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Wednesday, 8 December 2004

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

BUSINESS
Consideration of Legislation

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 a.m.)—I move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Customs Amendment Bill 2004.

Question agreed to.

CUSTOMS AMENDMENT BILL 2004
First Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 a.m.)—I move:

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

Question agreed to.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.32 a.m.)—I table the explanatory memorandum relating to the bill and move:

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

Question agreed to.

Bill read a first time.

The speech read as follows—

CUSTOMS AMENDMENT BILL 2004

The fight against the illicit drug trade in Australia and internationally remains a high priority for the Australian Government consistent with the Government’s Tough on Drugs strategy. The offences of importing and exporting illicit drugs across Australia’s national border are some of the most serious federal offences.

In relation to drugs such as heroin, judges have the capacity to impose sentences of up to 25 years imprisonment where the offence involves a trafficable quantity of the drug and up to life imprisonment where the offence involves a commercial quantity. Consequently, sentences of life imprisonment have been handed down. To date, the option of life imprisonment has not been available in relation to certain other illicit drugs, such as amphetamines, because the Customs Act has not prescribed ‘commercial quantities’ for those drugs.

I understand in a recent case involving the importation of 200 kilograms of methylamphetamine (known as ‘ice’), the judge suggested that, if there was a commercial quantity listed, he would have been able to consider imposing a life imprisonment penalty. In that case, the maximum penalty that could be imposed was the penalty for the lower threshold ‘trafficable quantity’, being 25 years imprisonment. Prior to the judge’s comments, the Attorney-General’s Department sought to address this issue by preparing regulations but have concluded that this could not be done because the drugs in question are already listed in the Act.

This Bill will prescribe commercial quantities for all illicit drugs currently covered by the drug importation offences in the Customs Act and therefore ensure that judges have the full spectrum of penalties available to them when sentencing those found guilty of importing large quantities of any illicit drug, including new and emerging drugs.

The Australian Government is committed to a proactive approach to ensure that judges will always have the capacity to make the penalty for drug offences reflect the seriousness of the crime.

Next year the Government will be bringing forward further improvements, including new serious drug offences for inclusion in the Criminal
Code. In the meantime, it is essential that this anomaly in relation to sentences be addressed.

Debate (on motion by Senator Webber) adjourned.

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

**AUSTRALIAN SPORTS COMMISSION AMENDMENT BILL 2004**

**CRIMINAL CODE AMENDMENT (TRAFFICKING IN PERSONS OFFENCES) BILL 2004**

First Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.32 a.m.)—I move:

That the following bills be introduced:

A Bill for an Act to amend the Australian Sports Commission Act 1989, and for related purposes.

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.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.33 a.m.)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.33 a.m.)—I table the explanatory memoranda relating to the bills 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—*

**AUSTRALIAN SPORTS COMMISSION AMENDMENT BILL 2004**

The purpose of the Australian Sports Commission Amendment Bill 2004 (the Bill) is to facilitate the more effective use of Customs information in the fight against drugs in sport. This information will normally concern importation or attempted importation by an athlete or by a member of an athlete’s support personnel, such as a coach, of a prohibited sports substance uncovered through measures such as postal intercepts or discovery on a person at Australia’s borders.

In 1999 the Australian Sports Commission Act was amended to enable Customs to pass this information to the Executive Director of the Australian Sports Commission (ASC). The provisions were thought at the time to be adequate. However, legal opinion obtained earlier this year in the context of doping allegations against a number of cyclists now indicates that the practical use of these provisions is more restrictive than first thought.

If the Executive Director is satisfied that the anti-doping policy of the sporting organisation to which the athlete belongs is “likely” to have been breached and the Customs information is “likely” to assist the organisation in determining whether to take action in accordance with its anti-doping policy, the Executive Director can then pass the information to the organisation. This limits the ASC’s ability to pass relevant information to sporting organisations. For example, some Customs information, such as the fact that a postal article addressed to a particular person was intercepted, may not by itself be sufficient to enable the Executive Director to be so satisfied.

In addition, the current legislative provisions impose significant limits on the use that can be made of the information by the recipient organisation. For example, even if the Customs information is able to be disclosed by the Executive Director to the sporting organisation, the organisation is precluded from using that information in any investigation, inquiry or prosecution under its anti-doping policy or rules.

Finally, the current provisions are silent on fundamental “natural justice” protections for athletes, such as the right to be notified that the Executive Director proposes to disclose Customs informa-
tion to the athlete’s sporting organisation, and the athlete being given the opportunity to make a submission to the Executive Director before the information is passed to the sporting organisation. It is also important to note that in the period since 1999 Australia has affirmed its commitment to the World Anti-Doping Code, which was released in March 2003 and is now being implemented by sporting organisations worldwide. Australia, along with 157 other countries, supports the Code through the Copenhagen Declaration on Anti-Doping in Sport.

Australia’s support for the Code and the Copenhagen Declaration includes our commitment to a comprehensive anti-doping framework. The ready availability of Customs information for use in anti-doping investigations and hearings is an essential element of such a framework.

Moving to the proposed amendments, they will address the restrictions in the current provisions by enabling the Executive Director of the ASC to authorise the disclosure of Customs information where the Executive Director is satisfied that it should be used or disclosed for permitted anti-doping purposes of the relevant sporting organisation. Permitted anti-doping purposes means any of:

(a) investigating whether an anti-doping policy of the ASC or a sporting organisation has been breached;
(b) determining whether to take action under an anti-doping policy of the ASC or a sporting organisation;
(c) determining what action to take under an anti-doping policy of the ASC or a sporting organisation;
(d) taking action under an anti-doping policy of the ASC or a sporting organisation;
(e) taking, or participating in, any proceedings relating to action that has been taken under an anti-doping policy of the ASC or a sporting organisation.

The amendments provide that the ASC Executive Director, before disclosing information, must give written notification of the proposed disclosure to the person to whom the information relates, and give that person the opportunity to make a written submission about the proposed disclosure.

The amendments also contain some specific provisions about the disclosure of Customs information for the Australian Sports Commission’s own internal anti-doping purposes.

In conclusion, the Australian Sports Commission Amendment Bill will advance Australia’s existing anti-doping framework and affirm Australia’s commitment to achieving a sporting environment free from prohibited substances.

CRIMINAL CODE AMENDMENT (TRAFFICKING IN PERSONS OFFENCES) BILL 2004


On 13 October 2003, the Australian Government announced a $20 million package of measures to combat trafficking in persons. Many measures from that package have already been implemented.

An important part of the 2003 package was a thorough legislative review.

The review carefully analysed Australia’s anti-trafficking laws to identify what changes were needed to fully and comprehensively criminalise trafficking in persons. This Bill is the result of that review, and represents part of the Government’s demonstrated and continued commitment to the fight against trafficking in persons.

The Bill comprehensively criminalises all aspects of this abhorrent crime by introducing a number of new and extended trafficking in persons offences.

It creates a specific offence where the trafficker transports their victim into Australia by using force, threats or deception.

The penalty for the new trafficking offence carries a penalty of 12 years imprisonment. This is set at the same penalty as blackmail.

An aggravated trafficking offence applies where a victim is also exploited, subjected to cruel, inhuman or degrading treatment, or endangered.
The aggravated offence carries a tougher penalty of 20 years imprisonment and is comparable to penalties for kidnapping and serious assault. The new trafficking in children offence is also punishable by a tougher penalty of 20 years imprisonment. This reflects the particularly repugnant nature of trafficking in children.

The Bill also creates new offences for trafficking in persons activities that occur wholly within Australia. The domestic trafficking offences will ensure each and every participant in the ‘chain’ of exploitation of the victim can be prosecuted for that participation.

The domestic trafficking offence is punishable by 12 years imprisonment, with a higher penalty of 20 years imprisonment for the aggravated offence where the victim is also exploited, subjected to cruel, inhuman or degrading treatment, or endangered.

The Bill also introduces the offence of debt bondage. This offence prevents traffickers from using unfair debt contracts and other similar arrangements to force victims into providing sexual services or other labour to pay off large debts supposedly incurred by the trafficker in transporting the victim to Australia.

This new offence will not criminalise legitimate employment arrangements that are not exploitative or unfair.

The debt bondage offence has a penalty of 12 months imprisonment with an aggravated offence where the victim is under 18 years. A tougher penalty of two years imprisonment for the child offence reflects the abhorrence of forcing a child into debt bondage.

The Bill also extends an existing offence to capture traffickers who induce victims to be transported to Australia by deceiving them about the conditions of their employment.

To ensure law enforcement and anti-corruption agencies can effectively investigate and prosecute these heinous acts, the Bill provides that telecommunications interception warrants are available under the Telecommunications (Interception) Act 1979 for the new serious offences.

People trafficking is a growing form of transnational crime that is receiving increasing attention throughout the world. Australia has a moral obligation to ensure that it has every possible measure in place to fight the trade in human beings and investigate and prosecute traffickers.

The Bill is a significant step. It ensures Australia meets, and actually exceeds its obligations under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Once this bill is passed, the Australian Government will be able to meet its commitment to ratify the protocol. The offences ensure that all aspects of trafficking in persons are criminalised in Australia—from the use of deception to recruit a trafficking victim, through the transportation of a victim to Australia through the use of threats, force or deception, to receipt and exploitation of a victim.

The new offences complement Australia’s existing package of measures, and will ensure Australia remains a world leader in the fight against trafficking in persons.

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

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

CUSTOMS AMENDMENT BILL 2004
Second Reading

Debate resumed.

Senator LUDWIG (Queensland) (9.34 a.m.)—There are a number of issues I will deal with before going to the substance of the Customs Amendment Bill 2004. This bill has been included for debate in the last week on the basis that it is an urgent bill, which enabled it to be exempt from the cut-off motion. The government was able to indicate the reasons for that sufficiently persuasively
enough to convince the opposition to support it. The caveat that the opposition sought and that was conceded by the government was that this bill operate for 12 months and a more comprehensive bill be provided in due course. The government has conceded that that bill should be referred to the Senate Legal and Constitutional Legislation Committee. That committee will examine that bill to ensure that it is appropriate and deals with the issues in a comprehensive way. In the interim, this bill will deal with the issue of having sufficient penalty options available to the judiciary in respect of criminals and commercial quantities of drugs.

The bill before us is an important piece of legislation that seeks to enhance sentencing options available to judges in cases where individuals are caught smuggling commercial quantities of dangerous drugs as defined under schedule VI. As it stands, the Customs Act includes 130 dangerous substances that are prohibited. These substances include dangerous drugs we are all familiar with, like cocaine, opium and heroin. Of course schedule VI also contains drugs that will be familiar to ordinary Australians as pharmaceutical products, like codeine, morphine and methadone. The importation of these drugs is restricted because they can be dangerous if taken in large quantities. A third set of drugs, which most senators may not know of, is legal drugs which may be used as ingredients in the manufacture of other drugs. We need to take strong measures to ensure they are not illegally imported as well. This bill tidies up the provisions of the Customs Act to ensure that that does not happen.

The bill will not affect the legal and proper import of drugs for medicinal purposes, as authorised by the Minister for Health and Ageing. Each of the 130 substances listed in schedule VI of the act has a trafficable quantity assigned to it. Anyone in possession of a trafficable quantity can be charged under provisions that prevent low-level drug dealing. Of these 130 substances, only 21 currently specify a commercial quantity. So schedule VI provides trafficable quantities for all of those and some commercial quantities, which are significant increases on the trafficable amount. We have seen in recent times huge imports of illegal substances that have been caught either by Customs, by the AFP or by both in combined operations. This demonstrates in some instances the tenacity of people to continue to attempt to import quite large quantities of illegal drugs.

The intention of differentiating between trafficable and commercial quantities is a good idea, and in retrospect the determination of commercial quantities probably should have been done at that time. But, by and large, I think it was considered at the time that some of these were unlikely to be imported at that amount or were unlikely to be considered as being of sufficient interest for those elements that would pursue these crimes to require the listing of commercial quantities. With the effluxion of time and the changing patterns across the world and across the drug markets there are now clearly instances of people seeking to bring not only trafficable quantities of drugs but also commercial quantities of drugs across our borders. I respect the fact that legislators at the time did not have the benefit of a crystal ball to tell them that drugs like MDMA, also known as ecstasy, would eventually cause the harm they are now inflicting upon our community. I am certainly pleased that Labor can contribute to tightening the provisions for the other 109 substances listed in schedule VI.

It may be worth mentioning the effect of the legislation in relation to sentencing. By defining a commercial quantity for these substances, we add a sentencing option for judges that includes life imprisonment. The
The maximum current penalty available for the illegal importation of these substances is 25 years, because that is the maximum penalty for importation of trafficable quantities. By spelling out the commercial quantities, as we do in this bill, we will allow judges to impose more severe or appropriate sentences for the Mr Bigs and others who seek to import dangerous substances into our country.

Labor is concerned about the importation of illegal drugs into this country and fully supports the excellent work of Australian Customs and the Australian Federal Police in their recent successes against drug importers. The amount of MDMA that has been detected by Customs has almost doubled over the last two years. That is excellent work, but we do not know the quantity of drugs which are getting through our borders. A number of people have been doing studies to work out what impact the current Tough on Drugs strategy is having on drug importation. We are certainly now detecting greater quantities of MDMA, but whether we are creating a dint in that market is another question that perhaps I can leave for the minister to answer. Labor is keen to ensure that there are sentencing options available for judges to ensure that they can at least deal in an appropriate way with the offences that are committed.

In truth, I think we are deluding ourselves if we believe these seizures have put a stop to the availability of illegal drugs in the community, as recent reports in the media show. If I can use figures from the Parliamentary Library and from Customs for senators’ interest, it is clear that more ecstasy is being imported into Australia. As recently as 1993, there were few seizures of ecstasy at the customs barrier. In 1994, 2.9 kilograms were seized. However, in the period January to August 1996, 29.9 kilograms were seized. In 2003-04 that figure was 873 kilograms. That is a frightening increase in the detection of MDMA.

There is some evidence to suggest that Australia could again be the target of drug lords who wish to import heroin. Senators may be interested to know that, since the removal of the Taliban in Afghanistan, opium poppies have returned to the fields as an acceptable cash crop for farmers. More heroin coming onto the market may well make Australia an increased target for heroin imports over the coming few years. Labor will be monitoring this situation closely and will be holding the government to account for any increased availability of this most insidious drug.

Labor has taken a number of steps to satisfy itself that this bill will not have an unjust effect. Firstly, the bill will not be retrospective. Secondly, as far as our resources have been able to check, the bill has been examined and it has been found that it does not make any attempt to modify or vary the existing commercial quantities specified for the schedule VI drugs. We can ensure that the government will at least put on the record that that is not the case. Thirdly, we will move an amendment to the bill to include a sunset clause. That will give the parliament a chance to review the effects and operation of the bill once it is enacted. There is also a commitment, as I said earlier, for a new bill that is to be introduced into the parliament next year to go to the Senate Legal and Constitutional Legislation Committee. I suspect that will include a range of other matters as well.

In short, this bill will have the effect of making additional penalties available to the courts in the very serious area of illicit drug importation in commercial quantities. It is an issue that Labor is able to support. It is also one of those areas where it is not just a case of ensuring that there are mandatory sentenc-
ing laws available. These are maximum sentences so the range of sentencing under the Crimes Act is available, and I am sure the minister can assure the parliament that that is the case. Therefore, I commend the bill to the Senate.

Senator GREIG (Western Australia) (9.44 a.m.)—The Customs Amendment Bill 2004, which has been introduced as a matter of urgency by the government, makes changes to the maximum penalties available for drug offences under the Crimes Act. The government indicates that recent prosecutions have highlighted an anomaly within the current provisions. Drug offences under the Customs Act are divided into those categories relating to trafficable quantities and those relating to commercial quantities of a prescribed drug. A commercial quantity is larger than a trafficable quantity and therefore attracts a heavier maximum penalty of life imprisonment, rather than 25 years imprisonment.

Currently, there are a number of drugs for which no commercial quantity has been prescribed under the act. In other words, the act only prescribes a trafficable quantity for those substances. I am informed that the reasons for these omissions in the act can be largely explained by the fact that, at the time when the drug offences were originally created, many of those substances were not being brought into Australia and used to the same extent as they are now. It appears that commercial quantities were prescribed for the more readily used drugs, while only a trafficable quantity was prescribed for the more rare drugs.

The drug market has changed considerably since that time and some of these substances, such as ice, are being more widely used and presumably imported in larger quantities. The government has informed the Democrats that this issue was highlighted recently during a trial relating to a customs offence involving a very large quantity of ice. I understand that the sentencing judge in that case sentenced the defendant to 25 years imprisonment, but commented that he would have given a sentence of life imprisonment had that option been available to him at the time.

One of the important considerations for the Democrats in examining this bill is that the effect of the bill is simply to provide more severe maximum penalties. There is no prescription of minimum penalties and, more importantly, the sentencing discretion remains with the court. I understand that the sentencing guidelines set out in the Crimes Act will continue to apply and will guide judges in determining the most appropriate sentence in the circumstances of the case. This means in practice that someone could commit an offence relating to a commercial quantity of a prescribed substance and it would be possible for them to receive a penalty that is less than the maximum penalty for a trafficable offence. Whilst I am not advocating light penalties for serious drug offences, the point I am trying to make is that the discretion as to the most appropriate sentence will remain with the court. This is vitally important, because it is the court that hears all the evidence in a particular case. It has the opportunity to hear submissions about any mitigating or exacerbating circumstances that may justify a longer or shorter term of imprisonment.

Essentially, the legislation will combat situations such as that which occurred in the recent ice prosecution, where the judge was of the view that a heavier sentence should apply, but was not able to give such a sentence due to the current legislative restrictions. This bill will give judges a broader discretion to determine appropriate sentences for serious drug offences. On that basis, we
Democrats readily lend our support for the legislation.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.48 a.m.)—in reply—I thank senators for supporting the Customs Amendment Bill 2004 and I acknowledge their contribution. In particular, I thank the opposition for their support for the quick facilitation of the passage of the bill. This is a very important bill which strikes at those people who wish to gain commercially from the trafficking in illicit drugs, in particular from the importation of those drugs into Australia. As Senator Greig pointed out, over time the drug scene has changed. When these laws were drafted some time ago the drug scene was somewhat different to what it is today. We have seen varying derivations of amphetamine type stimulants—in particular, crystal methylamphetamine, which is known as ice—gain a market share. Recently, there was a case involving the importation of that drug and, as Senator Greig pointed out, comments were made in relation to sentencing options. I draw to the Senate’s attention the fact that the Attorney-General’s Department had been working on this matter prior to that. It came to the department’s attention that an amendment was needed and the advice was it was best done by way of legislative amendment rather than by way of regulation. That is why the urgent passage of this bill is necessary rather than waiting until early in the new year.

I point out also that the government has a bill planned for the sittings early in the new year. The Law and Justice (Serious Drug Offences and Other Measures) Bill 2005 will be a comprehensive approach to drug offences and penalties which attach thereto. In this instance, however, urgent action was necessary and the officials of the Attorney-General’s Department have worked very well in getting this legislation in place. Again, I acknowledge the assistance of the opposition and others in the Senate in facilitating the passage of the bill.

As Senator Ludwig pointed out, this amendment bill relates to schedule VI of the Customs Act, which applies to offences involving a commercial quantity of amphetamine type stimulant drugs, particularly crystal methylamphetamine, which I mentioned earlier. Previously, the law dealt with offences involving only a trafficable quantity, a lesser amount, and the maximum penalty was 25 years imprisonment. Now offences relating to those sorts of drugs will have a maximum penalty of life imprisonment. Life imprisonment attaches to the importation of a commercial quantity of heroin, cocaine and other drugs about which we have a more common knowledge. The drugs mentioned in the amending bill will now have a commercial quantity provision, which will mean that life imprisonment can be handed down to anyone who imports a commercial quantity of those drugs.

Of course, it is no secret that we face a great challenge in the illicit drug market of amphetamine type stimulants. We have made some progress in reducing the supply of heroin. We are not complacent of course; we still continue the war against drugs in that area. But, both domestically and overseas, we have seen a huge increase in the production of amphetamine type stimulants. Domestically, drug laboratories have increased by around 300 per cent, indicating a huge domestic market.

Also, we have seen very large seizures at the border. This indicates that there is a market in Australia, and that overseas criminals see Australia as a target, so we have to fight it both internationally and nationally. With this amendment we send a very clear message that Australia will not tolerate the importation of commercial quantities of illicit
drugs—indeed, will not tolerate the importation of illicit drugs at all. The imposition of a penalty where the maximum period of imprisonment is life imprisonment is the strongest message we can deliver under our criminal justice system. There are people serving a life sentence under Commonwealth law for the importation of commercial quantities of illicit drugs. The Commonwealth has, we believe, the toughest penalties for the trafficking of drugs. We have seen life sentences handed down where non-parole periods have exceeded 20 years. There have been sentences ranging upwards from 25 years to life with non-parole periods in excess of 20 years. This sends a very clear message that, if you attempt to import illicit drugs into Australia, you will face serious penalties.

We have about 700 federal offenders in Australia, and over half of those would be for drug offences. In the Commonwealth jurisdiction those offences are at the serious end of the scale. Attempts are being made to bring in larger amounts of drugs, as Senator Ludwig has pointed out. I want to place on record the appreciation of the Australian government for the work done by the Australian Customs Service, the Australian Federal Police and the Australian Crime Commission and for the cooperation we get from state and territory police. We cannot fight this war alone. It requires a whole-of-government approach and a complete law enforcement approach. The very fine work of law enforcement is making a difference. We have had some standout results from the Australian Federal Police and the Australian Customs Service. I commend this bill to the Senate. It has been an urgent response and is much needed.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

**Senator Ludwig** (Queensland) (9.55 a.m.)—As I understand it, an amendment has been circulated in my name. If that is not the case, we can circulate it in due course. The amendment goes to the commitment to ensure that the provision has a sunset of 12 months. As Senator Ellison mentioned in his summing up speech, this would allow the bill to sunset in 12 months. In the interim, a new bill would be introduced by the government which would be referred to the Legal and Constitutional Committee for proper scrutiny. That is a sensible approach to take. The 12 months would allow this bill to operate unimpeded and within that 12-month period the important work of the committee would proceed in relation to the new bill. In that time, all those matters we referred to earlier could be examined. I might seek to circulate an amendment putting a 12-month—

The **Chairman**—Senator Ludwig, it seems as if the government have sighted a copy of the amendment because they were able to provide it to me.

Senator Ludwig—Maybe the minister has a copy. If the minister likes, I can easily sign the document and circulate it. It is not unusual in the chamber during a committee debate for us to take the opportunity to circulate an amendment. Its effect is clear. It will operate to ensure that there is a sunset provision of 12 months within the bill. So if there is a copy of that amendment available, I can sign that and circulate it under my name now.

**Senator Ludwig**—Maybe the minister has a copy. If the minister likes, I can easily sign the document and circulate it. It is not unusual in the chamber during a committee debate for us to take the opportunity to circulate an amendment. Its effect is clear. It will operate to ensure that there is a sunset provision of 12 months within the bill. So if there is a copy of that amendment available, I can sign that and circulate it under my name now.

**Senator Ellison** (Western Australia—Minister for Justice and Customs) (9.58 a.m.)—I foreshadow that the government has seen this amendment and agrees with it. It proposes that the amendments to schedule VI do not apply for longer than 12 months; that is a sunset clause. The government, as I mentioned in summing up the second reading debate, intends to replace the drug offences
in the Customs Act with ‘serious drug offences’ under the Model Criminal Code in the new year. This 12-month period will allow more than ample time for the government to achieve passage of the new Criminal Code offences, which will be referred to a Senate legislation committee, and that process will take some time.

We have a situation where these amendments can take effect on royal assent, so the new regime of life imprisonment for these drug offences will apply to anyone found guilty of committing an offence. That sunset provision will apply for 12 months. In the meanwhile, the government will introduce its new bill early in the new year, which is a more comprehensive approach to the issue of serious drug offences. It has come about as a result of working with the states and territories in relation to serious drug offences. This has been a work in progress, if you like, and one which is much needed. Of course the government has undertaken that the bill will be referred to a Senate legislation committee. Whilst that is being dealt with, this amendment bill will be in force in the interim. The opposition’s amendment, which deals with the 12-month sunset clause, is not inappropriate. Therefore, the government sees its way clear to agree to that amendment.

Senator LUDWIG (Queensland) (10.00 a.m.)—by leave—I move opposition amendments (1) and (2) on sheet RB253:

(1) Clause 2, page 1 (lines 6 to 8), omit the clause, substitute:

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
fied in column 1 of the table is taken to have commenced in accordance with column 2. What we do not have is a position where there will be any retrospectivity in relation to this matter. We will ensure that schedule 1 and schedule 2 commence on the day after the end of the period of 12 months, beginning on the day on which this act receives the royal assent. We also seek to insert a sunset provision which will ensure that the provisions will not continue. As I think we have made plain in both the second reading debate and the committee stage today, it is not our intention to otherwise repeal or peel back these provisions. It is one of those issues where, to keep the government accountable, there has been a process of ensuring that no unintended consequences occur, and we have the ability to revisit these provisions by way of a legislation committee. There could be a different outcome as a consequence of that, but that is a matter to be argued on another day.

Senator GREIG (Western Australia) (10.02 a.m.)—The Australian Democrats support the amendments. Clearly they have the support of both the major parties, so our support is a moot point—or not. Effectively, it is a mechanism of accountability. We have no particular difficulty with that. It would be open to the continuing Howard government or any future government to review this. We have no particular difficulty with that. As Senator Ludwig has said, the purpose behind this is self-explanatory; it has our support.

Question agreed to.

Senator GREIG (Western Australia) (10.03 a.m.)—The minister, in his contributions, spoke of ecstasy and methamphetamine use in Australian society. I just wanted to ask a few questions around that. The extent to which crystal meth and ecstasy are being used, particularly by young people in our society, has been of increasing concern to me in recent months. The government’s policy—the Howard doctrine if you like, over the term of three, now four, governments—has been a very strong, tough on drugs approach and there has been a lot of money going into publications and some education. But it seems to me that that has been largely focused on heroin use. I think most Australians, when listening to debates or thinking about drug use, tend to have that image of the junky with the dark eyes and the needle in their arm in Kings Cross and other places that experience these difficulties. It worries me that that is no longer the drug issue in Australia. It is now methamphetamine, speed and, to a lesser extent, ecstasy.

We saw a report recently which quite shockingly showed that we Australians are now the highest consumers of ecstasy in the world and the second highest consumers of methamphetamines, of speed, after Thailand. If the government is going to argue that its tough on drugs approach has been successful in reducing heroin deaths, and there is evidence for that, then the logical extension is that its tough on drugs approach has failed when it comes to methamphetamine and ecstasy use. What I would like to hear from the government is whether or not it has turned its mind to shifting its focus, resources, education campaign and money on the drug issue towards better educating young people in particular about the harmful long-term effects of methamphetamine and ecstasy use. My experience with friends, colleagues and people of my generation and younger is that this is seen in a very blase way. It troubles me that there is not a proper education campaign focused on those particular drugs. I can only say again that this laissez faire attitude troubles me. The research I am reading is showing that more and more health professionals—psychologists and psychiatrists—are becoming increasingly concerned about...
the long-term health implications, particularly with mental health and schizophrenia, from the use of these drugs.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (10.06 a.m.)—Senator Greig asked a very good question and it is one which the government is aware of. As I have said repeatedly, the fight in relation to drugs covers three fronts: law enforcement, education and rehabilitation. In relation to law enforcement, we are looking at a means of identifying sources of amphetamines, particularly precursors. I set up a precursor working group over two years ago which deals with the trade in precursors which go to make amphetamines. That has proved to be more important as time has gone by and it has involved the work of the health, law enforcement, education and private sectors. Indeed, the advisory group that I have is made up of people from those sectors. The work that they have done has been outstanding, right from the pharmaceutical sector—the supply of pseudoephedrine via cold tablets, which is one source of precursors for methamphetamine type stimulants. At the law enforcement level we are being very mindful of the growth in the use of amphetamines. Senator Greig is quite right that Australia is one of the highest users of amphetamine type stimulants in the world.

In relation to rehabilitation, we have drug diversionary programs. For instance, Senator Greig would be aware of the Drug Court of Western Australia. Many of the diversionary programs have Commonwealth funding and, indeed, that drug court could not function without those diversionary programs. I have been down to the drug court and seen first-hand the excellent work that is done there. That covers not only heroin but other illicit drugs as well. That is another area where Commonwealth funding is being used to address the abuse of drugs, not just heroin. I think Senator Greig has a point that, in the past, heroin achieved more notoriety than other drugs. In fact one of the concerns I have is with young Australians and the fact that there seems to now be a lack of awareness of heroin in comparison to amphetamine type stimulants—party drugs or designer drugs, as they are called. I think they are misnomers, because those drugs are much more lethal and dangerous than those terms would suggest.

I think that that is the big challenge for us. We have got the rehabilitation programs and the diversionary programs there, but I think the new frontier in relation to the use of amphetamines in this country lies in education. That does come within the ambit of our National School Drug Education Strategy, which we introduced in 1998, but I think we need to do more work on the education of young people in Australia in relation to these sorts of drugs. The government are totally committed to providing resources for this. I think that across all governments we have to develop a strategy as to how we deal with young people, especially in this area. In relation to heroin, I think we have made some ground; we have still got to make a lot more ground in relation to amphetamines, and we are intent on doing that. I do not have all the details of the programs here with me—they are in the Department of Health and Ageing and in Education as well, and they are not my responsibility—but I take a great interest in the area, and I undertake to Senator Greig that I will provide him with more detail in relation to that.

I can say, on behalf of the government, that we are totally committed to education programs to educate, in particular, young Australians about the dangers of amphetamine type stimulants, to rehabilitation programs which go to drug abuse across the board, including amphetamine type stimulants, and, of course, to law enforcement, for which I have personal responsibility.
Senator BROWN (Tasmania) (10.10 a.m.)—Could the minister inform the committee as to why Australia, with a population only slightly larger than that of the Netherlands, nevertheless has had a drug death toll of between 300 and 1,000 per annum—mainly young people—over each of the last 10 years, whereas the Netherlands has never had a death toll as high as 300? The drug death toll in the Netherlands has always been below 300 in the last 10 years. What is it that the Netherlands is doing that is saving hundreds of lives in that country which Australia is not doing and which is not saving hundreds of lives in this country?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.11 a.m.)—I am not aware of those figures for the Netherlands, but I can say that since 2000 we have seen a reduction in deaths from heroin overdose by up to 60 per cent across Australia. It varies in some jurisdictions, but that is an average. It does show that we have made some progress on that. I think the take-up of amphetamines in Australia has been particularly high, and we had perhaps lagged behind other countries in the take-up of those particular drugs. As I said a moment ago, education programs and rehabilitation programs are adjusting to that. We do not, of course, have the cocaine problem that the United States has. The United States has a huge cocaine problem. In Australia it is of a much lesser order and it is also of a much lesser order here than in Europe. You cannot just compare one jurisdiction with another in a rather bland way, because each jurisdiction has its own issues in relation to drug abuse and the sorts of drugs that are used.

Australia had a much higher heroin issue per capita than the United States for some time. Criminals, of course, adjust their trade for the market and what the market will take up. I think heroin is something we have made some progress on. Amphetamines are our big challenge. I might point out that we have found that the reduction of supply is one of the most effective measures to reduce harm. That has been stated by the United Nations Commission on Narcotics Drugs and by the Australian National University, which did a study for the Australian Federal Police. Recently at the Police Ministers Council there was a report, an independent assessment, that re-endorsed the fact that reduction in supply is the way to go. There have also been studies in New South Wales where I think Don Weatherburn said much the same. We have had a number of reports which say that reduction in supply is the right strategy. It makes it much more difficult to educate people, particularly young Australians, in an environment where there is an abundance of supply of illicit drugs. If you can reduce that supply and reduce the availability, your efforts at education can be much more successful.

The situation is similar in relation to rehabilitation. I have visited many clinics and programs and anecdotally I have had it put to me that, where you reduce supply and make the drugs harder to get, you have addicts who say, ‘Well, maybe it’s time for me to just quit.’ I remember talking to people from the ‘team challenge’ program in Victoria who gave me evidence that, when there was a reduction in supply of heroin, addicts they had dealt with said, ‘It was a circuit-breaker.’ That did not apply across the board, but it did apply in some cases. It was enough for some people to have a change in their life and to fight the addiction successfully. Of course, even one victory is a victory. The government is fully confident, and has an independent assessment which corroborates that confidence, that its law enforcement approach is appropriate; that its approach to the education of young people, particularly, in our schools is essential; and that rehabili-
tation is the third arm of our fight, our Tough on Drugs approach.

Whilst you might make comparisons with other countries, we compare what has gone on before and what is happening now. Alcohol is another frontier, and it is as big an issue, if not bigger, in our community than the illicit drug issue. It is making a bland comparison to say: ‘This country has had this result. Why haven’t we?’ I do not think you can simply compare one country with another. The Netherlands does not have the Indigenous issue with substance abuse—with glue sniffing, with petrol sniffing—that we have, and that is perhaps just as lethal if not more lethal than anything you can bring in across our borders. Petrol sniffing will give you brain damage very quickly. Alcohol abuse can kill you just as quickly. We have seen Indigenous communities where this is a big issue. If someone dies from substance abuse, that is tragic. It is part of our overall program of looking at deaths as a result of substance abuse. That is a different aspect that Australia has to tackle. The Netherlands does not have that. Looking at those differences demonstrates that a simple comparison does not do the issue justice.

Senator BROWN (Tasmania) (10.17 a.m.)—Nobody is arguing with the government about reducing the supply and criminalising those who want to make money out of the drug trade. The argument is with the government effectively saying that that is the be-all and end-all but that it will throw in some education programs. The minister edged towards talking about harm minimisation, which is the strategy endorsed by many leaders in the field, including those in policing, those in the courts and those with medical expertise in this area. This government has set its face against that. Mind you—and this is perhaps unknown to the minister—Commonwealth funding has gone into worthwhile programs, like those in Western Australia. People in Western Australia who are found to have illicit drugs on their property are given the opportunity to have rehabilitation—health and education included—rather than be sent to jail, which is the prime ministerial view of how people who are associated with drugs should be treated. The Prime Minister has determined that there shall not be heroin clinics for people who desperately need a circuit-breaker. He has turned his face against harm minimisation in this country.

When you look at the statistics of a like country such as the Netherlands, you can draw comparisons. There is a different philosophy there. That philosophy has saved lives, whereas the narrow view of this government has lost lives in this country. The minister says, ‘You can’t compare one country with another.’ Yes, you can. You can compare the philosophy and the more embracing view that people who are caught up in drugs of addiction should be treated as people who have a problem which they need to be helped out of. The consequence of getting somebody out of an addictive phase is to save society from the flow-on criminal behaviour which so often comes with drug addiction.

The question hangs in the air: why are scores of young Australians dying each year? The number of young Australians dying is above the number of young people dying in an equivalent country such as the Netherlands. Where is the failure? The minister has to face up to the fact that there is a failure in the delivery of drug policy in this country. It is because of the mind-set, which comes from the Prime Minister right down, that criminalisation not just of those people who peddle drugs—who should be put in jail—but also of those who become the victims is the way to go. It puts drugs underground and it denies people easy access to health, to psychological and social advice when they need
it and to the options for getting out of addiction.

At state level there are moves in that direction. I have just described the Western Australian position; there is a similar position in other states. But there is a prime ministerial mind closed to it and a ministerial mind closed to it. I believe that that unnecessarily costs young lives in this country each year. The government has to open its mind to the fact that, while we can and will endorse legislation such as that before the parliament today—which goes to making sure that people who import or deal in drugs are pursued and put out of action—at the other end there is a policy failure by government. The need, once people are addicted, for them to be helped to get out of their addictions for their own good, for the sake of their families and for the sake of the community in which they live is not being adequately tackled by this government.

Senator GREIG (Western Australia) (10.22 a.m.)—I also want to reply briefly to some of the comments the minister made about supply reduction being an important part of dealing with the drug issue. I do not disagree with that but we need to be reasonable, balanced and objective in terms of these arguments because there are also negative impacts of supply reduction. The government argues that it successfully removed a lot of heroin from our streets, and the data suggests that there has been a significant drop in heroin, although Police Commissioner Keelty has said that, in his view, that has more to do with the heroin drought in South-East Asia than the legislative response, but that is open to debate.

One of the things that happens with supply reduction is that the cost of those drugs which are available but which are fewer in number then skyrocket. As a consequence, those people with addictions then resort to more frequent and often more violent crime. There is a strong correlation between drug use, addiction and crime in our society. That opens up the question of whether as a community we need to have serious discussion on the provision of clean, regulated, government-provided heroin to those people who are addicted. That is a program that is practised in some countries to some effect. To some degree, we have had that debate about the heroin injecting rooms which exist in Sydney but which do not provide the drugs to people; they are merely a safe and clean space to use them.

Another thing is that it is wrong for the government to claim that supply reduction immediately leads to people not using drugs. When the government was trumpeting roughly 18 months to two years ago that the data was showing a significant drop in heroin use and heroin deaths, I received a phone call from a rehab centre based, I think, in St Kilda in Melbourne who put it to me that the very same people they were seeing over and again who were heroin addicts were still coming to them, only they had shifted their addiction to methamphetamine. In many ways, that was a more dangerous practice and a more dangerous drug. The quality and quantity of drug was much harder to determine, people were injecting much more unclean drugs and the adverse effects, particularly with anxiety, mental health issues and schizophrenia, were in many ways worse with methamphetamine than heroin. So we were simply seeing a shift in drug use rather than a reduction in drug use. For me, that brings home the point that we Democrats maintain very strongly—that is, we must first and foremost approach this as a health issue rather than a legal and legislative issue, although I accept the minister’s argument that it is a three-pronged approach.

Finally and perhaps more importantly, the minister touched briefly on the issue of alco-
hol. Let us keep all of this debate in context. Alcohol, far and away, is the most permissive, dangerous, costly and violent drug that permeates our society. But in response to that, our state and federal governments continue with relentless programs advising people about sensible drinking and against binge drinking, proper education programs in schools and good adverts on the television alerting people to dangers such as dangerous driving. I commend all that. I do not think any of us would not. But what we Democrats would like to see is the very same approach taken towards methamphetamine and ecstasy use in terms of resources, funding and education.

Senator BROWN (Tasmania) (10.25 a.m.)—Does the government support a prohibition on advertising the sale of alcohol?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.26 a.m.)—That is not in my portfolio but certainly the government has supported education programs in relation to alcohol and acknowledges that alcohol is a problem we have to deal with in our community. We funded the alcohol research foundation in relation to both research and education, as I understand it. I will take on notice the question about advertising.

While I am on my feet, I cannot let go unchecked a couple of comments that were made by Senator Brown and one aspect that Senator Greig mentioned. I am not aware of the Commissioner of Police ever saying that the reduction in heroin was due to a heroin drought in South-East Asia. I am aware that the Police Commissioner, Mick Keelty, said that the reduction in supply was largely due to law enforcement measures and interdiction. You can get droughts from time to time or reductions in production from time to time in Afghanistan and the Golden Triangle but criminals are not stupid. They build up stockpiles which keep the flow going. We saw that in relation to Afghanistan and the Taliban. It cut back production for a while but there were huge stockpiles that kept those supplies going. As we know, heroin goes from Afghanistan largely to Europe and the United States, and we get our supply of heroin from the Golden Triangle. But I can state with confidence that the Police Commissioner of the AFP, Mick Keelty, has always stated that the major reason for the reduction in supply has been the interdiction by law enforcement. I believe that that has been borne out by independent assessment.

In relation to Senator Brown’s comments, I think it is a bit rich of Senator Brown to come in here and attack the government’s policy in relation to drugs. Firstly, Senator Brown was not in the chamber when I detailed the support that this government gave to diversionary programs. I cited the example of a program that I knew about personally in the Drug Court in Western Australia. That is not law enforcement only; that is rehabilitation. We introduced a national schools drug education strategy. I introduced that strategy when I was minister for schools in 1998. That is not law enforcement; it is a wider approach in the fight against drugs. I appreciate the acknowledgment that Senator Greig gave to that but in response to Senator Brown’s comments I would say that his comment that there is just a law enforcement approach to drugs from this government is totally wrong. We have spent over a billion dollars on the Tough on Drugs strategy. As I recall, the majority of that funding of over a billion dollars would have been spent on education and health.

Recently, I announced just over $2 million from the proceeds of crime—there is some poetic justice, you might say, in relation to those proceeds—going to drug rehabilitation programs. That money went to drug rehabilitation. That is not law enforcement; that is
drug rehabilitation. We have always said that we fight drugs on three fronts: law enforcement, education and rehabilitation. You will not find me saying anything else nor have I deviated from that since I have been in this role or in my previous roles as minister for schools or parliamentary secretary to the minister for health.

For Senator Brown to say that we only have a law enforcement approach to this is totally wrong; in fact, we have been involved in diversionary programs in relation to alcohol abuse, particularly in Indigenous communities. We have done this with our crime prevention program. If you want to look at a soft approach to drugs, one which is totally off the beam, look at what the Greens propose, which Senator Brown tried to deny during the election campaign, although it was on his web site. The fact is the Greens had it on their web site, and it was a soft approach to drugs, even serious drugs such as amphetamine type stimulants.

Senator Brown cites the states. I can tell you that South Australia is scaling back its original legislation in relation to cannabis, Western Australia is regretting the day it ever went down that path, and I do not see New South Wales expanding its heroin injecting room. If it is such a good idea in those three states, why don’t all the other states follow? You have six states and two territories—all with Labor governments—and three out of eight have gone down that path; the other five have not. I sit on the Ministerial Council on Drugs Strategy, the Police Ministers Council and the Standing Committee of Attorneys-General, and I can tell you right now that those five other governments are not going down that path. For Senator Brown to highlight that is really without much base. Let us have look at the Greens’ policy. Their web site revealed a range of proposals and it stated:

1.2 The regulation of the personal use of currently illegal drugs should be moved outside the criminal framework.

3.17 Pilot programs to test the effectiveness of controlled availability of heroin to registered users from specifically licensed clinics

3.19 the decriminalisation and regulation of cannabis cultivation and possession for personal use, while monitoring its effects on the health of young people

3.20 the controlled availability of cannabis at appropriate venues

3.25 investigations of options for the regulated supply of social drugs such as ecstasy in controlled environments, where information will be available about health and other effects of drug use.

I will repeat the last one:

... investigations of options for the regulated supply of social drugs such as ecstasy—this defies belief, but I will go on because this is from the web site—

in controlled environments, where information will be available about health and other effects of drug use.

Senator Brown should have a good look at that. I put out that statement on 31 August in relation to the policy on the Greens’ web site: ‘Policy: Drugs, Substance Abuse and Addiction’. It appeared on the Greens’ web site. I do not think Senator Brown will find much support around Australia or from the state and territory governments to have ecstasy termed a social drug. When I was at the ministerial council on drug supply and we talked about the issue of amphetamine type stimulants, we deliberately avoided the term ‘party drugs’. We deliberately avoided the term ‘designer drugs’. It was unanimous, I can tell you, that we should avoid giving those sorts
of drugs, which are lethal, some soft description as a social drug.

If Senator Brown wants to come in here and have a debate about illicit drugs, he should at least put forward what the Greens stand for. We have got that from the Greens’ web site. One, he is wrong about the government’s approach to Tough on Drugs—it is not just law enforcement alone, and we have a record of funding education and health. Two, when he cites the state governments as going down that path, he fails to point out that out of eight state and territory governments, only three are doing it; the other five have decided well against it. Finally why doesn’t he trumpet what the Greens have said on their web site:

... investigations of options for the regulated supply of social drugs such as ecstasy.

If Senator Brown has that as his party platform, so be it, but let him at least let the Australian community know that.

Senator BROWN (Tasmania) (10.34 a.m.)—We do not need to because the government and its lackeys in certain sections of the media and Family First did the job after the Prime Minister consulted with them during the election campaign. Family First went into advertising and misrepresenting the Greens’ policies and withdrew them under legal threat during the election campaign, including the quite scurrilous assertions about my views on young people and drugs. This is a very serious health issue in this country which needs to be addressed and options need to be looked at. If the minister believes that options should not be looked at, that we should shut our mind to options, that is a different point of view to the one I have. The minister is saying, inter alia, that young people should not be informed about the danger of ecstasy in places where the widespread use of this dangerous drug is promoted and where this drug is sold by criminal elements. I disagree; I think the government has a job to warn people and to look at how best to get information to them.

As for going into the competitive sale of these drugs, I do not agree with that. Looking at options is something we must always do because the death toll is unacceptable. As I said at the outset of my contribution, this government must bear the responsibility for having a death toll which is way above that of European equivalent countries. It is the narrow-minded, constricted view that harm minimisation is not a way to go that does that. I believe the government should open its mind to looking at options which are in place elsewhere in the world. For example, recently a referendum in Switzerland, where the majority of people were opposed to heroin clinics, had 70 per cent support because people have seen the advantages of them. The minister says that five other jurisdictions—outrageously, that includes the ACT—have not gone in the direction of the heroin clinic in New South Wales. That is because this government stopped them.

I ask the minister again: how does he deal with the gross hypocrisy of the government not only permitting but endorsing the advertising of the most death-producing, health-wrecking and abusive drug in our society these days, which is alcohol? This government supports the advertising of alcohol to young Australians, where there is a massive problem of binge drinking and an on-flow problem of the uptake of other drugs. The government says it has got a $1 billion public purse program which includes health education, knowing it is truly overridden by the billions spent on drug advertising. The minister does not know what the government’s policy is, but every airport he goes into, for example, carries prodigious advertising for the sale of alcohol. Is it not a problem, Minister? Is the advertising of alcohol not a problem? Does it not cost the health system...
in this country billions of dollars a year? Is that drug, along with nicotine, not the biggest killer in the country? Can you answer those questions. Why is it that the government endorses the promotion of the abuse of alcohol? Because that is what comes out of the advertising of alcohol.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.39 a.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

NATIONAL WATER COMMISSION BILL 2004

Consideration resumed from 7 December.

In Committee

Bill—by leave—taken as a whole.

Senator BROWN (Tasmania) (10.40 a.m.)—I move the Greens’ amendment (1) on sheet 4439:

(1) Clause 7, page 6 (after line 20), after subclause (2), insert:

Specific functions relating to the provision of water for environmental purposes

(2A) The NWC has the following specific functions relating to the provision of water for environmental purposes in the Murray-Darling Basin:

(a) to complete implementation of the Living Murray First Step by 31 December 2005 (the Living Murray First Step means the provision of an average of 500 GL of water per year in perpetuity to achieve specific environmental objectives and outcomes for six significant ecological assets: Barmah-Millewa Forest, Gunbower and Koondrook-Perricoota Forests, Hattah Lakes, Chowilla floodplain (including Lindsay-Wallpolla), the Murray Mouth, Coorong and Lower Lakes, and the River Murray Channel);

(b) to secure an additional annual average of 2500 GL of water per annum in perpetuity for environmental purposes in the Murray-Darling Basin by 31 December 2007, of which at least 1000GL must be used to improve the health of the Murray River;

(c) to complete the return of all currently over-allocated or over-used systems to environmentally sustainable levels of extraction by 2010;

(d) in the Murray Darling Basin to allocate water for environmental purposes in accordance with plans prepared by the Murray Darling Basin Commission.

(2B) The NWC must provide for a national system of heritage rivers to be designated by 2010.

It would be very helpful if the Minister for the Environment and Heritage, and indeed any advisers, were actually available in the house. We had neither last night, but I think it is fair enough that this morning we should have both the minister—here he comes—and some helpful advice for the committee on the matters that have arisen and will arise.

I explained this amendment to the chamber last night, but I will reiterate briefly that this is an amendment to give some teeth and some definition to the National Water Commission, which is going to be funded by $2 billion of taxpayers’ money, to meet specific targets for providing environmental flows, particularly in the Murray and Darling. These are, firstly, to secure the entire 500
Chair, you will recall that last night several senators, not least Senator Lees, were speaking about the parlous state of the river red gums along the Murray: 75 per cent are stressed, dying or dead. There is massive carnage of these iconic red gum forests. One scientist described it as driving from Sydney to Melbourne along a thousand-kilometre highway with dead trees on both sides. That is how rapidly the river red gum forests are being destroyed. Of course, with that you get the destruction of habitat for a whole range of birds and mammals, and even the fish life in the river because the food resource in the river is very much related to the natural botanical cover of the riverine ecosystem.

The rescue of the red gums is absolutely critical. Prime Minister Howard and the government say, ‘We will give 500 gigalitres some time in the coming years.’ Maybe it will be 2010, maybe it will be 2014. That is too late. It has got to be now. We know that 500 gigalitres is not going to return health to the river; 4,000 gigalitres are required—eight times as much. But the government and the Prime Minister have not returned one drop of water to the Murray or the Darling in the last nine years in office—not one drop will be spent and no water will flow because there is no agreement—there is a fight over competition payments. During the election campaign the Prime Minister revealed that the $2 billion is not going to come from the Commonwealth purse; it is going to come from competition payments that the states and territories are getting.

The second part of the amendment is to secure an additional 2,500 gigalitres of water for the environment and the nation’s rivers by December 2007, with 1,000 gigalitres going to the Murray. That would take the Murray’s allocation to 1,500 gigalitres within three years. That is half what scientists say is required to ensure a healthy river. The report of 2002 has been suppressed. The written report has got out; the pictorial report has not. The Greens are saying: let us go halfway and put a date on it, which is three years out from now. I asked last night about the Murray-Darling Basin. So the minister has had overnight to consider a report to the committee this morning on a part of the Darling catchment which is of national significance and one of the nation’s and the world’s great waterbird havens and breeding places—the Macquarie Marshes. I ask the
minister to report on the state of the health of and the prospects for the Macquarie Marshes. I ask the government to turn around the wholesale destruction of the Macquarie Marshes due to the diversion of the flow from that river system over the last decades.

The third component of this amendment is to return rivers and wetlands to environmentally sustainable extraction levels by 2010—six years from now. The word ‘sustainable’ has become part of the government’s lexicon and it does mean something—sustenance for the environment which is guaranteed. Is the government not able to give that guarantee for six years from now? If it cannot give that guarantee, what date does it give? The National Water Initiative commits to returning overallocated systems to environmentally sustainable extraction levels, but there is no time line. Can you believe that? I am sure the minister is going to give us one, because if we do not have a time line it means nothing. In fact, it says that we are not going to achieve this. If we were going to achieve it, there would be a time line. It is done in all areas of the economy, but when it comes to the nation’s environment there is no time line. In other words, there is no objective in real terms.

The Australian Conservation Foundation, the Farmers Federation and the Banking Association agreed to environmental sustainability by 2014—a decade from now. When we look at the Murray-Darling system, as I said in reference to the red gum component, we cannot wait a decade. Urgent action is needed now because the whole ecological system has been collapsing in front of our eyes, due to the negligence of this government and indeed state governments, over the last decade when action was required. The problem was known further back than 10 years ago, but Prime Minister Howard, several environment ministers and government in general have sat on their hands and done nothing because they are not prepared to tackle the big irrigation players, the corporate sector, which takes most of the water out of these systems. The most vile and deployable excess has been reached with what we see at Cubbie Station and the upper catchment of the Darling River.

The $2 billion has no defined spending program—I will be asking the minister about that. We would be better off getting rid of Cubbie Station’s entrapment of the flow of the Balonne and other river systems in far south Queensland rather than just spending the money on feelgood programs which are not going to make much difference. Last night the minister said that the Prime Minister wants to get 20 major programs going in the next year—or was that years? Let us not set time lines. I ask him: what are the 20 programs?

The Prime Minister has said that water is property. He has put dollars on it and wants taxpayers to compensate the corporations who are overallocated and are, therefore, destroying this ecosystem. Don’t ask them to compensate the nation for the destruction of the red gum forests, the native fish populations, the Coorong and its bird population. The corporations do not have to pay for that because that is not worth a cent in this government’s estimation. That is not property. Everything comes down to dollars with this government. So, despite the ecologically criminal outcome for this river, nobody will have to pay and nobody will be found responsible.

The Prime Minister says, ‘Put dollars on water.’ One can understand compensation for land—it is even written into the Constitution—and he now says water, but what about air? How about compensating the citizens of Australia for the polluted and heated-up air they breathe due to industrial activity, in par-
ticular coal burning, and emissions. Is the Prime Minister going to bring to book diesel exhausts, which I am told kill 1,000 Australians each year? Is air not property? If it is, why isn’t there a dollar value on it and a penalty system for those who make it unfit to breathe and in fact, in some cases, lethal? It is selective; it is what the big corporations want.

Deputy Prime Minister Anderson introduced into the discourse a couple of years ago the need to compensate his mates who take the lion’s share of the water from the Darling system to make megadollars through the new industrial agriculture in that basin. Where is the compensation for the destruction of the environment that the overallocation of water has incurred? There is not a whisper or a hint of any. Instead the government wants to compensate the companies which endorse it—if commonsense prevails and they have to give back some water to ensure the health of the river. Where will the compensation come from? It will be taken from taxpayers and ordinary Australians and given to the government’s corporate mates. They have done the wrong thing and have gotten away with it, under the Carr government and its predecessors in New South Wales, for example. We have been asked to legislate to do the right thing, and they will get the money. They will get paid for it. But that philosophy of compensation does not extend to the environment, and it certainly will never extend to the environment under this government. (Time expired)

Senator LEES (South Australia) (10.56 a.m.)—I rise in support of the sentiments expressed by Senator Brown, in particular his emphasis on a time line. We certainly do need a time line and the teeth to insist that it is met. However, we in this chamber are not the ones putting together the plan of action; we are putting legislation in place that supports a COAG agreement. As much as we might like to get inside the COAG process and undo what has been done—which is at least a step in the right direction but still not good enough—we are at last seeing the states get serious about water, about the conservation of water, about the state of our rivers and underground aquifers and about guaranteeing the long-term availability of water for cities such as Adelaide. And the majority of farmers understand that, if they are not part of this process, in the long term the water will not be fit even for agriculture.

As I mentioned yesterday, already there are algal blooms in the Murray-Darling system and we are barely into summer. Alarm bells have rung, and with the drought they are ringing through the Murray-Darling Basin and in many other water systems across the country, such as the eastern Mount Lofty Ranges and the central Mount Lofty Ranges, in the mid-north of South Australia.

Finally there is an agreement between the states and the Commonwealth. Yes, there are some questions about funding which some states are concerned about, but we in this place cannot undo the basics of the agreement. The only issue I believe that is outstanding, where the legislation does not reflect what was agreed to, is in the process of openness and accountability. Looking at the running sheet, I see we are up to about half a dozen amendments—from the Democrats, me, Senator Murphy and the Greens—and I understand we are very close to the government agreeing that there has to be a transparent process where all parties and everybody who is interested in this is able to see what is going on, what is being accepted and what is being rejected.

I know the frustration when I have tried in South Australia to get information on issues that lots and lots of money has gone into. Many millions of Commonwealth dollars have gone into the salt interception schemes.
Farmers were promised that they would have annual watertable and salinity readings for the ground water under their properties and in the surrounding stockyard plains. What has happened? As things started to go wrong, we suddenly saw all the information dry up and the reports not released. Indeed, for the last four years farmers have been doing the work. They know that their bores are going up six or eight metres, but they cannot get the overall picture unless they put it together for themselves, because those reports are now hidden. So, while I am certainly supportive of the sentiments that Senator Brown has expressed, I believe to support at this time the amendments he has put forward will unduly delay this piece of legislation, which is a very positive step in the right direction.

If it does not work then yes, the Commonwealth should basically say to the states that enough is enough. I believe there is already power under the Constitution for the Commonwealth to step in where water is not being used wisely—I think the words are ‘where there is not reasonable use’. However, if there is any question about that then the environment minister can determine to put another power under the EPBC Act so that water becomes a trigger under the EPBC Act. I believe the minister already has enough grounds to do that. I think it will be at least 12 months before it has been proven whether or not this COAG process is really going to work on water. But somewhere down the track it will be up to the government to say either, yes, this is working—yes, we are getting somewhere—or, no, the states are still refusing to come to the party and to do what is sensible so we the Commonwealth will step in. For now I think the only amendment we have to concern ourselves with is the one that ensures the spirit of the COAG agreement is adhered to when it comes to openness and transparency of process.

Senator ALLISON (Victoria) (11.00 a.m.)—I want to indicate that we strongly support these objectives, along with Senator Lees, but believe that this bill is not the place for us to put them in. We would have no hesitation whatsoever in putting them into a second reading speech as an expression of what the Senate would like to see this process pick up on. I think it would be unworkable if this chamber actually imposed this on a process that is being set up, and that is what this bill is about: it is about establishing a process. So we absolutely agree with all of those points, and there are probably more that you would want to put in to get the NWC to consider. As the chair of the Senate environment committee inquiry into urban water, I would like to see the Water Commission deal with quite a lot of the very obvious problems with our urban water use that could be solved readily. I want to put on the record that the Democrats do support all of those specific suggestions.

I want to also say that designating a system of heritage rivers by 2010 is a fine idea. The Democrats have been advocating that for some time, and I hope that the heritage bill that was passed a little while ago picks up heritage rivers as one of its themes. It would be interesting if the minister could give us some information on the progress of that. I think that is the appropriate legislation under which this should be done. Certainly COAG should consider this, and consider heritage rivers and the importance of them, as part of its processes. It is unfortunate, really, that we cannot support this amendment either but in its current form.

Senator STEPHENS (New South Wales) (11.03 a.m.)—I indicate that the Labor Party cannot support this amendment either but in
broad terms we understand the intent and the principles behind it. We believe very strongly that encapsulated in this amendment are very important issues that need to be dealt with, as matters of great importance, by the National Water Commission in its practical work plans. It is unfortunate that we cannot support this amendment. We support the principles but not in this legislation.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.04 a.m.)—I commend senators for their contributions on this amendment. To be fair to Senator Brown, I think his motivations are absolutely pristine. There is no doubting that we share his views about the need to improve the environmental outcomes along the Darling and Murray rivers and basins. We have in fact, with the assistance of many very good people both within the basin and without, invested heavily and tried to develop a framework. I think we have successfully developed a framework that can see significant progress made. It was a pleasure for me to attend my first Murray-Darling Basin Commission Ministerial Council meeting on 26 November and to add to the approved list of projects projects that will in fact deliver something like 240 gigalitres of water to environmental flows. This will assist the six icon sites and is a big step forward.

It is probably fair to agree with Senator Brown on this point and say that progress has been far too slow. If we had been more ahead of the game then those red gums would not be in the distress that they are in now. I think it is helpful to learn from our mistakes, and there have been huge mistakes made along the River Murray. However, I think the other thing we should not do is undermine or potentially denigrate the work of many good people. There are good people all around Australia—people in the state governments; people in the ACT government under Jon Stanhope’s leadership; people showing leadership like Bob Debus in New South Wales, who is working very hard with his ministerial colleagues and the people from his authorities; scientists putting the hard work in; and farmers, as Senator Lees referred to—who are all working hard to get a great generational breakthrough on these issues. I do, however, think that the amendment of the Greens to effectively take the Living Murray first step initiatives and the responsibility for their implementation out of the Murray Darling Basin Commission and shift them across to the National Water Commission would be counterproductive. I hope that Senator Brown, who is quite clearly focused on the same issues as we are—we seek to deliver the same sorts of policy outcomes in a different way—would see that his amendment may actually be counterproductive.

Senator Brown asked questions about the time lines. I commend to him the National Water Initiative—if you do not have a copy, Senator Brown, then I will provide you with one—which does in fact set some quite clear guidelines and time lines. In fact, they support his own time line in part (c) of his amendment, which talks about sustainable levels of extraction by 2010. Senator Brown may not be happy with this but sometimes when you have state-Commonwealth negotiations you do not get the highest common denominator—you might even get the lowest common denominator. But I think in this case we have a practical, achievable deadline.

Even if you accept the view of Senator Lees that we might have some constitutional power to override the states on these things, the practical reality is that, when it comes to building the projects and negotiating with the farmers, a lot comes down to land use management which is, ostensibly, under the constitutional control of the states. Negotiating
with irrigators about how much irrigation water they will get and letting contracts to build pipelines and cover over irrigation channels are things that the states have to do. They are things that the Commonwealth cannot do unless we get rid of the federation all together, and some people probably advocate that from time to time.

We do have to work cooperatively. In the National Water Initiative the states and territories have agreed to make substantial progress by 2010 towards adjusting all overallocated and overused systems, in accordance with the time lines indicated in their implementation plans. So there is a clear time frame. The national timetable for action includes the development of the implementation plans, which are, as I said, progress by 2010, risk assignment by 2014, interim thresholds for water markets and trading by June of the coming year, freeing up of institutional barriers by 2014, and a range of investment programs and processes within that. So there are some clear time lines.

We also, to be practical, need to understand that we can build the projects and we can get to work on the projects that the Murray-Darling Basin Commission ministers agreed on late last month, but it does not help the environmental debate to blur these things unnecessarily. I think more people of Australia need to understand the practical side of environmental repair. When looking at a wetland or a piece of endangered biodiversity you can see that a lot of it is about practical measures—keeping out feral animals, stopping erosion, getting rid of weeds and fixing riverbanks. All of these things will get better community buy-in, which will help the cause that Senator Brown professes to support, if you do not blur this. One thing that you can easily confuse people with about the Murray is pretending that you can create this water. You can certainly save water by making sure that you do not have overallocation for irrigation purposes. But, ultimately, to improve the amount of water that goes to environmental purposes once you have done all of that you have to rely on precipitation—you actually have to have some rain. We have been very challenged for rain and, unfortunately, this parliament cannot legislate to make it rain. That is a practical fact that we should not hide.

In terms of those time lines, I said I think in answer to a question from Senator Lees during question time earlier in the week that I would seek to inform the parliament on the implementation schedule for the Living Murray Initiative, under the first steps. I will seek to do that on a regular basis. I will rely on my state colleagues to provide us with progress. It will be in my interests, in the government’s interests and in the interests of the people to have regular reporting on that. I have undertaken to do that and will continue to do so. That is the key reason why we cannot support Senator Brown’s amendment.

Senator BROWN (Tasmania) (11.12 a.m.)—There is an old saying that the way to hell is paved with good intentions. Everybody thinks this is a great intention. There are great sentiments about the Greens’ amendment here—but, goodness, do not ask us to support it! Let us not put some teeth in this legislation, and if we are going to set schedules let us not do it before 2010—a couple of elections away at least.

It is just a derelict attitude. The stress on the river red gum forests—and we know that that is an emergency which every week, every month has catastrophic effects—is not because of the rainfall; it is because the river flow and the floods are being sapped by human use, more and more by industrial agriculture. The Greens have brought forward some measures to get the water back because
this will be a crisis in the next 13 months. This minimal 240 gigalitres that the government is talking about should be 500 gigalitres. I ask the minister: when will the 500 gigalitre flow get back into the Murray? What is your time line, Minister, for getting that flow and what will it do as far as the river red gums are concerned? Will it turn around that awesome figure of 75 per cent stressed, dead or dying in those forests?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.14 a.m.)—That is a very fair question and one that I have undertaken to report back on. Just on 26 November we have agreed on the first projects put forward by the Victorian and the New South Wales governments, under famous clause 36. Those first projects were agreed to by the state ministers. They will only commence with the recommitment of the states to the National Water Initiative. We are very hopeful of an outcome. As I have said, I will report to the Senate on a regular basis on progress. It is a very fair question. The Commonwealth wants to see those projects flow. We do not want to stop at 240 gigalitres. It is a good start, though, Senator Brown, if you want to get to 500 gigalitres. It is a substantial first step. Let us get to the 500 gigalitres. You say that we should get to 1,500 or 2,400 gigalitres. The road to good intentions is paved in fact by substantial, solid and in this case very expensive steps. We should congratulate the proponents—the states in this case—and their partners in getting to the 240 gigalitres.

It is entirely appropriate that I report on a regular basis on the progress of those projects and on the environmental flows that they deliver. I think the concept of having the six icon sites that include the red gums you were talking about, Senator Brown, is a great way to focus accountability on the environmental outcomes. Quite frankly, we should be able to say exactly how many litres of environmental flow go to those icon sites as the projects unfold. I think that is good accountability. It is good pressure on governments and the commission to make us environmentally accountable for these outcomes. It is a good process.

The National Water Commission Bill 2004 focuses on places other than the Murray. There is a risk in the environmental debate of just focusing on one river. I know that state ministers are concerned about that. It is not in the interests of the Murray, which is obviously a vital and crucial environmental and natural asset for Australia—a piece of our natural heritage—to just focus on one river. For example, I think the Premier of Western Australia used this bit of politics to not sign up to the National Water Initiative, when he went back to my own state of Western Australia—as Western Australians are known to do from time to time—and said, ‘This is just a Murray-Darling agreement; it’s got nothing to do with Western Australia.’ You get that reaction the further you get away from the Murray River.

The government will invest more heavily than any other government in the history of Australia in the Murray River, the Darling River and the Murray-Darling Basin. But we need to ensure that Australians support that process and that they see the government and other governments investing in river systems all around Australia. In Tasmania, in Queensland and in my home state of Western Australia people need to see environmental repair taking place across a whole range of rivers, river systems and their estuaries. Also we cannot ignore, as Senator Allison has drawn our attention to, the very important need for far better management of urban water. That is why the Prime Minister travelled to Adelaide to announce investments in reforms and projects there. There are projects right around Australia, as Senator Allison
quite properly referred to, that need urgent and massive investment.

Historically, there has been a massive underinvestment and massively bad management of water in many of our urban centres. We are not casting blame on anyone here. We have had massive growth in this country. We have had urban sprawl expanding at massive and, dare I say, unsustainable rates, and water management is dragging many years behind. Getting that right means major investment. The water fund can provide that major investment, but you also need some reform to the way in which people price water, use water and manage water. This fund can underwrite that.

In relation to environmental repair of other rivers, the government has invested, through the Natural Heritage Trust, in a number of other projects, including $74.7 million in the last six years for the Great Artesian Basin; the Lake Eyre Basin projects; $32.7 million for on-the-ground works aimed at reducing the impact of stormwater and waste water on coastal and marine water quality; and $10 million over the past eight years through the Waterwatch Australia program, which sees local and state governments, industry and the community working cooperatively and has included about 50,000 volunteers across the states and territories in protecting and managing our waterways. All those examples give you a flavour of the sort of work that has been enabled by the government’s environmental programs across the rivers and waterways of this whole nation. A lot of that work goes unsung.

I asked the department to provide me with details of specific Natural Heritage Trust projects on Australia’s rivers other than the Murray, because we invest heavily in the Murray. I think there is a big risk in us all focusing our attention on the Murray—it needs that investment—but we also must make sure that Australians across the country know that their rivers in their own backyards are being looked after by appropriate levels of investment. We need to engage catchment groups and farmers, industry and dairies along the banks of our rivers, making sure they improve their work practices and stop nutrient flows into the rivers. That work is all happening as a result of the Natural Heritage Trust, through the integration of both the catchment plans and the work of volunteers across the country.

I will get information on just how many projects the government is funding through the Natural Heritage Trust for river care in this country. The early estimate is that there are 1,700 to 2,000 projects on rivers other than the Murray. I think it is really important we get the balance right.

Senator BROWN (Tasmania) (11.21 a.m.)—The problem is that the 1,700 projects the minister is talking about—which citizens put enormous work into and break their backs over—are no match for the extractive industries which are damaging the rivers. We are seeing overall serial degradation of the riverine systems in Australia. I have a sometimes residence on the Liffey River in Tasmania. The log trucks are ripping out the forests in that basin—under the aegis of the Prime Minister of Australia. When it rains you see the mud coming down the various streams into that river from the logging operations. But the Liffey river system is better off than many of the other river systems in Australia, where there is prodigious logging of old-growth forests and the destruction of natural habitat—there is no look in there for environmental sustainability—under the authority of the Prime Minister, the Rt Hon. John Howard. We see the destruction of river systems and upper catchments while money is given to citizens’ groups downstream to do what they can. There is no
logic. There is no national environmental common sense coming out of the Prime Minister’s office. The big money wins out and the environment suffers.

Citizens’ groups very often are despairing and are driven to do what they can to pick up the pieces with a bit of largesse from the government, which is no match for the destruction the Howard government permits and encourages, day by day, to river systems across this country. Witness the failure of the Howard government to bring to an end land clearing in Queensland—a state government initiative. Witness the failure of the federal government to do anything about the disgrace of the Cubbie Station. Witness the failure of the minister and the Prime Minister to ever use—glory forsaken—the corporations power of the Constitution, which gives the government the power to stop all these destructive operations, even if compensation is involved. That power will not be used because the government is not of a mind to tackle the mighty and the powerful when it comes to the extractive industries, and the environment continues to suffer.

The Greens have devised a simple program for putting time lines into the urgent need for a return of water to the river. The Greens program falls far short of that recommended by the scientists in the suppressed February 2002 report labelled, ‘Independent report of the expert reference panel on environmental flows and water quality requirements for the River Murray system’ which said that you will only get a higher probability of having a healthy working Murray system if you return 4,000 gigalitres. The minister cannot even give us the date for returning a 10th of that—something that is not going to reverse the destruction of most of the river red gums, let alone the other species, or the Coorong, the internationally renowned wetlands at the end of the Murray system. As I have said in this place, I went there earlier this year and the local expert said, ‘Those curlews’—the shore feeding birds—‘there were 40,000 in 1990 and today there are 2,000.’ The responsibility for the destruction of that internationally recognised water bird and marine and riverine system lies, above all, with the Howard government. Inactivity is every bit as culpable as wrong activity when you have the power to stop the wrong that is being done to these river systems. We bring in a simple amendment which says, ‘Let’s take the government’s projected return of water to the river and put dates to it’ and people say, ‘That’s a fine sentiment, but we cannot vote for that.’

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

The committee divided. [11.32 a.m.]
(The Chairman—Senator J.J. Hogg)

Ayes............. 3
Noes............. 44
Majority........ 41

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

NOES
Allison, L.F.
Bartlett, A.J.J.
Brandis, G.H.
Campbell, G.
Carr, K.J.
Colbeck, R.
Crossin, P.M.
Ferguson, A.B.
Forshaw, M.G.
Hogg, J.J.
Johnston, D.
Ludwig, J.W.
Mackay, S.M.
McGauran, J.J.J.*
Moore, C.
O’Brien, K.W.K.
Payne, M.A.

[Senator Brown]

Murphy, S.M.

Barnett, G.
Bishop, T.M.
Buckland, G.
Campbell, I.G.
Cherry, J.C.
Collins, J.M.A.
Denman, K.J.
Fifield, M.P.
Greig, B.
Humphries, G.
Knowles, S.C.
Landy, K.A.
Mason, B.J.
McLucas, J.E.
Patterson, K.C.
Ray, R.F.
Wednesday, 8 December 2004

SENATE

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Ridgeway, A.D. Santoro, S.
Scullion, N.G. Sherry, N.J.
Stephens, U. Tchen, T.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.

Senator STEPHENS (New South Wales) (11.35 a.m.)—by leave—I move opposition amendments (1) to (3) on amendment sheet 4481:

(1) Clause 8, page 8 (lines 11 to 14), omit sub-clause (2), substitute:

(2) Commissioners are to be appointed by the Minister, by instrument in writing, on the nomination of the parties to the COAG Water Reform Framework.

(2) Clause 8, page 8 (lines 15 to 17), omit sub-clause (3), substitute:

(3) A nomination of a person for appointment as a Commissioner must be made by resolution of the parties to the COAG Water Reform Framework.

(3) Clause 24, page 15 (line 14), at the end of paragraph (1)(a), add:

“or (iii) any COAG agreed programs;”

Amendments (1) and (2) relate to clause 8 and reflect the concerns of both the opposition and those people who made submissions to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee in relation to the provisions in the National Water Commission Bill 2004. The concerns are that the whole-of-government initiative that has emerged out of the COAG Water Reform Framework, which is now the National Water Commission, would be more appropriately reflected if the commissioners were to be appointed by the minister on the nomination of the parties to the COAG Water Reform Framework and that the nomination of a person for appointment as a commissioner must be made by resolution of the parties to the COAG Water Reform Framework, rather than the National Water Initiative, because, as we all know, there are some states and territories that have not signed up to that agreement. Amendment (3) is a very simple amendment going to the functions of the CEO that allow us to incorporate the addition of any COAG agreed programs in his administration of funds.

Senator ALLISON (Victoria) (11.38 a.m.)—I indicate that the Democrats will not be supporting these amendments. The composition of the commission was agreed by the COAG process, and I think it is worth noting that the Western Australian and Victorian state government submissions did not suggest any further changes to the composition of COAG. The commission comprises people with a high level of expertise in relevant areas. The Commonwealth nominates four members, including the chair, and the other parties to the National Water Initiative nominate three. We support the idea that the commission is expert in relevant fields and not representative of particular interest groups or governments. I think to interfere in what has already been agreed by COAG in this respect, in terms of expertise and so on, would not be appropriate for the committee at this point in time.

There is one issue on the matter of the composition of the commission that I would like to ask the minister about. It is an issue that came up as part of the WWF Australia submission to the inquiry process. Minister, you might be able to talk about this. The WWF Australia submission says:

... the Bill sets out a list of expertise to be included on the Commission, including experts in freshwater ecology or hydrology. WWF understands that the range of expertise is not limited to the list provided for in the Bill but notes the NWI implies experts in both freshwater ecology and hydrology will be included on the Commission (Schedule C). These are quite different scientific disciplines, and both highly relevant to the NWI. WWF is concerned that it is possible that only

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one relevant scientific expert may be appointed to the Commission.

I wonder if the minister could clarify that and confirm that it is intended that both freshwater ecology and hydrology will be included in the composition.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.40 a.m.)—I do not think it would be wise to confirm that. That could be too limiting. I will just say that nothing in this limits us from doing that. We want to make sure—and I think you would agree with this—that we have the very best experts on board. I think the sentiments that were expressed in the submission that you have quoted are entirely admirable and supportable, but I think that it would be inappropriate for me to limit the appointments in those terms. But it sounds like a very sensible suggestion, which we will take on board.

Senator STEPHENS (New South Wales) (11.41 a.m.)—I wish to ask the minister some general questions about the commissioners. I note the naming last month of Mr Ken Matthews as the newly appointed CEO of the National Water Commission. I ask, in terms of the legislation and within the provisions of the legislation, whether Mr Matthews will be a commissioner.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.41 a.m.)—The answer is yes—we expect that.

Senator STEPHENS (New South Wales) (11.42 a.m.)—The announcement by the Prime Minister of the Australian water fund indicated that the funds would go to projects on the ground. I ask the minister: where are the costs of the administration of the commission going to be drawn from?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.42 a.m.)—They will be drawn from the Australian water fund.

Senator STEPHENS (New South Wales) (11.43 a.m.)—I have a range of other questions, but I think, for expediency’s sake, I might leave those until estimates.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.43 a.m.)—There was one question that Senator Stephens did ask me privately, and that was in relation to when we want to make the appointments. We have not actually received formally the nominations from the states. As soon as the passage of this bill is complete—the first hurdle we have to jump—the Commonwealth’s view is that we get on and make these appointments as quickly as possible, bearing in mind the comments I made in relation to Senator Allison’s intervention in the debate. We are keen to do that, and we are obviously keen to get the nominations from the states.

Senator ALLISON (Victoria) (11.43 a.m.)—I do not wish to prolong this debate, but I would be in trouble with my colleagues if I did not say, Minister, that we hope these appointments are made on merit. I would have moved the Democrats’ usual amendment, which would be up to about 27 times now and which would likely not get support again. Minister, I would like you to take on board our request in this case that this be a clear process that is based on merit.

Senator BROWN (Tasmania) (11.44 a.m.)—Could the minister tell the committee what the 20 major programs are that the Prime Minister wants to get going in the next years?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.44 a.m.)—We are expecting to receive proposals from the states. We are expecting those proposals to be assessed under the commission’s legislative responsibili-
ties. I think the Prime Minister is giving a very clear indication—and I think Senator Brown would agree with this—that we will not just set up this bureaucracy and spend months and months, if not years, contemplating our bellybuttons. He wants projects to be commenced. That is the very clear indication. They will all be subject to the assessment processes and frameworks that are established under this legislation.

Senator BROWN (Tasmania) (11.45 a.m.)—So, when the minister said last night that the Prime Minister wanted to get 20 major programs going in the next years, that did not really mean anything in particular?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.45 a.m.)—It meant exactly what I said. I think the Prime Minister’s bona fides are represented by the fact that within a few weeks of his making that statement we are here with a substantial piece of legislation to set up a new National Water Commission. That supports a historic agreement between the states, the territories and the Commonwealth on how Australia deals with water and sets up a uniform national trading and pricing system. It is a historic addressing of the fact that we have had overallocations and that we are trying to get some very serious reform. The Prime Minister has supported this entire process with his own personal commitment to getting some projects going. We have already had brought to our attention proposals for projects and on the face of them—to a non-expert and a politician, as I am—they look like terrific projects to treat effluent, to stop effluent going into ocean outfalls and to reuse effluent for watering parks, gardens, tennis courts and golf courses instead of sucking water out of the Murray and using potable water for those things. Those are the sorts of projects I have seen.

I am a politician who is attracted to the concept of not flushing potable water out into the ocean after it has been used to flush sewage. I am naturally attracted to that concept. I am naturally attracted to the concept of stopping sewage going into our oceans and into ocean outfalls. I am naturally attracted to projects that use water more wisely, and I am very attracted to using this $2 billion investment from the Commonwealth to do so. But what we are discussing here is an expert process. Commissioners who are experts in this field will have sensible processes to analyse which are the best projects and which are the best investments to achieve the best outcomes for Australia. That is how the support of projects will be determined. That is a sensible process. I commend the Prime Minister on his initiative.

Senator BROWN (Tasmania) (11.47 a.m.)—Last night there were 20 major programs that the Prime Minister wanted to get going. Today there are not any specified at all. Of course we are all in favour of the recycling of water. But we have to keep very much in mind that eight per cent of the water in the Murray-Darling Basin is used for residential and commercial purposes and 70 per cent is used by the irrigators, and that is what the government does not like to look at. Get all the community groups going and doing their bit, use that motivation, but do not touch those big commercial operators unless you give them taxpayer funded compensation! This is the typical ‘greenwash’: let us show people—the schoolkids included—doing good things. It is part of a good education system to showcase up front the failure of activity down back, where it really matters. The friends of the government—the friends of the Prime Minister, the Deputy Prime Minister and other ministers—do not want their commercial activities assessed as infringements of the environmental laws of
the Murray-Darling system and in need of urgent review. Can the minister tell the committee when the 500 gigalitres will be returned to the Murray?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.49 a.m.)—I have already answered that question in a very deliberate and responsible way. I think Senator Brown’s problem is that he will not recognise the fact that the government have, through a very successful political process with the states and the territories, very much addressed the issue of the big irrigators. He would like to ignore that. It is hard to cut through in the suburbs and towns of Australia on the importance of that process and on how hard it is to get reform, but the government have taken it on. It would have been easier for us not to have done it, but we have done it. We have gone through this process with the states and we have delivered on that. Senator Brown wants to ignore that. He wants to say that all of the work that goes on by the volunteers and in the urban areas is what he calls a ‘greenwash’. It annoys him because the Liberal government have been successful in making environmental issues mainstream so that people in the suburbs, people in the towns and people on the farms have taken them on and taken ownership of them.

He is upset about that because for his political support base he relies on creating this issue and on saying that he is the only one who cares about the environment. He gets the bundle of votes that get him in here based on that. It really disturbs him that a government has made these issues mainstream and has invested more than any other government in the history of Australia in solving them. It disturbs him because it cuts away at his little niche market. I can see why Senator Brown is so disturbed, but he should not misrepresent the efforts of state Labor governments and the federal coalition government—with the support, by and large, of the federal opposition and the Australian Democrats—in not only taking on the problem of overallocation to the large irrigators but also saying, ‘We have to have work all the way up and down the process.’ We have to say to urban users of water that they can use water more wisely and encourage them to do that. We have just launched national water efficiency labelling. That is a tremendous result for a federation like Australia. But Senator Brown does not like that because it destroys his little niche market. We think it is really good for Australia.

I think the fact that the environment is a mainstream issue and Australians across the country are buying into it is absolutely fantastic for the environment. Senator Brown is so frustrated—it just annoys him—that a coalition government can do so much good for the environment and that we can actually deliver historic protection for the Great Barrier Reef, historic protection for forests and historic investments in the Murray through the Living Murray process. We now have huge levels of investment to solve our water problem and a framework developed with Labor governments, to their great credit. It would have been really easy for them to say: ‘We’re not going to help the coalition. We’re not going to sit down with John Howard and bring about this historic reform.’ But to the great credit of the Australian Labor Party in government in the states, they have helped us do that. They will mark their place in history. That must be incredibly frustrating for Senator Brown. I understand the frustration, but let us deliver for the environment.

We know that delivering for the environment is not in essence his main task, even though he professes it is. If you go to the Greens’ web site you see all the stuff about their social policies—how they want to make amphetamines more readily available for young people and how they want to close
down industry and transport. We have seen this today. Senator Brown has said, ‘Diesels are no good.’ You have the motor industry trying to develop cleaner fuels, better motors, more efficient transport systems and lighter-weight trucks—doing good stuff for the environment—but Senator Brown says: ‘Diesels are no good. Let’s get rid of them.’ What would that do to the price of goods around Australia? How would that impact on poor people through grocery prices? He could not care less about that. He wants to put up taxes and capital gains tax. We know what his policy agenda is. I can see why he is frustrated by governments across Australia reaching historic agreements to deliver historic environmental outcomes. He is not concerned about the environment; he is concerned about his little niche market in the political landscape. That is his true concern.

Senator BROWN (Tasmania) (11.54 a.m.)—I ask the minister: what is the date of the return of the 500 gigalitres of water to the Murray, which the scientists tell us is one-eighth of what is required to assure the health of the river? What is the date of the return of the first drop of that 500 gigalitres? The minister sits there. He cannot answer. There is no answer. There is no time line. After nine years of failure to get water back to the Murray—in fact, after nine years of presiding over a reduction of water to the Murray—this minister cannot give an answer and say when the repair process date will be set, after all we have heard in the last 10 years. It is just not good enough.

The schoolchildren, the people in the suburbs, those working in Landcare and those who participate in Clean Up Australia Day—I join them, like so many other people in this place do—have a right to know, at the junction of an important piece of legislation like this, what the government’s time line is for starting a process of return of water to a river where there are massive deaths of river red gum populations every day. This is a crisis situation but what we are getting is blancmange—a new bureaucracy set up with $2 billion, if the government can sort out the funding, to be taken from the state governments, but no goals are set. The Prime Minister wants 20 major programs but he does not know what they are. It sounds like a good figure. The serial announcements of 20 major programs, which cannot yet be defined, will go well over the summer.

But it is all a political exercise. There is a void of the hard, urgent and critical work of getting water back into the Murray and Darling system. You come up there against vested interests and the government is not and has not been prepared to tackle them, just as it was not prepared to tackle the land clearers, just as it is not prepared to tackle the coal industry and just as it is not prepared to tackle Gunns Pty Ltd destroying the forests of Tasmania, under the Prime Minister’s signature, and with it the river systems where clear-fell logging is occurring.

So this is a move to set up a commission with the states represented and a general view that it is going to take stock of what is happening. With the minister’s leave, the parliament might even find out what is happening. But there is precious little action in terms of the critical situation of these river systems and no time line for action. When the Greens moved for it, everybody in here except Senator Murphy said, ‘Oh no, we can’t go with that.’ Heads are in the sand. It is a failure of imagination—no, not imagination; it is a failure to face reality, because we are in an age when money speaks the loudest and values do not count or, if they do, they are very secondary. But every river red gum dying in these years and in these months—and with it the bird, marsupial, fish, insect and plant species that are being driven rapidly towards extinction by a failure of action or failure even to have a time line—is the
responsibility of this government. The minister cavils at my using the word ‘greenwash’. He said that this is the best performed government in Australia.

Senator Ian Campbell—I didn’t say that, Senator Brown. You misrepresent me continually. You should try to tell the truth. A good argument uses the truth, not distortions.

Senator Brown—The minister is now getting a bit out of hand. I am sorry, the minister did not say this is the best performed government. He admits to that, and that is a breakthrough.

Senator Ian Campbell—I said ‘the highest investments in the environment in Australian history’.

Senator Brown—He says ‘the highest investments in the environment in Australian history’. It is a money measure. We put money in there; therefore we are the best performers. It is law. It is tackling the people doing the wrong thing. That is required.

Senator Ian Campbell—that is called the EPBC, which you oppose.

Senator Brown—The minister says that the EPBC does that. Does it? What has it done to protect the river red gums? It has been there as they move towards regional extinction at an enormous rate. What has it done to protect the endangered species of Tasmania as the forests fall? It has aided and abetted it. In fact, it says that this minister is not responsible for what happens in forests in Tasmania; the Prime Minister handed that power away. That is what the EPBC did. What is the EPBC doing to protect the great wetlands of the Macquarie Marshes? I have asked the minister twice now to give this committee a report on the condition of this great birdlife habitat. He has failed to do so. That is a measure of his EPBC, which was meant to protect such places. But since the EPBC came in three or four years ago, the plight of the marshes has manifestly deteriorated. The plight of nationally significant species in these river systems has gone from bad to worse. There is another thing you need besides EPBCs, and that is government action—and we do not get that from this government.

If the minister thinks that he is in for an easy time in this environment by simply being able to criticise the Greens—take the wise-use dictum from the United States: when you cannot sustain a reasoned argument across this chamber, go for the individual, divert attention to them—he is not. I have been dealing with this for 30 years. He will be the latest in a long line of people. His predecessor, Senator Hill, was good at criticising environment groups, but the environmental awareness in this nation is way ahead of this government. I guess it is not trammeled by the vested interests. The average primary school class has a much greater environmental sensitivity and maturity than the cabinet of the Howard government with its power and presiding over the environmental fortune of this country.

Senator Stephens (New South Wales) (12.03 p.m.)—I want to speak about the intergovernmental agreement, which outlines the institutional arrangements of the National Water Commission and the advisory role of the National Water Commission. Firstly, is it the minister’s understanding that there is no provision for COAG or states and territories to directly seek advice from the National Water Commission, and that the general functions as described in the bill are curtailed by the commission providing advice only if requested to do so by the minister? Secondly, is he aware whether the intergovernmental agreement requires the National Water Commission to consider the views of stakeholders in preparing advice as required and that that is not provided for in the bill?
Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.04 p.m.)—My advice is that we did amend the bill in the House of Representatives, and that is now incorporated in this bill, and that is to seek to achieve that. It is referred to in clause 7(1)(ba) and it provides for the commission to also advise and make recommendations to COAG on any water matter of national significance. This makes it clear that the commission has a role in providing advice and recommendations to COAG.

Question negatived.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.04 p.m.)—I want to make what I hope is a helpful suggestion that we deal with the revised Democrat amendment. As I understand, it is a set of words that might find consensus. I think all of the amendments we now have on the running sheet—amendments by the Greens, the Democrats, the Australian Progressive Alliance, and Senator Murphy—relate to clause 44. My understanding from informal chatter is that the Democrat amendment, as amended through negotiations, may make everyone comparatively happy.

Senator ALLISON (Victoria) (12.05 p.m.)—Our amendment (1) circulated on sheet 4485 replaces the previous amendments on the subject of public availability of assessments. It is slightly modified but responds to a number of submissions that were made to the inquiry into this bill which called for greater public availability of the reports of the National Water Commission. The bill says that the commission may make assessments under clauses 7(2) and 7(3) available to the public but only with the agreement of the minister and that no other advice or recommendations can be made available to the public. This reverses that onus and effectively indicates that the commission must make its assessments under clauses 7(2) and 7(3) available to the public unless the minister does not agree. If the minister does not agree then he or she must advise the commission of the reasons why agreement has not been given and the commission must make those reasons available to the public.

We feel it is important that this information is available. I note that there have been concerns raised about the fact that a lot of state government information and reports are often not available, particularly on water matters. This amendment would make sure that baseline assessments would be available under clause 7(2) and that the assessments and the comprehensive review would be available under 7(2)(i). Biennial water industry performance and COAG water form framework assessments would be made publicly available under these amendments.

We agree with the government that it ought not be a requirement that advice or recommendations which would fall under clause 7(1), which is largely about those internal COAG agreements, are necessarily made public. We are happy to agree with that, but we do think that the assessments in themselves will contain all of the data that will be useful to the general public. For that reason, we are happy to modify our amendments and are pleased that the government has reached some understanding of what has given rise to them and is prepared to accept them. I move Democrat amendment (1) on sheet 4485:

(1) Clause 44, page 23 (lines 20 to 25), omit the clause, substitute:

44 Public availability of assessments

(1) The NWC must make its assessments under subsections 7(2) and (3) available to the public unless the Minister does not agree.
(2) The NWC must not make any other advice or recommendations available to the public without the agreement of the Minister.

(3) If agreement is not given under subsection (1), the Minister must advise the NWC of the reasons why agreement has not been given. The NWC must make these reasons available to the public.

Senator MURPHY (Tasmania) (12.09 p.m.)—The amendment that Senator Allison has just moved as a replacement for the initial amendment proposed by the Democrats is somewhat weaker. The initial amendment went to the question of the intergovernmental agreement on both the National Water Initiative and the National Water Commission. The amendment says that ‘the NWC will make its assessments under subsections 7(2) and (3) available to the public’. It goes on:

(2) The Minister may direct the NWC not to make an assessment public in accordance with subsection (1).

(3) Where the Minister makes a direction in accordance with subsection (2), the direction, together with a statement of reasons for the direction, must be tabled in both Houses of the Parliament by the Minister within 15 sitting days of the direction being made.

The new amendment says:

(1) The NWC must make its assessments under subsections 7(2) and (3) available to the public unless the Minister does not agree.

(2) The NWC must not make any other advice or recommendations available to the public without the agreement of the Minister.

(3) If agreement is not given under subsection (1), the Minister must advise the NWC of the reasons why agreement has not been given. The NWC must make these reasons available to the public.

There are no time frames. It says that it must make the assessments under subsections 7(2) and (3) available. I understand that there was some concern about setting a time frame for the assessments to be made publicly available because of the states and/or territories receiving the advice—I would like some explanation, probably from the minister, to confirm whether my view is correct—but in clause 7(4A), which is ‘Giving advice and making recommendations’, it says:

The NWC is to give advice and make recommendations to COAG under this section by giving the advice and making the recommendations to the parties—

which I assume are the states and territories—

to the NWI at the same time as the advice is given, and the recommendations are made, to the Minister.

I just want to confirm whether my understanding is correct that when all of the assessments and/or recommendations are given to the minister they are at the same time to be given to the states and territories, or to the parties to the NWI. Is my assumption correct?

Senator Ian Campbell—It’s given to the states.

Senator MURPHY—At the same time as it is given to the Commonwealth minister it is also given to the states, or to the parties to the NWI. I do not know if there is a concern about time frames. One of the things I did in proposing my amendment was to look at a time frame for the commission to make publicly available these assessments. I think that is very important, because if there are no time frames then things may be able to be put off for an indefinite period of time. Even in paragraph (3) of the Democrat amendment, which says that if agreement is not given under subsection (1) the minister must advise the NWC of the reasons why and then
the NWC must make these reasons available to the public, there are no time frames.

In other circumstances, this relates to other government business operations, and I think that is why the initial amendment of the Democrats—which sets down a time frame, as is the case in many other instances, such as where a direction is given or, in this case, agreement is not given—is stronger than the new one. There has to be a time frame for making these things available to the public. I would still argue that there ought be a time frame in what has been proposed here because I think that is an important aspect to it.

Can I then go to the issue of the recommendations. I would like the minister to explain why the government is opposed to making publicly available the recommendations that the commission is likely to make. The explanatory memorandum states that part of the role of the commission will be to:

... 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.

Why can the public not be informed of what this commission might recommend to the Commonwealth government and the states and territories in respect of the National Water Initiative and its views about what needs to be done? I cannot understand why the public cannot be made aware of that. I would be interested to hear any reasons from the minister. In light of the fact that Senator Lees advised she will be withdrawing her amendment and that we are now debating the Democrat amendment, I suggest that Senator Lees withdraws her amendment, but I am not withdrawing my amendment at the moment.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.16 p.m.)—The simple explanation is that section 1 items, through agreement between the states and the Commonwealth, are matters that would potentially do harm to the process if they are always exposed publicly. A whole range of assessments, benchmarks and progress reports are made public. The problem with the scheme we are establishing, which this amendment supports, is that public disclosure of section 1 items could be counterproductive. Where you are legally requiring that things be made public by the commission, rather than putting a specific number of days or hours on that requirement, I am told that under the law there is a presumption that it has to be done in a timely manner.

Senator MURPHY (Tasmania) (12.17 p.m.)—I question that, because I can recall a number of occasions where reports were supposed to be made publicly available but their publication was delayed for a significant period. I am not saying that will be the case in this instance, but it seems to me that history would suggest that, without some time frame, you could delay an assessment being made public for a considerable period—maybe a year, maybe longer.

In regard to the question I asked about the recommendations: if the commission is making an assessment as set out in clauses 7(2) and 7(3)—for instance, whether or not a party has met its obligations under the National Water Initiative—one assumes the assessment will be critical to some extent and, as a result, the commission might make a recommendation as to what needs to be done. It seems to me that assessments are covered under 7(2) and 7(3). I accept that giving advice to the government is a separate matter and the recommendations as to what needs to be done are a separate matter, but I still cannot see why they cannot be made public. Indeed, I would think that in some instances if they were not made public it might add to the public confusion, not en-
hance it. Therefore, the public might find it difficult to accept and might ask: ‘What’s going on? We have an assessment that is critical of a state or a territory in respect of not having met its obligations for some reason or other, but at the same time we don’t know what the commission has recommended to the government because that can’t be made publicly available.’

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.20 p.m.)—On the timing of responses, firstly, it would be hard to envisage why you would delay public disclosure and, secondly, the states will have these assessments anyway. So we cannot envisage why there would be any delay. The issues that are subject to public disclosure in the absence of a ministerial veto are all set out, as you know, in proposed sections 7(2) and 7(3) under the functions: determination of plans of the parties—as you say, that is the states—to the NWI for implementing the initiative consistent with objectives and advising COAG on the commission’s determination. They are all things which, quite properly, are part of the public disclosure. The reason there is serious concern about the first one is that ultimately and primarily this goes to advice to ministers. It is appropriate that the minister be able to get expert advice. The panel of experts is advising the government and the minister on the water fund and on other Commonwealth programs which relate to the management and regulation of Australia’s water resources. The minister might say, ‘I want to get some expert advice on this.’ Traditionally, as I understand, advice to ministers on what ostensibly are policy issues is not routinely made public. I think that is the simple explanation.

Senator ALLISON (Victoria) (12.22 p.m.)—I invite the minister to clarify the issue which Senator Murphy has raised that recommendations which are part of assessments under clauses 7(2) and 7(3) be included in the first amendment—that they would be made public. In amendment (2) the advice and recommendations that are part of clause 7(1)—those matters that are general functions of the NWC; the recommendations which are part of the assessments referred to in the first amendment—would be taken to be included. So it is assessments, recommendations, advice and anything else which is in clauses 7(2) and 7(3) which would be made publicly available. If the minister can clarify that, it would be useful.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.23 p.m.)—That is correct.

Senator MURPHY (Tasmania) (12.23 p.m.)—Can the minister, or maybe Senator Allison, point me to where proposed sections 7(2) and/or 7(3) actually mention recommendations? It seems to me that recommendations covered specifically under proposed section 4 are separate. That is why in paragraph (2) of the Democrat amendment it says:

The NWC must not make any other advice or recommendations available to the public without the agreement of the Minister.

I accept the minister’s explanation with regard to advice. I think it is correct that the government should be entitled to seek advice and receive it without having to make it public. But I am concerned that the National Water Commission would make a series of assessments and, as a result, make recommendations for solutions, or whatever the case may be, that are not in the form of advice. To use Senator Brown’s earlier argument, the commission could recommend that we have to return 10,000 gigalitres of water to the Murray by 2010. The public ought to be made aware of such recommendations which are given to the parties to the agreement at the same time—the states and territories.
I still maintain that there ought to be a time frame. The minister says—and I accept it—that where there is an obligation to make something public it should be done in a timely manner, but what is wrong with putting into a public disclosure provision a time frame of six or 12 months? What is the objection to doing that? That is what I do not understand. I find it difficult to see how you can say it must be done in a timely manner without defining a timely manner. There have been many instances with other reports which one assumed would have been made public in a timely manner but which have not. If the minister can give me some idea of what a timely manner is, I might be happy; otherwise, I would like to pursue putting a time frame on these things being made publicly available.

Senator ALLISON (Victoria) (12.26 p.m.)—I will let the minister answer the timely advice question, but I draw Senator Murphy’s attention to clause 7(2)(h)(iii), which says that one of the functions of this body is:

... to advise and make recommendations to COAG on actions that the parties might take to better achieve those objectives and outcomes ...

So there is at least one reference to recommendations under clauses 7(2) and (3).

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.26 p.m.)—My advice is that the common-law interpretation is that it has to be provided in a timely manner. I think it would depend on the circumstances whether that was a month, six weeks, six months or a year. The legal advice which we took in relation to this issue was that, where there is a statutory requirement for disclosure, there is a common-law understanding of what a timely manner means.

I think Senator Murphy would have shared my experience in this place that quite often when we do put time limits on things, particularly if there is no penalty for non-compliance, it tends to be public and political pressure that comes to bear on an organisation that fails to lodge or disclose something on time. Unless you can build in a penalty for nondisclosure within a certain statutory time frame, they are more often ignored than observed. It is the public pressure that gets brought onto the organisation. It is fair to say that people like Mr Matthews and the sorts of experts we are putting on the panel would be very keen to comply with the statutory obligation, which we are going to place on them when this legislation passes, to make that disclosure.

Senator ALLISON (Victoria) (12.27 p.m.)—I want to raise a different matter, but it comes under assessments, although we do not have an amendment that relates to it. The matter came up in the WA submission to the inquiry. The question asked why the bill does not provide for the Water Commission to make recommendations to the Commonwealth on competition payments as part of its assessments, in contrast to the national competition policy. The submission says:

This raises a question of who will then decide, from the assessments, the implication for competition payments in 2005/06.

I know this is a contentious issue—it is probably the root of the disagreement between the states and something that has held up progress on this issue—but it would be useful if the states could raise it and have a process in which to do so.

Senator MURPHY (Tasmania) (12.29 p.m.)—I know I have taken up too much of the chamber’s time, but I am still concerned. I might be happy were Democrat amendment (1) to say that the commission ‘must make its assessments under subsections 7(2) and (3) available to the public’. As Senator Alli-
son pointed out to me—and I am sorry I missed it—proposed section 7(2)(h)(iii) says: ... to advise and make recommendations to COAG on actions that the parties might take to better achieve those objectives and outcomes ... Why couldn’t we put the words ‘assessments and recommendations’ under those two sub-clauses?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.30 p.m.)—We could and we will.

Senator MURPHY (Tasmania) (12.30 p.m.)—I thank the minister for doing that. I will take him on his word that it will be done in a timely manner. I also indicate that, on the basis that word is put in there, I withdraw the amendment I had proposed.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.30 p.m.)—I move the following amendment to Senator Allison’s amendment:

Paragraph (1), after “assessments”, add “and recommendations”.

Question agreed to.

Senator ALLISON (Victoria) (12.31 p.m.)—I raised a question earlier—I do not whether an answer is available now—on competition policy payments.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.31 p.m.)—The National Water Commission will provide the assessment and the government will then make a decision.

Senator ALLISON (Victoria) (12.32 p.m.)—Are you saying that the National Water Commission will make an assessment of the national competition policy payments? I will go through my question again. The Western Australian government have raised the question of who decides about the national competition policy payments, recognising that this has been contentious. Their complaint is that there is nothing there that provides for the NWC to make recommendations to the Commonwealth on competition payments as part of its assessments. The question raised is: who will then decide from the assessments the implication for competition payments for 2005-06?

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.32 p.m.)—The NWC will advise of its assessment of the state’s performance against the National Water Initiative benchmarks and objectives. The decision on competition payments will be made by the government, which will obviously take into account the advice in relation to the assessments. That decision will also be informed by performance in a range of other areas relevant to the national competition policy.

Original question, as amended, agreed to.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.34 p.m.)—For clarity, I want to make it clear that the government have supported the amended Democrat amendment which has just been passed but we will be opposing the Greens amendment.

Senator BROWN (Tasmania) (12.34 p.m.)—I move the Greens’ amendment:

(2) Clause 44, page 23 (lines 20 to 25), omit the clause, substitute:

44 Public availability of assessments

(1) The Minister must table the NWC assessments, advice and determinations under paragraphs 7(2)(a), (d), (e), (f), (g), (h) and (i) and (3)(a), (b) and (c) in both Houses of Parliament when they are provided to the Minister.

(2) The NWC must operate transparently and make its advice and recommendations public except where directed by the Minister, provided the direction is public.
Where the Minister makes a direction in accordance with subsection (2), the direction, together with a statement of reasons for the direction, must be tabled in both Houses of the Parliament within 15 sitting days of being made.

We take the view that this is a $2 billion commission established with taxpayers’ money to deal with the public good—which is the water of the nation and its rivers—and that the deliberations of this commission are on behalf of the Australian people and not the government of the day. We believe that the outcomes of this National Water Commission should be on the public record. I note that the minister said that it may be that policy advice will be sought from the NWC by the government. This bill says that this will be an independent public body. This is a commission for the people of Australia. This is not a $2 billion commission set up to give the government policy advice or to be used selectively by the government against the rest of the body politic or the people of Australia. Let us make that clear.

The Greens do not go along with the view that, because other governments are involved or because policy is being sought by the Howard government, this National Water Commission, entirely funded by the people of Australia, should be secret. It is a public independent organisation, and where it produces documents that go to the minister the minister should be obliged to table them in this parliament, the parliament of the people. Otherwise we succumb to saying that the executive is above the people and the parliament, that the parliament and the people are second, and that we will get to know what the commission is doing by leave of the government of the day. We do not accept that, so this Greens’ amendment is an important one.

Question negatived.
are told that the Acts Interpretation Act requires that timetable of 15 sitting days.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (12.42 p.m.)—I move:

That this bill be now read a third time.

Senator BROWN (Tasmania) (12.42 p.m.)—What a great opportunity for tackling the problem of environmental degradation as it applies to Australia’s river systems has been missed in this National Water Commission Bill 2004. We are a country which the minister’s own second reading speech said is the driest of all the inhabited continents on the planet, yet we are amongst the biggest water users of any people on the planet. Crunched between those two realities are the river systems of the nation. For decades now those who know the rivers, from the Indigenous people through to the scientists, have been sounding the alarm bells.

We know from recent scientific study that in the decade of the Howard government the greatest of the nation’s river systems, the Murray-Darling, has had a rapidly deteriorating natural ecosystem. One of the signals of that rapid deterioration is the destruction of the river red gum ecosystems through want of action by the national government. In those systems 75 per cent of the trees are stressed, dying or dead, up from some 50 per cent in just the last couple of years. One would expect legislation establishing a National Water Commission would have time lines, goals and clauses in it which had teeth to tackle the prodigious overuse of water, the extraction of water from the river systems, and urgently meet the needs of the dying ecosystem that the Murray River is.

Question agreed to.

Bill read a third time.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Sandy Macdonald)—Order! It being 12.45 p.m., I call on matters of public interest.

Resources: Natural Resource Management

Senator EGGLESTON (Western Australia) (12.45 p.m.)—Australia is blessed with an abundance of natural resources, especially the state of Western Australia, which has been aptly described as Australia’s resources powerhouse. Whilst our natural resources make a significant contribution to our national prosperity, stimulating economic growth, generating extensive exports and creating employment in regional areas, it is prudent for Australians to understand that, although the contribution the resource sector makes to the Australian economy is huge, our mineral and energy resources are finite. At a recent energy council dinner in Perth, Sir Charles Court, the former Premier of Western Australia, said, ‘The reality that our reserves are finite should be borne in mind in planning the future exploitation of our mineral and energy resources.’

The extent of the contribution that natural resources make to our national prosperity is indicated by the fact that in 2003 resource exports had a value of $42.7 billion, out of a total of exports for Australia of $141 billion. Our mineral resources sector represents around a third of our exports. Western Australia has some 480 commercial mining projects, more than 770 operating mines and 143 plants, producing some 50 different minerals. Production in Western Australia exceeded more than $26 billion last year, representing approximately 40 per cent of Australia’s total resource production. The value of resource production in Western Aus-
Australia has doubled over the past decade. In fact, Western Australia has become a major energy producer of both natural gas and oil, with 55 oil and gas fields in production, and about 80 per cent of Australia’s gas reserves.

In recent times China’s voracious appetite for natural resources to fuel its economic growth has resulted in increased exports and higher prices for Western Australia’s resources, particularly iron ore and to some extent gas. The Chinese expansion has stimulated a significant expansion of the iron ore industry, with new mines and the growth of existing mines as well as the extension of port and processing facilities in towns such as Port Hedland and the port of Dampier. In 2003 mining investment in Western Australia increased by 54 per cent, totalling some $4.9 billion, which represents almost 50 per cent of total mining investment across Australia. Western Australia’s resource sector directly employs some 45,000 people and indirectly employs another 136,000 people, which represents 19 per cent of Western Australia’s labour force.

As I said at the beginning, it needs to be remembered that our natural resources are finite. While we have a duty to maximise the value of our resources, particularly in the energy sector, it is important also that we bear in mind our future needs and interests. Western Australia’s abundant reserves of natural gas present a unique opportunity to facilitate downstream processing of our resources by harnessing natural gas as an energy source or feedstock.

It was the discovery and extraction of natural gas on the North West Shelf, hence the securing of a competitively priced and reliable locally available source of energy, which led to the development of the first secondary downstream processing or value-adding plants in the Pilbara in recent years. Other factors involved have been the improved industrial relations, which flowed from the accords of the 1980s, and the improved technology, which has substantially reduced the manpower required to run large plants. Those three factors together—the availability of cheap energy, the improved industrial relations and the reduction in the size of the work force needed due to improved technology, particularly the development of computerisation—has meant that at last the concept of secondary downstream processing of mineral resources in the Pilbara can start to become a reality.

Sir Charles Court said in relation to the development of the Pilbara industries that in his day his government’s objective was always adding value to raw materials before exports. But at that time, in the 1960s and 1970s, companies were dependent on imported oil as an energy source. The oil shock of the early 1970s effectively put paid to any ideas of successful downstream processing projects. Both Hamersley Iron and Robe River were forced to close down their iron ore pelleting plants in the Pilbara when they became uneconomic due to the high price of oil caused by that first oil shock in the 1970s. Sir Charles made the point, in a speech he made to the Energy Council of Western Australia, that had the North West Shelf gas been available at the start of the resources boom in Western Australia:

... we would be looking at a different pattern of development in Western Australia than we have today.

We might, for instance, be today producing aluminium from our bauxite reserves in the north and steel from our iron ore. As Sir Charles went on to say:

The ultimate, of course, is to use the locally produced steel, aluminium and other metals for the making of commercial products in Australia for export—so reducing our dependence on imports of manufactured goods. Whilst the exporting of
raw materials has unambiguously enhanced our national prosperity, it is value adding which presents an opportunity for Australia to garner even greater benefits. There is no doubt that secondary downstream processing, or value adding, has the potential to stimulate a great deal of further economic growth, drawing billions of dollars in investments to regional areas and creating more employment opportunities than the simple extraction and export of raw materials, which is more characteristic of a Third World country than a First World country such as Australia.

However, while value adding, or secondary downstream processing, is what we would like to see happen, it is proving to be a somewhat illusive goal to achieve. Despite expectations of the Burrup Peninsula, in the north-west of Western Australia, becoming a major site for petrochemical industries, Western Australia has had only mixed success in attracting downstream processing opportunities, with a range of proposed projects no longer going ahead. In 2002, Syntroleum scrapped plans for a $1 billion gas-to-liquids project and in 2003 Methanex announced that it would not proceed with its proposed $800 million methanol plant on the Burrup. Likewise, the recent announcement of the mothballing of the hot briquetted iron, or HBI, plant at Port Hedland is another blow, although the plant could, it seems, be used to produce hydrogen as the basis for other chemical products if HBI production is not restored. Despite these setbacks, things are looking up for secondary processing prospects in the Pilbara, with the potential for $3.3 billion in downstream processing investments on the Burrup Peninsula, with other petrochemical plants.

The one project that is locked in is Burrup Fertilisers’ $630 million liquid ammonia plant. Construction of the plant commenced in April 2003 and it is expected to commence operations in the latter half of 2005. The plant will use natural gas to produce up to 760,000 tonnes of ammonia annually and, according to Burrup Fertilisers, it will be ‘one of the world’s largest ammonia production facilities’. The company will ship the ammonia to India to produce fertiliser. The project will create more than 600 jobs during its construction and around 60 jobs when operational.

Some other projects are currently under consideration in the Pilbara. Japan DME, a joint venture involving several Japanese corporations, is considering the construction of a $1 billion dimethyl-ether, or DME, plant on the Burrup Peninsula. If it goes ahead, the plant will use natural gas to produce methanol, which will be converted into DME. DME is primarily used as a commercial refrigerant, a propellant in aerosols, a solvent and a fuel in welding. However, in the near future DME is likely to be used as a fuel in power generation as an alternative to liquefied petroleum gas, or LPG, and as a transport fuel.

The second prospect in the Dampier Burrup area involves Dampier Nitrogen, which is considering the construction of a $900 million ammonia and urea plant, which would employ up to 1,000 people during the construction phase and 130 when operational. The third prospect for the Burrup area involves GTL Resources—GTL stands for ‘gas to liquid’. This company is considering the construction of a one million tonne per annum methanol plant on the Burrup, at a cost of $770 million. Unfortunately, this plant is now somewhat uncertain and there is no security that the GTL project will go ahead. Sadly, that is the story of many of the projects in the Pilbara. These great projects are announced, but there is many a slip between the cup and the lip, as the saying goes, and very few of them have come to fruition.
Australia has many advantages as an investment destination. These include an abundant and ready supply of raw materials; access to a competitively priced, abundant, secure energy source in the form of natural gas; a strong and dynamic economy; a secure environment with a stable democratic government, a well established, reliable and transparent legal system, and an educated and productive work force.

However, it has to be understood by all that we do live in a competitive world, where other countries are anxious to attract industry and are often willing to offer inducements, such as tax concessions and simplified approval processes, which are important to investors and which may outweigh Australia’s competitive advantages. So there is no room for complacency on Australia’s part in attracting investment. Accordingly, Australia needs to remove unnecessary impediments to investment. At the federal government level, Invest Australia has a major project facilitation program which provides a single point of contact to streamline approvals processes. It offers information, advice and support to prospective investors. This one-stop shop approach is very important, and it is used by many of our Asian competitors.

In summary, while the simple extraction and export of raw materials is the easy option, it is by value adding that we can maximise returns, create greater employment and promote regional development. As Sir Charles Court said, ‘It is time for Australia to think strategically about our future interests in terms of the preservation of our mineral and energy reserves.’

Superannuation

Senator HOGG (Queensland) (1.01 p.m.)—I rise today to speak of a very important launch by three of the major superannuation industry funds in Australia, entitled Key Education, which took place in Sydney on 24 November. I have always had an interest in superannuation because it is one of the keys for people’s whole-of-life security—their security in retirement. It would be fair to say that the Key Education program which was launched by these three major funds was a response to the looming choice of superannuation funds legislation which will come into operation from 1 July next year. The three funds involved were REST, which has 1.4 million members and assets of $7 billion; Superannuation Trust of Australia, STA, which has 450,000 members and $5.5 billion in assets; and Sunsuper, which has 700,000 members and $5 billion in assets. These funds came together, in spite of being competitors, to put this program together. The three funds have one thing in common, being industry funds, and that is to maximise benefits for their members.

The program that evening was very well organised, and I want to briefly go over some of the highlights of the evening. Firstly, there was a presentation by the three funds jointly for the launch of the Key Education program. People should become aware of this because it really is the key to them being able to maximise their superannuation in the longer term. They presented a fairly glossy brochure which summarised the arguments and the issues involved. In it they said:

REST, STA and Sunsuper have gone back to basics. We have asked Australians about the information they receive from their super funds and what they do with it. Their responses confirm that the solution does not lie in producing more material.

That is fairly important because people can become weighed down with information and material and are really none the wiser about the way in which they should invest their superannuation. Of course, that will impact greatly on their lifestyle when they retire.

They then outlined the basis on which the program was developed. They conducted a
survey of their members called the 2004 members education research program, which was conducted by Roberts Research Group. Part of the reason for this, they said, was that the first step of the program was designed to assist the three funds to develop ‘a “voice in the market” as a source of member education’. Education really becomes the basic thing that many members of superannuation funds need, because very few people really understand how their superannuation fund operates or the marketplace. They went on to say:

Specifically, the current research sought to assess the attitudes of employed Australian adults towards superannuation, the level of engagement—because, unfortunately, while many people’s superannuation funds have been growing, the level of engagement has not necessarily been all that high to date—and the extent to which their main superannuation fund was presently attempting to educate them about investing in superannuation.

They were the goals of the research that finally led to the launch of the program itself. They did a national random sampling of people 18 years of age and over who worked at least 20 hours a week, so they were targeting people who would be receiving superannuation, and they received a fair response from those people. Four hundred interviews were conducted between 21 and 27 October 2004. Most of those interviews, I understand from their promotional material, were conducted by telephone and averaged 13 minutes in length. So the survey was not done haphazardly; it was done very professionally and the results of that survey are important for many Australians.

I will go briefly through the findings which are outlined in the brochure that they have supplied to many of the people not only in the superannuation industry but also in employer organisations and unions, and to the politicians who turned up to hear the outline of the program. Some of the findings are disturbing. They said:

• 57% of Australian super fund members feel they have a less than adequate knowledge of super.

That is very concerning given that we are going down the path of choice of fund and that this survey finds that 57 per cent of people believe they have ‘a less than adequate knowledge’ of superannuation. That really raises the question that I raised in the debates that took place on the choice of super fund legislation: how are ordinary Australians going to cope and deal with what they will be confronted with post 1 July next year? They went on to say:

• Among the members under 30, only 2% believe they have anything better than an adequate knowledge of super.

So in that young group—and many young people do get superannuation—there is clearly a lack of knowledge and understanding of what happens in super. In this regard they found:

• 85% recalled receiving information from their main fund in the last 12 months. 53% read less than half of what was sent, including materials available on the web.

• 59% were not confident they could distinguish between information that was accurate or in accurate.

• 63% believed financial planners would provide information which was in their self interest or that of their employers.

Again, that is one of the concerns that arises with choice of fund. They further found:

• 46% were unable to agree that information sent by super funds had the members’ best interests at heart.

Last but not least in the document they reported:
64% said that given their present level of knowledge they were uncomfortable making a choice of super supplier.

So there is a great reluctance among people out there in the community to choose a fund for their superannuation. They do not believe that they have the knowledge that they should have to enable them to do so. I think those are fairly important findings.

It is interesting to then look at what they had to say about finding the key for these people. They said—and again I quote from the brochure—that ‘there is no shortage of information about investments and superannuation available to Australians’. I think that is quite true. But they went on to say:

Unfortunately, much of this information is not as useful as it could be—it’s like a maze and many people struggle to see the relevance to their situation. The result is that financial literacy remains at alarmingly low levels and many Australians are not preparing for retirement.

Of course, superannuation is one of the major bases of savings for Australians now, with other savings being absolutely at a low.

Then they went on to outline what the program will do:

Education Key is about helping members in an environment where they have more choices than ever before and the consequences of making a poor decision are more critical.

That is because superannuation is the only retirement benefit that many people will have. If the snake oil salesmen and saleswomen—as was likely to happen back in the early eighties—get their fingers on the superannuation of many people, as may well happen post 1 July next year, then of course many people’s retirements will be placed in jeopardy. The three major superannuation funds adopted a very positive approach in saying:

We genuinely believe education begins and ends with our members. We are passionate about listening to their needs and taking the time to talk with Australians from all walks of life to discover how educational materials can be made more relevant and accessible.

They went on to say, and this is terribly important as it separates them from many of the other insurance firms:

In line with our all-profit-for-members philosophies, the shared program enables the three funds to deliver high-quality, low cost education to members.

So the program that was launched was about delivering education to members in a changing environment which has been brought about by this government—prematurely, I believe, as I have said in previous debates, because the Australian work force do not have the literacy and numeracy skills to be able to make proper judgments as to how their superannuation should be invested. That is not to say it should not be invested wisely, but it is about being able to make the choices given the pressure that some of them will be placed under. In going on to describe Education Key, which is the name of the program, they said:

It is a customised financial education program designed to keep in touch with super fund members throughout their working life and into their retirement—and of course superannuation is a lifelong product. They outlined in the brochure a number of the features of the program. They said that it should be comprehensive, and they said:

A central library of materials leverages the substantial resources of the three funds.

This was a significant factor. Whilst these funds were in competition with each other, they saw that it was wise to come together in harnessing their capacity to educate their members collectively, thereby not only streamlining the education process but also avoiding duplication and cost to the members of those funds. They also said:
The library consists of:
• Workplace and public seminars on the basics and latest developments in super and investments.
• Interactive workbooks to help members apply what they learn to their unique situation.
• Regular investment and economic commentary ...
• Legislative and policy updates ...
• Member campaigns and topical articles to keep members informed and ensure they continue to make the right saving and investment decisions.
• An online learning centre with streamed learning that suits different levels of financial literacy and competency.

Therein lies the critical issue: how the average Australian worker will be able to cope with the literature that they will be bombarded with, offering them great deals to move here, there and everywhere else in the name of so-called maximisation of their retirement benefits.

In their brochure they further said:
... to be effective an education program needs to be:
• Integrated into the fund’s regular service model
• Tiered to cater for members’ different levels of knowledge
• Use personalised data and messages
• Include face-to-face contact with an expert.

They covered the essentials of their program very well, in my view. They outlined a very sensible and rational approach to the new environment that is happening. They want to make it comprehensive, they want to make it very effective and they say that they want to engage, educate, empower and evolve their members. The project seems to me to be very worth while. I was very impressed by what I heard at the launch on the 24th. They do say that the program needs to be accessible and that:

The program is constructed so that key messages can be delivered in varied formats ...

They are catering for a wide range of people, whether they are young adults, adults, pre-retirees or retirees. They are catering for everyone in their program. They say:

Education Key provides pertinent information as members need it.

I would commend people to become familiar with the program. I think it is a really positive step taken by three of the major superannuation funds in Australia to meeting the challenges with choice of funds superannuation.

**Immigration: Detention Centres**

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (1.16 p.m.)—I speak today on the ongoing debacle of detention centres in Australia and, indeed, outside Australia—on Nauru. During the break between sitting weeks a couple of weeks ago, I managed to visit the detention centre on Christmas Island—one of the few federal MPs who have visited that centre to meet with the detainees there. Certainly, they are one group of people who have undoubtedly been forgotten, despite some of the significant public debate around the issue of asylum seekers, refugees and detention. I think the situation facing the group on Christmas Island has not got very much public attention, and of course that is the reason the government, at great public cost, took those people to Christmas Island.

It is a fact that the detainees on Christmas Island did get to the migration zone. Their boat sailed through to just off the coast of Port Hedland, so there was absolutely no legal need to take them to Christmas Island. It did not affect in any way the progress of their refugee claims. It was purely an effort by this government to try to get them out of sight and out of mind, and I think that has worked at great public expense. It was absurd to take people from literally next door to a detention centre at Port Hedland, which...
was still operational at the time, and put them on a Navy vessel and ship them all the way out to Christmas Island, which is a very long distance. It cost an enormous amount of money to use the Navy as a glorified water taxi. It is simply a ridiculous way to use the Navy, but they are the lengths the government will go to to keep people out of sight. It was a valuable experience for me—and, I would suggest, a valuable experience for the detainees—for me to be able to visit them and to talk with them, because they have very few visitors from the mainland and certainly very few visitors from the federal parliament. There has been only one as far as I am aware.

It is also relevant to talk about that in the context of detention overall. Earlier this week, the Minister for Immigration and Multicultural and Indigenous Affairs announced that, I think, 27 Iraqis on Nauru have now been assessed as being refugees and will be able to get visas in Australia. That is great. It is a pity it has taken three years for those people to be assessed to be refugees and to now get a temporary protection visa. It is a pity they have had to be locked up on Nauru, sometimes via a period of time on Manus Island—and, indeed, some of them were on Christmas Island before that—for three years before they could get those visas. It is an absurd situation at massive public cost. Having also visited Nauru twice—as I have done—and met with people there, including these Iraqi people, I can categorically report to the Senate that the mental health damage done to these people is enormous, and the damage will stay with them for a long period of time.

We have also seen just recently hunger strikes in the Baxter detention centre, near Port Augusta in South Australia. I asked a question of the minister about that last week. She did not seem to know much about it. She could not find her briefing note, which was a bit disappointing because she is the immigration minister and it was not as though she was representing somebody else. I would have thought she would have had more awareness of the detail of that quite serious problem of hunger strikes within an Australian detention centre. That group of Sri Lankans, as I understand it, ceased their hunger strike after receiving certain communications, but I have just heard reports, which I am seeking to further confirm, that there are now other people going on hunger strikes in Baxter. Three Iranians in the detention centre have started a hunger strike and there is at least one man who has been on the Baxter detention centre roof for a couple of days. A statement has been issued by all 70 of the people of Iranian background still in Baxter. Many of these people have been in detention in Australia for three or four years and some have been in detention for over five years.

When you put people in a situation where they have no hope and live in fear over months and months, it is inevitable that you will get not only severe psychological damage but also acts of desperation such as hunger strikes. It is a ridiculous situation that we have this incredibly expensive, elaborate detention regime stretching from thousands of kilometres offshore on the Pacific island of Nauru to thousands of kilometres offshore to Christmas Island in the Indian Ocean as well as to the centre of Australia and yet we still have people languishing there year after year and we still have these disturbances and these acts of extreme distress such as hunger strikes. It is a ridiculous situation that shows the unsustainability of the government's mandatory detention model and the extreme folly of Labor continuing to partially attach themselves to it.

I will talk a little bit more specifically about the Christmas Island visit because so few people have managed to get there and
I had the opportunity to meet with the asylum seekers. There are currently 43 Vietnamese asylum seekers there. They fled Vietnam and ended up in Australia, as people may recall, in about the middle of last year. This group of people are all related in terms of broader extended families and in terms of the activity that they were all engaged in. They claim to have been distributing pamphlets, speaking out against the Vietnamese government and calling for political freedom and better treatment for the people.

They arrived in the boat the Hao Kiet off the coast of Port Hedland on 1 July last year after a month at sea and were then taken across to Christmas Island, arriving on 5 July. As a total coincidence I was actually there at the time, in my capacity as a member of the Joint Standing Committee on Migration, which was conducting a visit to look at the preparations for the revamping of the detention centre there—preparations that were being very hurriedly sped up to allow for the arrival of these people. Again, it was at enormous cost. I think people can appreciate how expensive it is to ship in materials to Christmas Island, to ship in staff to undertake construction and all of the infrastructure. It was very expensive to get everything to Christmas Island and it was a great waste of money when the facilities were already set up and staff were already present in places like Port Hedland.

As I said, the Joint Standing Committee on Migration was on the island. The government waited until the committee had left the island on the government plane and then it shipped in the Vietnamese asylum seekers literally on the same day, within a few hours of our departure. We were not able to meet with them at all. We saw the centre literally the day before the Vietnamese moved in. So it was good to go back there nearly 18 months later to see the place after it had been lived in for so long. The situation does have some advantages over the situation in other detention centres I have been to in that the group is all of one nationality and all broadly known to one another beforehand. So you do not get some of the problems of people from mixed ethnic backgrounds and nationalities being pushed in together. Having said that, I do not suggest that there are still not some issues there in terms of that group of people. They all live in one compound, all 43 of them, in very small rooms—about two widths of a single bed for the room—one beside the other, in a big elongated demountable.

One very obvious transition I noticed in being shown around the place was the vegetable garden that they have managed to create in the space of 18 months from when we were there. I have a photo taken at the time when the area was just bare dirt. Now there are all sorts of vegetables grown there. Indeed it is the best vegie garden on Christmas Island, as I understand it. They have been able to develop the natural market gardening tendency, I think, of rural Vietnamese people and they have produced an enormous amount of vegetables. Each group that I was visiting brought gifts of lettuces and other vegetables that they had grown in the camp. I hasten to add that I did not bring them back to Australia, because of the importance of maintaining quarantine. Nonetheless, they did not go to waste. It was wonderful to see all of that having been grown in that space of time—pawpaw trees and other things as well. There were also beds that they had planted, grown and pruned in such a way as to have the name of the boat, the Hao Kiet, the name of Christmas Island and the date of their arrival in the camp as a permanent reminder of where they had come from and the date on which they had arrived.

Out of the group that arrived, nine of those people have already received protection visas from Australia, having been assessed as in need of genuine protection.
Those two families are living in Perth and Melbourne. It highlights an anomaly and is part of the reason for the additional distress that the detainees still on Christmas Island are feeling, because some of them have been accepted and others have not, despite having been involved in the same activity and despite the fact that many of them are linked in a family sense. As I understand it, the rest of the family of one of the young women there had been granted a visa but she had not, for reasons that she could not understand. And from reading her decision, I was certainly not able to understand it either. She is 22.

Amongst the group currently in detention there are nine children. Whenever the minister talks about children not being in detention in Australia anymore we have the little asterisk saying that it ‘does not count Christmas Island’. People on Christmas Island get annoyed when they are not counted as part of Australia and they feel forgotten generally. We had the opportunity to meet with a number of residents of Christmas Island as well and I would certainly like to thank all of the people I met with for all sorts of reasons. They were all extremely friendly and welcoming. Unless you are an asylum seeker and are going to get locked up, I would recommend going to Christmas Island. It is a fascinating place with an amazing environment and a very interesting and unique culture and history. Unfortunately for the asylum seekers they do not see much of that because they are locked up in their detention centre. They do get out on escorted trips but their freedom is being denied them and they are in conditions that could hardly be called luxurious or even anything more than basic. But conditions are not the real problem, of course. It is the lack of freedom that is the real problem.

As someone who has visited detention centres all around Australia as well as Nauru, I did find some of the restrictions that were placed on me in meeting with the detainees fairly unusual. They were frustrating rather than impeding, but annoying nonetheless. Clearly, the interpreter was saying that there were various questions they were not allowed to answer and issues they were told not to talk about. And the time during which I was allowed to meet with each group was much shorter than usual. Given that there was hardly a big long queue of people waiting to come and visit, this was frustrating and there did not seem to be any good reason for that.

There is no doubt that there is still significant oppression and persecution in Vietnam. The US State Department has placed Vietnam on a persecution watch because of the continuing and increasing acts of oppression against political and religious freedom in that country. The Vietnamese communist government has specifically been cited by the US for failing to guarantee individual religious freedom for its citizens. Amnesty International has reported strong and ongoing concerns with the human rights situation in Vietnam. So there is no doubt that there are serious problems and serious human rights breaches in Vietnam.

Obviously, with refugee claims it has to be demonstrated that those breaches apply to each person’s individual case to a certain level for a certain reason. That is part of the issue of assessing people’s claims. But the fact is that these people have been on Christmas Island now for nearly 18 months, and they look like being there for a long time yet. We were talking about people being in Baxter or Nauru for three, four or five years. We do not want more wasted lives, particularly of the children who are growing up in this environment. I met a nine-month-old baby who was born in a camp and a woman who is pregnant. That situation should not be continued. Just because the government has been re-elected does not mean this issue has
gone away. It has not and the Democrats will continue to raise it.

Finally, I would like to thank Kaye Bernard and Dr Mary Crock in particular, who were visiting at the same time as me, for their assistance on the island. They are committed to trying to assist these people and, along with many others in the Australian community, will continue to try to ensure that the individual circumstances of this group of people, along with many others who are the victims of this government’s unjust laws—this parliament’s unjust laws, I have to say—are not forgotten. (Time expired)

Health: Underage Drinking

Senator BARNETT (Tasmania) (1.31 p.m.)—My special message to parents and guardians at this precious time of year is to watch over your children, be supportive of them and be aware of the peer pressure and dark opportunities associated with underage drinking, which may threaten their health and long-term future. There are thousands of ways by which premature alcohol use and abuse could ruin the life of your child, and I am not only considering the health complications. Excessive drinking among young people can provoke lawlessness, drink-driving, road fatalities, drowning, assault, rape, unwanted pregnancies and damage to property, to name some consequences in the short term. In the long term it can lead to the social and personality breakdown of young individuals, loss of career, substantial personal debt, loss of friends, loss of humanity and, again, loss of life.

It is for these reasons that today I propose we as a community consider a national summit on underage drinking. I do so because this issue is a crisis confronting every parent, every police station, every ambulance depot, every hospital emergency department, the entire alcohol and advertising industries, social workers and law makers in Australia et cetera. It confronts all of us daily. I will come back to this proposal later. Firstly, I will present some facts about the problem.

Alcohol abuse is a great tragedy in Australia. According to the National Health and Medical Research Council it costs more than $7.5 billion a year in health costs, while recent studies show that it has been linked to almost 40 per cent of injuries, 34 per cent of homicides, 50 per cent of domestic violence cases, 34 per cent of cases of drowning and almost 50 per cent of assaults. According to research conducted by Curtin University of Technology’s National Drug Research Institute nearly one in six of all deaths among 15- to 24-year-olds in the 10 years between 1993 and 2002 can be attributed to risky alcohol consumption. I am astonished by this statistic. According to research released by the institute last month, in the period researched an estimated 2,643 young people died in Australia from alcohol attributable injury and disease, representing about 15 per cent of all deaths in the 15- to 24-year-old age group.

In this period there were 77 deaths from risky alcohol consumption in my home state of Tasmania. That is 1.2 deaths per 10,000 in the 15- to 24-year-old range. There were 30 deaths in the ACT, 123 in the Northern Territory, 752 in New South Wales, 588 in Queensland, 350 in Western Australia, 507 in Victoria and 216 in South Australia. Western Australia had the second highest rate of alcohol attributable deaths among 15- to 24-year-olds—1.3 deaths per 10,000—while the Northern Territory had the highest rate, at four deaths per 10,000. The research also shows that 22 per cent of injuries that lead to young people being hospitalised can be traced back to risky drinking. For these young people, at such a delicate and impressionable age, the horrible scenario looming is that the younger they start drinking and then abusing alcohol the greater the likely inci-
ence of alcohol abuse in later life, with the terrible associated risks.

Alcohol abuse among our young is indiscriminate. It knows no class or geographical boundaries, no race or colour, nor other ethnic differences. It is a sinister incidence of substance abuse that can embolden the shy and naive child while goading others to recklessly act out of character. The peer pressure accompanying drunkenness can be so great and so intense that the steadying influence of parents and guardians becomes paramount, in fact vital. So my message to parents is to be aware of where your children are and what they are doing as the schools wind up for the year, a hot summer comes upon us and the festive season begins.

It is disturbing that studies already done suggest a correlation between underage drinking and complications later in life. A similar pattern exists in the problem of childhood obesity. The earlier the age of initiation into alcohol consumption the greater the risk of substance abuse later in life. Likewise, you find it in children suffering from obesity in those formative years. They are 50 per cent more likely to remain obese in later life, at a time when the dire threat of middle age health consequences is greater.

The Australian Secondary Schools Alcohol and Drugs Survey, conducted every four years under the auspices of the Cancer Council, showed in a national analysis of data from the 1999 survey that, despite increasing attempts at school based intervention, the number of current drinkers among younger and older students was as high or higher than in any other survey year since 1984. For all age groups the proportion of current drinkers had steadily increased since the 1990s. It also showed that more children were starting to drink at a younger age. There was an increase in the number of 12-year-olds reporting regular alcohol consumption. Listen to these statistics: 20 per cent of boys—one in five—and 10 per cent of girls. Importantly, the average number of drinks consumed by students was also higher than in any survey since 1984. According to the alcohol awareness survey conducted by the Salvation Army:

This generation of drinkers starts younger, drinks more and indulges in binge drinking to a greater extent than any previous generation.

The Ministerial Council on Drug Strategy found that not only are there ‘more young people drinking alcohol but they are drinking at an earlier age and in an increasingly risky manner’. The National Drug Strategy Household Survey estimated that 1.2 million teenagers consumed alcohol in 2001—approximately 6,500 were daily drinkers, 460,700 were weekly drinkers and a further 730,000 drank less than weekly. One-third of 14- to 17-year-olds consumed alcohol to a level of risk on at least one occasion in the last 12 months. Many deaths and injuries occurred after young people became drunk from binge drinking. According to the institute, more than 45 per cent of 18- to 24-year-olds exceeded safe drinking guidelines for acute harm at least once a month.

How should we deal with underage drinking and is there a role for governments in the campaign to protect or at least enlighten our children about the peril of underage drinking? In the 2000-01 federal budget under the National Alcohol Harm Reduction Strategy the Australian government committed $4 million towards a national alcohol action plan aimed at promoting and updating National Health and Medical Research Council drinking guidelines and developing partnerships aimed at reducing alcohol related harm. A further $4.2 million was committed to this work in last May’s budget. In 2002 an extra $115 million was allocated for the establishment of an alcohol education and rehabilitation foundation to support rehabilitation, re-
search and prevention programs and encourage responsible consumption of alcohol.

There is no question that governments are endeavouring to tackle the problem, but obviously this is a monumental challenge confronting us as a nation. Accordingly, I welcome the comments of my colleague Christopher Pyne MHR, the Parliamentary Secretary to the Minister for Health and Ageing, in a recent National Press Club speech, when he said:

Ultimately, it is families that bear the responsibility for preventing teenagers from engaging in problem drinking, and it is families that stand the best chance of succeeding. Like it or not, teenagers will continue to find ways to get alcohol. The question is, will they be brought up with the self-restraint to deal with temptation.

That is not to say that government should be an idle bystander. Governments can and should assist, by funding research into the causes and effects of teenage drinking and running information campaigns to disseminate the products of that research to the broader community.

I have raised the issue and the recommendation that there be a national summit with Christopher Pyne and, like me, he has a similar concern regarding the problems of underage drinking. I appreciate his special interest in this issue.

I note that in its response to the New South Wales Summit on Alcohol Abuse in August 2003—300 public submissions and 318 summit recommendations—the New South Wales government proposed a strategy that was designed as an agent for incremental change rather than dramatic action. The New South Wales government’s opening response to the summit was:

Improvements will come through a cultural shift towards greater awareness and responsibility, and any such change will be incremental, not dramatic.

... it requires a truly cooperative partnership between government, the alcohol industry, scientific and medical experts, community and professional organisations and individuals.

Taking these observations and responses into account, I believe it would be in the national interest for Australians as a caring and modern community to have a national summit on alcohol abuse, especially dealing with the problem of underage drinking. I agree with the New South Wales government view that a cooperative path with the industry players and key stakeholders would be preferable to an intrusive, high-handed, legislative approach. Having said that, the legislative arm of reform ought not be altogether ruled out having regard to what is clearly a developing crisis among our young children.

In my experience with the market and industry regarding childhood obesity I found major players such as McDonald’s and the advertising industry ready and willing to consider self-regulation and similar reforms, and in the case of McDonald’s more healthy options as part of its fast food products, along with nutritional labelling on their packaging. I congratulate them for being part of the solution, not part of the problem.

Over the past two years I have worked closely with the Australian Association of National Advertisers and other peak organisations in the preparation of an advertising campaign to combat childhood obesity and to encourage self-regulation through the establishment of a code of advertising to children. Based on that experience I am a strong supporter of this cooperative approach because more can be achieved in the long term than by a single, knee-jerk raft of legislative reforms adopted without proper consultation. I have had preliminary discussions with key members of the alcohol industry and they have indicated strong interest in helping to address the problems. They have researched the problems both here and overseas and
considered measures to address the problems. For this I thank them and indicate my willingness, together with others, to work with them. A national summit would give all stakeholders ownership of the incremental reform process, and I would hope that the summit would be the beginning of a more dedicated effort by all those involved, particularly families, and a more consistent national approach.

Why am I advocating this? Because the statistics of high alcohol use and abuse by our children greatly disturbs me and others, especially the survey results of secondary school student use of alcohol in 2002 from the Cancer Council of Victoria. The statistics showed that in 38 per cent of cases the parents were the most common source of alcohol for the secondary school children surveyed, and that spirits in mixed drinks were the most common types of drinks across all age groups, with females the greater consumers of pre-mixed drinks. Clearly, there is grave need for an extensive awareness and education campaign.

There are obviously many facets of this crisis that could be aired and investigated by a national summit. I am clearly not an expert but I would like to say that the national summit need not be driven by government, although governments at all levels would no doubt be invited to participate. The summit could tackle a range of social issues and problems facing our children. It could be a milestone in national action for the sake of our youth. I commend it to the Senate and to all Australians.

Industry: Skill Shortages in Manufacturing

Senator LUNDY (Australian Capital Territory) (1.44 p.m.)—I would like to speak today on the issue of skill shortages in the manufacturing sector. Under the Howard government we have seen a decline in manufacturing. The Minister for Industry, Tourism and Resources rarely mentions manufacturing, completely ignoring its critical role in a balanced, modern economy and society. Under the Howard government, we have watched manufacturing jobs disappear. Between the years 2002 and 2004, 50,000 jobs were lost. We have witnessed manufacturing’s contribution to GDP decline and exports of elaborately transformed manufactures slow dramatically. The Howard government has failed to do anything to address the massive skill shortages evident in manufacturing. In this sector alone the Australian Industry Group reports that there are currently between 18,000 and 21,000 vacancies for tradespeople.

Skill shortages are a key impediment to jobs growth and productivity growth. The Howard government has neglected to address these chronic problems, undermining Australia’s manufacturing capability. Just yesterday Sensis and Australian Business Ltd released quarterly survey results contained in their Manufacturing and allied services index. They are very telling of the dire need for the manufacturing sector to receive some attention from the Howard government. The survey found that Australian manufacturers have the lowest level of business confidence of any major industry, citing finding quality staff as the major issue dominating the sector, with a growing number of firms sceptical about the state of the economy now and over the next 12 months.

I would like to run through the key findings of the Manufacturing and allied services index. Fourteen per cent of manufacturing firms stated that the national economy would be worse off in one year. Twenty-one per cent of manufacturing businesses experienced problems in finding quality staff. This was cited as the most important business concern for the second successive quarter. This equates to over one in five manufactur-
ing firms currently reporting difficulties finding quality staff—a problem far more acute than in other sectors. There was a dramatic decline in sales performance and lowered expectations for the current quarter. Also confirmed in the index was a concern with lack of work, preventing manufacturing and allied firms from increasing the size of their work force. Subdued growth in capital expenditure was cited, with the outlook for future investment falling. Manufacturing firms compared with other business sectors were the least likely to have experienced an increase in capital productivity. There was a decline in the proportion of manufacturers reporting increases in the value of their exports. Finally, profitability for manufacturers is falling dramatically—a net negative eight per cent of firms reported declines in the last quarter.

These findings confirm what many organisations have been saying for quite some time now—the AMWU in particular has been highlighting the skills shortage for some time. The chief executive of ABL said of the findings that skill shortages were the real issue confronting the sector, with a high proportion of manufacturing firms reporting that they were having difficulties finding staff. He said:

This is a two-pronged issue for manufacturers. Despite the fact that they are currently increasing employment, manufacturers are having difficulty finding sufficient staff with the skills they need to continue and are also having to cope with poor perceptions about manufacturing as an occupation. It will be important to address these issues to ensure continued strong growth in this important sector.

The CEO also said:

... while this quarter’s results show that manufacturing firms are successfully creating more jobs, they are being held back trying to attract staff with the appropriate skills in a declining pool of potential employees.

But instead of addressing these sorts of concerns and the real needs of the sector, the Howard government is ignoring this incredibly important economic opportunity by refusing to comprehensively address the skill shortages. The evidence is right there for all of us to see. In the government’s own figures, which were released late last month, a dramatic increase in the number of vacancies for skilled tradespersons was evident—a staggering 54 per cent rise over the last three years. The figures contained in the Department of Employment and Workplace Relations skilled vacancies index showed that vacancies for skilled tradespersons jumped from 97.1 in November 2001 to 149.4 in November 2004. These figures reveal the sharply rising demand for skilled workers in key areas, including the metal trades, automotive, electrical and construction industries.

It is worth reflecting on the half-hearted response the Howard government has had to the skills issue. We saw in the election a very late addition to their big-spending policies in the form of a handful of technical colleges that will not be fully in place for another four years and hence will do nothing to help Australian businesses, like those in the manufacturing sector, who are crying out for skilled workers right now. The need is now, not in four years time.

It is also important to put the skill shortages that are being experienced in manufacturing in the context of what is happening right around the nation. In Australia skills growth as a driver of productivity has dropped 75 per cent in the last 10 years. Australia will have a shortage of over 130,000 skilled workers over the next five years. Around 40,000 Australians are turned away from TAFE every year because the Howard government will not fund enough places. Most of the growth in the New Apprenticeships scheme has occurred in industries
where there are no skill shortages. The numbers of traditional apprenticeships have remained largely unchanged since 1996. Between 20 and 30 per cent of new apprentices receive inadequate training, and half the people who do not finish their New Apprenticeships say it is because they feel they are being used as cheap labour instead of being trained.

Despite these systemic problems evident in the training for trades, the Howard government’s plan for technical colleges will provide training to fewer than two per cent of Australian year 11 and 12 students. The vast majority of senior secondary students will still miss out. Early school leavers and year 12 graduates will also be excluded from the colleges. The flawed technical colleges plan has even been criticised by the Howard government’s own members, with the federal member for Page, Ian Causley, saying last month that the new technical college in his electorate should be ditched because it is a duplication and that the desperately needed funding should instead be invested in the local Wollongbar TAFE. So the Howard government is wasting time and taxpayers’ money.

Instead of wasting millions trying to duplicate the TAFE system, the government should act to address the urgent skill shortages now, fund our TAFEs properly and get more young people into apprenticeships in the areas of skill shortages. It is worth noting that the abolition of ANTA signals, I think, the end of a tripartite collaborative approach to vocational education in Australia. This will only serve to exacerbate markedly the sorts of chronic problems that are currently being experienced. How on earth the sorts of skills needs of industry of the future are going to be anticipated without that effective collaborative approach is beyond certainly my imagination. It represents a retrograde step and will make the problems that much harder to solve in the future.

It is also worth mentioning a Senate committee report, Bridging the skills divide, that was tabled late last year. That Senate committee warned that Australia will not have enough skilled metal, engineering and manufacturing workers to carry out the $20 billion worth of major infrastructure and resource projects expected in the next 10 years. It is not as though there is not enough intelligence and investigation into the skills shortage. As I mentioned, that particular report was published over a year ago, well in advance of any opportunity that the Howard government had in anticipating its policies in the lead-up to this year’s election.

Australia’s manufacturing sector is at a crossroad. Manufacturing is illustrative, I think, of the chronic nature of the skills shortage as well as the need for improved innovation and productivity to enhance our competitiveness. In the context of the loss of some 50,000 jobs, new sectors of manufacturing are not emerging with any strength to replace the sectors disappearing or going offshore. The years between 1996 and 2001 represent a period of missed economic opportunity that seriously hindered Australian manufacturing’s ability to compete globally. We will now pay the price for the negligence during that period, when there was no investment in skills and the future of this important sector.

What this means is that, under the Howard government, we are attracting less than a third of the global investment we were attracting under the Labor government. Under the coalition, the Australian investment in manufacturing is one-tenth of the average achieved under the previous Labor government. The latest quarterly Australian national accounts: national income, expenditure and product released last week by the
Australian Bureau of Statistics showed the continuing overall decline in manufacturing, with the industry gross value added, chain volume measures showing an overall negative two per cent change on the previous quarter in the manufacturing sector.

The Howard government have no vision or plan for the sector and no real clue about how to address the pressing need for skilled workers. They have effectively dismantled the one body that has the chance to do that planning, to advise the sector and to engage all parties and stakeholders in the process.

The alternative that Labor put forward at the last election is the opposite: an agenda to boost enterprise, exports, jobs and growth. Labor believe that manufacturing plays a critical role in the modern economy. Whilst we will not have the opportunity to implement policies that we put forward at the last election, it is worth reminding the Howard government that Labor’s vision, which included a centre of excellence for advanced manufacturing, an Australian manufacturing council and the 10-year manufacturing strategy to revitalise the sector, stands in stark contrast.

I would like to conclude my comments by characterising the magnitude of the challenge that stands before Australia in the manufacturing sector. We do need to become ever more competitive as the challenges of the global economy continue unrelentingly. I noted with interest in a Business Week article that the US Bureau of Labor Statistics has been doing its best to continue its work in comparing the hourly compensation for factory workers across the world. I suppose it is not surprising that statistics for China have been incredibly hard to come by, so the challenge for the Bureau of Labor Statistics in the US was to look at averages and at the various rates of the hourly compensation for factory workers and to try to estimate what that hourly rate would be for China. It has come up with a figure and I think it is indicative and worth going through. In the USA itself, the hourly rate for manufacturing workers is $US21.11. This can be seen in context: the average around the world, for the 30 countries surveyed by the Bureau of Labor Statistics, is $US14.22. The next significant figure is the price of labour in Mexico—hourly compensation is $2.48, which is the lowest in the 30 countries surveyed, I believe, in that particular statistical analysis.

The best estimate by a researcher engaged by the Bureau of Labor Statistics is a figure of US$64c for the hourly rate of factory workers in China. That represents an average of just over a dollar for workers in cities in China and around US$45c per hour for factory workers in provincial areas. The article does not claim that the statistic is spot on, but it is certainly the best analysis that the US seems to have come up with. These are the sorts of competitive rates that we are going to be faced with. These numbers have a huge significance for Australia because they characterise the challenge of what we have before us and of our ability to compete on the world stage in manufacturing products. They also characterise the appalling nature of the neglect by the Howard government of the manufacturing sector over the last eight years. This is neglect that we will be paying a price for for the next decade and perhaps beyond.

**QUESTIONS WITHOUT NOTICE**

**Taxation: Family Payments**

**Senator CHRIS EVANS** (2.00 p.m.)—My question is directed to Senator Patterson, the Minister for Family and Community Services. Can the minister confirm that the 2003-04 family tax benefit reconciliation figures completed to the end of September 2004 do not include all families who had an FTB debt raised against them? Is it true that the minister has directed her department not
to officially record an FTB debt where the per child supplement is greater than the amount of FTB debt? Does this not have the effect of concealing the true number of families who have been saddled with an FTB debt? Can the minister now indicate how many Australian families have been excluded from the September 2004 reconciliation figures, as a result of her attempt to cover up the problem, on top of the 67,000 families the figures reflect have incurred an FTB debt for the 2003-04 financial year so far?

Senator PATTERSON—I do not agree with the supposition that the honourable senator has made. Families are significantly better off under this government than they were under Labor and than they would have been with Labor's failed tax policy.

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I do not know whether the minister has got any grasp of her portfolio at all, but I asked her a specific question about her own department's figures and I think we deserve a reply. I ask her again: has the minister directed her department not to officially record FTB debt where the per child supplement is greater than the amount of FTB debt? Why are the government trying to hide the true figure of those who have been affected by debt? Will the minister, if she does not know the answer, take the question on notice so people can at least understand what is going on?

Senator PATTERSON—Australian families understand very clearly what is going on. They understand that they are $600 per child better off as a result of the increase of the $600 supplement—$600 per child, per annum, per financial year better off. In addition, they had $600 more in June last year per child because of sound economic management. That is what families in Australia clearly understand.

Workplace Relations: Australian Workplace Agreements

Senator LIGHTFOOT (2.02 p.m.)—My question is addressed to the Special Minister of State, Senator Abetz, representing the Minister for Employment and Workplace Relations. Will the minister continue to ensure that Australian workers receive higher pay and better conditions through Australian workplace agreements? Is the minister aware of media reports today indicating that some of those who have previously opposed AWAs are now reconsidering their position? Does the minister support such a reconsideration?

Senator ABETZ—I thank Senator Lightfoot for his question and acknowledge his longstanding interest in this very important area of public policy. The short answer to the honourable senator’s question could be: yes; yes; and yes. Yes, the government will be maintaining its support for AWAs, because AWAs are delivering higher pay and better conditions to hundreds of thousands of our fellow Australian workers. Yes, I am aware of reports today that the Labor Party is reconsidering its attitude to AWAs. That did at first surprise me, as undoubtedly it surprised Senator Lightfoot, because Labor has opposed AWAs since they were first introduced in 1997. That is seven years and three Labor leaders ago.

Mr Latham said as recently as two and a half weeks ago, on 20 November: ‘We don’t see the need for AWAs. Our policy is unaltered.’ But all that appeared to change yesterday when Mr Stephen Smith made some widely reported comments about reconsidering Labor’s attitude. It seemed that the penny had finally dropped. Labor had realised that opposing AWAs was anti-workers and anti-jobs. Today, of course, Mr Smith held his humiliating 8 a.m. doorstop to crawl down from the comment that he had made yesterday. Presumably, the backroom boys of the
ACTU in Swanston Street monstered him and as a result he was required to withdraw his comments.

Senator Kemp—Was that rollback?

Senator ABETZ—It was another rollback, Senator Kemp. Mr Smith’s first attempt at some independent thought, of trying to give Labor a new policy direction, lasted for less than 24 hours. So it looks like AWAs are going to go the same way as Labor’s forestry and Medicare Gold policies. First they claim they are being scrapped and then they claim they are not. It is the old Labor twostep: one step forward and one step back. Labor’s problem is not just that they do not know what they stand for, it is the fact that they do not stand for anything. So they get out the butcher’s paper from time to time and have a collective brainstorm to work out what they might say today. But the only thing that ever ends up on the butcher’s paper is the various bits of factional blood that gets shed, because they are unable to come to a policy position.

In politics, if you do not stand up for things you believe in you will end up with nothing. That is what is happening to Labor. They are political agnostics who do not believe in anything any more. So we call on Labor to reconsider their attitude, to be daring like Mr Smith and dare to shake off the union puppet strings just for a moment or two. And who knows, they might actually get to enjoy it, like Tony Blair. But even better, it would be good for Australia. Now there is a novel thought for Labor to adopt—to actually adopt a policy position that is within the national interest and not within the narrow sectional interest of an organisation that now represents less than 20 per cent of Australia’s work force.

Taxation: Family Payments

Senator MARSHALL (2.07 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. Does the minister stand by her comments in the Age newspaper on 17 November 2004 in which she described families who had received multiple family tax benefit debts as ‘repeat offenders’? Is the minister still considering her proposal, outlined in the same report, to interfere in the FTB applications of some families to increase their income estimates to try to avoid future overpayments? If the minister implements this proposal, won’t it have the effect of reducing fortnightly assistance to those same families? Isn’t it true that some of the families that the minister has characterised as ‘repeat offenders’ have suffered multiple FTB debts through no fault of their own?

Senator PATTERSON—One of the things that Labor need to understand is that there are always difficulties in actually getting similar families similar assistance in similar circumstances. Using last year’s income estimate, which Labor used, was not effective. They had to have a buffer of 10 per cent, which they forgave. That meant that some families had 10 per cent more assistance than they otherwise would have got and some people did gain in that situation. There are other families who did not get as much as they ought to have, given their income for that year, and they did not get a top-up. So you had families who were in similar circumstances being treated very differently. What we have tried to do is ensure across a financial year that families in similar circumstances—that is, with the same number of children, similar income—are treated in a similar way.

Because of the various measures that we have introduced, we have now identified some people within the system who have had overpayments a number of times and who consistently underestimate their income. I indicated in a discussion with one of the journalists—and of course the Labor Party
would only bring up one aspect of that—there were some people, because of the lumpy nature of their incomes, who had difficulty in estimating it. There were some others who failed to change their income. One of the problems we have got with the system is that people can have given you an income estimate three years ago and they are not required to update it. If they consistently do this—and, in some cases, some people underestimate their income year in and year out by $10,000 to $15,000—it would indicate to me that either they need some assistance because they are unable to ring up and change their income or they are using it. I met with a large number of people who had overpayments when I first became minister, and one person indicated to me that he did choose to underestimate his income to get extra money. I want to make sure that we get closer during the year to the correct fortnightly payment of the very few people we now have who are receiving an overpayment. We have to try to ensure that, in that financial year, people are paid as close as possible to their need, rather than using the previous year, where people have lost their jobs, need the money and have not got that financial assistance. I am working to ensure that families are treated fairly—treated the same in similar circumstances—that people do not get more when they are not entitled to it and that they get it as close as possible in that financial year when they need that assistance. Let me just remind people that families are now receiving, on average, if they are eligible for family tax benefit, about $7,000 a year per family—a significant increase on the assistance they were getting under Labor. When you run a strong economy, then you can actually deliver social dividends to the community and, in this situation, to families.

Senator MARSHALL—Mr President, I ask a supplementary question. I did ask the minister: if the minister implements this proposal, won’t it have the effect of reducing fortnightly assistance to those same families? Doesn’t the minister’s proposal demonstrate the minister would rather blame ordinary Australian families for the problems with the FTB system than accept any responsibility for fixing it? When will the minister deliver on her promise of last year to fix the problems with the family assistance system rather than searching for someone else to blame?

Senator PATTERSON—Obviously the Labor Party get their supplementary questions and stand up and religiously ask them, even though they do not really add anything and they have already been answered. The issue is that, when a family receives an overpayment, their income will be reduced the next year when they have to pay it back. What we want to do is ensure that, as close as possible within that year, they get a correct fortnightly payment. I do not know whether Senator Marshall is saying, ‘If they get an overpayment, they shouldn’t pay it back,’ because, if they get an overpayment, they have had more per fortnight than they were entitled to. I do not know whether what Senator Marshall is saying is that we should leave it like that and let them have an overpayment and, as Labor did, excuse the overpayment.

Howard Government: Family Policy

Senator TCHEN (2.13 p.m.)—My question is also to the Minister for Family and Community Services, Senator Patterson. I ask: will the minister inform the Senate how the Howard Government is providing extra assistance to Australian families to allow them to exercise choice in the way in which they raise their children? If time permits, I ask the minister to further inform the Senate if she is aware of any alternative policies.

Senator PATTERSON—I said ‘excuse the overpayment’ in the answer to the last question; it should be ‘excuse 10 per cent of
the overpayment’, I suppose, if I want to be absolutely correct. This is a reasonable and sensible question about family tax benefit from Senator Tchen. Families eligible for family tax benefit have lodged their tax returns, received a pre-Christmas windfall and benefited from the Howard government’s strong economic management. Almost 1.6 million families with around 2.8 million children have seen the benefit of the $600 per child supplement. That is the $600 that Labor said is not real—the $600 that they went around trying to tell the Australian public during the election is not real. Wayne Swan said it is not real. Of great concern is that this is the man who is a pretender to the Treasurer’s seat saying the $600 is not real. If that is the way he is going to run the economy, heaven help us if he ever gets the handles of the Treasury levers. When asked whether he still maintained that the $600 is not real, he said, ‘That’s absolutely my position.’

Well, 1.6 million families know it is real. They know that they have received on average more than $1,000 extra in family tax benefit—that is, 1.6 million families have received on average more than $1,000 in family tax benefit. Through the initiatives that I have put in place, such as the simplification of forms and communication to families and the provision of more choice for families in how they receive their assistance, overpayments have been reduced threefold to around eight per cent. I would like colleagues on the other side to take note of that: overpayments have been reduced threefold, to around eight per cent. But I am not going to stop there, and I am still working to ensure families receive their correct entitlement to the assistance they deserve.

Labor is still standing by its failed tax and family policy, which would have cut financial assistance to over one million low-income families. Tanya Plibersek went out and said that Labor’s policy was a ‘fantastic policy’. Wayne Swan called it a ‘real winner’. The reality is that Labor planned to scrap family tax benefit B. This would have reduced choice for families. Labor planned to scrap the $600 per child payment. Scraping the $600 payment would have hurt families because the money is real, despite the fact that some people still say it is not real. Incredibly, Labor tried to con low-income families by telling them they would be better off weekly when in fact they would have been worse off annually. It just does not add up. Claims that the $600 is not real just do not add up either. These claims just prove that Labor does not have the skills to manage the budget. The $600 is real; 1.6 million families know it. It is Labor that is unreal in its treatment of families. Perhaps the Labor leadership should listen to the advice of the member for Ballarat. She said:

We should never again let ourselves be in a position where we attack sole parents. We lost votes because of it.

I have to say I agree with her. Labor lost votes because people understood that they could not be better off weekly and worse off annually. The very people that were going to be penalised under Labor were sole-income families and low-income families. Through strong economic management, we are providing the extra assistance that families deserve and the policies which allow them to exercise choice in the way in which they raise their children.

Taxation: Family Payments

Senator MACKAY (2.16 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. Is the minister aware of the recent finding by the Commonwealth Ombudsman in his annual report that many Australian families are now ineligible for low-income health care cards, as well as other concessions and entitle-
ments, because they followed the government’s advice to overestimate their income to avoid being saddled with a family tax benefit debt? Isn’t it true that these families may have suffered a direct financial loss as a result of following the government’s advice? Has the government now reversed its earlier advice to families to overestimate their income to avoid an FTB debt? If so, when was this decision taken and what advice is now being provided?

Senator PATTERSON—The Ombudsman’s report is based on data of a couple of years ago—and I cannot remember the exact date—that does not actually reflect the current family tax benefit situation. Also, there are other ways in which people can apply for low-income health care cards. My advice from my department was that some of the issues that were raised in the Ombudsman’s report have been addressed by some of the changes within the family tax benefit scheme and that some of the information is now out of date.

Senator MACKAY—Mr President, I ask a supplementary question. Minister, did the government consider the full consequences of families overestimating their income when it advised them to do precisely that? How much has the government’s incorrect advice cost Australian families? Will the minister now agree that some compensation to families who suffered financial loss as a consequence of following that government advice is warranted?

Senator PATTERSON—When that was raised, I checked with Centrelink and I was advised that they are advised not to suggest that people overestimate their income. There are other offers in More Choices for Families; people may choose to receive some of their family tax benefit at the end of the year. There is no direction for Centrelink to advise people to overestimate their income.

Veterans: Gulf War

Senator BARTLETT (2.19 p.m.)—My question is to Senator Hill, the Minister for Defence and the Minister representing the Minister for Veterans’ Affairs. I ask the minister whether he is aware of the recent Monash University study on the impact of vaccinations on Australian Gulf War personnel, which found that veterans who had multiple immunisations have almost double the rate of health symptoms of non-vaccinated veterans and that psychological problems and skin, sinus and eye complaints occur far more frequently amongst veterans of the 1991 Gulf War than amongst other personnel. Minister, in light of this evidence directly linking exposure to medicines and chemicals in the first Gulf War to the deteriorating physical and psychological health of veterans, does the government accept that it has a responsibility to those who have been detrimentally affected? What action is the government taking to modify or monitor vaccinations given to Australians currently serving in Iraq?

Senator HILL—Defence and the government obviously support personnel that have served in the conflicts mentioned by the honourable senator or in any other conflicts by not only monitoring their health but also by providing all necessary support. The honourable senator will be aware of previous studies on these issues and the responses given by the defence health authorities in the budget estimates committee hearings. From time to time further reports come along, and they are properly taken into account by the defence health community as well. Any further information that has come out of the Monash study will be considered by Defence and, if it is found to provide additional information that is useful, will be taken into account.
Senator BARTLETT—Mr President, I ask a supplementary question. What action is the government taking in relation to the Australians serving or just having served in the current Iraq conflict to properly monitor vaccinations and other health risks and to follow through on any health consequences and their health status following their return from Iraq? Could I also ask the minister a question in relation to another health matter. He will be aware of an earlier study linking RAAF victims of chemical exposure during maintenance of F111 fuel tanks with serious health problems. The minister made a promise to act promptly to assist those victims and, as I understand it, to make a submission to cabinet before the end of the year. Could he indicate whether or not that has happened and whether action is being taken to assist victims of health problems arising from that situation?

Senator HILL—They are two very different matters. In relation to defence personnel returning from current operations, their health position is monitored. I have answered questions on that before and have provided some detail. They have the full benefit of defence health services on an ongoing basis. In relation to the deseal-reseal issues arising out of the maintenance of F111s at Amberley, as the honourable senator knows the last of a set of major reports was recently handed down. I said a few weeks ago that that was being considered by government and that government would consider the final report as soon as possible and that cabinet would consider it hopefully before Christmas. That is still my objective. (Time expired)

Centrelink: Compensation

Senator DENMAN (2.23 p.m.)—My question is to Senator Patterson, the Minister for Family and Community Services. Is the minister aware that one family has been paid compensation under the compensation for detriment caused by defective administration scheme as a result of that family complying with the government’s advice to overestimate their income and to reduce the risk of incurring family tax benefit debts? Wasn’t this payment necessary in order to compensate the family for financial losses incurred as a result of having a low-income health care card because they followed the government’s advice to overestimate their income? Can the minister now indicate how much this family was paid in compensation? Can the minister also update the Senate on how many other families find themselves in this situation?

Senator PATTERSON—I do not know the exact details of the individual case to which Senator Denman is referring and I will seek advice on that. But let me just say that it is not government policy to advise customers to overestimate their income. The government has implemented a large number of policies to help families receive their correct family tax benefit payments. In November 2002, we implemented the More Choices for Families measure to give families more payment choices to reduce the likelihood of an overpayment. These choices were further simplified in 2004, in addition to the publication of new information booklets and simpler claim forms—things that I said I would introduce when I first became minister.

Centrelink encourages customers to estimate their income as accurately as possible. Customers can ring Centrelink as often as they like to change their income estimates. There is one situation—that is, where the secondary income earner is returning to work—where they cannot estimate what their income will be. In the next financial year, the money that they earn will be able to be quarantined on returning to work. That is yet another measure to reduce the likelihood of families receiving an overpayment. Families are able and, as I said, encouraged to update their income estimates at any time
throughout the year. The majority of customers get their correct entitlement or receive a top-up at the end of the year while a small number incur an overpayment.

The latest figures show that only eight per cent of the 1.6 million families who have been reconciled incurred an overpayment. The figures referred to in the Ombudsman’s report—I have found the actual date here now—are from 2002-03 and do not really reflect the most recent trends in delivery of the family tax benefit. Families entitled to receive the family tax rate of FTB are entitled to a low-income health care card even if they take advantage of the More Choices for Families measure. Families are able to adjust their payments—for example, by deferring part of their payment to the end of the year. In doing so, they retain access to all other ancillary benefits such as health care cards.

The government’s family assistance arrangements are simpler and more generous than the previous system under Labor. We believe that because we are now assisting families to the tune, on average, of $7,000 in family benefits, including an addition—those people who hold a health care card have a safety net that Labor would have stripped away from them—Labor is now nitpicking around the edges because they have got a policy that has failed, a policy which actually made some families, particularly those more vulnerable families, worse off.

Senator DENMAN—Mr President, I ask a supplementary question. Minister, I think you have realised I got that from the October 2004 Ombudsman’s report. I think you have already answered some of my supplementary question, but can you indicate how many families have suffered financial loss as a result of following the government’s advice to overestimate their income? What is the minister now doing to compensate all those families who missed out on valuable concessions because they followed the government’s advice? How much will it cost to compensate those families?

Senator PATTERSON—With all due respect to Senator Denman, and I do respect Senator Denman as one of the senators on the other side—she does not have to go to preselection now so it is not going to affect her—she is basing her statement on a wrong premise.

Senator Chris Evans—The Ombudsman’s report?

Senator PATTERSON—She is saying that they followed the government’s advice. It is not the policy to advise customers to overestimate their income.


Senator Vanstone—Stop interrupting.

Senator PATTERSON—that is not the government’s policy—

Senator Chris Evans—if you have a hangover—

The PRESIDENT—Order! Senator Evans!

Senator Vanstone—I don’t have a hangover.

Senator PATTERSON—Mr President, I actually think that what Senator Evans said just then was totally unacceptable and ought to be withdrawn.

The PRESIDENT—Senator Patterson, have you concluded your answer?

Senator PATTERSON—I am actually in the middle of my answer and had a point of order. Senator Evans sits there making snide remarks across the chamber that are totally unparliamentary. Mr President, you ought to call him to order. But I will finish on the fact that Senator Denman has based her question on an incorrect premise. It is not the gov-
ernment’s policy to encourage people to overestimate their income. We have got a range of measures to encourage them to estimate their income correctly. If they do have income that goes up and down, there are a number of choices they can make. We are working to ensure that they are aware of those choices.

**Telstra: Services**

Senator MURPHY (2.29 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan, who would no doubt be aware that Telstra has conducted a major upgrade and replacement of regional and remote digital radio concentrator systems. This reconstruction occurred primarily because the existing system had insufficient Internet capacity to meet the government’s commitment on Internet delivery. I am informed that Telstra has, as part of the reconstruction, replaced hundreds if not thousands of solar panels, regulators and batteries and is now in the process of trashing this supposedly redundant equipment. This equipment could, as part of our overseas aid program, provide low-cost communications and education services to many of the poorer countries to our north and east. Will the minister investigate if Telstra is in fact destroying this equipment and, if it is, will the minister request a halt to the process to see if the equipment could be used elsewhere, particularly to assist those less well-off nations?

Senator COONAN—The answer to Senator Murphy’s question is yes, I will make inquiries.

Senator MURPHY—Mr President, I ask a supplementary question. I thank the minister for being prepared to undertake those inquiries, but will she indicate that, if it is proven to be the case that Telstra is destroying the equipment, she will ask for a halt to be put to that process until a determination can be made to see whether or not it could provide very valuable assistance to, as I said, countries that are less well off than ours and provide some very valuable services in both communications and education?

Senator COONAN—There are a number of hypotheticals in Senator Murphy’s supplementary question. I have said I will make inquiries. I appreciate the sentiment behind Senator Murphy’s question but I cannot be giving assurances and guarantees until I make the inquiries that I have indicated I will make.

**Regional Services: Program Funding**

Senator BUCKLAND (2.31 p.m.)—My question is to Senator Campbell representing the Minister for Transport and Regional Services. I refer the minister to the Regional Partnerships grant of $187,000 for a Uniting Church redevelopment in Golden Grove in suburban Adelaide. Is the minister aware of a report about this project in today’s Adelaide Advertiser, which quotes the Reverend Robert Iles, who says the church was notified of the grant last month by way of letter from Mrs Kelly? Did the minister dispense the grant money as Minister for Veterans’ Affairs or is this another one of her allegedly lost letters from late August?

Senator IAN CAMPBELL—I am aware of the grant and, like many of the grants from the Regional Partnerships program, it supplies support to communities that have obviously struggled to get that support from either local or state government programs or, in some instances, other Commonwealth programs. There are other programs such as the Bondi marine centre, where you have local government, the state Labor government of New South Wales and the federal coalition all supporting a project. The Golden Grove church redevelopment, we are told, will provide valuable meeting space and facilities for the community. The church cur-
Currently hosts a playgroup for the general community, a program for seniors and a drop-in program. I think they would all be programs that most people—

Senator Hill—Labor is attacking that grant.

Senator IAN CAMPBELL—Yes, they are attacking a lot of grants, Senator Hill, that are doing very good work for communities that would otherwise be struggling — communities that are generally ignored by Labor.

Honourable senators interjecting—

The President—Senator O’Brien, Senator Evans and Senator Hill, shouting across the chamber while the minister is trying to give an answer is disorderly.

Senator IAN CAMPBELL—What we have seen over the last few years is Labor attacking grants that help in regional areas, attacking grants in metropolitan areas but always attacking grants that assist communities with the development and improvement of facilities and, in this case, upgrading kitchen and toilet facilities so that seniors and other people who want to drop in can be assisted. Rather than look at the benefit of this $187,000 grant under the program, they would rather look into when the letter arrived and who wrote the letter. We have had a whole series of questions through the last few days where Labor were trying to find out about a set of guidelines. When they find that the programs are approved by the guidelines, they go on a different attack.

What they will not do is raise questions about grants, for example, in the city of Fremantle for an on-track cycle project in the federal seat of Fremantle. They will not, of course, attack a $104,000 grant in the federal seat of Perth for the Craftwest Centre for Contemporary Craft—undoubtedly, a grant that would have been vetoed by the federal member for Perth. I wonder if the federal member and Federal President of the Australian Labor Party, the member for Fremantle, would attack the grant for an on-track cycle track in Fremantle. She is probably too busy sorting out the problems of the Australian Labor Party to take an interest in practical on-the-ground programs that assist in Fremantle.

The member for Brand was quite keen to see funding resolved for the Rockingham Beach forefront village and for a marina project, the Cape Peron marina precinct. Again, we do not hear Labor asking questions about a whole series of projects which you could describe as not technically regional, but they are happy to take the money. The federal member for Brand will take the money. The federal member for Fremantle will take the money. The federal member for Perth will take the money.

Senator Chris Evans—‘Technically regional’—there is a technical difference.

Senator IAN CAMPBELL—No, they are not in regional centres. They are in well-known metropolitan areas like Fremantle city. You are quite happy to attack grants in seats where it suits you but not where it does not suit you. (Time expired)

Senator BUCKLAND—Mr President, I ask a supplementary question. The minister has answered the key elements of that question. Will the minister provide details of all Regional Partnerships project grant notifications sent out over Mrs Kelly’s signature, on Mrs Kelly’s letterhead and date stamped on or after 26 October 2004, and will he do so at the end of question time today?

Senator IAN CAMPBELL—My advice is that the project that Labor are now attacking is a project to develop facilities in the Golden Grove church to assist the community, to assist seniors and to create better facilities for a drop-in centre. This is what Labor are attacking—improving the kitchen,
improving the toilet facilities. They want to attack this. I am told that it met all the guidelines, that it was properly communicated to the church.

*Opposition senators interjecting—*

**Senator IAN CAMPBELL**—The senator obviously wants to undermine this community program. You would think Labor would care about seniors. You would think they would care about developing drop-in centres. All they want to do is play politics with it.

### Environment: Great Barrier Reef Marine Park Authority

**Senator BOSWELL** (2.37 p.m.)—It is some time since I have asked a question, but I will ask a few more. My question is directed to the Minister for the Environment and Heritage, Senator Ian Campbell. In view of the coalition’s policy on recreational fishing, released on 25 September, which states that the coalition will review the Great Barrier Reef Marine Park Authority Act to improve the performance of the Great Barrier Reef Marine Park Authority, its office holders and its accountability frameworks, will the minister inform the Senate of government progress on this election commitment? What progress has been made on the structural adjustment package to assist both professional and amateur fishermen?

**Senator IAN CAMPBELL**—I thank Senator Boswell and other Queensland senators such as Senator Santoro who have taken a close interest in this very important issue not only for North Queensland but for all of Australia.

*Senator George Campbell interjecting—*

**The PRESIDENT**—Order!

*Senator George Campbell interjecting—*

**The PRESIDENT**—Order! Senator George Campbell, are you deaf? I said come to order!

**Senator IAN CAMPBELL**—Unlike Labor senators, who wanted to play politics with the Great Barrier Reef marine protection plans, who were prepared to tear up the most protection the Barrier Reef has historically ever been given for the chance to win some seats in Queensland, the coalition stood behind the historic levels of protection and delivered policies which will ensure that that reef is protected better than any other reef in the world. In fact, an international report has shown that that protection plan, which has created controversy with commercial fishermen, which has created controversy with recreational fishermen, has in fact also delivered significant protection for one of the great environmental assets of this country.

You did not hear the Greens, you did not hear the Australian Conservation Foundation and you did not hear the Wilderness Society attacking the Australian Conservation Foundation when in the election campaign they said that they would tear up that plan, that they would tear up protection for the reef, that they would go into a new planning process and reopen all of the boundaries and that they would renege on their policy to change their previous policy under Mr Crean to extend the park boundaries out to the economic zone. But, quietly, in a press release issued in the dying days of the election campaign, they whittled away and watered down that policy. You did not hear the Greens, you did not hear the Conservation Foundation and you did not hear the Wilderness Society issue one line of attack to the Labor Party for the biggest backflip in Labor Party environmental policy history—tear up the plan and backflip on Mr Crean’s policy. And, of course, they got away with it. There was not a line of attack from the Greens or the so-called Greens.

The coalition was committed to that plan. We have committed, furthermore, to improving the Great Barrier Reef Marine Park Authority. We will do so through a review of the
Great Barrier Reef Marine Park Act 1975, which has not been reviewed for a long time. We want to improve the performance and governance structures. We also want to improve the consultation processes, which I know are very important to the fishermen—the recreational fishermen and the commercial fishermen—ensuring for this multi-use park that we have in fact got sustainable fisheries, that recreational fishermen can get access to the park in a sustainable way without causing damage to the biodiversity and conservation values, that the tourism industry can continue to operate in a sustainable way and that they can interact with this world-leading authority in a way that guarantees protection for the park for its conservation values but also ensuring that other users of the park and stakeholders feel some ownership of the processes and that they are being heard. This can be improved and will be improved, and I will advise Senator Boswell and all other interested senators—in fact the whole Senate—of the details of the review process, which will meet the requirements of the Uhrig review of statutory authorities and office holders.

Senator Boswell also asked about the structural adjustment package. It is on track. We are looking at buying back some fishing licences to reduce effort in the park to ensure that, with the smaller areas available for fishing, those areas do not have too much pressure on them. The announcement of the licence buy-back occurs on 17 December, which Senator Boswell will be pleased to know. I have taken a close working interest in making sure that package meets the needs of commercial fishermen but also businesses that supply the recreational fishing industry. I am confident that package will assist those people. (Time expired)

Veterans: Health Services

Senator MARK BISHOP (2.42 p.m.)—My question is to Senator Hill, the Minister representing the Minister for Veterans’ Affairs. Can the minister confirm that veterans with accepted war-caused disabilities in Tasmania are now being transported to the mainland for treatment at high cost to the taxpayer and great distress to the veterans because medical specialists in Tasmania refuse to accept the gold card? Further, is the minister able to inform the Senate how many veterans and war widows have been transported from Tasmania for medical treatment in the last year, and at what cost? Is the minister aware that, even after the forthcoming fee increases, schedule fees for the gold card will be up to 25 per cent lower than for private health funds and, as a consequence, it is unlikely that specialists in Tasmania or any other state will change their attitude to the gold card? Minister, why is the government so unwilling to honour its commitment to care for sick veterans?

Senator HILL—I am aware of the media release of 6 December by the State President of the Tasmanian RSL, Ian Kennett, concerning Tasmanian specialists not accepting the gold card. A number of specialists in Tasmania are no longer seeing veterans under the gold card arrangements because they perceive the fees to be inadequate. This situation is disappointing. However, veterans in Tasmania still have access to specialists in the majority of medical fields. The accessibility of medical specialists in Tasmania is a statewide work force issue and not limited to the veteran community.

In the 2004-05 budget the Australian government committed an additional $157.6 million over four years to increase fees for medical specialists. Currently medical specialists treating eligible veterans receive 100 per cent of the Medicare schedule fee. From
1 January 2005, specialists will receive an additional 15 per cent for consultations and 20 per cent for procedures provided to eligible veterans. The initiatives will go a long way towards addressing this situation. The department will transport to the nearest centre any veteran or war widow who requires specialist medical attention where no specialist is available locally. I take this opportunity to indicate that any veteran having difficulty finding a specialist may contact the Tasmanian state office on 1800 555 254 for assistance. I thank the honourable senator for the question.

Senator MARK BISHOP—Mr President, I ask a supplementary question. Years ago there was a government which used to transport people who committed offences to Tasmania. Apparently now we transport people who have served their country to the mainland! In that context, is the minister aware that the withdrawal of specialists’ acceptance of the veterans gold card has been a major problem in the veterans portfolio for over two years? Can the minister advise what attention the Minister for Veterans’ Affairs is giving to this major problem in her current portfolio and when she might give it priority over and above the apparent pressing business from her previous responsibility of regional pork barrelling?

Senator HILL—We cannot of course force specialists to treat veterans, although I am pleased to say that most do and they accept that as part of their contribution to our community as a whole and are very proud to do so. What is the government doing? As I just said to the honourable senator, although obviously he did not listen, we are putting in an extra $157.6 million over four years to increase fees to medical specialists to encourage them to continue to provide these services. If specialists in the vicinity of the veteran are unwilling to provide the service, we will facilitate the veteran to receive that service at the nearest possible location. That is what this government is doing. Rather than carping and whingeing about helping veterans, we are actually putting money behind the gold card. (Time expired)

Environment: Policies

Senator GREIG (2.47 p.m.)—My question is to Senator Ian Campbell, the Minister for the Environment and Heritage. Does the minister agree with a statement made in this chamber last Wednesday by his colleague Senator Ian Macdonald:

"... this Christmas time Australians can tuck into Australia’s fine, fresh, ‘clean and green’ seafood, content in the knowledge ... that the Australian fish and fish products they are eating come from environmentally sustainable fisheries—some of the most environmentally sustainable fisheries in the world."

Can the minister confirm that in fact the southern bluefin tuna is recognised by the World Conservation Union’s red list of endangered species as being critically endangered and that the New South Wales government recently recognised this species as being threatened with extinction due to unsustainable fishing practices? Minister, is it the case that stocks of southern bluefin tuna have fallen to just 10 per cent of their original population? Will the minister take the opportunity to correct his colleague’s public statement and instead issue warnings to seafood consumers to be more selective in their habits and to assist for a more sustainable outcome?

Senator IAN CAMPBELL—I thank Senator Greig for a very important question. The fact of the matter is that he is right and so is Senator Ian Macdonald. The practical reality is that Australian fisheries management of this southern bluefin tuna stock is world best practice. It has been certified as sustainable, and Australians can know that when they buy tuna caught by Australian registered and licensed fisheries they are
buying tuna from a fishery that is certified and sustainable. Where Senator Greig is right is that internationally the tuna species is under severe threat—there is no doubt about that. The dilemma the government has—and it is a serious one to which Senator Greig draws attention—is that this is an international stock which roams the oceans of the world and is fished heavily by a number of nations. Through a range of international organisations and agreements, Australia seeks to regulate the stocks of this fish to see them recover well above the highly threatened levels to which Senator Greig has quite appropriately and accurately referred to get them back to a healthy and sustainable level. The dilemma we have is whether we stop fishing bluefin tuna and say to Australian consumers, ‘Let’s not consume Australian caught tuna; let’s walk away from those international agreements and see our quotas distributed among other nations and fished illegally,’ or whether we stay engaged, ensure that our fisheries are sustainable domestically and work internationally to encourage other licensed fisheries to follow our lead and other good fisheries management nations, therefore using that leverage and our diplomatic efforts to achieve international sustainability.

I think the course we have chosen is the correct one. We recognise the threat to the stocks internationally and that Australia can play a positive leadership role to improve the international sustainability of this fish stock. We can do that by being open and honest with the Australian people. In this case both Senator Greig and Senator Ian Macdonald have been honest about the situation. There is a threat, but Australia can and will play a role in this, as we do through a number of organisations in relation to a number of fish stocks. The story of the patagonian toothfish is well known to Western Australians in particular because a WA based company is the primary licensed fishing operator in that fishery in the Heard and McDonald Islands. It is a great example of a win-win process through international conventions. It is recognised by the World Wide Fund for Nature as world leading and Australia’s engagement in the fishery has seen illegal fishing severely curtailed. We are told by various intelligence sources that it may just about have been wiped out but for the vigilance and Australia’s engagement in the fisheries. We have huge challenges in that tuna fishery. Australia is playing a positive role and will continue to do so.

Senator GREIG—Mr President, I thank the minister for his answer and ask a supplementary question. Can the minister say whether he will be making a determination on the public nominations submitted by Humane Society International to list southern bluefin tuna under the Environment Protection and Biodiversity Conservation Act 1999 or is it the case that the legislative time frame for that decision has now expired?

Senator IAN CAMPBELL—I will be cautious in this answer because there are legislative processes afoot. My understanding is that there has been a six-month extension to the licence for the fishery and that means that the EPBC listing of the species as threatened process is delayed for that period, but I will get back to Senator Greig with specific details so he is fully informed and so is the public.

Regional Services: Program Funding

Senator CARR (2.53 p.m.)—My question is to Senator Ian Campbell, the Minister for the Environment and Heritage and the Minister representing the Minister for Transport and Regional Services. Will the minister now confirm that the $1.2 million grant to Primary Energy Pty Ltd was in breach of the Regional Partnerships guidelines with regard to funding for research? Can the minister
also provide whether other aspects of the guidelines were complied with, including the normal due diligence study undertaken into the financial viability of the project? Further, given that these guidelines also require additional information relating to company finances, ownership and management structures if the application exceeds $250,000, what additional due diligence was undertaken? Will the minister table the results of this additional investigation? Was the financial viability of the project dependent on the provision of government funding?

Senator IAN CAMPBELL—You would think that Labor might give up on picking on Primary Energy after they were totally humiliated when they asked questions about an application of that company for grants under the Greenhouse Gas Abatement Program. They had the audacity to come into this place and claim that that company had been knocked back under the guidelines and application processes for that program under the Australian Greenhouse Office in my department. Within minutes of being asked the question, we confirmed that they had not applied under round 1, round 2 or round 3 of that application process.

I am still waiting for Senator Wong and Senator Carr to come in and apologise and show some basic courtesy to people like Ian Kiernan, the chairman of that company, who has now publicly said that Labor’s attacks are undermining the very viability and the chances of that company to proceed and make sure that they are ready. Mr Kiernan’s letter, which I read into the Hansard record earlier in the week, made it clear that the grant they had been seeking was a tiny fraction of the investment intended to be put into that project—a project that Mr Kiernan AO, the head of Clean Up Australia, a world-leading, internationally renowned solo yachtsman, a fantastic Australian who has led the world in relation to environmental matters and who is now leading this project. We share with Ian Kiernan the belief that this project can deliver 40 full-time jobs in the region. I think we have said 50; he has said 40. I am prepared to accept his word for it. We agree that there will be 350 additional flow-on jobs in the community, significant advantages in building a supply chain for the commodities in that region and also significant advantages for the structural adjustment that is required within the Namoi Valley because of the need to move to more sustainable water use—an issue the Senate spent most of the morning talking about. We support that.

Senator Carr obviously does not like listening to or accepting the answers. He has been proven wrong so many times. He will not apologise to the proponents, he will not apologise to the people of Gunnedah who are behind this project; but he needs to understand that this project was approved under the guidelines. He also made the allegation earlier in the week that it was not supported by the Namoi Valley structural adjustment process. It was. The committee recommended it. So you are wrong every time, Senator Carr. If you want to pick on a project, do not pick on a project that is as good as this.

Also, please do us a favour and tell us whether Labor would can this project. Tell us which one of all of these fantastic projects funded by the regional program would Labor ditch. Will they ditch the Gunnedah project? Will they tell Ian Kiernan to go packing? Will they tell the City of Fremantle to pack up their On Track Cycles program? Will they tell the Craftwest Centre for Contemporary Craft people that they can pack up that? Let us get the member for Fremantle, the member for Perth and the member for Brand to tell all of these recipients and let Senator Carr tell people of Gunnedah that they will close down these projects.
Senator CARR—Mr President, I ask a supplementary question. In providing an additional answer to a question without notice on Monday on a matter he just referred to again, the minister advised the Senate:

In relation to the Greenhouse Gas Abatement Program, my department ... confirms that the company—

Primary Energy—

has not registered an interest in or submitted any applications for GGAP funding ... Yesterday the Minister for Agriculture, Fisheries and Forestry revealed that Primary Energy Pty Ltd ‘did register an expression of interest in relation to the third round’ of the Greenhouse Gas Abatement Program. Which of these conflicting statements is correct? When will the record be corrected?

Senator IAN CAMPBELL—Strangely enough, your whip Senator George Campbell knows exactly when the record was corrected because it was corrected within a few minutes of sitting time. The record was corrected immediately. The fact remains—and the Labor Party do not like it—that no application was made under round 1, round 2 or round 3.

Law Enforcement: Regional Security

Senator SCULLION (2.59 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister update the Senate on the Australian government’s efforts to foster regional cooperation in the fight against terrorism and transnational crime? How is this helping to keep Australians secure?

Senator ELLISON—I thank Senator Scullion for that very important question. We have to remember that security in our region directly affects the security interests of Australia. Yesterday the foreign minister, Alexander Downer, announced that Australia would double counter-terrorism assistance to Indonesia to $20 million over five years. That is further evidence of this government’s commitment to security in the region. That initiative will do a number of things. It will develop a range of counter-terrorism initiatives in three key areas: enhancing the capacity of the Indonesian national police to combat terrorism; enhancing travel security, targeting the airports in Indonesia; and combating terrorist financing, aimed at disrupting money-laundering which terrorists rely on to fund their activities. Part and parcel of that will be support from this initiative for the core functions of the new Transnational Crime Centre in Jakarta. We announced earlier funding to the tune of $4.7 million for that. This is a further commitment by Australia to security in the region to cut-off terrorism at its source and to assist our neighbour Indonesia in the fight against terrorism. It follows in a long line of initiatives.

Earlier this year I went to Indonesia and opened the new Jakarta Centre for Law Enforcement Cooperation with then President Megawati. We funded that centre to the tune of just over $36 million. This is a centre which will bring the region’s law enforcement and counter-terrorist people together to fight terrorism in the region. This has a direct benefit to the region in which we live and also to the security interests of Australia. It is just not good enough to bolster our initiatives at home; we have to engage in the region, and this is precisely what we are doing. Of course there are other initiatives which we have put in place previously. For example, our people-smuggling conferences in Bali brought collective action in the region in relation to people-smuggling.

We announced during the election commitments to further engagement in the region, such as the establishment of two counter-terrorism regional engagement teams by the Australian Federal Police to be located in the region to have longstanding offshore deployment and the creation of two counter
criminal intelligence teams with additional specialist personnel. We also announced additional funding of $11.8 million over four years to counter-terrorism capacity building projects in the region. As well as that, in my portfolio I announced the opening of Customs offices in Beijing and Jakarta. This is a suite of measures which we are employing in the region to not only engage with our neighbours in the fight against terrorism but also work with our neighbours in the region to fight transnational crime. This has a direct bearing on Australia’s interests and of course relates to both security at home here and law enforcement. The announcement yesterday is a commendable one and will go a long way in the fight against terrorism in the region.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Centrelink: Job Network

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues) (3.03 p.m.)—Yesterday I undertook to get back to Senator Greig with some information on a question he asked about Centrelink and the Job Network. Minister Hockey has provided me with a response to the question he asked yesterday. I am advised that there has been an increased focus on referrals by Centrelink of the job seekers to whom he was referring, in line with government directions. It is a natural consequence that there will be an increased focus on offering a range of services to all customers who are able to participate in the workforce. Centrelink is, therefore, working closely with the Department of Employment and Workplace Relations and the Job Network to increase participation opportunities. Centrelink staff have been and remain committed to offering disability support pension and parenting payment customers the opportunity of a voluntary referral to a Job Network member for assistance. Centrelink offers the benefits of the Job Network to these customers and interviews with Centrelink specialist officers. Participation is completely voluntary for parenting payment and DSP customers.

Customers with a disability are advised of all forms of employment assistance. This includes specialised disability employment services. Suitability is determined through the job seeker classification instrument, otherwise known as the JSCI. Based on customer information revealed through the JSCI, they may be referred to a Centrelink disability officer, a psychologist or a social worker for a secondary assessment. These customers may choose to attend a specialist disability employment service if they are eligible to do so. Customers who receive a disability support pension may choose to end their participation with a Job Network provider and change to a specialist disability employment provider due to the voluntary nature of their participation.

Veterans’ Affairs: Audit

Senator HILL (South Australia—Minister for Defence) (3.04 p.m.)—I have some further information in response to a question asked by Senator Hogg on 2 December in relation to Auditor-General’s report No. 15. I seek leave to incorporate that information in Hansard.

Leave granted.

The response read as follows—

Senator Hogg asked the Minister representing the Minister for Veterans’ Affairs without notice on 2 December 2004:

With reference to the Auditor-General’s report No. 15, which uncovers massive financial bungling by a range of government departments and entities
(1) Why did the Department of Veterans’ Affairs operate an illegal operating overdraft in 2002-03 in breach of its contract with its bank?

(2) Did the Minister know of and/or approve such an arrangement?

(3) In respect of the overdraft, what was the interest rate payable and total interest bill paid for this illegal overdraft scheme?

(4) In respect of the overdraft, why was such an expensive funding operation entered into?

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

(1) The Department of Veterans’ Affairs has had extensive discussions with the Department of Finance and Administration regarding this matter. The DVA administered payments account group inadvertently went into debit balance on one occasion, late December 2002. However, under the Commonwealth banking arrangements, any debit balance is replenished at the end of the day. Accordingly, no overdraft existed and there was no cost to the Commonwealth. It was also not a breach of the Department’s contract with its transactional banker, the Reserve Bank of Australia and payments made by DVA to its clients were not affected.

(2) No. The matter is effectively procedural in nature and the Minister was not advised by the Department.

(3) No interest penalties were incurred by the Department.

(4) The account funds are government appropriations that are drawn down as needed.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Taxation: Family Payments

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (3.05 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Patterson) to questions without notice asked by senators today relating to the family tax benefit.

It was clear from the response of the minister that she has no idea about key issues in her portfolio. She was unable to answer a couple of very key questions. One of them was about the extent of the debt problem, which I would have thought, whatever one’s views about the payment system, was an important issue for thousands and thousands of Australian families. She was asked about the change in the recording of that and had no idea about that. Then she was asked about the question of compensation for families who have been advised to overestimate their income and as a result lost other Commonwealth benefits such as access to health care cards. She had no answer to that. She actually sought to dispute what the Commonwealth Ombudsman said in his October 2004 report. I do not think she has read that. She referred in her answer to one of his earlier reports. Clearly she is not on top of her game.

What this reflects is a much wider problem: that the government has failed to come to terms with the family debt mess it has created. The minister, when she took over the portfolio, said in October 2003 that she was committed to fixing the problem. We now notice that, under the new ministerial responsibilities, that job has been taken off her. In fact most of the job has been taken off her. It is a bit hard to come to terms with what the minister is now responsible for because Senator Minchin, in addition to having to run half of Senator Hill’s portfolio, now also has responsibilities in Senator Patterson’s old portfolio area. He is the fix-it man for those who cannot manage the finances. Minister Hockey has now also been given the job of trying to manage the family debt crisis because Senator Patterson ain’t up to it. She has failed so far, and the government has decided to try somebody else.
The clear issue that Senator Patterson failed to respond to today is the minister’s response to fixing the debt problem by fiddling the figures. What we have is a change in the way the debts are represented. Instead of continuing to provide the information on the number of families who have fallen into debt, the big fix has been put in and they have changed the way they reflect the figures. Now when we ask how many families have family debts caused by overestimation of income, the figure is manipulated so that those who are considered to not have a net debt are excluded—that is, those families who have a debt less than $600, $1,200 or whatever their payment is. If the net result is not a debt they are not counted. Of course, those families do have a debt and it is taken off them; it is just taken out of those other payments. But the minister seemed not to have a grasp of that. I urge her to come back into the parliament and provide the proper information. It was a reasonable question of her portfolio. She did not seem to grasp the question, but the question remains. We want a true picture of the extent of the family debt problem. She owes it to the parliament and to the Australian public to make it clear.

The other issue that really troubled me was that, as I said, the minister seemed to have not read the Ombudsman’s report. The Ombudsman found very clearly that there is a problem with the Commonwealth providing advice to families to overestimate their income, because a consequence of overestimating their income was that some people did not qualify through the year for low-income health care cards. The Ombudsman was concerned about that and he raised that concern. As at today the minister seemed to have not read the report, and then she denied the fact that he had found the problem. I refer the minister to the Ombudsman’s 2004 report. I urge her to read it and I urge her to come to grips with the problem. One of the things he pointed out is that one family has been paid compensation. Centrelink had provided advice that was detrimental to them because they had encouraged them to overestimate their income and they then lost other benefits such as access to health care cards, electricity account reductions et cetera.

Compensation was paid to that family because of the advice provided by the minister’s department. When I asked her about compensation for other families she said, ‘It’s not an issue, not a problem. I don’t know anything about it.’ It is an issue. Thousands of Australian families have been denied benefits that they would otherwise have been entitled to because they acted on advice from Centrelink. What compensation has been paid to them? What steps have been taken to ensure that they receive their full entitlements? The minister does not know, does not care and is not interested. The Ombudsman is interested, those families are interested and this parliament is interested, and we will be pursuing these issues. The minister has to do better than she did today. She will have to front up and answer why those families have not received compensation, why they have not been treated fairly and why what she told the parliament today was totally misleading. *(Time expired)*

**Senator KNOWLES** (Western Australia)

*(3.10 p.m.)*—There is no doubt about Senator Chris Evans, is there? Other than screeching abuse across the chamber all through question time, he gets up after question time and verbalises the minister.

**Senator Chris Evans**—Verbalises?

**Senator KNOWLES**—Verbals the minister, I should say. Senator Evans should know the saying well because he consistently verbalises everybody and anybody. His contribution just now was the worst example of verbalising someone after a question time held only in the last hour.
The interesting thing is that, when the Labor Party talk about family tax benefits, payments to families and those sorts of things, their memory is short. During the election campaign the failed former member for Stirling went on ABC radio and admitted that the tax policy of the Labor Party had to be changed. Guess what? The failed former member for Stirling was shut up. She was not allowed to do any media interviews; she was not allowed to do anything from that moment on. Why? Because she told the truth. Why? Because a caller rang that radio station and said, ‘We are a family with three and a three-quarter children’—in fact the family was only four days off having four children—’and we went onto the Labor Party web site to have a look at your tax policy. We’re going to be worse off by about $800 or more a year.’ What did the failed former member for Stirling say, ‘Gosh, we’re going to have to fix that, aren’t we?’ That was an admission that the policy was wrong. But what happened? The temporary Leader of the Labor Party, Mr Latham, said, ‘Don’t worry about that, that’s okay, because all families will be better off every week.’ They would just be worse off every year!

Senator Barnett—That doesn’t add up, does it?

Senator KNOWLES—That is a very good point, Senator Barnett. How on earth can families, or anyone for that matter, be better off on a weekly basis but worse off on an annual basis, also alleged that that $600 a week payment was not real. How can you have a policy where people are actually getting money in their hands and have the Labor Party say that it is ‘not real’? And it was not just that magnificent dreamer Mr Swan; I think Ms Plibersek and a few of the others also said that it was not real.

This is the party that is grizzling today about people receiving extra money, about 1.6 million families receiving extra money, that would have cut money. After eight years in opposition this is the party that would have cut money to families. The Labor Party would have cut financial assistance to over a million people on low incomes. Yet, they have absolutely no shame. They would have scrapped the FTB part B. They have no shame. They come in here and criticise the benefits that this government is paying. They would have continued cutting assistance to families. I want to make sure that the Australian people know that Australian families are receiving record financial support from the Howard government that would have been cut had the Labor Party been elected. Now let us see what they come up with. (Time expired)

Senator MARSHALL (Victoria) (3.15 p.m.)—I rise to take note of the answer given by Senator Patterson to a question asked by Senator Denman today. In the real world, people’s circumstances change. In the real world, people’s employment situation changes. The problem here is that we have a system that does not accommodate real changes for real people on an ongoing basis. We have a minister who, instead of trying to fix a system to accommodate the real world and real people, wants to blame the people who are caught out by the system. The minister is accusing people who overestimate their income, through no fault of their own,
of being repeat offenders and, by implication, says that they are doing something wrong and they are guilty of some offence.

That is an outrageous slur on hardworking people who are simply trying to do the best they can to estimate their income in the real world where circumstances change. I know it is hard to do that. Strangely enough, I am not the only person who thinks it is hard. Minister Patterson herself thinks it is hard to estimate income. In my question to the minister today I referred to an article in the *Age* of Wednesday, 17 November. In that article Senator Patterson admitted there would always be some families who incurred overpayments under the government’s family tax benefits system because it was hard to accurately estimate earnings. Those were the minister’s own words. Yet, earlier in the same article, this statement appeared:

Family & Community Services Minister Kay Patterson said yesterday she was considering “uplifting” repeat offenders’ estimated incomes based on their previous years’ earnings to lessen the likelihood of overpayments.

The minister is trying to have it both ways: admitting that it is hard for them to estimate their income in advance over that period because it is hard in the real world to make those estimates. Yet, when the estimates are made, they are ‘repeat offenders’. The minister is going to intervene with her proposal to automatically uplift their income, so it will be overestimated, so those people cannot have their FBT element reduced. This minister is not in control of the system. Minister Patterson said she would fix the family debt crisis when she first became Minister for Family and Community Services in September 2003. All she has done is apply bandaid after bandaid, but the bandaid have not fixed and will not fix the problem. They are merely creating more problems.

Having Centrelink tell people to overestimate their incomes, so as to avoid the possibility of getting into debt at the end of the year, is creating enormous problems. The opposition referred in its question today to the 2004 Ombudsman’s report, which indicated clearly that people are missing out on concession benefits they are entitled to, including stamp duty exemptions, electricity account reductions, motor vehicle registration exemptions, reduced health and pharmaceutical costs and reduced red tape costs associated with buying homes. We know from that report that some people have already been compensated for the wrong advice given to them by Centrelink. But the minister was unable to address that issue in her answer to the question.

Minister Patterson was asked specifically by Senator Evans: ‘Is it true that the minister has directed her department not to officially record an FBT debt where the per child supplement is greater than the amount of FBT debt? She answered with some waffle: ‘Everyone knows that families are better off under this government than they would have been under Labor.’ She had no idea how to address the very specific question asked of her because she is not in touch with what is going on in her portfolio. She is not in control of this situation, which is getting out of control. Now we see the minister is cooking the books to try to avoid the number of people listed as having debt to Centrelink. She has deliberately excluded from the figures some families which incurred a family tax benefit debt, thereby making the crisis seem less than it really is. This is a deceptive and misleading situation that the minister is engaged in. The minister has shown by her inability to answer questions today that she does not understand the system. She is completely incapable of fixing the very problem she recognised and said she would fix when she took over as minister in 2003. She has not fixed it, she cannot fix it, she does not know how to fix it and she is not aware of
the problems in her own ministry. It is probably time that Joe Hockey was parachuted in to fix this problem and take the problem out of her ministry.

Senator BARNETT (Tasmania) (3.20 p.m.)—It is an absolute pleasure to stand here today in response to this motion to take note that has been moved by Labor and to talk about families. That is what this debate is about. We have been debating the merit of choices. The Australian people made a choice on 9 October. They had a clear choice between the coalition and the Labor Party. One of the reasons that people overwhelmingly supported the Howard government was the Howard government’s support for families. That is why Labor are still in opposition. Senator Marshall talked about people missing out. He made certain allegations regarding Minister Patterson. He said that people were missing out in many respects. Let’s just remind Senator Marshall and the Labor Party of their own policy in terms of people who were missing out. Labor’s policy made it very clear that over one million people in low-income families would miss out; their financial assistance would be cut.

Senator Marshall, who has just left the chamber, is not willing to listen and accept the views that have just been put. These views are sound, they are real and they are factual. Under Labor’s policy, over one million low-income families would miss out on this financial assistance. Labor member Tanya Plibersek said that Labor’s policy was a ‘fantastic’ policy. Wayne Swan called it ‘a real winner’. But they got caught out. Labor’s policy was to scrap the family tax benefit part B. That would reduce the choices for families and scrap the $600 per child payment, which they said ‘was not real’. That is what Wayne Swan was saying. Somehow or other they came up with this policy. They tried to con low-income families by telling them they would be better off weekly, when they would be worse off annually. How does that add up? How does that make sense? The Australian people could see through the veneer, through this ploy that was put to them by the Labor Party. The Labor Party were caught out—hoist on their own petard. The former federal member for Stirling—as Senator Sue Knowles has made clear on radio in Western Australia—was caught out.

I debated this matter with Senator Nick Sherry in Tasmania, at an independent retirees’ meeting. It was made very clear to Senator Sherry at that meeting that single mothers on a low income would also miss out. It was also made clear during the election campaign, and the Australian people decided what was best for them. They decided that our policy was best because it benefits 1.6 million families with around 2.8 million children. Those families have seen the benefit of the $600 per child supplement.

I walked through Waverley, Rocherlea and Mowbray, door-knocking with Michael Ferguson, the new member for Bass. We asked people: ‘What do you think of this $600? Is it real, or is it not?’ They said: ‘Of course it is real. We have got the money in the bank. We will be spending it on household items. We will be spending it on tables, chairs and beds, and on fixing the car.’ The money was being spent on a whole range of items to help these low-income families. They were thrilled and they were very thankful. This is something that the former member for Bass, Michelle O’Byrne, was not prepared to disclose. The biggest swings—in Bass, at least—were in those former ‘Labor heartland’ areas. Michael Ferguson got a swing up of up to 10 per cent in some of those suburbs. That is primarily because of our good policy across the board, including our policy to support families—(Time expired)
Senator DENMAN (Tasmania) (3.25 p.m.)—I also wish to take note of the answers given by Senator Patterson in question time today in relation to Centrelink compensation. I had great hopes that the minister would do what she said she would do when she took over this portfolio of family and community services in 2003, and fix the problem which is creating so much grief and heartache for families all over Australia. I have great difficulty in supporting a system which with one hand purports to give but which takes away with the other. Like the rebate culture, which applies with so many other programs of this government, the principal solution offered to Australian families is to overstate their income so that they do not end up with a debt at the end of the year.

It seems to me that this government develops its philosophies for Australian families, and particularly for those in need, based on the circumstances of those who are much better off. Whether it is the Medicare safety net, child-care benefits or many other benefits, this government adopts the same approach—completely without consideration of the circumstances of those who need the support most.

The minister seems happy to provide the bandaid advice of overestimating income to avoid an unwanted debt later. There are two fundamental flaws with this approach. First of all, it defeats the very purpose of the family payment for those in real need, which is to provide them with the financial support when they need it—to put food on the table, to clothe and to provide health care and recreation for their children. For those families who have a cash flow it is not such a problem, but for those who need every cent they receive to pay for their daily outlays, the solution suggested by the minister offers no comfort at all. Secondly, it has a disastrous flow-on effect on other costs and benefits. As I am sure the minister is aware, child-care costs are assessed based on the estimated income levels currently registered with Centrelink by the client. If a client overestimates their income to avoid a family debt later, she or he will receive a smaller reduction in their child-care bill. In other words, the client gets less in family tax benefit whilst at the same incurring a higher cost for child care.

I have a constituent in exactly this situation. She is able to estimate her own income fairly accurately as she is on a set wage, but her partner works as a casual and they find it difficult to estimate his income from week to week with any certainty. They do not want a debt at the end of the year, so they overestimate their income to Centrelink and, as a result, suffer increased child-care costs on a weekly basis. It is hard enough for them—a family where one partner is earning a fixed and guaranteed income—but it is even harder for those who have no consistency at all in their regular income. But all this government is prepared to offer as a solution is to resort, once again, to the same old rebate culture that pervades so many of its programs.

It is not only child-care payments which are affected. For many families the effect of overestimating their income to Centrelink to avoid an unwanted debt at the end of the year will be to lose other entitlements, such as low-income health care cards and the consequent benefits and concessions that flow from having such cards. As with the so-called Medicare safety net and the government’s proposed expansion of child-care support, the mentality is all based on a rebate culture—a culture designed for families who can actually receive a rebate.

I want to address an issue that Senator Guy Barnett referred to, and that is the way the $600 was spent. I know from experience that many families did not spend that $600 wisely. They chose to spend it the way they
wanted to—and that is their right. A number of families got into debt by gambling the $600 and so the children did not benefit. Some of them did spend the money wisely but, in my experience, a number did not. They incurred debts, and so created difficulties for their children—(Time expired)

Question agreed to.

Veterans: Gulf War

Veterans: Health Services

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.30 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked by Senators Bartlett and Bishop today relating to veterans' affairs.

In question time today Senator Bishop from the ALP addressed a growing and continuing problem with veterans in Australia, particularly in Tasmania. We are seeing a range of different examples of how this government does not properly address the needs and concerns of veterans. We have a government that is quite happy to make lots of political capital out of waving the flag when sending Australian men and women off to war and doing all the chest beating and drumbeating that accompanies that: welcome home parades, medals, plaques and memorials. These are photo opportunities for government members. But the real test of commitment is how you treat veterans once they are back in the community, once their duty is done, and once they are feeling the physical, mental, health, social and economic effects of their service to the community. That is the hard part and that is the part where this government continues to fall down.

It is being made worse at present because of the difficulties that the new Minister for Veterans' Affairs, Mrs De-Anne Kelly, is finding herself in. I do not know whether Mrs De-Anne Kelly will be a good minister; my personal experience with her would suggest that she is probably quite effective in many areas. But the fact is that her attention at the moment is very much caught up in defending herself and explaining her behaviour and actions in relation to activities before the election. There is no way she is able to give the sort of attention that is needed and that veterans deserve, particularly given that she is a new minister just getting up to speed with the portfolio. That I think is an extra concern. It is certainly justified for the Senate and the public to require answers from Mrs Kelly about her prior actions. We need to make sure though that veterans are not disadvantaged by having a minister whose mind is elsewhere.

In question time today we had more information coming forth and further studies showing that there is clearly an extra health impact—physical and mental—on Australian veterans from the first Gulf War from 1991, with a much higher incidence than for other defence personnel. That fact needs to be acknowledged and those people need to be assisted. The extra concern is whether or not proper monitoring was done following the first Gulf War and whether proper monitoring is being done following the current Gulf War of the health impact on veterans. These veterans also had immunisations, which received some publicity, and also had their health potentially affected by being exposed to other dangerous environments such as those with depleted uranium. Those things need to be properly assessed. There is certainly evidence that it has not been done properly in the past. The reason the Democrats keep raising this issue is to keep pressure on the government to make sure that they do the job properly now—by monitoring the health, dangers and risks to Australian defence personnel in the fields—as they will be the ones who will pay the price down the track.
Senator Bishop raised the issue of veterans whose gold card is not being accepted by a growing number of specialists. This problem is becoming particularly chronic in Tasmania where veterans are being flown at government expense to the mainland to get specialist treatment. That is not only far more expensive but also, depending on the health conditions, far more inconvenient, uncomfortable and painful. For many of those veterans, travelling in aircraft or long distances can be extremely painful, depending on their condition. Follow-up treatment afterwards is also much more difficult. These are problems that the government should be preventing from happening rather than having the Senate and veterans’ organisations continually having to bring them to the attention of the government. It is very easy to talk about handing out gold cards to veterans and saying that that is going to guarantee them service. The fact is that it does not. (Time expired)

Question agreed to.

PETITIONS

The Clerk—A petition has been lodged for presentation as follows:

East Timor: Oil and Gas Fields

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

We the undersigned appeal to the Australian Government regarding its conduct of negotiations with the Government of Timor Leste on the maritime boundary between the two countries and sharing of the Timor Sea oil and gas revenue.

We pray the Senate ensures the Australian Government:

• negotiates a fair and equitable maritime boundary with Timor Leste according to current international law and the provisions of the UN Convention on the Law of the Sea (UNCLOS),
• responds to Timor Leste's request for more regular meetings to settle the maritime boundary dispute between the two countries within a more reasonable timeframe,
• returns Australia to the jurisdiction of the International Court of Justice and UNCLOS for the adjudication, of maritime boundary,
• commits to hold intrust (escrow) revenues received from the disputed areas immediately outside the Joint Petroleum Development Area (RDA) 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.

by Senator Nettle (from 2,950 citizens).

Petition received.

NOTICES

Withdrawal

Senator GREIG (Western Australia) (3.36 p.m.)—Mr Deputy President, I withdraw business of the Senate notice of motion No. 4 standing in my name for today, relating to the proposal to vary the reporting date and terms of reference of a matter referred to the Legal and Constitutional Legislation Committee relating to the Disability Discrimination Amendment (Education Standards) Bill 2004.

Presentation

Senator Heffernan to move on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Wednesday, 9 February 2005, from 4 pm to 6 pm, in relation to its inquiry on the administration of Biosecurity Australia concerning the revised draft import risk analysis for apples from New Zealand.

Senator Marshall to move on the next day of sitting:

That the provisions of the Workplace Relations Amendment (Small Business Employment Protection) Bill 2004 be referred to the Employment, Workplace Relations and Education Legislation

Senator Stott Despoja to move on the next day of sitting:
 THAT the Senate—
(a) notes that:
(i) in the recent United Nations (UN) debate on a ban on human cloning, the Australian Government co-sponsored a proposal from Costa Rica that it had previously stated it would oppose,
(ii) the change in the Government’s position on this issue was made without consultation with the states or the biotechnology industry, and
(iii) a review of the Research Involving Human Embryos Act 2002 and the Prohibition of Human Cloning Act 2002 is due to commence shortly and the independence of such an important review should not be compromised by government commitments in the international arena;
(b) calls on the Government to consult with the states and the biotechnology industry before stating its position on human cloning at the UN in February 2005, when debate on this issue is due to recommence; and
(c) congratulates the Australian Stem Cell Centre, Australia’s only Biotechnology Centre of Excellence, for holding its second successful Annual Scientific Conference.

Senator Stott Despoja to move on the next day of sitting:
 THAT the Senate—
(a) notes that:
(i) the review of the cost adjustment factor indexation mechanism for Commonwealth funding of universities provided for under the Higher Education Support Act 2003 will not be an independent review,
(ii) a review of such importance should not be conducted within the confines of the Department of Education, Science and Training and the Government,
(iii) the university sector has no confidence in the review of indexation delivering an appropriate outcome, and
(iv) without improved indexation, universities will have few alternatives to meet funding shortfalls other than increases in student fees when they approach the end of the Government’s ‘Our Universities: Backing Australia’s Future’ package in 2008;
(b) condemns the Government for under-funding universities for the past 8 years, partly through inadequate indexation, to such an extent that universities are now turning to students to provide a short-term increase in funding; and
(c) calls on the Government to:
(i) make all paperwork pertaining to the review public, in time for the sector to make informed comment before the review is completed in February 2005, and
(ii) rule out any further higher education contribution scheme increases.

Senator Stott Despoja to move on the next day of sitting:
 THAT the Senate—
(a) notes reports of violence within the Puncak Jaya district of West Papua, including reports that:
(i) between 5 000 and 20 000 Papuans have fled into the mountains after raids by the Indonesian military, whose officers allegedly fired automatic weapons at villagers from helicopters,
(ii) humanitarian access is being denied to these displaced persons and many of them are now starving, and
(iii) at least 18 people have died, including a number of children; and
(b) calls on the Government to express concern to the Indonesian Government regarding these reports and encourage the Indonesian Government to:
(i) immediately institute an investigation into the allegations,
(ii) ensure the safe return of the displaced Papuans to their homes,
(iii) enable humanitarian and human rights organisations, as well as journalists, to gain access to the affected area,
(iv) work to bring an end to the violence within West Papua, and
(v) bring the perpetrators of these crimes to justice.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that 10 December is International Human Rights Day and join with the many thousands around the world, who are participating in events on this day, to:
(i) condemn the ongoing abuse of human rights worldwide,
(ii) recognise the need for concerted international action to address human rights abuses, and
(iii) call for urgent efforts to address the growing inequity between rich and poor which impinge on rights to life, liberty and freedom from oppression for so many millions around the globe; and
(b) condemns the Government’s appalling record in the field of human rights, and in particular the Government’s:
(i) failure to endorse the United Nations (UN) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
(ii) contravention of the UN Convention on the Rights of the Child in relation to some asylum seeker detainees,
(iii) tacit support of United States of America tactics in the ongoing occupation of Iraq including the use of depleted uranium, napalm and cluster bombs,
(iv) unwillingness to act in defence of Mr David Hicks and Mr Mamdouh Habib illegally detained in Guantanamo Bay, Cuba,
(v) failure to pursue the recommendations of the Royal Commission into Aboriginal Deaths in Custody, and
(vi) failure to reach UN agreed targets for international aid for poverty alleviation overseas.

Senator Brown to move on the next day of sitting:

That the Senate noting that 10 December is International Human Rights Day, congratulates Mr Brian Summerfield who is celebrating the day in Melbourne by completing a bike ride around Australia during which he raised hundreds of dollars for Tibetan refugees and promoted the cause of a free Tibet.

Senator Marshall to move on the next day of sitting:

(1) That so much of standing orders be suspended as would prevent this resolution having effect.
(2) That the Flags Amendment (Eureka Flag) Bill 2004 be restored to the Notice Paper and that consideration of the bill be resumed at the stage reached in the last session of the Parliament.

Senator Brown to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Commonwealth Electoral Act 1918 to enable voters at Senate elections to determine the order of their party preferences in above the line voting, and for related purposes.

Senator FERRIS—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

1. The committee met on Tuesday, 7 December 2004.

2. The committee resolved to recommend—

   (a) the provisions of the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004 be referred immediately to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 7 March 2005 (see appendix 1 for statement of reasons for referral);

   (b) the provisions of the National Health Amendment (Prostheses) Bill 2004 be referred immediately to the Community Affairs Legislation Committee for inquiry and report by 10 February 2005 (see appendix 2 for statement of reasons for referral); and

   (c) the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004 be referred immediately to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 7 March 2005 (see appendices 3 and 4 for statements of reasons for referral); and

3. The committee resolved to recommend—

   That the following bills not be referred to committees:

   Aboriginal and Torres Strait Islander Commission Amendment Bill 2004
   Australian Passports Bill 2004
   Australian Passports (Application Fees) Bill 2004
   Australian Passports (Transitionals and Consequentials) Bill 2004
   Financial Framework Legislation Amendment Bill 2004
   James Hardie (Investigations and Proceedings) Bill 2004
   Postal Industry Ombudsman Bill 2004
   Tax Laws Amendment (Retirement Villages) Bill 2004
   Water Efficiency Labelling and Standards Bill 2004
   Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004.

The committee recommends accordingly.

4. The committee deferred consideration of the following bills to the next meeting:

   Bills deferred from meeting of 7 December 2004
   Australian Communications and Media Authority Bill 2004
   Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004
   Datacasting Charge (Imposition) Amendment Bill 2004
   Radio Licence Fees Amendment Bill 2004
   Radiocommunications (Receiver Licence Tax) Amendment Bill 2004
   Radiocommunications (Spectrum Licence Tax) Amendment Bill 2004
   Radiocommunications (Transmitter Licence Tax) Amendment Bill 2004
   Telecommunications (Carrier Licence Charges) Amendment Bill 2004
   Telecommunications (Numbering Charges) Amendment Bill 2004
   Television Licence Fees Amendment Bill 2004.

Jeannie Ferris
Chair
8 December 2004.

Appendix 1

Proposal to refer a bill to a committee

Name of bill(s):

Broadcasting Services Amendment (Anti-Siphoning) Bill 2004 Reasons for referral/principal issues for consideration
Possible submissions or evidence from:
To explore the adequacy of the current anti-siphoning regime and to examine whether any changes are required to ensure that it remains effective.

Committee to which bill is referred:
Environment, Communications Information Technology and the Arts Legislation Committee

Possible hearing date:
Possible reporting date(s): 7 March 2005

Appendix 2
Proposal to refer a bill to a committee
Name of bill(s):
National Health Amendment (Prostheses) Bill 2004

Reasons for referral/principal issues for consideration
Impact on private health insurance premiums and patient choice
Need for provisions to ensure that patients are informed of potential gap costs

Possible submissions or evidence from:
Consumer/patient groups; doctors groups; PHIO; DOHA: state health departments; independent experts

Committee to which bill is referred:
Community Affairs Legislation Committee

Possible hearing date: TBD
Possible reporting date(s): 10 February 2005

Appendix 3
Proposal to refer a bill to a committee
Name of bill:
Workplace Relations Amendment (Right of Entry) Bill 2004

Reasons for referral/principal issues for consideration:
To examine the provisions of the bill relating to the expansion of the Commonwealth system for union right of entry over state systems; changes to criteria for a person to be granted a right of entry permit; and proposed limitations on union right of entry, and any related matters.

Possible submissions or evidence from:
Australian Council of Trade Unions (ACTU)
Australian Industry Group (MG)
Australian Chamber of Commerce and Industry (ACCI)
Master Builders Association (MBA)
Construction, Forestry, Mining and Union (CFMEU)
Independent Contractors of Australia
BGC Construction (WA Company)
ANZ Bank
Financial Sector Union
Commonwealth and State Governments

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

Possible hearing date(s):
Possible reporting date: 7 March 2005

Appendix 4
Proposal to refer a bill to a committee
Name of bill(s):
Workplace Relations Amendment (Right of Entry) Bill 2004

Reasons for referral/principal issues for consideration:
Whether provisions of the bill are appropriate/justified

Possible submissions or evidence from:
ACTU; ACCI; AIG; unions; BCA

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

Possible hearing date: TBC
Possible reporting date(s): 13 May 2005

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, relating to proposing the reference of matters to the Legal and Constitutional References Committee, postponed till 9 December 2004.

General business notice of motion no. 16 standing in the name of Senator Brown for today, relating to the Tarkine wilderness, postponed till 9 December 2004.

General business notice of motion no. 17 standing in the name of Senator Brown for today, relating to Tasmanian forests, postponed till 9 December 2004.

General business notice of motion no. 47 standing in the name of Senator Nettle for today, relating to East Timor, postponed till 9 December 2004.

Withdrawal

Senator LUDWIG (Queensland) (3.39 p.m.)—Mr Deputy President, I withdraw general business notices of motion No. 44 standing in my name for 9 December 2004, relating to counterfeit passports.

COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Reference

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

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 Transitional 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 sufficient to deal with emerging market and technical issues in the telecommunications, media and broadcasting sectors; and

(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.

Question agreed to.

BULUNBULUN, MR JOHN

Senator RIDGEWAY (New South Wales) (3.39 p.m.)—I move:

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.

Question agreed to.

ANSETT AUSTRALIA: EMPLOYEE ENTITLEMENTS

Senator CHERRY (Queensland) (3.40 p.m.)—At the request of Senator Lyn Allison, I move:

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 Mentha 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.

Question agreed to.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Reference

Senator BROWN (Tasmania) (3.41 p.m.)—I move:

That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 16 June 2005:

Compensation arrangements for wheat growers after the writing-off of the Iraqi wheat debt, with particular reference to:

(a) how decisions were made; and

(b) the impact on wheat growers.

Question put.

The Senate divided. [3.45 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.......... 34

Noes.......... 30

Majority.... 4
AYES

Allison, L.F.  
Bishop, T.M.  
Brown, B.J.  
Campbell, G.  
Cherry, J.C.  
Conroy, S.M.  
Denman, K.J.  
Faulkner, J.P.  
Greig, B.  
Lees, M.H.  
Lundy, K.A.  
Marshall, G.  
Moore, C.  
Nettle, K.  
Ray, R.F.  
Sherry, N.J.  
Webber, R.  

Bartlett, A.J.J.  
Bolkus, N.  
Buckland, G.  
Carr, K.J.  
Collins, J.M.A.  
Crossin, P.M.  
Evans, C.V.  
Forshaw, M.G.  
Hogg, J.J.  
Ludwig, J.W.  
Mackay, S.M.  
Murray, A.J.M.  
O’Brien, K.W.K.  
Ridgeway, A.D.  
Stephens, U.  
Wong, P.  

NOES

Abetz, E.  
Boswell, R.L.D.  
Calvert, P.H.  
Chapman, H.G.P.  
Eggleson, A.  
Ferris, J.M.  
Heffernan, W.  
Johnston, D.  
Knowles, S.C.  
McGauran, J.J.J.  
McGauaran, I.J.I.  
Patterson, K.C.  
Santoro, S.  
Tchen, T.  
Vanstone, A.E.  

Barnett, G.  
Brandis, G.H.  
Campbell, I.G.  
Coonan, H.L.  
Ellison, C.M.  
Fifield, M.P.  
Humphries, G.  
Kemp, C.R.  
Lightfoot, P.R.  
Mason, B.J.  
Minchin, N.H.  
Payne, M.A.  
Scullion, N.G.  
Troeth, J.M.  
Watson, J.O.W.  

PAIRS

Cook, P.F.S.  
Hutchins, S.P.  
Kirk, L.  
Stott Despoja, N.  

Tierney, J.W.  
Colbeck, R.  
Macdonald, I.  
Ferguson, A.B.  

* denotes teller

Question agreed to.

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Reference

Senator GEORGE CAMPBELL (New South Wales) (3.49 p.m.)—At the request of the Chair of the Foreign Affairs, Defence and Trade References Committee, Senator Hutchins, I move:

That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 15 September 2005:

(a) Australia’s economic relationship with China, with particular reference to:
   (i) economic developments in China over the past decade and their implications for Australia and the East Asian region,
   (ii) recent trends in trade between Australia and China,
   (iii) the Australia-China Trade and Economic Framework and possibility of a free trade agreement with China,
   (iv) ongoing barriers and impediments to trade with China for Australian businesses,
   (v) existing strengths of Australian business in China and the scope for improvement through assistance via

CHAMBER
Commonwealth agencies and Australian Government programs, and
(vi) opportunities for strengthening and deepening commercial links with China in key export sectors;
(b) Australia’s political relationship with China, with particular reference to:
(i) China’s emerging influence across East Asia and the South Pacific,
(ii) opportunities for strengthening the deepening political, social and cultural links between Australia and China, and
(iii) political, social and cultural considerations that could impede the development of strong and mutually beneficial relationships between Australia and China; and
(c) Australian responses to China’s emergence as a regional power, with particular reference to:
(i) China’s relationships in East Asia, including in particular the Korean Peninsula and Japan,
(ii) the strategic consequences of a China-ASEAN free trade agreement, and
(iii) China’s expanded activities across the South West Pacific.

Question agreed to.

Rural and Regional Affairs and Transport References Committee
Corrigendum
Senator RIDGEWAY (New South Wales) (3.50 p.m.)—I present a further corrigendum to the report of the Rural and Regional Affairs and Transport References Committee on Australian forest plantations—a review of plantations for Australia: the 2020 vision.

Ordered that the document be printed.

Scrutiny of Bills Committee
Report
Senator GEORGE CAMPBELL (New South Wales) (3.50 p.m.)—On behalf of the Chair of the Senate Standing Committee for the Scrutiny of Bills, Senator Ray, I present the 12th report of 2004. I also lay on the table Scrutiny of Bills Alert Digest No. 12 of 2004, dated 8 December 2004.

Ordered that the report be printed.

Senators’ Interests Committee
Report
Senator GEORGE CAMPBELL (New South Wales) (3.50 p.m.)—On behalf of the Chair of the Standing Committee of Senators’ Interests, Senator Denman, and in accordance with the Senate resolution of 17 March 1994 on the declaration of senators’ interests, I present the register of senators’ interests incorporating a statement of interests and notifications of alterations of interests of senators lodged between 19 June and 6 December 2004.

Legislation and References Committees
Reports
Senator FERRIS (South Australia) (3.51 p.m.)—On behalf of the chairs of the Employment, Workplace Relations and Education Legislation and References Committees and the Environment, Communications, Information Technology and the Arts References Committee, I present reports on matters referred to these committees during the previous parliament. I seek leave to move a motion in relation to the reports.

Leave granted.

Senator FERRIS—I move:
That the reports be adopted.

Question agreed to.

Public Works Committee
Reports
Senator FERRIS (South Australia) (3.51 p.m.)—On behalf of the Parliamentary Standing Committee on Public Works, I present the following reports of 2004:

5th report of 2004—Proposed development of land at Lee Point Darwin for Defence and private housing
6th report of 2004—Fit-out of new leased premises for the Department of Prime Minister, 1 National Circuit, Barton ACT
7th report of 2004—Fit-out of new leased premises for the Attorney-General’s Department, 3-5 National Circuit, Barton ACT
8th report of 2004—New East Building for the Australian War Memorial, Canberra ACT
9th report of 2004—Development of a new collection storage facility for the National Library of Australia, Hume ACT

Senator FERRIS—I move:
That the Senate take note of the reports.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—
Mr President, on behalf of the Parliamentary Standing Committee on Public Works I present five reports, numbers 5, 6, 7, 8 and 9 of 2004, on matters which were considered in the last Parliament, but not tabled before the dissolution. I will deal briefly with each report.

Proposed Development of Land at Lee Point in Darwin for the Defence Housing Authority

The first of the reports is the Proposed Development of Land at Lee Point in Darwin for the Defence Housing Authority. This work seeks to provide fully serviced allotments to allow for construction of community-standard housing to satisfy Defence’s accommodation requirements and to allow for an integrated community development by offering dwelling sites for public sale. The estimated cost of the proposed project is $41,381,480. The Committee has agreed that the work should proceed; however, it has made a number of recommendations, including:

- the possibility of providing a purpose built community centre within the development;
- investigation of design measures which might minimise the use of air conditioning in the houses;
- the development and implementation of protocols for the efficient use of energy in tropical regions;
- the placement of details of the planning and execution of the development on DHA’s website and a program of community consultation; and
- the provision to the committee of periodic information on design and costs as the project progresses.

Fit-out of new leased premises for the Attorney-General’s Department

The Committee’s 6th report of 2004 examined the Fit-out of the New Leased Premises for the Department of Prime Minister and Cabinet at 1 National Circuit, Barton, ACT. The purpose of the work is to provide increased space and security in the new leased premises. The Committee considered the fit-out only, not the lease of the building which, under the PWC Act, does not come under the scrutiny of the Committee. The estimated cost of the fit-out is $23 million. A number of issues were explored by the Committee in the public hearing, including:

- The compliance of the roof with National Capital Authority requirements;
- Traffic management;
- Fire safety and evacuation procedures in the design of the fit-out;
- The extent of staff consultation and the provision of child care facilities;
- The degree of energy efficiency in the design and the compliance with the standards of the Australian Greenhouse Office; and the capacity of the design to accommodate growth in staffing over the 15 years of the lease of the building.

The Committee was satisfied with the responses of the department to its questions and recommended that the work proceed.

Fit-out of new leased premises for the Attorney-General’s Department

The Committee’s 7th report deals with a very similar work to the 6th report, the Fit-out of the New Leased Premises for the Attorney-General’s Department at 3-5 National Circuit, Barton, ACT. This work is also a fit-out for a 15 year lease at a
cost of $23 million. The work was presented to the Committee at a very early stage and the Committee expressed concern at the lack of detail in relation to both cost and design that was available to it at this stage. The Committee, therefore, has formally requested that it be updated on costs and design at a time closer to construction.

With the provisions that the Department keep the Committee informed, it has recommended that the work proceed.

———

New East Building for the Australian War Memorial

The 8th report for 2004 deals with a work for the construction of a New East Building for the Australian War Memorial. This building will accommodate 65 staff, provide storage for the Research Centre collections and facilities for the photographic laboratories and workshop. The new area will free space in the existing building for the War Memorial’s displays. The estimated cost is $11.6 million.

A number of issues were discussed, most notably those affecting the place of the War Memorial as a premier national institution within the designated areas of the National Capital Plan. The National Capital Authority was concerned that the War Memorial use high quality materials, in the exterior cladding and roofing materials, which would be in keeping with the situation and significance of the existing building. The Committee recommended that the Australian War Memorial and the National Capital Authority continue to liaise on this matter.

Other matters considered by the Committee included:

• consultation with staff on the fit-out design;
• the need to consult with the Australian Greenhouse Office;
• occupational health and safety features of the design; and
• the contractual arrangements for the delivery of the project.

The Committee satisfied itself on these matters, and therefore the Committee recommends that the proposed works for an extension to the Australian War Memorial proceed at the estimated cost of $11.6 million.

———

Development of a new collection storage facility for the National Library of Australia

The last report that the Committee is tabling today is report number 9 for 2004, the Development of a New Storage Facility for the National Library of Australia at Hume, ACT.

The primary aim of the proposed work is to construct a facility with the capacity to support the National Library’s ongoing storage needs. Current storage facilities are full and the Library informed the Committee that it needs storage that has appropriate insulation and air conditioning in order to protect the collection.

The estimated cost of the proposed works is $9.9 million.

A variety of issues were raised with the Library at the public hearing, including:

• the capacity of the Library to acquire the land at Hume from the ACT Government;
• compliance with the National Capital Development Control Plan;
• siting arrangements for the proposed building, fire protection and security.

Being satisfied with the Library’s responses to its concerns, the Committee recommends that the works proceed.

Mr President, I would like to take the opportunity to thank my Committee colleagues and all those involved in all of the above inquiries. I commend the reports to the Senate.

Question agreed to.

Environment, Communications, Information Technology and the Arts References Committee

Report

Senator CHERRY (Queensland) (3.52 p.m.)—I present the report of the Senate Environment, Communications, Information Technology and the Arts References Committee entitled Turning back the tide—the invasive species challenge, together with the
Ordered that the report be printed.

Senator CHERRY—I move:

That the Senate take note of the report.

I am very pleased to table the unanimous report of the Senate Environment, Communications, Information Technology and the Arts References Committee on the very important subject of invasive species. Invasive species, according to the Invasive Species Council, is the next biggest threat to biodiversity after land clearing. The economic effect of invasive species on agricultural production is estimated at close to $5 billion a year in lost production yet invasive species rarely rate a mention in the public debate about the state of the environment. This report, which contains some 27 recommendations, completes a 17-month inquiry initiated by the Democrats. The inquiry also considered the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002, which was introduced by Senator Bartlett in 2000. Several submitters raised concerns about the scope of the terms of reference. It was suggested to the committee that invasive species are not only those that are foreign to Australia’s shores. Indeed, it was suggested that native flora and fauna can pose a threat to biodiversity in areas outside their natural range, largely due to human involvement. They can display many of the worst features of invasives, despite being natives.

The committee also received representations about the need to consider pest and weed species not specifically named in the terms of reference, often based on a misunderstanding of a particular term of reference in that it was not exclusive of all other species. It was also suggested that the term of reference concentrating on the estimated costs of different management responses for certain specified pests and weeds was essentially unhelpful because there is no agreed model to measure the ecological cost of invasive species in economic terms. Accordingly, in chapter 4 of the report, the committee has examined the costs and benefits of a range of invasive species programs without confining itself to the set list of species specified in the terms of reference and without attempting to factor in the indeterminate environmental costs.

The committee received 76 submissions from Commonwealth, state and territory ministers, and a range of plant nursery industry groups, researchers, farming and agricultural organisations, and environmental groups. It held four public hearings with some 54 witnesses in Canberra, Brisbane and Adelaide. While in Brisbane, the committee supplemented the formal information from the public hearings with a day of site inspections. The committee visited the Queensland government’s Fire Ant Control Centre and several sites in and around suburban Brisbane to inspect weed infestations before touring the Alan Fletcher Research Station.

The problem of invasive species is, of course, multifaceted. How do we stop more invasive species from entering Australia? How do we deal with those that are already here? What about marine invasives? The oceans are so vast. Can we realistically stop the spread of pest marine species? How do we as a federated nation deal with the challenge of invasive species whose spread crosses state boundaries and which may be relatively benign in one state but have devastating effects in another area? But if these challenges are not met, invasive species have the potential to cause the ‘McDonald’sisation’ of our environment so that, wherever you travel in the world, you will see roughly the same plants and animals dominating the landscape and doing the same damage to the environment and the economy.
The challenge, though great, is not insurmountable. There have been some significant successes. Of course, one of the earliest was the near eradication of prickly pear by the introduction of a predatory caterpillar. In 1999 the black striped mussel was identified in the port of Darwin but was quickly and successfully eradicated. More recently Australian governments agreed at very short notice to contribute $123 million towards the eradication of the red imported fire ant when an outbreak was identified in Brisbane in 2001. This native of South America is extremely aggressive. In the United States, fire ants have caused over 90 deaths and thousands of hospitalisations as a result of allergic reactions. That eradication program is now reaching a successful conclusion. Research continues on species such as the European carp, which may one day be effectively eradicated as a result of the CSIRO’s project to genetically engineer a daughterless carp.

The committee found that in many areas government policy is moving, howbeit slowly, in the right direction. However, the committee found that much more still needs to be done. We also found that while there are many Commonwealth, state and local government agencies dealing with invasive species, these programs are too often under-funded and coordination between levels of government is weak. Invasive species do not recognise borders, yet Australian management plans and the legislative framework that supports them are jurisdictionally based. Frustratingly, those controls introduced and managed by the states and territories are inconsistent, which further weakens the national effort. Australia needs to develop a more coordinated national approach to this issue. All parties to this inquiry have argued that it is the proper role of the Commonwealth government to provide national leadership. That leadership should involve working with the states and territories to develop an agreed national framework. The framework would include common standards and common invasive species terminology and categorisation, put into effect through national strategies and/or action plans and supported with appropriate funding.

The committee welcomes the agreement by the Natural Resource Management Ministerial Council that a robust national framework is needed, and noted the establishment in April 2004 of a joint Commonwealth-state NRM standing committee task group to investigate and report on options for a national framework for preventative action, early detection, awareness and ongoing control of invasive species. This initiative received bipartisan support in the lead-up to the recent federal election.

The committee found that more action was needed to identify and prevent the spread of invasive species in Australia. It recommends that the Commonwealth, in consultation with the states and territories, should develop an agreed alert list of invasive species; legislate a consolidated national list of taxa whose sale and spread is prohibited; review the threat abatement process; standardise the use of species, not genera, listings on schedule 5 of the quarantine proclamation and applications for the import of plants and seeds into Australia; improve the independence of the import risk analysis process; review and update the existing list of weeds of national significance; and use its power to promulgate regulations under section 301A of the Environment Protection and Biodiversity Conservation Act to prohibit the trade in invasive plant species.

We call on those states which have not yet prohibited as a minimum the sale of 20 identified weeds of national significance to do so as soon as possible. The committee also found that more action needs to be taken to
identify and eradicate weeds which are not yet an apparent problem but which are likely to become so in the future: the so-called sleeper weeds. The committee commends the leading role that Australia has played in addressing the problem of marine invasive species being introduced through ballast water. However, there is a pressing need to accelerate action to prevent the introduction of marine pests through hull fouling, and for more long-term funding for research into marine pests. The committee also found that there is a need to improve the level of funding for research into invasive species and to develop a comprehensive range of programs to educate the public and raise awareness of the issue. The committee believes that the financial burden of managing invasive weeds should be borne by those who are responsible for the importation and sale of plants known to be weedy.

I wish to thank the submitters to the inquiry, who provided us with an enormous wealth of material; the many people who gave evidence to the committee around the country; and our hosts during the committee’s inspections in Queensland. I regret that the lead-up to the recent federal election prevented the committee from undertaking a more extensive program of hearings and site inspections, but I can assure everyone who made submissions to the committee that their views were fully considered. I want to acknowledge and thank the staff of the committee secretariat, particularly Frank Nugent and Jacqui Dewar, for their help in producing this excellent report. I want to particularly acknowledge the contribution of Mick McLean, who retired as secretary of the committee last week after three years service to this committee and 16 years service to the Senate. Mick always achieved a very high standard in the committee’s work and I wish him well in his well-deserved retirement, and a happy birthday for today.

As I said at the beginning, this is a unanimous report and a call for action to all levels of government. I commend this report to the Senate and to the government. Our 27 recommendations set a strong action agenda that I hope is picked up by the government and the Natural Resource Management Ministerial Council as they conclude the development of a national framework on invasive species.

Question agreed to.

Appropriations and Staffing Committee Report

The DEPUTY PRESIDENT—On behalf of the President, I present the 41st report of the Standing Committee on Appropriations and Staffing on security funding and the appropriation bills.

Ordered that the report be printed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.02 p.m.)—I move:

That the Senate adopts the committee’s recommendations relating to security funding, and Appropriation Bills and payments to international organisations.

Question agreed to.

DOCUMENTS

Register of Senate Senior Executive Officers’ Interests

The DEPUTY PRESIDENT—On behalf of the President, I present the Register of Senate Senior Executive Officers’ Interests incorporating notifications of alterations of interests of senior executive officers lodged between 19 June and 6 December 2004.

Commonwealth Ombudsman Report

The DEPUTY PRESIDENT—On behalf of the President, I present the report of the Commonwealth Ombudsman on activities in monitoring controlled operations conducted
by the Australian Crime Commission and the Australian Federal Police.

COMMITTEES
Finance and Public Administration
References Committee
Membership

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—The President has received a letter from a party leader seeking a variation to the membership of a committee.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.03 p.m.)—by leave—I move:

That Senator McLucas be appointed as a participating member of the Finance and Public Administration References Committee.

Question agreed to.

TAX LAWS AMENDMENT (RETIREMENT VILLAGES) BILL 2004

First Reading

Bill received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.04 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 ELLISON (Western Australia—Minister for Justice and Customs) (4.04 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 (RETIREMENT VILLAGES) BILL 2004

This bill makes minor amendments to the A New Tax System (Goods and Services Tax) Act 1999 to remove public uncertainty concerning the operation of this Act in regard to retirement villages. The amendments confirm that the Government's policy concerning the goods and services tax treatment of retirement villages has not changed. The changes remove uncertainty surrounding a proposed Australian Taxation Office ruling that may have had the effect of changing the existing goods and services tax treatment for some retirement village residents.

The amendments in this bill clarify the law. They confirm that residents of serviced apartments in retirement villages are entitled to receive supplies of accommodation and a range of services GST-free. This will be the case where residents require and receive daily living or nursing assistance. The serviced apartment amendments will apply from 1 July 2000 to protect the Government's policy intent and provide certainty for industry and aged residents.

The amendments also confirm that charities that operate retirement villages are able to supply accommodation, accommodation related services and meals to their residents GST-free. The Government's amendments reaffirm the Government's commitment to the aged care industry and demonstrate that the Government is responsive to industry concerns. The charitable retirement village amendments apply from the date this bill receives Royal Assent. This reflects that arrangements currently in place by charitable retirement villages are protected by the current Australian Taxation Office published view of the law.

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.

Ordered that the resumption of the debate be made an order of the day for a later hour.
JAMES HARDIE (INVESTIGATIONS AND PROCEEDINGS) BILL 2004

First Reading

Bill received from the House of Representatives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.05 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 ELLISON (Western Australia—Minister for Justice and Customs) (4.05 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—

JAMES HARDIE (INVESTIGATIONS AND PROCEEDINGS) BILL 2004

Today I introduce a Bill to facilitate a thorough and effective investigation by the Australian Securities and Investments Commission—ASIC—in relation to matters arising out of the James Hardie Special Commission of Inquiry in New South Wales. The Bill will also facilitate proceedings that may arise from these investigations, which may be brought by ASIC or the Commonwealth Director of Public Prosecutions—the DPP.

There is considerable community concern about the conduct of James Hardie across a number of years and particularly in relation to the separation of subsidiary companies with liabilities via a group restructure, the transfer of key assets offshore in that restructure and the subsequent underfunding of obligations to compensate those victims who have a legitimate claim against James Hardie for asbestos-related diseases.

These obligations have recently been estimated at approximately $1.5 billion. However, the figure could be as high as $2 billion as the number of victims identified increases. This figure may increase further as the second and third waves of people who have been exposed to asbestos products manufactured by James Hardie contract asbestos-related diseases.

The Government remains of the view that James Hardie should honour its obligation to compensate those victims who have a legitimate claim against James Hardie for asbestos-related diseases.

In addition, a thorough investigation of the conduct of James Hardie, with proceedings brought where misconduct is found, is essential to maintaining community confidence in the Australian corporate regulatory regime.

Mr President it is the Government’s view that ASIC must conduct a comprehensive investigation into the conduct of the James Hardie Group, its directors and officers, and its advisers. The investigation of possible contraventions of the Corporations Act may be impaired if ASIC and the DPP cannot obtain and use material obtained by the Special Commission which is subject to claims of legal professional privilege.

It is expected that many crucial documents will be subject to claims of privilege by James Hardie. The transactions that will be the subject of investigation are of a complex nature, and were the subject of extensive legal advice and assistance. Materials documenting this advice may offer critical evidence as to the purpose and nature of certain transactions. Such evidence may be unavailable from any other source.

To address this concern, the Bill will expressly abrogate legal professional privilege in relation to certain materials, allowing their use in investigations of James Hardie and any related proceedings. This means that authorised persons, including ASIC and the DPP, will be able to obtain materials that would otherwise be subject to legal professional privilege and use them for the purposes of James Hardie investigations and proceedings.

The Bill will confirm a longstanding interpretation of ASIC’s investigative and enforcement powers which was cast into doubt by the decision of the High Court in 2002 in the Daniels case. That case created some uncertainty as to whether
the 1991 decision of the High Court in the Yuill case would be followed today if a request by ASIC to produce material subject to legal professional privilege was to be challenged.

In the Daniels case, the High Court found that legal professional privilege is not merely a rule of substantive law but an important common law right that cannot be abrogated by statute without express words or an unmistakeable implication. Nevertheless, there are situations in which its abrogation is justified in order to serve higher public policy interests. One such situation is the effective enforcement of corporate regulation.

The Bill addresses a number of limitations of recent NSW legislation that provided for the transfer to ASIC of all records produced to or created by the NSW Special Commission of Inquiry. Even though ASIC requested it, the NSW Act did not address the legal impediments to the use of those records by ASIC and the DPP in investigations or proceedings. As a result, the Commonwealth Parliament will be asked to pass this law to remedy the situation.

In accordance with the Corporations Agreement, I have notified the relevant State and Territory Ministers about the Bill.

The Government shares the community’s concern about the difficulties faced by the victims of asbestos disease and their families and wishes to ensure that they are treated fairly. We also place great store in ethical behaviour by corporations. We do not condone or support companies that restructure their affairs to avoid their legal liabilities to those people whose suffering is very great and whose lives are shattered by horrible disease. That sort of behaviour is unconscionable and should be prosecuted to the full extent of the law.

I commend the Bill to the Senate.

Debate (on motion by Senator George Campbell) adjourned.

Ordered that the resumption of the debate be an order of the day for a later hour.
NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) BILL 2004

Consideration of House of Representatives Message

Message received from the House of Representatives returning the National Security Information (Criminal Proceedings) Bill 2004, acquainting the Senate that the House has agreed to the bill with amendments and requesting the concurrence of the Senate in the amendments made by the House.

Ordered that consideration of the message in Committee of the Whole be made an order of the day for a later hour.

DISABILITY DISCRIMINATION AMENDMENT (EDUCATION STANDARDS) BILL 2004

Report of Legal and Constitutional Legislation Committee

Senator McGauran (Victoria) (4.08 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 Disability Discrimination Amendment (Education Standards) Bill 2004, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

TAX LAWS AMENDMENT (RETIREMENT VILLAGES) BILL 2004

Second Reading

Debate resumed.

Senator Sherry (Tasmania) (4.09 p.m.)—The Tax Laws Amendment (Retirement Villages) Bill 2004, which the Senate is now considering, will finally bring to a conclusion a very trying ordeal that the Liberal government has forced on some of Australia’s most vulnerable and needy persons—the elderly. This ordeal has been caused by one thing, and one thing only: the harsh, brutal, at times arrogant and uncompassionate attitude of this Liberal government to elderly Australians in seeking to impose the GST on basic living services. Here we are, four years after the introduction of the GST, still dealing with its consequences.

I will briefly outline the history of this debacle, because I think it is important that those elderly Australians who are listening receive an appreciation and an outline of the absolute travesty and the very poor way the Liberal government has handled this issue. I say Liberal government as I do not call it a Liberal-National Party government, because the Nationals just follow the Liberal Party in everything they do—they are the doormats—so when I refer to the Liberal government you will know what I mean.

Let us go back to the introduction of the GST. At that time there was great concern in the community about how it would affect the residents of retirement villages, so the Liberal government promised to exempt all those in nursing homes and retirement villages from the GST. This was given effect in a determination by the former aged care minister in 2000, Mrs Bishop, the member for Mackellar. In that determination she stated the list of services that would be GST free and specified that to be eligible for the GST-free supply the resident of a retirement village must need and be in receipt of certain services. Frankly, the determination would make an episode of Yes, Minister or Yes, Prime Minister with Sir Humphrey Appleby bureaucratic-speak look good. This was the government’s first failure. It failed to make the original determination clear. The sector was left in a state of confusion as to how the actual law would be applied and what it meant. So, over the intervening period—and this went on for four years—some retirement villages collected the GST and some did not. It was an absolutely absurd situation to allow
this uncertainty about GST collections to run for four years.

The Australian Taxation Office began a review of the taxation treatment of retirement villages in February 2003. As part of this review process, the ATO came to the view that those living in serviced apartments in retirement villages were effectively living in their own homes. As services provided to persons in their own homes are generally not GST free, this would imply that the GST-free treatment of these services would cease, and this was made clear to the sector in the ATO’s consultation process. So we had the former minister, Mrs Bishop, assuring people about the introduction of the GST. I notice Senator Murray is in the chamber, representing the party in part responsible for delivering the GST and in part responsible for creating this mess by not being thorough enough to make sure this issue was cleared up at the time in those now infamous negotiations that they engaged in. That is my flick of the day to the Democrats. I just want to remind you of your part in this debacle, Senator Murray. So we had the former minister, Mrs Bishop, saying, ‘Oh, no, they won’t be hit by the GST.’ Then we had the ATO and their officers—and I am not being critical of the ATO, who were only doing their job and who have to apply the law, which was apparently not well written by this parliament—going around in the consultation process making it clear that the GST would apply. The ATO prepared a draft ruling but did not release it.

So what happened next was an absolute farce in public policy terms, and here the blame shifts squarely to the feet of the Treasurer, Mr Costello. When they heard of the ATO’s hardline position, many in the aged care sector were, quite rightly, very worried indeed and they began to panic. They feared that they would be charged significant back taxes and penalties. So retirement village operators started to increase levies imposed on these aged persons—and we are not generally talking about the most affluent of retirees in society—to provide for back payment of the GST. Some operators seriously questioned their financial viability. They were in an uncertain position. If they did not try to recover the back GST and then had to pay it in one lump sum that would obviously significantly affect their cash flows in the year that they had to pay the back GST. That potentially could have sent some retirement villages broke. Others held out in the hope that the tax might never be levied. That is a very unsatisfactory situation.

On 10 August this year the Labor shadow Treasurer, Mr Crean, the member for Hotham, asked the Treasurer, Mr Costello, a question without notice. He asked:

Is the Treasurer aware of reports that Mr Charles MacDonald of the Retirement Villages Association has stated that, as a result of uncertainty arising from the Australian tax office’s deliberations on a draft ruling on this matter, some retirement villages are already being advised to start making provision for this GST impost? Is the Treasurer aware that, in December 2003 and June 2004, the Parliamentary Secretary to the Treasurer wrote to the member for Petrie confirming that the Australian tax office was preparing a draft ruling on this matter which contravened government policy and implied support for this change?

The response by the Treasurer, Mr Costello, was quite extraordinary. He stated in Hansard:

Retirement village residents in serviced apartments and independent living units are not GST free. That is the legislation and that is the policy which the government announced.

It was not, but that was what Mr Costello claimed at the time. It was a very arrogant and inconsiderate claim and declaration. All of a sudden the Treasurer, Mr Costello, had created a new tax, a new GST application, where it was not supposed to have applied. This was in direct contradiction of yet an-
other core election promise. Mr Costello indicated that persons in serviced apartments in a retirement village were to be charged GST on their basic living services. Effectively by this announcement he extended the GST into aged care. The Treasurer did not even wait for the draft ATO ruling.

Thanks to the inquiry by our former shadow Treasurer, Mr Crean, the issue had finally been brought to light in public and had to be dealt with. The Treasurer, Mr Costello, realised he had a significant problem. When Mr Crean pressed the Prime Minister on the same issue the next day, Mr Costello denied in the House that he had said that residents of serviced apartments in retirement villages were GST free. After reflection I think that he misled the House—and the Hansard proves it. It was not a great comfort that this debacle was rolling on for the residents in retirement villages who were affected. They were still left with doubt and uncertainty.

So what happened? Later that night, after Mr Crean had asked the Prime Minister about the issue—I am not sure what time it was but it was certainly done in the dark of night to avoid press scrutiny—we had a backflip. The Minister for Revenue and Assistant Treasurer, Mr Brough, put out a press release indicating that these basic living and accommodation services would be GST free and that the Liberal government would legislate to ensure it. It is very clear what happened. On one day the Treasurer effectively made an announcement that the GST would apply. The Prime Minister, Mr Howard, was asked about it the next day and he contradicted the Treasurer. Then the Prime Minister obviously called in the Treasurer and said, ‘The GST doesn’t apply. You’d better get it right; you’d better back down.’

The Treasurer is too arrogant to back down on anything. He is too arrogant to put out his own press release acknowledging that he got it wrong so he rang up Minister Brough to get him to put the press release out late at night so that it would not get any press coverage. So we finally got the right outcome but it was four years too late. Since the year 2000, many residents in these facilities have had to suffer uncertainty or pay an unnecessary tax. This government owes an apology to those residents and to the operators of the aged residential care homes who were left in this position. Four years is a long time to allow something as fundamental as the application of GST to some retired Australians to remain in doubt. It is a very long time.

The explanatory memorandum to this bill indicates that the cost of this backflip is some $63 million over the forward estimates, and $47 million in the first year. This is money that the Liberal government ought not to have received. This amounts to 63 million reasons why the Treasurer, Mr Costello, should apologise to the residents of aged care facilities and the operators of these homes. Will he? I am sure he will not. Even then, when we analysed this bill, we found that the government still had not got it quite right.

I point out, as I pointed out earlier, Labor have led the way on this issue in exposing the gross incompetence of the government in their mishandling of the issue and the insensitivity in the application of the GST to certain residents in aged care facilities. Labor have consulted with the sector to ensure they are happy with the bill that we are considering. There are still some issues which need to be resolved. In particular, my colleague Senator Jan McLucas, who is the Labor Party’s shadow minister and spokesperson on aged care issues, will be outlining in detail those particular aspects in her contribution and in the committee stage.
In closing my contribution in this place on this piece of legislation, yes, this is technically a tax bill. It is certainly dealing with the application of the GST to certain residents of aged care facilities. But we should look beyond the travesty of justice, the incompetence of the government and the arrogance of the Treasurer on this important issue to those who have been affected by these four years of uncertainty: the residents of the aged care facilities. You could not pick a better example of the application of a new tax creating uncertainty for retired Australians. When Australians retire I think they do want a degree of certainty. Certainly when they move into aged care facilities they do want to know what price they have to pay. It is a massive indictment of this government that four years on we are finally fixing up this tax problem.

Senator Murray might remember that two years ago tomorrow we were in this chamber at about six o’clock in the morning correcting the GST application to the Royal Life Saving Society Australia. It is certainly written in my memory. It is not often we are here until six o’clock in the morning. We were dealing with fixing up the GST as it applied to the Royal Life Saving Society Australia, and at last count I think that was the 1,200th amendment to the GST. We were dealing with that one two years after the introduction of the GST; at six o’clock in the morning, prior to breaking for Christmas. So much for this simple tax! Here we are, another two years on, still trying to fix it up.

The Labor Party will be supporting this legislation. There are a couple of amendments that will be dealt with in committee. We have consulted with organisations from the charitable sector, including Catholic Health Australia, and they are very keen that this bill pass before the parliament adjourns for the summer break so that the uncertainty that the aged care residents, the aged care sector and the operators have had to endure as a result of the incompetence of the government in the application of the GST in this sector—this sad chapter—will hopefully be brought to a close.

Senator MURRAY (Western Australia) (4.25 p.m.)—The Tax Laws Amendment (Retirement Villages) Bill 2004 ensures that supplies of certain services to residents of serviced apartments in retirement villages are GST free where the resident requires daily living activities assistance or nursing services. It was always the intention of the Democrats—and, as we understood at the time, of the government—that health care services be provided GST free. We always regarded health care services in the broad sense, not in the narrow sense. It is frustrating that nearly five years on the government is only now legislating to confirm this principle. On the one hand it is concerning that the explanatory memorandum indicates that there are $47 million in refunds that will need to be paid retrospectively to residents of retirement villages that have been incorrectly paying GST—that is a large sum of money. Of course on the other hand the government gets a big tick for retrospectively compensating people, because it is important that where the law has changed in this manner individuals and organisations are not prejudiced. We do urge the Australian Taxation Office to provide these funds as soon as practicable and possible.

The Australian Democrats are supporting the bill, but we do note the concerns of the retirement village industry that an aged care assessment team will be responsible for assessing the level of care that a resident of a retirement village requires. We understand the concern that ACAT may set a level of care criteria that would make the provision of care services in serviced apartments too onerous. It does not automatically mean that they will; they might not. We support the
position of the industry and of the Labor Party that a registered nurse or doctor should be able to make this determination. More particularly, we support the broad intentions of the Labor Party amendments, which have been circulated on sheet 4442 revised. Amendment (1) says:

The Aged Care Minister must set by determination the way in which the levels of care services required by residents are to be assessed.

We think there is some sense to that, because in this area it is often a very anxious time for people. Knowing how their case will be assessed, we think, will be to their advantage.

Moving on from those remarks, with respect to the bill specifically I want to briefly make a couple of remarks about the GST. Overall the GST has been a wonderful boon to Australia. It has delivered tremendous certainty to state funding. It has replaced an inefficient wholesale sales tax on goods with a much more efficient, if admittedly complex, tax on goods and services. That was always a desirable proposition. I notice the states are singularly happy with the cash flow that they are now using.

Senator Patterson—Have they thanked you, Senator Murray?

Senator Murray—Many of them have thanked me privately, but I have yet to receive any public acknowledgement of the role we played.

Senator Patterson—You’ll die waiting!

Senator Murray—I think I will die waiting. We have taken a lot of pain to deliver Australia a lot of gain. I do note, however, in some newspapers reports on and advocacy for a rather poor proposition that the GST should be revisited to apply to basic food. In response to that the Treasurer made it very clear the other day that he was not interested in that proposition. But I should remark that some of those very newspapers that are pushing that boat, that the GST should be extended into areas to which it presently does not apply, of course, forget to remind their readers that, at the time of the original debate, they were asking to be GST exempt themselves. That is a little fact that is conveniently left out of the commentary. I want to again put on the record that before the Democrats made the decision to amend the government’s controversial tax package, we did listen to the evidence from a comprehensive parliamentary inquiry, which clearly indicated to us the benefits to low-income earners of basic and fresh food being GST free.

Some of these editorial writers and advocates imply that food is the only thing which is GST free, but I want to remind people that the coalition decided on extensive GST exemptions: for dwelling rentals, health services, education, financial services and exports, all of which total well over 20 per cent of GDP. In other words, right from the start the coalition advocated that one in five consumer dollars should not be subject to the GST, and basic and fresh food was added to that; it was not the only exemption or even the most important exemption. The Democrats agreed with the coalition’s proposed exemptions, and we then broadened them to include basic and fresh food, which is consistent with GST/VAT systems the world over. We also negotiated extended exemptions in the health, education and charitable services sectors. I freely admit that we could have done a bit better; undoubtedly the government could have done a bit better. Everybody concerned could have done better. But, overall, I think it was a very good outcome in Australia’s national interest.

Even without taxing food, this year the GST will provide the states with an additional $1.6 billion revenue windfall. I am sometimes astonished by the fact that people who say they are in the progressive sector of policy and thought and who want much more
spent on services for Australians simultaneously oppose a GST system which delivers the money that enables those services to be provided by governments, especially bearing in mind that around three-quarters of countries in the world have those systems, and it is a very common tax methodology. Including GST on food now would not reduce small business paperwork significantly and it would do nothing to fix the other problems that are apparent, so we certainly would not support any proposition to go back and tax fresh and basic food. For the record, I do recall a little fact that is often forgotten: three times in divisions the Labor Party did, in fact, vote to apply the GST to food. It is on the record; it is in the Hansard. We should remember that. We are certainly pleased that the government have no interest in going down that route, and the Democrats certainly have no interest in it.

Senator McLUCAS (Queensland) (4.34
p.m.)—I ask senators to cast their minds back to 2000 when the GST was trumpeted as a simpler tax system, one that was going to make compliance with tax law in Australia simpler, fairer and easier for all concerned. The fact that we are here four years afterwards debating the Tax Laws Amendment (Retirement Villages) Bill 2004 that is trying to clean up this mess makes an absolute lie of the claim. Four years on, we are cleaning up the mess that the retirement village sector has been complaining about since even before the tax law came into effect on 1 July 2000. We are still cleaning up that mess. I have to say I am pleased that finally the government has been brought to the table to deal with the uncertainty in the retirement village sector about the application of GST to services that they provide. However, I am disappointed that the government has not quite got it right and has not really solved the problem.

Let us be clear about why we are debating this legislation. The reason is that the Labor Party, on behalf of the retirement village sector, has been pursuing the government for more than two years to try to get some resolution on how the GST is applied to services provided to retirement village residents. It may have taken a long time but, once again, it is the Labor Party leading from the front and it is the coalition government that has belatedly listened and finally acted on Labor’s calls. I am pleased to say that it has finally acted to sort out the mess regarding GST and retirement villages, albeit not completely. The lack of clarification about how retirement village residents are taxed has dragged on since before the GST was introduced in 2000. Prior to the government introducing the GST act, which was effective on 1 July 2000, the implications of how the GST would be applied to the retirement village sector were unclear. In particular, it was unclear how it would impact on retirement village residents who require types of care similar to that provided in residential aged care—services which are GST free.

Over the last few years Labor, along with the industry, have called on the government to clarify the issue of how the GST on retirement villages is applied, to bring certainty and security to the sector. Finally they have listened to our concerns and that of the industry. However, the history of this issue, given the time it has taken for the government to respond, is illustrative of the way the coalition have failed to treat older Australians with dignity and security. The original intent of the GST legislation appeared to support the view that people in retirement villages should not pay the GST on services that were similar to services provided by Commonwealth funded aged care providers. But what happened was that the Australian Taxation Office had such a narrow definition of what ‘residential setting’ meant that it
caused widespread confusion within the sector for residents of retirement homes and for their families. In March 2000, the then shadow Treasurer, Simon Crean, pursued the issue with the Treasurer of the absurd situation of the GST applying to services received by one elderly person living in a retirement village but not applying to a person in a nursing home receiving exactly the same service.

People living in retirement villages have faced an uncertain situation for over four years. These retirement villages, which have been operating privately or by community organisations since the 1950s, cater for people aged over 55, through either self-care accommodation or continuous care. The primary point at issue was how the GST was applied to residents of serviced apartments in a residential setting. Independent living units are very similar to serviced apartments: they provide a range of accommodation services such as meals, the provision of daily living assistance, nursing care where needed and, if required, cleaning and other accommodation services. Residents of self-care units often provide their own food and personal care but they also utilise common village facilities and services. In this respect, many retirement village residents are self-supporting. On the other hand, older people living in serviced units often have their meals as well as other services, such as cleaning and nursing services, provided.

The problem is the grey area that exists between self-supporting residents and those requiring some form of assistance. This has been particularly complex for the retirement village sector when factoring in the GST. There was a lack of clarity and clarification in relation to how the GST applied to retirement villages because of the ATO’s extremely narrow definition of ‘residential setting’. The ATO commenced a review of the GST in retirement villages through the Retirement Village Industry Partnership in February 2003. The association representing the sector, the Retirement Village Association, was involved with the ATO’s partnership as they tried to get the ATO to clarify GST issues and not radically change, by reinterpretation, their understanding of how the GST was to be applied to services provided in retirement villages. Over time the ATO, in a number of private tax rulings, has been making determinations that differed from the understandings that had been reached with the sector when the GST was first introduced. Of particular concern at the time to the industry was the ATO’s position that serviced apartments were not residential settings. The ATO’s then position was that serviced apartment residents were not living in a residential setting as the ATO did not believe serviced apartments met its definition of a ‘congregate care’ facility.

The purpose of this bill therefore is to clarify the definition of ‘residential setting’ in relation to retirement villages so that those people living in a serviced apartment located in a retirement village who are receiving nursing or living assistance on a daily basis will have those services provided GST free. The bill seeks to link the term ‘residential setting’ with ‘residential facility’, meaning that services delivered in a residential setting are now recognised as similar to those delivered in publicly funded residential care, such as a nursing home. This change will go a long way towards removing the grey area that has caused so much anxiety and so many problems among residents, village owners and the families of people in retirement villages.

As I said before, Labor does have concerns about other aspects of the bill with regard to the provision that the Minister for Ageing or the aged care secretary can assess and determine the degree and level of daily living and nursing style assistance that is GST exempt and can delegate the power to
assess a person as requiring a specific level of care to members of an aged care assessment team, or ACAT. Labor’s amendments are designed to remove the discretion given to the Minister for Ageing and the secretary to specify the level of care that a resident needs to enjoy to be deemed to be in a serviced apartment in a residential setting.

The industry has raised concerns about changes to the status quo and about the retention of the system whereby a resident’s doctor or a registered nurse who is independent of the retirement village can make the assessment, as the doctor or nurse often has more intimate knowledge of their patient’s changing health status. We do not want to see the ACAT assessment process bogged down or the aged care assessment teams unable to make timely assessments of residents in retirement villages or delays in the work that they are doing assessing needy people who are looking for further support, either through residential aged care or through community aged care packages. Even though the bill does not specify who should do this assessment, we see no reason why medical doctors or registered nurses could not be trusted to provide the proper assessment of the level of daily assistance a client may require.

The government has, to some extent, fixed up the problems of defining residential settings by including serviced apartments in retirement villages. I suggest that adopting Labor’s amendments would go a lot further towards clarifying the GST issues for people in retirement villages. I believe that the sector has advised the government of its concerns in this area. At this point in time we hope the government has taken on board the sector’s concerns and will continue to work with it to improve the care and services provided to older Australians. During the committee stage we will further explain Labor’s amendments, and I urge the government to consider them in good faith.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues) (4.44 p.m.)—The Tax Laws Amendment (Retirement Villages) Bill 2004 makes some minor amendments to the new tax system to remove public uncertainty in relation to the GST treatment of retirement villages. It is not that the government’s policy on the GST treatment of serviced apartments in retirement villages has changed. It has always been the government’s intention that GST-free treatment apply where residents require daily living or nursing assistance. The government is simply removing uncertainty surrounding a potential ATO ruling that may have the effect of changing the GST treatment for some residents. The government is confirming that, in the context of the ruling, residents of serviced apartments in retirement villages who are assessed as requiring daily living and nursing assistance will receive these services GST free where the retirement village provides the daily living and nursing assistance in line with the quality of care principles under the Aged Care Act 1997.

The other main part of the bill concerns the charitable sector. Retirement villages operated by the charitable sector receive GST concessions in relation to accommodation, related services and meals if they meet certain guidelines—and always have. This bill protects that treatment.

The opposition is accusing the government, in effect, of a lack of care for elderly Australians, and I reject this accusation totally. In fact, this is just one of a range of measures this government is committed to which recognise the contributions of senior Australians and the issues faced by retirement home residents. The government has
announced a comprehensive program involving more financial support and respite for carers, and exempting accommodation bonds paid by people entering low-level care, hostels or homes from the social security and Veterans’ Affairs assets tests until bonds are refunded. These measures complement other government initiatives such as making a national health priority of dementia and increasing at-home support for people living with dementia; a 100 per cent Medicare rebate; and the increased private health insurance rebate—for people aged 65 to 69, increasing it to 35 per cent, and for people aged 70 and over, increasing it to 40 per cent.

I add that the government has moved quickly to remove public uncertainty about the potential Taxation Office ruling. 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 MCLUCAS (Queensland) (4.47 p.m.)—by leave—I move opposition amendments (1), (2) and (3) on sheet 4442 revised:

(1) Schedule 1, item 2, page 3 (lines 17 to 29), omit subsection 38-25(3B), substitute:

(3B) The Aged Care Minister must set by determination the way in which the levels of care services required by residents are to be assessed.

(2) Schedule 1, item 2, page 3 (lines 30 to 32), omit subsection 38-25(3C).

(3) Schedule 1, item 3, page 4 (lines 18 to 23), omit paragraph 38-25(4A)(c).

Sector advocates have expressed concerns with respect to two elements of the bill and how it will be applied to the retirement village sector. The government has assured them that their concerns will be dealt with in the administration of the bill, but they have indicated to us that they would prefer amendments to be made to the law.

The first problem relates to the fact that the bill empowers the Minister for Ageing to specify the level of care needed to qualify for GST-free supplies. There is some concern that the level of care could be specified as being so high that it would be too onerous for an operator to provide and too expensive for a self-funding resident to pay even with the GST-free concession. The sector would prefer that the bill specify that satisfying at least one of the criteria listed in the aged care minister’s determination, the quality of care principles, should be a sufficient condition for the GST-free treatment.

There is also some concern that the bill empowers the minister to specify the process by which the requisite level of care for GST-free services is assessed. This is expected to be the aged care assessment teams, the ACAT teams, who currently assess the residents’ eligibility for government funded places. This would inevitably delay the ACAT assessment process, both for people needing assessments for the retirement village program and for people requiring assessments prior to receiving services in a residential aged care facility or for a community care package. The sector suggests that it would be more appropriate that this assessment be delegated to a doctor or a registered nurse.

Labor’s amendments ensure that the current provisions in terms of the level of care will prevail as per the then aged care minister’s determination of 2000. They also ensure that the aged care minister will determine the process by which this level of care is assessed, not the Australian Taxation Office. The minister’s determination will then be a disallowable instrument, adding a further layer of review as a protection. Labor’s amendments are constructive amendments
created in consultation with the sector, and I look forward to support both from the government and from other senators.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.50 p.m.)—I think it is important to put on record the reasons why the government does not support the opposition’s amendments. As was explained earlier, this bill makes minor clarificatory amendments to the GST rules applying to treatment of retirement villages. These rules include a robust assessment process to ensure that GST-free treatment applies to those in need of daily living or nursing assistance. These provisions became necessary to remove the potential for an ATO ruling that might have had the effect of altering the intent of the government’s legislation.

However, the amendments that the opposition is moving will undermine this process by removing the power for the aged care minister to make a determination of the level of care services that residents of serviced apartments must require in order to qualify for GST-free accommodation and certain services. This, quite simply, would place the ATO in the position of having to assess whether residents of serviced apartments have the required minimum care needs and who is entitled to receive them. It will come as no surprise to those listening to this debate that the ATO simply does not have the expertise to make such assessments and potentially have to issue rulings on this matter, and it would create the kind of uncertainty that the bill is designed to remove.

Moreover, the opposition amendments would fundamentally change the current assessment process and would potentially allow all occupants of retirement villages to be provided with GST-free treatment in respect of their accommodation regardless of their needs—again, an unintended consequence. Such an outcome could also have significant GST revenue implications which, on very short notice, we have not been able to assess. As all GST revenue is passed on to the states and territories it would be necessary for the state and territory treasurers to approve the amendments the opposition is moving if they amounted to a change to the GST base, which I think they probably do. Since they broaden the exemption, on face value, beyond the government’s original intent, we are not in a position to support them. I am not aware of whether the opposition has this approval—Senator McLucas or other earlier speakers, I understand, may not have dealt with it—but, if insisted on, these amendments will potentially delay what is a necessary but minor clarificatory measure.

The opposition has quite wrongly criticised the period over which this issue has developed without recognising that it was a potential ATO ruling and not the government that raised concerns. In fact it was in my previous portfolio that I became aware of the potential effect of the possible ATO ruling. So what we are now looking at is an eleventh-hour amendment from the opposition. In my view this is not an appropriate response on the part of the opposition for the reasons I have outlined—and I think they are substantial reasons. It also has the potential to significantly prolong the process, something that the aged care sector can best do without. So it is for those cogent and compelling reasons that the government will not be supporting the amendments.

Senator McLucas (Queensland) (4.54 p.m.)—I have a couple of points. I just want to clarify for the minister the intent of the first amendment. It says:

The Aged Care Minister must set by determination the way in which the levels of care services required by residents are to be assessed.
The purpose of that amendment is to make it absolutely plain that it is not the Australian Taxation Office that will be making that determination; it will be with the right department—that is, the aged care section of the Department of Health and Ageing—through the aged care minister. That is the reason we have made that amendment. The ATO might be fine at devising tax law—and there is probably a question about that, given that we are four years down the track and still cleaning up the GST—but the purpose of that first amendment is to make it very plain that it is in the purview of the aged care minister according to, in this case, her reading of the determination, so that that is the right place for the assessment to occur, not in the ATO.

It is not an eleventh-hour amendment. The sector has been calling for this sort of clarification for a long time and I think it is quite inappropriate to be saying that we will be delaying this legislation. We are aware more than you and your side of politics that the retirement village sector has been calling for this clarification for a long time. There is plenty of time between now and tomorrow afternoon to deal with this matter. I urge the government to look more closely at the amendments that Labor are proposing. I suggest that the first one exactly clarifies the concerns that you have raised.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.56 p.m.)—The clarification that the sector has sought is provided in the measure that we are currently debating. It is a measure that works effectively without the opposition’s amendments, which do absolutely nothing to clarify and everything to hinder the proper operation of this measure. It shows fairly conclusively that the Labor Party, whilst claiming to somehow or other have some mortgage on being able to consult the sector, clearly does not appreciate that what the sector obviously needs is the clarification this legislation provides, and it needs it now.

Following Senator McLucas’s point, I have just had a look and it appears that we first got this amendment at about three o’clock this afternoon. It was the basis upon which I mentioned in my initial remarks that the government have not had an opportunity to consider perhaps all of the implications of this amendment. But because we wish to get it passed and we wish to provide the certainty the sector has sought, we have tried to deal with it on the run. On my reading of it, the amendments that the opposition are moving appear to undermine the process by removing the power that has been sought in its terms for the aged care minister to make a determination of the level of care services that residents of serviced apartments must require in order to qualify for GST-free accommodation and certain services. I agree with the Labor Party that this matter should be resolved expeditiously. If the opposition were serious about wishing to provide this certainty to the sector they would withdraw the amendment and allow the legislation to pass.

Senator McLucas (Queensland) (4.58 p.m.)—The minister was criticising the Labor Party for the delay in provision of the amendment to the government. The minister may not know that Labor have been in discussion with Minister Brough’s office throughout the day and it is through those negotiation processes and ongoing discussions that the words in front of us now appear. It is obvious that the government is not going to support them and that is unfortunate, not only for the quick movement of this bill through the chamber but also for those people who are in the retirement village sector who would very much like it. So criticising Labor for not providing amendments until this afternoon is a false and hollow criticism. We have been in negotiations with
the government all day. It is plainly wrong to say that these are eleventh-hour amendments or have just been thrown at the government at three o’clock this afternoon. Let us be clear about this. We have tried very hard to do the right thing by the sector and we have tried very hard to negotiate in good faith.

Senator Coonan—If you’ve been negotiating, why haven’t you got something that is accepted?

Senator McLUCAS—I do not think you are listening to the sector, to be frank. We have moved amendments that the sector are clear they want pursued, and we will pursue them on their behalf. There is plenty of time for this bill to pass through this chamber and the other. I hope that the government uses the time that is afforded to it to look very closely at the intent of the amendments.

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) (5.01 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Tax Laws Amendment (Superannuation Reporting) Bill 2004 and informing the Senate that the House has disagreed to the amendments made by the Senate, and requesting the reconsideration of the bill in respect of the amendments to which the House has disagreed.

Ordered that the message be considered in Committee of the Whole immediately.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.02 p.m.)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

(Quorum formed)

Senator SHERRY (Tasmania) (5.04 p.m.)—We are dealing with the return of the message from the House of Representatives in respect of Tax Laws Amendment (Superannuation Reporting) Bill 2004 and the two amendments that the House has rejected which were passed in the Senate chamber and added to this bill yesterday afternoon. The taxation super laws reporting bill deals with the removal of the requirement for employers to report to their employees within 30 days of the end of the quarter that they have paid the superannuation contribution. This is a measure that was introduced by this government together with the requirement for the payment of superannuation contributions at least quarterly. So the issue that we are dealing with in this bill is a consequence of the government introducing this reporting requirement.

If the bill passes, which it will, the requirement that employers notify their employees of the payment of superannuation will be removed. However, this requirement will not be removed for all businesses because a substantial proportion of them are required under various industrial instruments, federal and state awards and other industrial instruments, to notify their employees of the payment of superannuation. Even many of those that are not required to do so do notify their employees of the pay-
ment of the superannuation contributions. From the outset, even prior to this bill being given notice of via a government announcement during the election, I had a number of complaints about the practical application of the payment reporting system.

In particular, I had drawn to my attention specific examples in the hospitality industry and in some sections of the agricultural industries of the practical limitations of this reporting mechanism, particularly in industries where there is a very high turnover of labour, as there is in the two examples I have given. There are practical problems in carrying out the reporting requirements and therefore, where it is impractical to carry out the reporting requirements, employers would be in breach of the law. The Labor Party recognised from the outset that there was a practical problem in some areas with this reporting mechanism. This highlights the fact that the government did not give sufficient thought to this mechanism when it introduced it some years ago.

In the message we are considering, the House of Representatives has disagreed with two amendments: one that was successfully moved by the Labor Party and supported by the Democrats, and one moved by the Australian Democrats and supported by the Labor Party. I would not say that I am disappointed; I think it is a sign of the arrogance of this government, which will get worse over time. The two amendments that were passed by the Senate and added to the bill were reasonable amendments. The Labor amendment went to ensuring that we are regularly updated with a factual report on the number of employers not paying the SG, the quantum of moneys involved, the number of employees and the actions being taken by the tax office to recover moneys. The Labor amendment required the reporting of this information on a yearly basis. I do not think that is unreasonable. That amendment was passed by the Senate.

In the public interest it is important that, in considering the reversal of a reporting measure, we do know the facts and what is going on. A relatively small number of employers do not pay SG, but the fact that SG goes unpaid, often for considerable periods of time, does impact, I am led to believe, on tens of thousands of employees. So it is important to at least know what the facts are. I think that that, in the context of what we are considering, is a reasonable amendment. But the government with its arrogant approach—take it or leave it; black or white—does not agree with that reasonable amendment; likewise with the Democrat amendment. I was not here for the debate yesterday but I think the Democrats recognise that there are some problems and they have attempted to come to some sort of practical solution to deal with the problems that do exist in some areas. Nevertheless, the government has chosen to reject both amendments by the message.

On the issue of unpaid superannuation contributions, it is hard to establish the facts. Occasionally we get some information from estimates. We do know that there are tens of thousands of employees each year who go without their SG and that it is crystallised as a problem when, as happens in some cases, the employer is put into receivership and bankruptcy proceedings. I point out to the chamber and to those who are listening that, even though the superannuation guarantee is a statutory entitlement in this country, there is no compensation in the event of employer bankruptcy. Often, the outstanding superannuation contributions—a statutory entitlement—will exceed the redundancy payments that an individual should receive and are covered, at least in part, by the Commonwealth's statutory employee entitlements scheme. We have an absurd situation where some elements of redundancy pay—long
service leave, outstanding wages and matters of that like—are, on employer bankruptcy, covered by a limited statutory entitlements scheme, but not one cent of superannuation that is unpaid on employer bankruptcy is compensated for. I point out that one of Labor’s policies is to ensure that in those circumstances the outstanding superannuation guarantee contributions are covered by an employee entitlements protection scheme. That is another issue for another day. We should minimise the outstanding superannuation guarantee contributions and ensure that, where we cannot recover the moneys, employees are covered in terms of compensation.

In considering this bill the Labor Party recognises that there are some practical issues that have to be resolved. The government has provided a blanket solution. It is not a perfect solution by any means but nevertheless it is a solution. It could have been dealt with in a better way. The two amendments that were carried in the Senate were reasonable in our view. However, a solution has to be found and, even though it is a solution that we think could have been better refined, we will not be insisting on our amendment and we will not be supporting the amendment that was successfully carried by the Australian Democrats, because we want to ensure the passage of this legislation. So we will be accepting the message transmitted from the House of Representatives.

A lot of the focus of the argument on this issue has been about red tape, particularly for small business. Whilst the problems in this area are important—and I have mentioned some of industries where they are important—the problems that businesses are going to face with new paperwork, new costs and legal liabilities when the so-called ‘fund choice’ hits the deck on 1 July next year will rival those of the GST. There are other issues, but that is for another day. The problems that businesses are going to face with additional paperwork, record keeping, inspections by the tax office, paying moneys to multiple funds, paying for the transaction costs for payment to multiple funds and the legal liability if they give advice outside of the terms of the fund choice bill will be very significant indeed.

We have a government that talks the talk on red tape for business—in particular, small business—but it does not walk the walk. The Labor Party will be drawing to the attention of employers throughout Australia in the run-up to fund choice just who is responsible for the additional work requirements that employers will have to go through in respect of superannuation fund choice. We will be drawing to the attention of employers that it is a Liberal government that has imposed significant new red tape burdens on employers with superannuation fund choice. I am already starting to get significant levels of complaints from employers as they are being briefed by superannuation funds on the new obligations—the burdens, the red tape—that are going to be introduced for them with superannuation fund choice. Those burdens will far and away exceed the issues relating to red tape as it applies to small business in this bill.

That is another debate for another day. I look forward to that debate and to drawing the community’s attention to the direct responsibility this government has for new employer obligations for superannuation fund choice. We will be holding the government accountable. It appears that there is a hypocritical double standard. You address the paperwork requirements for superannuation reporting, where there are some real problems—so it is one step forward for business—and then next year in the lead-up to 1 July it will be 10 steps backwards once employers start implementing superannuation fund choice.
That is not to say that superannuation fund choice can be reversed—I will be making comments about that on another occasion—but certainly there are going to have to be solutions found in two areas: the compliance burdens for employers and the issues in relation to fees and charges. Again, that is another debate for another day. The Labor Party will certainly be pointing out the Liberal government’s responsibility for the new paperwork and costs that will result for employers. They will be many, many times those of the bill we are considering at the present time. The Labor Party will not be insisting on its amendment or supporting the Democrat amendment. We will accept the message from the House of Representatives.

Senator CHERRY (Queensland) (5.18 p.m.)—I want to express my disappointment with the attitude of the government to these amendments and my disappointment that the Senate will not be insisting on them. The issue of whether this bill is necessary is one the Senate needs to consider very carefully. True, I suppose, we have to acknowledge that some businesses have complained about the compliance costs of reporting to their employees on a quarterly basis about how much superannuation they pay. But what is wrong with that? What is wrong with saying to employers, ‘Good practice is telling your employees four times a year how much super they are being paid and where it is being paid to’? Surely that is what you would call minimum good practice by an employer.

In the first 10 years of the SG there were 45,000 complaints by employees to the tax office about unfunded superannuation guarantee payments. The measure we are putting in place with this bill is going to make it harder for people in the future to be able to track whether their superannuation guarantee is being paid or not. Yes, the quarterly payment into the super fund continues. But, really, if it is not being paid and you are not being told, it becomes much harder to track.

Senator Sherry missed the debate last night. When this bill was announced by the government last July the Financial Review editorial described it as ‘political opportunism’. That is what it is. It goes backwards in terms of improving the safety and security of our superannuation system, giving workers the information they need to protect their superannuation and ensuring that workers can track what is happening to their superannuation. We acknowledged, given the government wanted to reduce compliance costs, that we should look at that issue. We went back and looked at the explanatory memorandum the government produced with this bill, which asserted that awards and state legislation require superannuation to be on pay slips. According to the ACTU’s submission to the inquiry into this bill, that particular assertion was grossly overstated in that a lot of awards do not require that at all and state legislation only requires the amount and not the fund to be stated on the pay slip.

But we thought, okay, given the government is saying that we do not need this reporting requirement because it is on pay slips, let us say that if it is on a pay slip then that reporting requirement is met. By that simple amendment you reduce the compliance costs of the current law by half and probably by two-thirds or three-quarters. In doing so, you are encouraging employers to aspire to a best practice human management technique, which is telling their employees on their pay slips, comprehensively, at least once a quarter, how they are going in terms of their superannuation. From that point of view we thought it was a reasonable amendment and we thought the ALP’s proposals to make the tax office a bit more assertive in pursuing SG or collecting the data was reasonable as well.
I am surprised by Senator Sherry’s statement that he will not insist on these amendments because this bill needs to go through. I would remind Senator Sherry of his own ‘superannuation: a safer system’ policy released only a few months ago. It does seem like a long time ago, but a few months ago it said:

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

That is what we are essentially saying here. That is what we are trying to encourage—best practice to ensure that superannuation becomes regularly reported in pay slips and, as a result, becomes a reporting mechanism. I think that the amendment that we moved achieves the outcome that we wanted of ensuring that employees know what is happening to their super, while significantly reducing the compliance costs of the bill introduced some 18 months ago into this place which introduced quarterly reporting. That is the sort of approach we would like the government to consider rather than this sledgehammer to crack a walnut approach. A couple of businesses that do not follow best practice human resource management practices complain and, as a result, becomes a reporting mechanism.

Why do we not look at something more reasonable, something that tries to balance compliance costs on the one side with benefits to the employees on the other? I note—and this was also noteworthy when the original bill was debated in this chamber 18 months ago—that there were, in fact, substantial benefits to employers in quarterly reporting. On the introduction of the quarterly reporting bill back in 2002, the government senators, in their report on the bill, said:

... employers may also benefit from the measure, including from reduced administration costs associated with quarterly rather than annual contributions. In particular, benefits may result from the potential for:

- achieving interest savings that could result from the accrual of smaller SG shortfall amounts over a quarter rather than over a full year;
- receiving early warning of possible problems regarding the level of contributions and the opportunity to rectify these leading to reduced SGC payable over the year; and
- developing better business practices, especially by small business, and thereby avoiding large annual outlays.

Another benefit that the government senators noted at the time was that it would be about:

- improving employees knowledge and understanding of their superannuation entitlements resulting in the potential for early notification of difficulties regarding payment of contributions and incentives for consolidation of disparate contributions.

All of those are important benefits, yet apparently in the new-look Liberal Party it is all one way: business gets the benefits but any costs associated with that have to be downplayed and got rid of; they are unnecessary. If that is the basis for balance, I shall be pleased to leave this place in July because, in some respects, it will be tragic to see coming forward these sorts of provisions that are so unbalanced against the interests of ordinary Australians—the so-called ‘battlers’ who voted for the Howard government—and so unbalanced in the favour of business, even in the face of clear evidence that the provisions are needed. There have been 45,000 complaints in 10 years. Surely we should be trying to reduce that. Surely we should be trying to make efforts, as the then Minister for Revenue and Assistant Treasurer said in her second reading speech when introducing these measures 18 months ago, to reduce the incidence of lost accounts.
I am disappointed that the Senate tonight has not received support from the government for these amendments. I think they are reasonable. I think they are appropriate. They try to take the intent of the government’s legislation, as reflected in the explanatory memorandum, give it some real meaning and make it work for both employees and employers. Surely that is what a government of balance is about, not being totally and utterly one eyed in standing up for the interests of the squeakiest wheel in the small business sector. From that point of view, I think that at the end of the next three years we will see workers much worse off than they are now, and Australia much worse off. Certainly, this measure is going to make it much harder for choice of funds to be successful in July. That disappoints me because I supported that legislation.

The Democrats will be opposing this motion. We believe these amendments should be insisted upon and we would certainly ask the minister to seriously consider withdrawing her motion at this stage and considering a proposition that finds a reasonable compromise on this. To insist on removing a reasonable reporting mechanism that the government knew was necessary 18 months ago, that all of industry says is necessary and that the evidence from the statistics of the tax office says is necessary certainly is, in my view, a retrograde step.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (5.27 p.m.)—I want to first of all deal with the remarks made by Senator Sherry. I note that the Labor Party will now be accepting the message from the House of Representatives. I think it is fair to place on record just what has happened in respect of the anticipated passage of this bill. Last night in the Senate we had a chaotic and a divided Labor Party effectively voting down a bill that just two days before they had said they would support. Just two days ago, in the other place, the shadow minister, Mr Fitzgibbon, said in his speech on the second reading debate of the Tax Laws Amendment (Superannuation Reporting) Bill 2004:

The bill is a genuine attempt to reduce the compliance burden on small business. Labor supports this and will support the bill.

Yet last night in the Senate we had Mr Fitzgibbon’s Labor Senate colleagues introducing their own amendments to create a complex new reporting structure that would have simply added to the burden of complying employers. This is notwithstanding the fact that much of the information referred to in the amendments is already provided.

Senator Sherry—Mr Temporary Chairman, I raise a point of order. The minister is misleading the chamber in saying that we voted the bill down. We did not vote the bill down last night. The minister is lying.

The TEMPORARY CHAIRMAN (Senator Lightfoot) You should withdraw that, Senator Sherry.

Senator Sherry—I withdraw that. I now have the minister’s position clearly on the record to say—

The TEMPORARY CHAIRMAN—There is no point of order, Senator Sherry.

Senator COONAN—I can understand how Senator Sherry, as the spokesperson for superannuation, realises that just about anything that the Labor Party do on superannuation consigns them to utter irrelevance. Senator Sherry was actually the architect of a superannuation policy that he took to the election where he proposed to rip $4 billion out of the superannuation savings system. Not worrying about the workers, Senator Sherry’s policy, on behalf of the Labor Party, was going to rip into the savings of workers and rip into and actually abolish the co-contribution, when it was a measure de-
signed specifically to help low- and middle-income earners.

It ill behoves Senator Sherry to be talking piously, so it would seem, about Labor’s position on this bill. I can understand why Senator Sherry is very sensitive about the fact that he has just had to do a huge backflip by accepting the message from the House of Representatives and dropping the poor old Democrats down a hole once again. You cannot trust the Labor Party on these kinds of amendments, that is for sure—as Senator Cherry would appreciate.

Labor were once again in complete disarray last night, introducing their own amendments to create a complex new reporting structure that would simply have added to the burden of employers needing to comply with this legislation. Thankfully, it would seem that cooler heads have prevailed in the House of Representatives. Senator Sherry now has his riding instructions. He has been told what to do and the Labor Party will now be supporting this legislation without amendment, as they should have done in the first place.

It really did get worse, because Labor also voted for a Democrat amendment that would reverse the intention of the bill by reintroducing the superannuation reporting requirement, which the shadow minister said on Monday Labor would support removing. So there is confusion all around on the part of the Labor Party, but that is not very surprising. This bill has a commencement date of 1 January. It is too important to fall victim to Labor’s continued internal chaos and policy paralysis.

As for the issues raised by Senator Cherry, who I think does try to get some balance into the approach taken by the Democrats, I reiterate comments I made in the debate last night. The government notes that there is a combination of practices and safeguards to be found throughout the legislation that satisfies the government that it will allow employees to remain informed about their superannuation. That is important.

As I pointed out in my earlier comments, the government does recognise the importance of employees knowing that their super entitlements are being met and their having a sense of ownership over their retirement savings. As I have already noted, employees will continue to receive annual statements—at least—from their superannuation funds and, importantly, they can contact their funds as frequently as they like to satisfy themselves with certainty that their entitlements have been received by the funds and are being allocated to their accounts. This level of conclusiveness is not provided by current or, I should add, mere employer reports. I do not mean that annual reporting is not important—it is. The government takes the view that an appropriate balance is reflected in this legislation, and I am sorry that Senator Cherry has not reconsidered his position. I am glad that the Labor Party now accepts the government’s position and will be supporting the legislation.

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

The committee divided. [5.37 p.m.]

(The Chairman—Senator J.J. Hogg)

| Ayes | 45 |
| Noes | 9 |
| Majority | 36 |

AYES

Barnett, G.  Bishop, T.M.
Bolkus, N.  Boswell, R.L.D.
Brandis, G.H.  Buckland, G.
Campbell, G.  Campbell, I.G.
Chapman, H.G.P.  Colbeck, R.
Conroy, S.M.  Crossin, P.M.
Denman, K.J.  Ellison, C.M.
Faulkner, J.P.  Ferguson, A.B.

CHAMBER
Consideration of House of Representatives

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.41 p.m.)—I move:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Senator LUDWIG (Queensland) (5.41 p.m.)—This amendment relates to a bill which was proposed by the Attorney-General in fulfilment of an agreement made some time ago now, on 25 June 2004. It relates specifically to a part of a national licensing regime regulating the access and ownership of materials considered a threat to national security. At the time the bill was introduced and dealt with, the opposition indicated that we would be agreeing to the passage of the bill on the basis of the requirements to meet national security. However, we did, and still do, believe that it could be improved significantly. We sought to include a provision which ensured that the word ‘thing’, which was contained in paragraphs 35 and 39, had a bit more substance around it and could be dealt with by regulation and, by way of definition, the regulation could then assist in describing the word ‘thing’. The opposition was concerned with what is called incremental legislative overreach, whereby you can, by regulation, expand definitions that should not be expanded without significant oversight by the parliament. It ensures that, by way of regulation, it can in fact be done.

There is, of course, the ability to have a disallowance motion provided for to give notice and disallow, but that is used only in circumstances where there is clearly overreach by the legislators. We are not suggesting that would be the case here, but it is one of those parliamentary scrutiny measures that deserved consideration by the government. We are disappointed that they did not include the amendment in the bill, because it would have made it a much better bill as a consequence. However, the overriding position that the Labor Party has adopted in respect of this particular issue is that the bill is a beneficial bill. As I have said, it provides a licensing regime which will allow states, in the normal course of checking on people’s backgrounds, not only to check their criminal databases but also to access ASIO’s terrorist database. In allowing them to do that, the provision will assist in ensuring that people do not obtain ammonium nitrate or other chemicals which could be used for explosive devices without at least adequate security checks being in place and without a licensing regime administered by the states.

Although it is belated and it provides a bit of a catch-up on national security, it meets...
the test of being a bill that is needed and that will provide enhanced national security for Australia. Therefore it deserves support, notwithstanding the inability of the government to recognise the need for the amendment made by Labor in this instance. We will not be insisting on that amendment because we think overall that the bill should pass, come into operation and be part of our national security response.

Senator GREIG (Western Australia) (5.45 p.m.)—Likewise, we Democrats will not be insisting upon the amendments proposed by Labor—amendments which I made clear in my second reading contribution to this debate earlier in the week that the Democrats had given thought to. We did not move them simply because Labor had come to the same conclusion and had circulated its amendments before we had. We consider that the bill as a whole, on balance, is good and necessary. I have made those points also in my contribution to the second reading debate. Our only criticism is what we see as the late timing of the bill. We would have liked to have seen this particular legislative reform introduced sooner and we have been calling for something similar for some months now.

However, we agree with Labor that the substance of the bill could be improved upon by better addressing the issue of the terminology ‘a thing’, which is really quite extraordinary in terms of legislative framework. We believe that the bill could do with better regulation, structured in such a way that it could perhaps be a disallowable instrument such that the parliament would also have a role of oversight and review of the powers we grant to ASIO. As it stands the bill is structured in a way which offers ASIO, to some degree, a blank cheque. Senator Ludwig has referred to that as legislative overreach and we would agree with that. It concerns us that there will now, it would seem, be opportunities for ASIO, in terms of the operation of this bill, to extend its processes of liaison and scrutiny to things other than, in this case, ammonium nitrate. That may seem benign on the surface but I think that, unless we as a democratic institution take great care to proscribe the powers and opportunities that we give to our intelligence agencies, necessary though they are and accepting the important role that they play, we may be diminishing the civil liberties and rights of our citizens. We have some discomfort with the blank cheque that this provides to ASIO but nonetheless, on the basis of the broader aspect of this bill being good, we will not be insisting upon the amendment.

Question agreed to.

Resolution reported; report adopted.

NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) BILL 2004

Consideration of House of Representatives Message

Consideration resumed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.49 p.m.)—I move:

That the committee agrees to the amendments made by the House of Representatives to the bill.

Senator LUDWIG (Queensland) (5.49 p.m.)—The stated intention of the National Security Information (Criminal Proceedings) Bill 2004 is to provide a procedure where the disclosure of information relating to or that may affect national security could be introduced during federal criminal proceedings. The stated aim of the bill is to allow this information to be introduced in an edited or summarised form so as to facilitate the prosecution of an offence without prejudicing national security and the rights of a defendant to a fair trial.

In this instance we have a schedule of amendments that have been made by the
House of Representatives to clarify the procedures and ensure that the operation of the procedures that are contained within the bill will work more effectively. We are disappointed that all of the matters that could have been dealt with were not dealt with in the National Security Information (Criminal Proceedings) Bill. However, when you look at the position of the bill as a whole, it is much improved from when we first started. The Senate Legal and Constitutional Committee was able to provide a number of recommendations on the bill and they were in part picked up by the government. Although they were not completely and all picked up by the government, significant improvement was made.

I think it is worth mentioning the significant improvements that committee work can make. Senator Greig was also a party to that committee and I think that in this instance he would concur that the work of the committee was able to significantly advance the recommendations that were picked up by the government. The recommendations exposed issues that the government were able to incorporate into the bill to improve its operation. They ensured that issues such as how the procedures would work, and how the process would be dealt with and continued in a fair way, moved the balance between national security and the right of defendants in these matters to receive adequate instruction from solicitors and barristers. They ensured that there were checks and balances and that public interest rights were significantly protected. So the changes ensured that the public interest was balanced against the needs of national security.

Although, as we indicated during the second reading debate, the bill is not perfect and Labor certainly would have done it differently, I think it has been significantly improved. Without taking up a significant amount of the chamber’s time, I have been able to at least put down our position. We would have implemented a new federal protected disclosure regime, which would have included appropriate protections for persons working in the area. We would have had a better position than the one the government has now adopted.

One of disappointing things that came out of this, notwithstanding the Senate Legal and Constitutional Committee work, was that the government failed to address the Australian Law Reform Commission work. A unique situation developed where the ALRC developed a report, called Keeping secrets, which by and large was ignored by the government. They developed a model of their own. One wonders what the ALRC really thought about the whole process. They clearly spent significant amounts of time and energy developing a response to this position without the knowledge that at some point the government would in fact develop a bill and response, but not based on the work that ALRC had done. The ALRC ended up commenting, in relation to the national security bill which was proposed by the government, that they were—perhaps in my words—a little bit disappointed that the government had not taken the opportunity of utilising a lot of their work.

Labor will agree to the passage of this bill. The scheme will provide protections and the right checks and balances. It balances national security on the one hand with the rights of the offender and the defendant on the other. It ensures that the judiciary still has a significant role in ensuring fairness all round. It has been substantially amended to pick up recommendations of the Legal and Constitutional Committee.

Senator GREIG (Western Australia) (5.55 p.m.)—As I made clear in the Democrats response to the bill in the second reading debate, we oppose the bill in toto. In relation
to the amendments which have now been made by the other place, we welcome some but disagree with others. I would like to touch on some of those briefly. We would argue that amendment (1) basically accepts what was the opposition’s original amendment, which we supported, to insert a definition of ‘substantial adverse effect’. The government amendment we have now expands upon and further clarifies the definition inserted by Labor.

Amendments (2) and (3) we could support. Amendment (2) further expands the regulation-making power under clause 23. In particular, it provides that regulations may be made in relation to accessing, preparing, storing, handling and destroying information. Amendment (3) ensures that the court can make orders relating to not only the storage of information but also to its handling or destruction. Amendment (4), again, we could support. This amendment makes it clear that a defendant’s legal practitioner is a potential discloser for the purposes of paragraph 28(8)(c). This is important because it ensures that the defendant is provided with the Attorney-General’s certificate but is also subject to the offence of unlawful disclosure.

We do not agree with amendment (5), but we could begrudgingly accept it, I suppose. The amendment removes subclause 29(3A), which was inserted by an opposition amendment in the Senate. The subclause provides that, in considering whether to exclude a lawyer who has not received a security clearance, the court should consider how long that lawyer has been in active practice without previous criminal convictions or adverse findings in disciplinary matters, the lawyer’s previous experience in handling confidential information and the effectiveness of any undertakings to the court. The government makes the point that this subclause does not add anything to the bill and that essentially the court will still have to consider whether granting an uncleared lawyer access to information would be likely to prejudice national security. While it may be true that these additional considerations add little to the bill, in the sense that they may be taken into consideration by the court in any event, the Democrats do see some merit in explicitly including them in legislation. They serve to remind courts that, just because a lawyer has not received a security clearance under this legislation, he or she is not automatically prevented from accessing high-level security information. Ultimately, such access will be at the discretion of the court and the court will be free to take into account matters such as the legal practitioner’s previous record. As these are important factors, the Democrats do see some benefit in expressly including them in the bill. However, as they do not change the ultimate decision to be made by the court, we will accept the amendment.

Amendment (6) is one we could not support. This amendment removes subclause 29(6), which was included in the bill by an opposition amendment. It provides that the court must make the record of a closed hearing available to the public unless the court determines that the publication of the transcript would prejudice national security. We accept the government’s point that the transcript of the rest of the trial proceedings, other than closed hearings, would be available to the public and we also accept its point that the transcript will be available to the parties for the purpose of an appeal. But perhaps the most important point that the government makes is that the hearing is closed to the public in order to prevent the disclosure of information that may affect Australia’s national security and that it would not be appropriate to protect the disclosure of information all the way through trial only to have it disclosed to the public. In part, we Democrats agree with this argument. How-
ever, we are also conscious of the possibility that, in some circumstances, after hearing the relevant evidence in full, the court may reach the conclusion that the information would not, in fact, prejudice national security. In those cases, the interests of an open justice system should prevail. We concede that this will rarely be the case. However, we are concerned that this will be the case on occasions, and for the sake of those occasions the court should retain its discretion to order the public release of the transcript.

Amendments (7) and (8) relate to the opportunity for the prosecution and/or the Attorney-General to seek an appeal of the court’s decision in relation to a request to vary aspects of a record. They are similar to provisions in clauses 32 and 33 relating to appeals against the court’s proposed statement of reasons. This is because in each case the legislation sets up a process which involves only the court, the prosecution and possibly the Attorney-General but which occurs without the knowledge of the defendant and his or her lawyer. We Democrats view these provisions not only as inherently unfair to the defendant but also as a dangerous blurring of the separation of powers.

Regardless of any genuine security concerns raised by the prosecutor or the Attorney-General at this stage, these provisions have the potential to create a perception that the executive government is playing a direct and active role in the decision-making process of the court. We Democrats believe it is important to guard against such a perception. It should be the case that the prosecutor and the Attorney-General can make their national security concerns clear to the court prior to the making of a section 29 order. There is no need to give them an additional right of appeal in the absence of any counterarguments from the defendant. In summary, that is the Democrats position on this latter suite of amendments progressed by the government through the other place. Our opposition to the bill in toto remains.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.01 p.m.)—Earlier today the House of Representatives passed the National Security Information (Criminal Proceedings) Bill 2004 subject to eight amendments, and Senator Greig has just canvassed those. These amendments further the policy objectives of the bill agreed to by the Senate last week without undermining its effectiveness. These amendments achieve two main goals. Firstly, they reinforce that there is only one criterion that should be considered by a court in deciding whether to give uncleared legal representatives access to security sensitive information—that is, whether such access would be likely to prejudice national security. Whether a lawyer has previous convictions or adverse findings in disciplinary proceedings of itself offers little insight into whether the lawyer is of security concern, although it may be something to which the court has regard in assessing the likely prejudice. Only an appropriate security clearance process can give us that assurance. Secondly, they ensure that a security cleared legal representative of the defendant can access the closed hearing transcript in a prescribed place and manner.

The amendments facilitate the work of the defendant’s legal representative in a secure environment, ensuring both fairness to the defendant and the protection of sensitive information. In this way the bill strikes an appropriate balance between the competing public interests of open justice and national security. In the spirit of working collaboratively to combat the growing threat of terrorism, the House of Representatives decided to reach this compromise to facilitate the passage of this bill. A number of the amendments I have referred to are consequential on amendments which the opposition moved in the Senate and which were passed. I think an
example of this was the substantial adverse effect, which Senator Greig pointed to in his speech and for which Senator Ludwig outlined the situation. I will not prolong matters unduly. Suffice to say these amendments are in line with the policy objectives of the bill. They are worth while. I commend the motion to the committee that it agrees to the amendments made by the House of Representatives.

Question agreed to.
Resolution reported; report adopted.

JAMES HARDIE (INVESTIGATIONS AND PROCEEDINGS) BILL 2004
Second Reading
Debate resumed.

Senator WONG (South Australia) (6.05 p.m.)—I rise to speak on the James Hardie (Investigations and Proceedings) Bill 2004. If we were to document Australian corporate history, it is highly likely the most alarming and unethical chapter would concern James Hardie Industries Ltd. For decades the health risks of asbestos have been known and, in spite of this knowledge, James Hardie continued to produce asbestos until 1987. Thousands of Australians have fallen ill and many have died as a result of asbestos related diseases. These illnesses are painful and terminal. The victims have not just been those who suffered and suffer from diseases like mesothelioma—the James Hardie workers—but also their families. These were the victims’ loved ones, the people for whom the workers were trying to build a better life. Now they are left with little; they have lost what is most important and they are left to fight for compensation. James Hardie has gone to considerable and unethical lengths to avoid paying this compensation. Indeed, it appears that if James Hardie had taken as much care of its workers as it has in avoiding its liabilities we might be thinking of them in a better light.

The ALP have been doing everything in our power to support James Hardie’s victims and to pressure James Hardie to do the right thing. Some months ago Mark Latham decided that Labor would not accept the donation from James Hardie to the party and, instead of giving the money back to James Hardie, he gave the money to sufferers of asbestos diseases. It is interesting to note that during the election campaign, two weeks from election day, the Prime Minister finally jumped on this bandwagon and decided that he should not accept the money from James Hardie either.

The newly elected member for Parramatta has also been a key player in putting this issue in the public eye. She has worked with local families in her community, lobbying, agitating and doing all the things a local champion should. With the Construction, Forestry, Mining and Energy Union, she helped organise a council boycott of James Hardie products, with over a dozen councils now participating. It is interesting to contrast the actions and position taken by the ALP and the member for Parramatta with those taken by the member for O’Connor. Last night we saw an extraordinary contribution to the House of Representatives—an extraordinary defence of James Hardie. Indeed, one might say the member for O’Connor is in the smallest club in the nation: he is the sole shareholder and director of the James Hardie fan club. His comments likening Hardie victims to ‘ambulance chasers’ were offensive and completely lacking in compassion. I call on him to apologise to James Hardie workers and to asbestos victims, sufferers and their families for his comments.

The Australian Council of Trade Unions have also been at the centre of the victims’ struggle. The ACTU have been with the Hardie victims all along, negotiating, organising and leading the public movement to stop the injustices. This is the same ACTU that this
government would prefer did not exist and will be trying to dismantle over the next three years. I congratulate the ACTU on their work, a fine example of the collective spirit that underpins the trade union movement. I also acknowledge the fine and courageous work of the victims, their families and their supporters in their campaign for justice for asbestos disease sufferers. Currently negotiations are continuing between James Hardie, the Medical Research and Compensation Foundation, and the ACTU on behalf of claimants, for additional funds to be paid to the foundation by James Hardie. Legislation like this before the chamber is strongly supported by our community as a necessary measure to pressure Hardie and to ensure that justice is done.

The actions of James Hardie in relation to victims of asbestos related diseases are reasonably well known. The company engaged in a complex corporate restructure, separating subsidiary companies with liabilities and transferring assets offshore to a Dutch-registered legal entity. The company also established the Medical Research and Compensation Foundation, ostensibly to deal with the claims of all victims of asbestos related diseases against the various companies comprising James Hardie. Despite the clear public assurances of James Hardie officers that the foundation was sufficiently funded to meet its liabilities, it has become clear that a substantial funding shortfall exists, currently estimated to be in excess of $1.5 billion. In addition, the financial state of the foundation was debilitating by the cancellation of partly paid shares by the former parent company subsequent to the corporate restructure being authorised by the New South Wales Supreme Court. The cancellation effectively removed an additional potential funding source for the foundation and occurred despite the existence of the shares being relied on in the court proceedings to approve the corporate restructure.

The New South Wales government has provided pivotal support for Hardie victims from the beginning. Premier Carr and Attorney-General Debus have applied pressure on Hardie management and used whatever means at their disposal to force its hand. The New South Wales government established the Jackson special commission of inquiry, in which adverse findings were made against various Hardie executives. Subsequently the Australian Securities and Investments Commission announced it would fully investigate these matters. The New South Wales government has liaised extensively with ASIC to assist it in carrying out its investigations. It passed a bill providing for the statutory transfer of all records produced for or created by the special commission. However, the New South Wales bill does not abrogate legal professional privilege or confidentiality in the records for the purposes of ASIC’s civil or criminal proceedings. This was identified by ASIC as a potential limitation and ASIC sought that this legal professional privilege be abrogated by the New South Wales government. That government rightly took the view that it was not appropriate for a state government to seek to pre-empt Commonwealth decision making on ASIC’s powers, which could effectively put the regulator in a more favourable position under New South Wales legislation than it would be under its own Commonwealth act.

Some weeks ago, the New South Wales Attorney-General wrote to the federal Treasurer, requesting his urgent consideration of this shortcoming in ASIC’s powers. As a result of this initiative, we now have this bill. Given this background, it is disappointing that the Treasurer sought to imply, both in the parliament last week and in a subsequent media statement, that the bill arose out of the failure of the New South Wales government
to act appropriately or swiftly in respect of Hardie. A cynical person might question the Treasurer’s motives in making such an implication. Certainly we would hope that he is not seeking to play politics on such a sensitive issue. We on this side of the chamber support this legislation and its speedy passage through the parliament. We believe the circumstances of asbestos victims and the conduct of James Hardie justify the legislation.

The bill significantly enhances the ability of ASIC or the Director of Public Prosecutions to undertake investigations and take proceedings against corporate bodies that are part of the James Hardie group, its officers, employees or advisers. The bill expressly abrogates legal professional privilege in relation to certain materials, permitting their use in these investigations or proceedings. Materials include records used in the special commission, as well as materials requested by ASIC or the DPP in relation to their investigations. The investigations and proceedings for which privilege is abrogated are limited to the circumstances of the restructure I described earlier, including Hardie’s ability to meet its liabilities. The bill effectively removes any uncertainty as to whether ASIC’s powers to require the provision of materials can be obstructed by a claim of legal professional privilege. Whilst there is broad support for this bill in the community, in parliaments around the country—with the exception of the member for O’Connor—and amongst those who are supporting the cause of Hardie victims, some concern has been expressed by the Law Council and in legal circles about the implications of this bill.

It is indeed a serious matter to abrogate legal professional privilege. We on this side do not take lightly any move of this kind and would see that this is not a precedent. However, the investigation of these important issues may be impaired if ASIC or the DPP were unable to obtain and rely upon materials before the Jackson inquiry, on the basis of a claim of legal professional privilege. In particular, the subject matter of many of the things which require investigation include complex transactions. Materials documenting relevant advice may offer critical evidence as to the purpose of these transactions and the intention of James Hardie officers, which would otherwise be extremely difficult to establish. Without the measures provided for in this bill, we may not be able to establish the knowledge and intention of James Hardie officers. We believe not only that there is a public interest in establishing these things but also that they are likely to be critical in determining whether any breaches of the law have occurred.

There are many alarming findings of the Jackson inquiry which require further investigation by ASIC. Adverse conclusions were made against Peter Macdonald and Peter Shafron, as chief executive officer and chief financial officer respectively. Commissioner Jackson also found that Mr Macdonald and possibly James Hardie Industries Ltd may have been in breach of section 1309 of the Corporations Law and that their decision to send a media release asserting that liabilities were covered to the Australian Stock Exchange on 16 February 2001 contravened section 995(2) of the Corporations Law. It is fundamental to the public interest that these allegations be investigated and tested.

The opposition will be supporting the legislation. However, we do flag a number of issues on which we request some advice, and I will indicate them to the minister: why there was a decision not to extend to the ACCC similar provisions to those extended to ASIC, and whether or not personal legal professional privilege will be retained by Hardie’s officers. This bill is specifically intended for Hardie, and it is intended to facilitate justice for its victims, who have been
undermined, mistreated and misled. This bill has no wider application, but if it were to have any wider effect I hope it would be simply to discourage corporate misbehaviour of this kind in the future. I know that many good Australian corporate citizens have been shocked and horrified by Hardie’s actions.

Of course, for ASIC’s investigation to be effective it needs to have not only the information required but also the necessary funds. It was particularly disturbing to see on Business Sunday two weeks ago ASIC’s Chairman, Mr Jeffrey Lucy, indicating that the organisation needed further funds to fully investigate Hardie. We call on the Treasurer to guarantee in no uncertain terms that the government will provide immediately the funds required for ASIC to fully investigate James Hardie. The opposition want a full, prompt and thorough investigation by ASIC, and any wrongdoing to be addressed as soon as possible. This matter has dragged on for far too long for too many innocent Australians.

I would like to turn to one other issue arising out of the Jackson inquiry. The New South Wales government has announced legislation which seeks to enable asbestos victims to take action against related corporations, including the Dutch-registered entity. The Commonwealth has indicated support for this legislation. However, there is a lack of clarity as to the enforceability of any judgments under this legislation in the Netherlands. In particular, the Jackson inquiry queried whether laws that were retrospective and Hardie specific would be enforceable in the Netherlands in the absence of a treaty. The legislation proposed by the New South Wales government and endorsed by state and Commonwealth attorneys-general is specifically directed at Hardie and is retrospective. Therefore, a treaty would appear necessary. However, when commenting in favour of the New South Wales legislation, the Commonwealth Attorney-General claimed that Dutch authorities had advised that, in general, it was not necessary to set up a treaty with the Netherlands for conventional Australian court judgments. But this is not what the New South Wales legislation is likely to deliver. Previously, the Attorney-General indicated that the government would consider pursuing a treaty. We call on the Attorney-General to table the advice he has received as to whether a treaty is necessary. Victims and their families deserve certainty. They need to know that any court proceedings and charges that are successfully prosecuted will have the full force of the law behind them. They need to know that no sanctuary and no succour can come from the change of address on Hardie’s letterhead.

The financial state of the foundation remains parlous. Its directors recently sought the appointment of a provisional liquidator and have indicated that without further cash injections by James Hardie the foundation will have to be liquidated. This process was temporarily averted by a last-minute cash injection of $88 million by the former James Hardie parent company, and these proceedings have now been adjourned until late January next year. The potential liquidation of the foundation has ramifications not only for future and current unpaid claimants but potentially also for those persons who have received payments to date. In this parliament we need to do all that we can to see justice prevail for Hardie’s victims. More than anything, however, we need to see James Hardie take its seat at the table and negotiate in good faith to see this matter resolved. James Hardie must immediately agree upon a fully funded settlement arrangement for asbestosis victims.

I want to briefly comment on the second reading amendment which Senator Murray has flagged with me. I indicate that the Labor Party would be very happy to support para-
graph (a) of that second reading amendment. It is entirely consistent with the strong position we have taken for a number of months, including during the election campaign, against James Hardie’s actions and its callous disregard for the victims of asbestos related diseases. However, we are not in a position to support paragraphs (b) and (c), which deal directly with tobacco companies. I indicate that the Labor Party have also taken a strong position in relation to tobacco companies. Unlike the government, we have indicated that we would no longer take political donations from tobacco companies. We hoped that the government would engage in some bipartisanship on that issue and we challenged them to do the same thing.

We also, in our previous election commitments, indicated a substantial increase to funding for antismoking campaigns and antismoking programs. We are not soft on tobacco companies; we have taken an extremely strong position. However, we think tackling that aspect of public policy onto this legislation is not appropriate. The issue of the abrogation of legal professional privilege is a difficult matter. It is justified in the circumstances of James Hardie, where we have had the Jackson inquiry and where we have the information to demonstrate that that is the case. If such legislation were mooted in relation to tobacco companies, we would obviously examine it in light of our previous policy commitments to support antismoking campaigns and to refuse to take political donations from the companies. However, we are not prepared to support the second part of Senator Murray’s second reading amendment.

In closing, I emphasise again that bipartisanship—except for the member for O’Connor—across parliaments around this country to pressure James Hardie to fund an appropriate settlement fund for asbestos victims is welcome. This parliament does call on James Hardie to do the right thing. The community calls on James Hardie to do the right thing. What they have engaged in has been unethical. It has not been in accordance with the standards of ethical behaviour we do expect from Australia’s corporations. Hardie’s victims and their families deserve far better than the company have provided to date. They must immediately agree to fully funded settlement arrangements for asbestos victims.

Senator MURRAY (Western Australia) (6.22 p.m.)—As I understand the procedures for the James Hardie (Investigations and Proceedings) Bill 2004, because there are no amendments we will not be going into committee stage. I have received a copy of a James Hardie letter which has been addressed to, amongst others, the Treasurer, the Minister for Finance, Deputy Leader of the Government in the Senate, Leader of the Opposition, Minister for Defence, Leader of the Government in the Senate, Leader of the Opposition in the Senate, Deputy Leader of the Opposition in the Senate, Deputy Leader of the Opposition in the Senate, Leader of the Australian Greens and Leader of the Australian Democrats. This copy of mine is with the Deputy Leader of the Australian Democrats. There may be many other people who have copies of this letter. Because we are not going into committee stage, I would suggest that the contents of this letter are such that they should be on the record. I am going to ask if I can give this letter to the attendant so that the whips of either side can have a look at it and be satisfied that this can be tabled at the end of my remarks, if that meets with your approval, Mr Acting Deputy President.

The ACTING DEPUTY PRESIDENT (Senator Brandis)—You do that, Senator Murray. I assume that you will at the appropriate time seek leave to table or incorporate the letter, subject to what the whips say.
Senator Murray—I will at the end of my remarks.

The Acting Deputy President—I am advised by the Clerk that, if you request it, the Senate can go into committee in these circumstances.

Senator Murray—I am not asking that it go into committee. That is why I would rather short-cut the procedure.

The Acting Deputy President—You can proceed with that course you have foreshadowed, Senator Murray.

Senator Murray—Thank you for your forbearance. The James Hardie (Investigations and Proceedings) Bill 2004 abrogates legal professional principle from the James Hardie Group and their advisers in respect of the investigations surrounding the James Hardie restructure. My notes from the Joint Standing Committee on Corporations and Financial Services, of which I am a member, say that the James Hardie bill seeks to remove legal professional privilege from material arising out of the James Hardie special commission of inquiry in New South Wales, otherwise known as the Jackson inquiry, in order to facilitate investigation and instigation of legal proceedings by ASIC and the Commonwealth DPP.

In its Bills Digest the Parliamentary Library has identified several issues raised by the bill. The main issue is whether the bill, in particular proposed section 4(4), could be interpreted as being contrary to the constitutional principle of separation of powers since it contains a possible direction to courts conducting James Hardie proceedings to disregard any claim of legal professional privilege. The Bills Digest notes that this area of law is unsettled in Australia and that there is no fully accepted test for when legislation will constitute an impermissible interference with judicial functions. The pertinent issue is whether the proposed legislation or a provision within that proposed legislation constitutes a direction to courts in a pending or prospective case rather than a substantive change to the law.

The position taken by the Privy Council in Liyanage v. The Queen, where a piece of Ceylonese legislation aimed at securing the conviction of alleged conspirators in a coup attempt was found to be a usurpation of judicial power, has received a mixed reception by Australian courts. Some Australian cases have indicated that without such direct intervention in the judicial process there will be no breach of the doctrine of separation of powers, but in recent decisions courts have been reluctant to fully adopt the approach in Liyanage. In some cases the approach has been at least partially endorsed by Australian courts. Those notes from the Joint Standing Committee on Corporations and Financial Services capture the likelihood of a legal challenge. But the likelihood of legal challenge is low, in my opinion, because of wide community and political outrage at the behaviour of the James Hardie Group with respect to their failure to meet their obligations to asbestos victims.

The muted adverse reaction to the announcement of the removal of legal professional privilege for James Hardie does not conceal the fact that some of the legal fraternity are concerned about the precedent. Undermining the principle of legal professional privilege has its attractions in moral circumstances like these surrounding the asbestos claims scandal. This bill does increase the probability that directors and managers at James Hardie will be properly punished for their behaviour. That is its plus. Its minus is that to do so requires the removal of a legal protection that has until now been available to all. And if the whips are happy to have that James Hardie letter tabled they will see that that group is concerned about unintended consequences.
I am also assisted, apart from by the Bills Digest and my notes from my corporations committee, by the Scrutiny of Bills Committee, which tabled its report this afternoon. In that Alert Digest—which a number of people would perhaps not have had a chance to access because it was tabled only this afternoon—the committee does make the point that any abrogation of legal professional privilege:

... trespasses on the rights of those affected, and the Committee will always draw such provisions to the attention of the Senate.

It goes on to say:

The Committee also notes the retrospective effect of the legislation, which would abrogate legal professional privilege in respect of records produced to, or created by, the James Hardie Special Commission of Inquiry and transferred from the NSW Government to ASIC, as well as relevant material obtained after the commencement of the bill.

The Committee considers that, while clause 4 clearly trespasses on the rights of the James Hardie Group of companies (to the extent that the group can be considered to enjoy such rights)—and of course they distinguish individual rights as opposed to entity rights—the question of whether it does so unduly is a matter for the Senate as a whole.

Further on, the Scrutiny of Bills Committee says that it considers that one of the issues we should be cognisant of is the use in the bill and its accompanying memoranda and second reading speech of criteria such as ‘higher public policy interests’ which, as it says:

... are not susceptible to objective definition, to justify the intrusion on such rights. The Committee considers that, if such an approach is to be adopted in the future, the criteria should be better developed and defined, and seeks the Treasurer’s advice on the development of this approach.

In the absence of a better developed definition of criteria such as ‘higher public policy interests’, the Committee does not consider that the bill provides a useful precedent for future legislation intended to abrogate legal professional privilege.

One of the reasons that I am going to be moving my second reading amendment is to signal to the Senate that there are moral circumstances, which might be regarded as approximating these, in which the government has sought to set aside a standard legal protection. If that is so and if this bill is to prove a precedent for future action then it does behove the Treasurer and his officers to develop a better defined set of criteria whereby the corporate veil will be ripped away in certain circumstances. I do think it important that the Senate is aware of past history where for the first time something is introduced and then later on it is repeated in other bills, with the first introduction used as a precedent. This is an important issue because there are other areas which properly are moral circumstances worthy of being treated in this manner.

The Democrats will support any measure that may increase the chance of justice being obtained for the many victims of asbestosis that accords with good process and rights. Our question is: why stop at these victims? If such laws are good enough for James Hardie, they are good enough for the churches and the tobacco companies too. What about the vastly greater number of victims of child sexual assault or the vastly greater number of victims of tobacco poisoning? I am sure senators can come up with other classes of victims as well. If legal professional privilege deserves to be lifted for particular moral circumstances, that principle needs to be properly developed for all appropriate moral circumstances and it also needs to be properly circumscribed.

In the past three years, the Democrats have participated in over 60 parliamentary
reports and committee inquiries aimed at ensuring Australia has the toughest possible rules regulating corporate responsibility. The conduct of companies like HIH and James Hardie illustrates that, given the opportunity, some businesspeople do try to bend laws and do try to avoid their full moral obligations. By maintaining and toughening corporate governance rules and corporate governance law the Democrats have contributed, with other parties in the Senate, to minimising the opportunities for corporations to avoid their responsibilities. Tough and responsible laws that ensure Australian companies and their directors are kept honest never do get as much publicity as they deserve, but in so many ways they are much more important in the long term than any public grandstanding or random corporate bashing.

The Democrats have affirmed that we would support any changes to federal or state laws that were identified by the report of the commission of inquiry into James Hardie as being necessary. Our intention is to assist in providing full political and parliamentary support for the victims of James Hardie to ensure they receive the fullest compensation and the best process of justice that they can. We do have a very strong record of trying to lift the standards for corporate responsibility and of trying to keep the rogue elements of the business community in check without creating unnecessary constraints on the vast majority of businesses who do the right thing. We used our links with the Netherlands parliament and government to increase the pressure over there on James Hardie Industries to meet its obligations to the many workers affected by asbestosis. We did that by having questions asked by a member of the Democrat family in the Netherlands.

Companies like James Hardie and others manufactured most of the asbestos products that have been used in thousands of commercial and private buildings in Australia. Regardless of what is said in the face of prospective litigation, all know about the effect these products have on the health of employees and on members of the wider community. Unfortunately, James Hardie shirked their corporate and social responsibilities. James Hardie defended their first asbestosis death case in Sydney in the 1930s. However, it was not until 1978—years after other companies had done so—that James Hardie finally put a warning on its asbestos products. The Democrats will be supporting the bill and will introduce a second reading amendment. I seek leave of the Senate to table that letter from James Hardie.

Leave granted.

Senator MURRAY—I move the second reading amendment standing in my name:

At the end of the motion, add “but the Senate:

(a) notes and strongly condemns the conduct of the James Hardie Group as identified in the Jackson Inquiry;

(b) also notes that over the past 50 years tobacco companies have knowingly supplied and promoted a deadly product that kills over 15 000 Australians a year; and

(c) calls on the Government to consider abrogating legal professional privilege for tobacco companies in respect of civil disputes”.

Senator MARSHALL (Victoria) (6.35 p.m.)—I am very pleased to offer my support for the government’s James Hardie (Investigations and Proceedings) Bill 2004. As we have already heard today, this bill is about equipping the Australian Securities and Investments Commission, ASIC, with the powers necessary to ensure it gets access to all relevant information in James Hardie’s possession so that it may undertake a thorough and effective investigation into matters arising out of the New South Wales special commission of inquiry into James Hardie and the Medical Research and Compensation
Foundation. The bill, as the second reading speech outlines, will also facilitate proceedings that may arise from these investigations and may be brought by ASIC or the Commonwealth Director of Public Prosecutions. I welcome these developments.

There is little doubt about the community’s attitude towards companies that shirk their corporate responsibilities, towards companies that swindle victims by shifting assets offshore to avoid paying compensation and towards companies that seek to pervert investigations into their actions by preventing investigating authorities’ access to documents in their possession. The case concerning James Hardie is a particularly clear one, and one that has rightly been at the centre of community concern and action for a number of years now. This is a company that has sought, through a number of different means, to avoid facing up to its corporate responsibilities and to avoid compensating its own victims—those living with diseases caused by the asbestos products that it, James Hardie, manufactured. This is a company that, throughout the proceedings of the NSW special commission of inquiry, sought to prevent access by the commission to documents in its possession. This bill ensures that such actions by James Hardie will not be possible in the pending ASIC and possible DPP investigations against it.

As the Treasurer said in his second reading speech:

... the bill will expressly abrogate legal professional privilege in relation to certain materials, allowing their use in investigations of James Hardie and any related proceedings. This means that authorised persons, including ASIC and the DPP, will be able to obtain materials that would otherwise be subject to legal professional privilege and use them for the purposes of James Hardie investigations and proceedings.

As I have already said, I welcome this legislation. For a number of years now I have taken a keen and close interest in the James Hardie case and more particularly in the journey and the hard-fought fight by Hardie’s victims of asbestos disease for the compensation they so rightly deserve and are owed by the company. I have spoken about the issues concerning asbestos related diseases and about James Hardie Industries numerous times in the Senate. In fact, I first raised my concerns about James Hardie’s inadequate funding of the Medical Research and Compensation Foundation back in November 2003.

Following that speech I received a letter from Mr Greg Baxter, the Executive Vice-President, Corporate Affairs, of James Hardie Industries, who sought to refute numerous claims I made in my speech. My speech referred to a number of quotes made by Mr Peter Gordon from the law firm Slater and Gordon in an advertorial featured in the Herald Sun on 25 November last year. In his letter dated 28 November 2003 Mr Baxter put to me:

Mr Gordon also claims that James Hardie set up a company with “clearly inadequate funding to deal with compensation...” This is also incorrect. The Foundation that was established by James Hardie was vested with all of the assets of the two former subsidiaries that had manufactured asbestos containing products, as well as an additional $90 million beyond any legal obligation owed by these subsidiaries. This additional amount enabled the Foundation to be established with assets that actuarial advice indicated would be sufficient to meet all expected future claims.

As I said subsequently, and I will repeat it today, what a joke of a claim that has proven to be. In February this year, the New South Wales Carr Labor government launched a special commission of inquiry into the Medical Research and Compensation Foundation, the fund set up by James Hardie to compensate asbestos victims. At page 7 of his report, under section 1.4, Commissioner Jackson QC stated:
The Foundation’s funds are being quickly used up in the payment of current claims against Amaca and Amaba—
the two subsidiary companies referred to by Mr Baxter in his letter to me—
In my opinion, they will be exhausted in the first half of 2007 and it has no prospect of meeting the liabilities of Amaca and Amaba in either the medium or the long term.
Indeed, the commission of inquiry proved Mr Gordon’s claims correct after all. In doing so the commission totally debunked Mr Baxter’s claim and left him and his argument with no credibility whatsoever. Mr Baxter’s letter, full of mistruths and disingenuous statements as it was, did indeed make one fair point. In closing Mr Baxter wrote in his letter:
We believe it is not only important that the facts about James Hardie and asbestos are widely known and well understood, we think it is also imperative that a comprehensive solution is developed to address the broader issues now confronting the wider community.
Well, indeed! Thank goodness the Carr Labor government set that course in train. We continue to wait for James Hardie to catch up to and to commit to the spirit of the conclusion contained in Mr Baxter’s letter to me last year. Indeed, this legislation and other investigations will hopefully bring the company, kicking and screaming as it may be, to the party. The reason that this legislation is before the Senate and that community agitation about this issue has been so high for so long is obvious: asbestos is killing Australians in relatively large numbers. People are dying slow and painful deaths because of this product and the company that manufactured it. Any reasonable person can see that compensation is owed to affected parties. The legislation is part of a concerted effort to see that compensation is paid to those who deserve it.
Over the past 75 years, millions of Australians have been exposed to asbestos at work or through their jobs, at home, at schools and at many other public places around the country. More than 2,500 asbestos caused deaths occur in Australia each year now. Sadly, this number is on a steep incline and will continue on that course for some time. Due to the long latency period between the exposure to asbestos fibres and the manifestation of asbestos related diseases, which is often up to 30 years or more, the epidemic of these diseases is yet to peak in Australia. It is expected that this will occur in or around 2023, so we as a society and a community have another 20 or so years until we have hit the peak of the problem. As many as 45,000 persons, it is expected, may die from asbestos related diseases in Australia over the next two decades if effective medical treatments are not found.
Asbestos is the known cause of numerous diseases which include, but certainly cannot be limited to, the following: lung diseases, including asbestosis, pleural plaques and lung cancer; mesothelioma in a number of strands; cancer of the gastrointestinal tract; cancer of the larynx; cancer of the bowel; and from time to time other organs and systems are believed to be the sites of malignant change due to asbestos.
For the information of those who may be listening on radio and those unfamiliar with the history of this product, I would like to submit some background information about it to the Senate. Asbestos is a generic term applied to some mineral silicates of the serpentine and amphibole groups, whose characteristic feature is to crystallise in fibrous form. Until the late 1960s, Australian industry used both types of asbestos at rates of 75 per cent and 25 per cent respectively. Subsequently, the use of chrysotile increased to approximately 95 per cent while the use of blue and grey asbestos declined to five per
Asbestos is one of the most useful and versatile minerals known to man, mainly because of its unique properties: flexibility, tensile strength, insulation from heat and electricity, and chemical inertness. It is the only natural mineral that can be spun and woven, like cotton or wool, into useful fibres and fabrics. Over the years, more than 3,000 asbestos products and their uses have been identified.

Most Australian homes contain asbestos products in one form or another. Asbestos has been used in fencing, asbestos pipes, thermal insulation, fireproofing, paints and sealants, textiles such as felts and theatre curtains, gaskets, and in friction products such as brake linings and clutches. During the peak building years—the fifties, sixties and seventies—asbestos found its way into most public buildings, including hospitals, schools, libraries, office blocks and factories. Workplaces such as ships’ engine rooms and power stations were heavily insulated with sprayed limpet asbestos. As such, asbestos diseases can no longer be considered as a problem isolated to the miners of the product. Occupational exposure to lethal asbestos among former workers of the asbestos manufacturing industry, government railways, electrical commissions, wharves, building industry, and Defence personnel in the Navy, Army and Air Force, is now producing lung cancers, mesothelioma, asbestosis and pleural diseases of quite significant proportions. Tragically, asbestos diseases not connected to occupation are also now emerging among those in the broader community.

James Hardie is a company highly responsible for this situation and it must be brought to account. I would like to take this opportunity to recognise the hard work and dedication of the community sector and the trade union movement in forwarding us to this position today. The legislation before the Senate and the wider campaign against James Hardie would not have been possible if it were not for the tremendous work of victims and victims support groups, other non-government organisations, individual trade unions and the trade union movement more widely, or, indeed, the commitment of the New South Wales Carr Labor government. Other organisations and authorities, including numerous local governments and even state governments, through their plans to boycott James Hardie products, have made and will continue to make an impact on the company. I commend their actions.

One other thing I would like to point out to the Senate is that James Hardie knew as a company the health risks of asbestos exposure as far back as the 1930s. People at James Hardie conspired to keep that a secret from the broader community and from health authorities for a generation. We should not only be seeking justice for those that have contracted asbestos related diseases; justice goes further than simply compensating the victims. What the government really needs to do is to look back to those people who conspired to keep the danger of asbestos from public knowledge for a generation, because it is those people who are ultimately responsible for the deaths that we are going to see—the agony and the pain that people are going to suffer—over the next 20, 30 and 40 years.

It is only through the concerted effort of all governments that this company will finally be brought, kicking and screaming, to the table and that all victims will have the chance of seeing the compensation they deserve and are owed. Again, I welcome the legislation before the Senate. I congratulate the government for it. I look forward to the investigations and proceedings to take place into James Hardie and its personnel in the not-too-distant future. Most importantly, I look forward to seeing all of James Hardie’s victims adequately and fairly compensated.
Senator MURRAY (Western Australia) (6.48 p.m.)—I seek leave to incorporate Senator Andrew Bartlett’s speech in the second reading debate on this bill.

Leave granted.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (6.48 p.m.)—The incorporated speech read as follows—

I rise today to speak to the James Hardie (Investigations and Proceedings) Bill 2004.

This Bill abrogates legal professional principle from the James Hardie Group and their advisors in respect of the investigations surrounding the James Hardie restructure.

Like most Australians, I’ve been personally outraged by the conduct of James Hardie as it has been revealed in the Jackson Inquiry.

James Hardie was one of the major manufacturers of asbestos products that have been used in thousands of commercial and private buildings in Australia. Like the tobacco companies, they knew about the effect these products would have on the health of employees and on members of the wider community.

James Hardie through decades of improper conduct shirked their social and corporate responsibilities whilst earning massive profit from asbestos and its related products.

James Hardie defended its first asbestosis death case in Sydney in the 1930s. However, it was not until 1978, years after other companies had done so, that James Hardie put a warning on its asbestos products.

The Jackson Inquiry found that the fund established to pay asbestos claims, had, at 30 June 2004, assets of $179.2m but the estimate of future claims is about $1.5 billion in net present value terms.

The degree of impropriety of the Directors and Senior Management in separating James Hardie from the fund is still to be revealed. It seems clear that the NSW Courts have been defrauded and it is also obvious that James Hardie thought they could just walk away from their obligations without facing any sanctions. However, the Australian public and their Parliament will not let them get away with it.

We think James Hardie should fund its liabilities in full. This should be unconditional.

The Democrats will always support any legislation like this that will increase the prospect of real justice. It feels particularly important when the justice is for the victims of an insidious product like asbestos. We have all seen the terrible consequence of asbestosis. It’s a horrific disease.

It puts into context the Australian Democrats record on corporate governance. We are committed to ensuring better insolvency laws so that artificial bankruptcy and company restructures can’t be used to avoid legitimate debts.

In the past three years, the Democrats have participated in over 60 Parliamentary Reports and Committee Inquiries aimed at ensuring Australia has the toughest possible rules regulating corporate responsibility. The conduct of companies like HIH and James Hardie illustrates that, given the opportunity, some business people will try to bend laws and avoid their moral obligations.

By maintaining and toughening corporate governance rules the Democrats have minimised the opportunities for corporations to avoid their responsibilities. The Democrats believe that the companies that act inappropriately or illegally are in the minority. Australia’s tough laws ensure that we generally have a high standard of corporate responsibility but there is more to do.”

The Democrats will spend the next three years of Parliament continuing their push for stronger corporate responsibility laws including:

• passing our Corporate Code of Conduct Bill which imposes environmental, human rights and labour standards on Australian companies overseas;
• encouraging Australian companies to develop codes of ethics;
• greater disclosure of, and incentives for, ethically and socially responsible investments;
• greater disclosure of executive salary packages at the time they are negotiated, with shareholders given the power to veto the most excessive salaries;
• further improvements in the transparency of political donations;
• the requirement to declare if Directors are subject to patronage; and
• better insolvency laws so that artificial bankruptcy and company restructures can't be used to avoid legitimate debts.

The Democrats corporate responsibility achievements in the Senate include:
• Laws that require companies to disclose their impact on the environment;
• the toughest possible standards of corporate governance and company disclosures;
• improved tax concessions for charities and the not-for-profit sector;
• the promotion of family friendly work practices including paid maternity leave;
• maintaining laws protecting against unfair dismissals;
• laws that allows superannuation members to chose ethical investments;
• laws that requires fund managers to publicly prove they are 'ethical'.

Tough and responsible laws that ensure Australian companies, and their directors, are kept honest never get much publicity but, in so many ways, they are far more important than the easy task of public grandstanding and corporate-bashing.

We have affirmed they would support any changes to Federal or State laws that were identified by the report of the Commission of Inquiry into James Hardie and our intention to provide full political and parliamentary support for the victims of James Hardie to ensure they receive full compensation and justice.

The Party also decided to back this up with financial support to help the campaign of the asbestos victims. The Australian Democrats have committed to giving financial support to help the victims of James Hardie and that will occur as soon as possible. The party has debts arising from the federal election. We have prioritised available funds towards debts we have a legal obligation to pay and will make all other payments, including a donation to an asbestos victims organisation, as soon as sufficient funds become available in the new year.

The Australian Democrats have the strongest record on lifting the standards for corporate responsibility and keep the rogue elements of the business community in check, without creating unnecessary constraints on the vast majority of businesses who do the right thing.

We used our links with The Netherlands Parliament and Government to increase the pressure on James Hardie Industries to meet its obligations to the many workers affected by asbestos by having questions asked by a member of the Democrats party in the Netherlands.

This government should take up the recommendations and the findings of the Jackson inquiry in New South Wales and fix the problems in the Corporations Law that allow James Hardie to walk away from their obligations to workers and their families in this country.

The Democrats will be supporting the Bill. We have introduced a second reading amendment that calls on the Government to extend the concept of the removal of legal professional privilege to tobacco companies.

**Senator NELSON (New South Wales)** (6.48 p.m.)—Last week was the 20th anniversary of the Bhopal disaster. It is often described as the worst industrial accident in history. It was in fact a corporate crime of enormous magnitude—a crime that continues now with Union Carbide and its parent company, Dow Chemical, attempting to avoid liabilities to the victims of Bhopal.

The James Hardie (Investigations and Proceedings) Bill 2004 we are debating today seeks to address another terrible corporate crime—a corporate crime that has affected thousands of Australians and will continue to affect many more into the future. Unlike the Bhopal disaster, James Hardie’s negligence did not happen in one day; it is a creeping, silent crime that has affected workers and their families across the country and it is a crime that has continued over decades.
The Greens support this bill because it will allow ASIC and the DPP to access materials obtained by the New South Wales commission of inquiry that would otherwise be subject to legal professional privilege and then to use those documents to investigate whether James Hardie has breached the Corporations Act. Any action that can be taken to ensure James Hardie is brought to justice will be supported by the Greens.

Debate interrupted.

**DOCUMENTS**

**Consideration**

The government documents tabled earlier today and general business orders of the day Nos. 17 to 33 relating to government documents were called on but no motion was moved.

**ADJOURNMENT**

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

That the Senate do now adjourn.

**Iraq**

Senator **LIGHTFOOT** (Western Australia) (6.51 p.m.)—In my adjournment speech tonight I wish to outline just a little of Australia’s contribution to rebuilding Iraq. In doing so, I would like to read from an email forwarded to me by the Western Australian President of the Australian-American Friendship Group in Western Australia. The email is from a Mr Ray Reynolds, who is apparently a medic in the Iowa Army National Guard currently serving in Iraq, and Mr Reynolds appears to be feeling somewhat jaded and disenfranchised as he writes:

As I head off to Baghdad for the final weeks of my stay in Iraq, I wanted to say thanks to all of you who did not believe the media. They—that is, the media—have done a very poor job of covering everything that has happened. I am sorry that I have not been able to visit all of you during my two week leave back home. And just so you can rest at night knowing something is happening in Iraq that is noteworthy, I thought I would pass this on to you. This is the list of things that has happened in Iraq recently: (Please share it with your friends and compare it to the version that your paper is producing.)

- Over 400,000 kids have up-to-date immunizations.
- School attendance is up 80% from levels before the war.
- Over 1,500 schools have been renovated and rid of the weapons stored there so education can occur.
- The port of Umm Qasr was renovated so grain can be offloaded from ships faster.
- The country had its first 2 billion barrel export of oil in August.
- Over 4.5 million people have clean drinking water for the first time ever in Iraq.
- The country now receives 2 times the electrical power it did before the war.
- 100% of the hospitals are open and fully staffed, compared to 35% before the war.
- Elections are taking place in every major city, and city councils are in place.
- Sewer and water lines are installed in every major city.
- Over 60,000 police are patrolling the streets.
- Over 100,000 Iraqi civil defence police are securing the country.
- Over 80,000 Iraqi soldiers are patrolling the streets side by side with US soldiers.
- Over 400,000 people have telephones for the first time ever.
- Students are taught field sanitation and hand washing techniques to prevent the spread of germs.
- An interim constitution has been signed.
- Girls are allowed to attend school.
- Textbooks that don’t mention Saddam are in the schools for the first time in 30 years.
Don’t believe for one second that these people do not want us there. I have met many, many people from Iraq that want us there, and in a bad way. They say they will never see the freedoms we talk about but they hope their children will. We are doing a good job in Iraq and I challenge anyone, anywhere to dispute me on these facts. If you are like me and very disgusted with how this period of rebuilding has been portrayed, email this to a friend and let them know there are good things happening.

It is signed:
Ray Reynolds, SFC Iowa Army National Guard
234th Signal Battalion

Being a somewhat ageing politician, I am not going to stand here and swear that somewhere in Iraq is a Ray Reynolds, completing the last few weeks of his tour of duty with the Iowa Army National Guard. Maybe there is, maybe not—that is what I thought. But I will stand here and say that I forwarded the letter to the Department of Foreign Affairs and Trade in Australia and asked for validation of Mr Reynolds’s claims and was assured of the genuineness of the claims in that email.

The department was also kind enough to supply me with some further data regarding Australia’s specific contribution to the rebuilding of Iraq:

Australia has committed $126m to Iraq’s rehabilitation and reconstruction:

• We have deployed over 30 technical experts to assist in reestablishment of Government services and return of a sovereign Iraq Government since March 2003
• committed $45m to reconstruction priorities, with a particular focus on rehabilitation of agriculture sector and food security
• directed assistance to improve water/sanitation, food supply/distribution, donor coordination, economic management, legal, oil and defence policy, capacity training for police and officials from the Trade, Foreign Affairs and Agriculture ministries and war crimes investigations
• we have allocated $25m to UN and World Bank trust funds (including approx. $5m for elections assistance)

I am here to tell you, Mr Deputy President, at first hand that the coalition’s intervention in Iraq has had positive outcomes for which the people of Iraq are very grateful. The data goes on:

• the Coalition of the Willing has put an end to Saddam’s continuing defiance of the UN Security Council’s demands that Iraq verifiably terminate its illegal WMD and long-range missile programs
• the Coalition of the Willing has ended Saddam’s sponsorship of terrorism in the Middle East, and
• the Coalition of the Willing has ended Saddam’s reign of terror and has given Iraqis the hope of a democratic future

I feel very comfortable standing here telling you of these things, Mr Deputy President, because I have been to Iraq and I have personally witnessed these outcomes and the result of the outcomes. I have witnessed the girls all over Iraq going back to school. I have seen some of the rebuilding of the 2,500 schools that are now teaching over six million children. I have visited Sulaimaniya University, where the staff rejoice at their new found freedom to impart knowledge, as they always intended to do, free now from the constraints of life under the evil and prolonged dictatorship of Saddam Hussein. And as a result of the involvement of the coalition of the willing and the contribution of the Australian government, all the universities in Iraq are open for business.

With respect to human rights and the judiciary, I was able to see how Iraqis enjoy unprecedented freedoms of expression, movement, assembly and religion. Iraqi women now have rights, and minorities are protected. An independent judiciary and human rights ministry has been established, and 260 mass graves have been identified.
With respect to health, education and employment, young Ray Reynolds, the medic in the Iowa Army National Guard, is correct—a vaccination campaign recently completed reached over 90 per cent of all Iraqi children. And he is correct about the role of the coalition in assisting Iraq on its path to democracy and political transition. In August, an interim national council was elected to oversee the work of the Iraqi interim government. Preparations, with the support of the UN, are currently under way for the elections in just a few weeks time, and more than 600 core personnel are now employed by the Independent Electoral Commission for Iraq. Iraqis are registering to vote in all of the 85 per cent of voter registration centres that are now open.

It was my great pleasure earlier this week to welcome the newly appointed Iraqi Ambassador to Australia, Mr Ghanim al-Shibli, to the inaugural meeting of an informal Australian-Iraqi parliamentary friendship group. Nearly 50 colleagues have expressed interest in this group, which is expected to be formally recognised following the establishment of the new Iraqi parliament as a consequence of January’s elections.

Young Ray Reynolds is right: the real story of what is happening in Iraq—the advances that are being made, the freedoms that have been restored, the evil that has been ousted—is not being told at home. There is too much of a focus on the outrages that are still being committed. Yes, ‘still’ being committed, not being committed because of the coalition’s presence in Iraq, because outrages such as we have recently seen went on for years under Saddam Hussein and a few have continued to be perpetrated by Saddam’s outlaw remnant forces. It is these outrages that have drawn the attention of the media, not the fact that the kids are going to school and whole townships now have electricity, potable water and basic sewerage; not the fact that there are no freshly dug mass graves and that every day represents another step along the path to a free and democratic Iraq. None of that appears to be newsworthy.

What Australia and Australian personnel are doing in Iraq and for Iraq is a reason for great pride. Wherever you are, Mr Ray Reynolds, may I wish you a merry Christmas. Keep up the good work. I and many of my fellow Australians are aware of, grateful for and respectful of your contribution and that of your nation to a better Iraq and thus a better world. May I take this opportunity to send that Christmas message to our own troops and service personnel who are serving in Iraq and other parts of the world. It is a better world because our troops are doing just that.

Reynolds, Mr Matthew

Senator MOORE (Queensland) (7.00 p.m.)—In May 2003 I got a serious phone call—in fact, I got a lot of calls. They said that the National President of the Commonwealth Public Sector Union, Matthew Reynolds, had collapsed in Canberra and that there was very little hope that he was going to make it. Too soon after, our worst fears were confirmed. Matthew Reynolds, at 38 years of age, at the very time that he and his team were celebrating the fact that they had won the national CPSU election, was dead. The immediate shock and disbelief was felt much more widely than across our union, because Matthew’s life had touched so many people. That shock and disbelief took over from our grief, because we did not understand that somebody who was just so alive, who loved life so much and who lived life to its full was no longer with us.

In the immediate aftermath our union set up a web site. We are the CPSU, which is the union for the public sector, so we are pretty good at that kind of thing. We were overwhelmed by the number of people—members, delegates, heads of departments, people from football clubs—from across the
country who chose to go onto our web site and talk about how much Matthew meant to them and about what kind of guy he was. It is important, Matthew, to know that we did not talk about you as though you were some kind of saint; we talked about your overwhelming enthusiasm and the fact that you were not perfect but, boy, were we going to miss you.

Our national secretary at the time, not a man noted for great emotional outbursts, talked about the fact that, although words could not express the way people were feeling, still they had to talk and they had to share. What we did as a union was to set up these outpourings in a permanent record so that Matt’s family, in particular his partner, Jenny, and his kids, Tayla and Joel, could see then and into the future just how much their partner and dad was respected, loved, needed and, more than anything else I think, just liked. Throughout all these statements, in particular at the service that was held at the Catholic cathedral—even though Matt was not particularly religious—there were many themes of love and statements about what kind of impact this man had on so many people in only 38 years. He was a proud Tasmanian who constantly spoke about his home, which was the ‘island down south’.

As a public servant Matt went into our union as a young member working in the Department of Veterans’ Affairs. He was a strong delegate who actually lived the theme of unionism: unity makes us strong. He saw that there was a need for that kind of understanding in his workplace. He worked not just at the local level but through the various levels and structures. He put to work the themes of working together, listening, being strong and, more than anything, knowing that workers had rights to be looked after and to have their say.

Matt loved his football. As much as we heard about the other things that he enjoyed, this strange game, which involved a ball bouncing around, was a passion. I am from Queensland and I support another code, but he never stopped trying to sell to me the advantages of that game. Often he had to show me how the moves worked. It was not enough just to talk about it; he would leap around describing his great skill and prowess. I did not always believe these stories—it was something he talked about a lot—but I found out that he was actually quite good and that he used his skills working with kids in the local Canberra community, because in the process of moving through the ranks of our union Matt left his beloved Tassie, came to Canberra and became the national president.

However, core throughout all his activities was the grounding he had in the strong love of his family. His comrades in the union knew all about what was going on in the family with Jenny, Tayla and Joel. He worked with a number of youth communities in Canberra, sharing with people of all ages, particularly kids, his enthusiasm and love of life. Some of the statements on the web site talk about the fact that parents in those groups recognise what a difference he made in the lives of the local kids and how kids just liked being around him.

The particular skill that he had of encouraging people to just like being with him was very valuable as a union organiser. People respected the fact that Matt always had time to listen to them. He made them feel better—he listened to them, he always had time to have a talk and he really cared about them. One of the things I really want to put on the record tonight is the fact that working with Matthew Reynolds made you a better person. He gave you the strength to think that you could make a difference and that you had skills that were valuable. Throughout the
statements that I keep are those from people who were new delegates, people who were very high up in departments and people he just ran into who said that he made a difference in their lives because he cared for them.

I remember that Matt, as the national president, had to chair a number of meetings. My personal view is not that this was his best skill, because he was interested too much in what people were saying. He let people go on; he wanted to hear what they were saying and he wanted to have them involved in the process. That is not always a skill that chairs of meetings have, because sometimes they are keen to have the debate move on rather than listen to the words and the feelings.

Matthew made people feel good about themselves. He gave them the chance to learn about their own skills. In a special kind of way, one of the strengths he had was to acknowledge that sometimes he was not right. He was always trying to find ways to make his own behaviour and performance better. It is really entrancing when people who are rising through a pretty tough workplace acknowledge that perhaps they were not right, though that might not happen straightaway. I well remember him following up after we had concluded meetings just to get one more argument into the discussion. He was a tenacious advocate and a particularly strong negotiator. I know that he worked with people in this building as various departments were developing enterprise bargains, and, certainly, I think his memory is strong among some of the workplaces here. Matthew made our union a better union, and he gave all of us as members and delegates a chance to work together to achieve what we must do, which is to represent workers and improve working conditions.

I was stunned by the amount of grief that was shared by people across the country. I was stunned by the coverage the Canberra Times gave to Matthew and his family. I am also stunned by the fact that they have not forgotten the man. Next week in Canberra there is going to be the dedication of a room at the Canberra Hospital. It has been jointly organised by the Canberra Hospital, the CPSU, the CFMEU and the organ donors’ group. Matthew continues to be active in his society almost two years after he has left us in one way. People want to keep his memory alive because he deserves it. I have tried five times to make this particular speech. The first time it was knocked over by a debate about the war and then, each time I put it on the agenda, something else happened and pushed it off. I think Matthew was working against me and did not want these statements made.

I want to have acknowledged in this place—a place to where I always hoped Matthew would come one day—Matthew’s name, his strength and what a great bloke he was. For Tayla and Joel, I want to say that your dad was a great comrade. He made me a better unionist and a better person and, more than anything else, his great smile made me want to be with him. He was not just respected; he was genuinely liked. In solidarity, Comrade, you are still with us.

Community Affairs References Committee: Report

Senator MURRAY (Western Australia) (7.09 p.m.)—On the last sitting day before parliament was prorogued for the 2004 election, the Senate Community Affairs References Committee tabled the powerful and damning report, Forgotten Australians: a report on Australians who experienced institutional or out-of-home care as children. Although I have already spoken to this report on its tabling, I rise again to comment on it and especially to state that, if ever there was a Senate report deserving of a rapid response
to its recommendations, *Forgotten Australians* would have to be right up there. As the first of two reports of the inquiry into children raised in institutional and other forms of out-of-home care, *Forgotten Australians* focuses on the period from 1920 until the 1970s, when large institutions were replaced mainly by smaller residential homes and foster care. The second report of the committee is to be tabled in March 2005 and will focus on the more contemporary problems of child protection.

The tabling of *Forgotten Australians* on 30 August produced scenes in Parliament House never witnessed before, to my knowledge anyway. More than a hundred care leavers, along with their supporters, travelled to Canberra for this momentous and long-awaited occasion. As the tabling speeches were delivered, committee members fought back tears and were intermittently interrupted by applause, cheers and tears from the public gallery. At the media conference afterwards it was no different. Many a journalist remarked that they had never seen such an emotional response to a Senate report before. It received widespread coverage in the media the following day, with the *Canberra Times* stating:

> The normally rarefied atmosphere of the Senate was broken yesterday as 100 victims of abuse in institutional care wept and cheered during the tabling of a report into their lives.

The public gallery was filled with survivors—alone or with family members—wiping their eyes, sniffing, and then applauding the work of senators who spent almost a year and a half chronicling their harrowing stories of abuse.

The editorial of the *Age* on 2 September 2004 stated:

> It was an incongruous scene: as the nation’s political leaders played in the theatre of electoral combat outside, inside the Parliament politicians from both sides wept with genuine compassion for a long-forgotten group.

The reason for this outpouring of emotion is not hard to find. Committee members learnt from more than 600 submissions of how children were placed in foreboding environments, often completely bereft of the love and nurturing so crucial to becoming functional adults. I should also mention here that submissions are still coming in, and the committee is to be congratulated on having a very compassionate view in extending the time for submissions to come in. As many care leavers did not know about the inquiry, the committee decided to continue to accept submissions. At times committee members have also become privy to stories of unbelievable acts of cruelty imposed on helpless kids given up to, or forcibly taken into, care.

For the survivors who contributed to this inquiry—and they do describe themselves as survivors—the time had at last arrived for them to be able to open up and tell their stories, usually for the very first time, and it is the telling of the stories that is often very important to those people. Knowing they at last could do so—and, most importantly, be believed—gave them the courage to be heard. They felt they had suffered in silence for long enough. They have courageously opened up their hearts to tell their stories and it must not be left there. This report must not gather dust; the survivors deserve justice much sooner rather than later. In that regard, we should recognise the fact that some state governments have been trying to do some work in this field.

Last week one of my committee colleagues, Senator Humphries from the ACT, addressed the chamber about *Forgotten Australians* and, in speaking about the widespread abuse and maltreatment, he stated:

> This is the legacy we must now face; this is the private agony that public policy must now come to terms with.
He later continued by stating that addressing this legacy is a matter of urgency—a statement I support unequivocally, and a statement I am certain all the other committee members support unequivocally. It is vital that state governments and the federal government act quickly to implement the report’s recommendations for the provision of services and the redress of grievances. Governments and agencies failed for well into last century to protect their most vulnerable children. To continue to fail them now as damaged adults would be completely unacceptable.

Additionally, and as a matter of some urgency, I urge the federal government to take appropriate steps to ensure that the new association called the Care Leavers of Australia Network, CLAN, receives assistance to carry out its support services. This is just one of a number of organisations in the country, such as the Child Migrant Trust, that are dedicated to assisting people in these circumstances. But in this address I want to draw attention to the particular plight of CLAN.

I first learnt of CLAN when it put in a submission to the 2001 child migrant inquiry which was conducted by the Senate Community Affairs References Committee. Part of that submission said:

Although we support wholeheartedly the aims of the Inquiry, we regret that its terms cannot be broader to cover the very similar experiences of some tens of thousands of Australian citizens.

I knew then that another inquiry was warranted—one that would not have been seen the light of day but for CLAN’s efforts. There had been the stolen generation inquiry; there was then the child migrant inquiry; and a third in the trilogy was obviously required to complete the picture of how children raised in institutional care had fared, both then and subsequently.

Established in 2000 by two former care leavers, Leonie Sheedy and Dr Joanna Penglase, CLAN is a national support and advocacy organisation for older people who grew up or spent time during their childhood in state care in orphanages, children’s homes and other places away from their families. From a paid-up membership of up to 300 in 2002, the number of members is now approaching 800. That may seem a very low number when you consider that the number of children institutionalised last century is estimated by the committee to approximate at least 500,000. But, given that many of the people in those circumstances became loners and are very unattracted to joining organisations, it is a very high number achieved in a very short time.

CLAN is in the business of organising and assisting care leavers, an agenda that is proving far too successful in terms of their very limited resources. I stress that they are far too successful, because the drain on their resources, especially since Forgotten Australians became public, is quite dramatic. One has to remember that these kinds of services are often accessed by people after hours and during weekends, when they have finished their daily work or when their loneliness leads them to the telephone and to needing someone to talk to. Apart from the influx of telephone calls, nowhere is this better demonstrated than with CLAN’s web site statistics. The quarterly reports for 2004 show that during the first quarter the number of requests made on the CLAN web site was 1,317. Those of you who know much about computer web sites would know that that number is quite low. However, just two quarters later, at the end of the third quarter—that is, after the report’s tabling—that number had blown out to 261,608 inquiries. It is massive. The web manager also informs my office that CLAN is ranking high in all the search engines and that people are accessing
the site every day of the week, not just from Australia but from all over the world.

In short, a couple of people running CLAN are now at breaking point. I know my colleagues on the committee are deeply concerned about that matter. CLAN has been literally swamped with calls from people wanting assistance and from others wishing to tell their stories because they had missed out with the Senate inquiry. Many want to know what the report means for them, when the recommendations will be addressed and when they will be able to access services. With only one person to take these calls, which I should add can at times take up to one hour, the workload has become unmanageable. In fact, this worker was on the verge of collapse just last week. What is urgently required to meet the increased workload is the assistance of professional and specialised staff.

Although CLAN has received some small funding grants from New South Wales, South Australia, Victoria, Western Australia and the ACT, these are nonrenewable and barely cover costs associated with running the organisation. These grants represent an acknowledgement that CLAN is working to fill a service gap in Australian welfare provision. I urge the state and federal governments to come to CLAN’s aid in more meaningful and ongoing ways. Having abrogated their duty of care in the past to care leavers—and some governments have—it is now time for them to put the record right and to make re-dress. I also urge the Commonwealth government to consider intervening in this urgent matter. Federal as well as state assistance would go a long way to ensuring that organisations like CLAN can meet recommendation 20 of Forgotten Australians, which states that they should ‘maintain and extend their service to victims of institutional abuse’. The alternative is for CLAN to continue to flounder or to fold due to a workload that many politicians and their officers would find unbearable. (Time expired)

Griffin, Marion Mahoney

Senator FERRIS (South Australia) (7.20 p.m.)—Tonight I want to speak about an extraordinary woman to whom this city can be grateful, even today, for her part in its remarkable design. Earlier today, the Minister for Local Government, Territories and Roads launched the Griffin legacy, enhancing Walter Burley Griffin’s original plan that created what he termed the ‘ideal city’, although some of us might sometimes disagree. On this occasion it is important to remember that the woman who helped Walter Burley Griffin win the commission to design this city was his wife, Marion Mahoney Griffin.

I want to speak about Marion Mahoney Griffin tonight. She was a pioneer in the field of architecture and design. Marion Mahoney was born in Chicago, Illinois, in 1871. In 1894 she became only the second woman to graduate in architecture from the Massachusetts Institute of Technology. In 1898 she became the first woman in the world to practise as an architect. She truly was a trailblazer. After graduating, Marion Mahoney began work for Frank Lloyd Wright, one of the world’s best known architects. She worked for Lloyd Wright off and on for 14 years and at times she was his only employee. Her Japanese-influenced architectural presentation drawings, which she produced while working for Lloyd Wright, were instrumental in enhancing her early reputation.

During her time with Lloyd Wright she became one of his primary designers. She was responsible for many of the furnishings of his beautiful houses, including his murals, the mosaics, the furniture, the leaded glass and even the lighting. She gained a reputation as an outspoken, dramatic and individualistic woman. Much of the beautiful and
now world famous architectural presentation drawings and watercolours that helped Lloyd Wright promote his practice were in fact drawn not by him but by Marion Mahoney. I have been fortunate to see some of these pieces that are now in the Powerhouse Museum in Sydney, and I went a couple of years ago to view a beautiful exhibition of some of her early work. When Lloyd Wright sold his practice the new owner recognised her influence on Lloyd Wright's designs and realised that he needed someone better than him to finish off some of the work to please Wright's clients. Marion Mahoney Griffin had oversight of the completion, and in some cases the design, of some of his very well-known unfinished commissions.

But her working life with Wright had another serendipity that still has an effect on our city today, 100 years later. She began to work with the very mild-mannered Canadian Walter Burley Griffin. She fell in love with him and she married him. Their professional relationship ended in a marriage ceremony in 1911. She then went to work in his practice and became his partner both professionally and personally. Soon she was the chief draftsman in the office.

While her architectural work became well known, it was the exquisite hand-coloured presentation art that accompanied her husband's entry for the 1912 design competition for the new Australian capital that really put her on the map. The quality, the colourings and the design details, without doubt, would have had a very persuasive impact on the panel of assessors, as they judged it to be the winning entry. This is all the more remarkable because, as colleagues would know, neither Marion Mahoney Griffin nor her husband, Walter, visited the site for the national capital or the land surrounding it, or even set foot in Australia. The brilliance of their combined design and talent was that this prize winning design was produced from their Chicago offices.

When Burley Griffin was appointed federal capital director of design and construction, his wife moved with her husband to Australia, and they managed an architectural practice in Melbourne while Walter focused on the planning of the new national capital. While in Melbourne, Marion designed buildings for Canberra. However, sadly, very few of the modest workers cottages that she designed were ever built in Canberra. Their departure from the implementation team was an unhappy one, but much of the work they did subsequently in the Sydney suburb of Castlecrag remains today. Marion moved with Walter to India in 1935 and lived there until his death in 1937. She then returned to Chicago, where she died at the age of 91.

It is to me a tragedy that Marion Mahoney Griffin, one of the first female architects in the world and a significant contributor to our beautiful national capital, remains unrecognised in this city 100 years later. Not a plaque, not a peaceful garden, not a building, not even a roadway has been named after Marion Mahoney Griffin—nothing. And today’s exciting enhancement to the Burley Griffin plan continues to overlook her. A glossy brochure was released today and there is only one mention of Marion Mahoney Griffin—in passing, on one of the pages, yet we reproduce some of her drawings in that pamphlet. I think it is a tragedy.

I appeal to the Joint Standing Committee on the National Capital and External Territories of the parliament to please recognise the talent of this quite remarkable woman. This glossy brochure, which was produced by the National Capital Authority, highlights the Griffin legacy. It was released today in this building on the Queen’s Terrace overlooking his plan. Why is there no mention in all of the announcement of the upgrade, which
extends the Burley Griffin legacy, of Marion Mahoney Griffin? What has she done in 100 years to deserve to be so tragically overlooked? This is despite the fact that in this brochure some of her original drawings have been reproduced. Marion Mahoney Griffin, a remarkable woman, a talented woman, deserves at the very least a significant profile in this town, in this national capital—recognition of the work she put in with her husband to win the design almost 100 years ago. We enjoy it today. Where is the recognition this woman deserves?

**Senate adjourned at 7.28 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:

- Department of Transport and Regional Services—Report for 2003-04.

The following document was tabled by the Clerk:


The following document was tabled pursuant to the order of the Senate of 25 March 1999, as amended on 18 September 2002:

- Australian Competition and Consumer Commission—Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance for the period 1 July 2003 to 30 June 2004.
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The following answers to questions were circulated:

Immigration: Vietnamese Citizens
(Question No. 3177)

Senator Bartlett asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 30 August 2004:

(1) Since April 1975, how many people from Vietnam have been granted the following categories of humanitarian visas: (a) refugee; (b) temporary protection; (c) special humanitarian; (d) special assistance; and/or (e) other.

(2) Since April 1975, how many people from Vietnam have been granted the following categories of permanent visas: (a) family reunion; (b) overseas student; and (c) other.

(3) Since April 1975: (a) how many people from Vietnam sought asylum after arriving in Australia by boat; and (b) how many of these people were denied asylum by the department or its predecessors.

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

Complete data for the period requested by Senator Bartlett is not readily available in reportable form from departmental systems. The information provided in response to (1) and (2) relate to arrivals of Vietnamese citizens under various programs.

The information provided is derived from two sets of arrivals data:

- a consolidated number of arrivals for each program year of Vietnamese citizens by broad migration category including under the Humanitarian Program from April 1975 to 30 June 2004; and

- a breakdown by visa category of Vietnamese citizens who arrived on permanent visas and student visas from 1982-83 to 30 June 2004.

Arrivals data has been compiled from Departmental Overseas Arrivals and Departures data that is sourced from Incoming Passenger Cards. Arrivals and Departure data is used in various Departmental publications.

(1) A total of 108,537 Vietnamese citizens arrived in Australia under the Humanitarian Program in the period April 1975 to 30 June 2004.

For the period 1982-83 to 30 June 2004, Vietnamese citizens who arrived in Australia under the Humanitarian Program by category are as follows:

(a) Refugee category - 40,035 persons;

(b) Temporary Protection - 10 persons (granted after arrival in Australia);

(c) Special Humanitarian Program - 12,654 persons; and

(d) Special Assistance Category - 1,451 persons.

(2) A total of 65,200 Vietnamese citizens arrived in Australia for permanent stay under other (non-Humanitarian) Migration categories from April 1975 to 30 June 2004.

For the period 1982-83 to 30 June 2004, Vietnamese citizens who arrived in Australia under the Family Migration and Student categories are as follows:

(a) Family migration (permanent category) - 62,005 persons;

(b) Overseas students (temporary category) - 23,118 persons. This figure includes initial entry and re-entry; and
(c) Other - 2,680 persons (permanent categories).

(3) (a)-(b) For the period 1975 to mid-1989, systems cannot report on the exact number of Vietnamese nationals who arrived in Australia as unauthorised boat arrivals or the number of applications for protection lodged, granted and refused.

Complete statistics are not available broken down by nationality for unauthorised boat arrivals since 1975.

Environment: Middle Head Road to Balmoral Walking Track

(Question No. 2)

Senator Nettle asked the Minister for the Environment and Heritage, upon notice, on 3 September 2004:

With reference to the work on Middle Head Road to Balmoral Walking Track undertaken by the Sydney Harbour Federation Trust:

(1) On what basis was the decision made to commence work on the road before an upgrade of the existing track from Chowder Bay to Middle Head Road was undertaken.

(2) (a) What form of assessment has been undertaken regarding the potential increased risk of fire resulting from the construction of the walking track; and (b) can a copy of the assessment be provided.

(3) (a) What is the proposed timeline for the completion of the Middle Head Road to Balmoral Walking Track; and (b) when will the track be completed.

(4) What is the cost of this section of the track.

(5) What precautions are being taken during the building of the track to prevent further spread of phytophthora.

(6) (a) What measures will be in place once the track is completed to prevent the further spread of phytophthora; (b) at what stage can these measures be reviewed; and (c) what will the review process involve.

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

(1) The walking track has been designed and constructed as a raised boardwalk and concrete sections to prevent walkers coming in contact with soil. This best practice design, as recommended by Dr Brett Summerall from the Royal Botanic Gardens, removes the need to upgrade any other walking tracks in the local area.

(2) (a) The Sydney Harbour Federation Trust (the Trust) engaged fire consultants Conacher Travers to assess the impact of the walking track and potential increased fire hazard. (b) Yes. A copy is attached.

(3) (a) and (b) The portion of track on Commonwealth land is due for completion by the end of December 2004. The portion of track on land managed by Mosman Council is subject to approval of a Development Application with construction time anticipated to be 2 months after development approval.

(4) The portion of the track on Commonwealth land is contracted to cost $420,631.00 ex GST: The portion on council managed crown land is tendered at $63,950.00 ex GST.

(5) The walking track is being constructed in accordance with an Environmental Management Plan (EMP) prepared by the contractor and reviewed and amended by the Department of the Environment and Heritage and the Trust. The EMP includes strict hygiene protocols developed in response to the threat of phytophthora.

(6) (a) The management of the track from the threat of Phytophthora will include the following:

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Use of integrated boot cleaning stations at entry points to the track.

Prevention of walkers from leaving the track via handrails and landscaping.

Ongoing testing of soils along the track route.

Design of the track to prevent walkers coming into contact with soil.

Phytophthora education program developed by the Trust.

Active management of infection with a tree injection program.

(b) The operation management plan will be available for review and comment prior to the opening of the track.

(c) The operation management plan will be developed in consultation with the Department of the Environment and Heritage. The Trust will seek an independent review from Dr David Guest, Professor of Horticulture at the University of Sydney.

Immigration: Villawood Detention Centre

(Question No. 8)

Senator Brown asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 16 November 2004:

(1) Did staff at Villawood Detention Centre advise detainees on 14 July 2004 that families with children would be sent to a detention centre in South Australia; if so, was the notification followed by a protest.

(2) (a) What protocols are in force to handle such protests; and (b) what eventuated in this case.

(3) If a detained sole parent is taken from the detention centre for any reason: (a) what provision is made for the care of his or her children; and (b) what protocols are in force for this situation.

(4) (a) Under what circumstances can a detainee be given medical or psychiatric treatment; and (b) who is empowered to decide on the necessity for, or type of, treatment to be given; and (c) is the consent of the detainee required.

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

(1) No.

All detainee families with children at Villawood Immigration Detention Centre (VIDC) were provided with a brochure on the Port Augusta Residential Housing Project for information. Some families at VIDC were considered for transfer to Baxter Immigration Defence Facility (BIDF), primarily to create greater potential for use of the Residential Housing Project at Port Augusta for families likely to be in immigration detention for lengthy periods. This is consistent with Migration Series Instruction (MSI) 371, tabled by the Minister for Immigration and Multicultural and Indigenous Affairs on 3 December 2002. Those families considered for transfer were consulted about the move prior to 14 July 2004. Of the families being considered, those who indicated they did not wish to go were not included in the transfer.

There was protest action following the transfers.

(2) (a) The Detention Services Provider has procedures in place for handling critical incidents, including protest action. These procedures are not publicly available because they relate to the good order and security of the centre and publication has the potential to compromise this. (b) There was peaceful protest action both inside and outside the VIDC on 14 July 2004 against the transfer of selected families to the BIDF the day before.

A small group of around 50 protestors gathered outside the centre, together with media representatives and departed just after 4pm.
Five detainees within the centre (none of whom was to be transferred to BIDF) participated in protest action. Although vocal, the protest was peaceful. It is noteworthy that none of the group transferred to BIDF was involved in the protest.

Apart from GSL officers speaking to the protestors, no other action was deemed necessary as a result of this peaceful protest.

(3) (a) In normal circumstances, the child or children of a sole parent would be expected to accompany the parent if he or she were taken from the detention centre. However, where it is necessary to separate a child from his or her parents, each case is assessed individually and depends on the possible length of separation. Care options may include placing the child in the care of extended family or another detainee family, or arranging foster care in the community through the relevant child welfare agency. (b) Arrangements exist with state welfare authorities for the care of unaccompanied minors. Consistent with the International Convention on the Rights of the Child (CROC), the Australian Government believes it will usually be in the best interests of the child to remain with their parents. However, where a child welfare agency recommends separation from parents this advice will be implemented to the extent possible.

(4) (a) Any medical and psychiatric treatment required by detainees is identified by qualified medical professionals. The medical professionals have regard, not only to the detainee’s physical and mental health, but also the safety and welfare of other detainees, visitors and staff. (b) A registered medical practitioner or mental health professional. (c) Generally, where it is medically necessary to receive treatment, detainees do consent to treatment as recommended by medical professionals. There are, however, in specific circumstances, legislative provisions for non-consensual medical treatment where appropriate, such as state mental health legislation and regulation 5.35 of the Migration Regulations.

**Fisheries: Longline Fishing**

(Question No. 9)

Senator Brown asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 21 October 2004:

Given the following extract from the website of the South Australian Branch of Marine and Coastal Community network http://www.mccn.org.au/sa/; ‘South Australian fishers have continued to criticize Australian Fisheries Management Authority (AFMA) to allow automatic longline fishing in the southern fishery. Speaking on ABC radio, Alan Suter, from the Commercial Marine Scalefish Executive Committee and the West Coast Fishermen’s Association has claimed most South Australia fishers are opposed to the practice. The fishers have also expressed extreme disappointment in State Fisheries for failing to protect the fishers and fish stocks. Fourteen trial auto-long-lining permits have been issued, allowing each fisher to put up to 15,000 hooks into the water twice a day. AFMA claims it will not compromise sustainability in deciding to allow the use of automatic long-lining in the Southern and Eastern Scalefish and Shark Fishery (SESSF). Apart from existing trial permits, no further auto-long-lining permits will be granted until further examination of the management measures required’:

(1) Were relevant stakeholders consulted before the AFMA issued the auto-long-lining permits.

(2) Has there, in the light of the criticisms by the industry, been any review of the policy of allowing automatic longline fishing; if not, will the Government instruct the AFMA to conduct such a review, involving full consultation with the affected parties within the Australian fishing industry.

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

(1) Yes.

(2) A review is currently being undertaken.
Family Services: Accommodation Support Services
(Question No. 14)

Senator Allison ask the Minister for Family and Community Services, upon notice, on 2 November 2004:

(1) Is the Minister aware that in Victoria: (a) there are now 3,155 individuals on the waiting list for supported accommodation; (b) 1,160 individuals are rated as urgent; and (c) the average waiting time for supported accommodation is now 140 weeks.

(2) When negotiating the next Commonwealth State Territory Disability Agreement, will the Government require state and territory governments to better meet their obligations in regard to people with disabilities who are assessed as being in need of accommodation services; if so, what targets will be set for reducing this serious unmet need and reducing waiting times; if not, why not.

(3) Is the Minister aware that families provide over 90 per cent of the accommodation, personal care and support of people with dependent disabilities.

(4) Is the Minister aware that only 10,500 Victorian parents of children with disabilities receive assistance from the state government, out of approximately 140,000 who require assistance; if so, what representation has been made by the Commonwealth to the Victorian Government to meet the needs of those currently not receiving assistance.

(5) Has the Government made representation to the Victorian Government suggesting that the revenue from selling the land on which Kew Cottages is located should be used for accommodation for people with disabilities; if not, why not.

(6) Does the Minister advocate choice of support and accommodation for families that are currently caring for a disabled and dependent person; if so, how.

(7) Is the Minister aware that the board of Endeavour, the largest service provider for people with intellectual disability in the southern hemisphere, has been forced, through inadequate Commonwealth and state funding, to close its services; if so, what action does the Minister intend to take to ensure that those services will continue to be made available to those who need them.

(8) What progress has been made in moving young people with disabilities from nursing homes into more appropriate accommodation in each state and territory.

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

(1) I am aware that there is significant unmet need for accommodation support services across the country. The Victorian State government agreed in 1991, along with other state and territory governments, that they would have sole responsibility for the policy, planning and management of accommodation support services for people with disabilities in that State. The issue of shortages of services is best directed to the level of government responsible for those services.

(2) The Australian Government is committed to ensuring that State and Territory Governments meet their responsibilities under the Commonwealth State Territory Disability Agreement, however, I have no comment at this time on the details of the terms of a fourth Agreement.

(3) I am aware that of the 3.8 million people with disabilities living in households, 39 per cent do not require assistance and 37 per cent reported that their needs were fully met. I am not aware of the figure quoted or its source.

(4) See response to (1) above. The Australian government and Victorian State government discuss disability matters regularly, including through Community and Disability Services Ministers forums. We have consistently urged State governments to address the needs of people with disabilities and their families and carers.

(5) No. This is a matter for the Victorian Government.
(6) People with disabilities have the right to live as independently as is possible and in circumstances as close as possible to that of other people in the community. The Australian government and State and Territory Governments discuss disability matters regularly, including through Community and Disability Services Ministers forums. We have consistently urged State and Territory governments to address the needs of people with disabilities and their families and carers.

(7) I am aware that Endeavour Foundation has been seeking additional funding from the Queensland State government for its accommodation support services. Endeavour does not receive any funding from the Australian Government for these services, which, as is indicated in answers to other questions, is a matter for the state government. Endeavour does receive funding from the Australian government for employment assistance services. I understand that Endeavour is closing three employment assistance services, but has said this is for commercial reasons only. The Australian Government has provided assistance to Endeavour to ensure continuity of service to the consumers affected by Endeavour’s business decision. People will continue to receive employment services.

(8) I understand that the number of people with disabilities under 50 living in aged care nursing homes has reduced in recent years. I am continuing to work with state governments to encourage the provision of appropriate forms of accommodation support to people with disabilities who need such assistance to prevent any need for their entry into aged care nursing homes, and where possible to offer individuals in those nursing homes a more appropriate service.

Gambling
(Question No. 34)

Senator Allison asked the Minister for Communications, Information Technology and the Arts, upon notice, on 17 November 2004:

(1) What is the status of the referral by the Australian Broadcasting Authority (ABA) to the Australian Federal Police (AFP), following complaint 03CE001251J made in March 2003, of gross breaches of law under subsection 8A(2) of the Interactive Gambling Act 2001, particularly since the complainant was advised by the AFP in August 2003 when taking formal statements that the AFP would proceed to prosecution of Betfair.

(2) If no charges have been laid, why is this the case.

(3) Does the Minister intend to refer to the ABA or the AFP the complaint made by Mr Tim Ryan that Betfair breached the law under subsection 8A(2)(a) of the Interactive Gambling Act 2001 by taking a bet on 19 June 2004 on the US Golf Open after the event had started.

(4) Has there been any investigation of the claims that Betfair continue to offer betting, contravening subsection 8A(2)(a) of the Interactive Gambling Act 2001; if so, have charges been laid; if not, why not.

(5) Is Betfair registered for the goods and services tax (GST) in Australia; if so, when did it register.

(6) Is it correct that the GST was payable by Betfair on revenues received from Australian residents using their wagering platform; if so: (a) was the GST paid; and (b) if the GST was not paid, what action has been taken in respect of that non-payment.

(7) Have any money laundering matters in relation to betting exchanges and unregulated cross-border wagering come to the attention of the Government; if so: (a) have any such matters been referred to the AFP; and (b) have any been charges laid.

(8) Has the Government considered banning cross-border gambling, except where mutual recognition of jurisdictional authority and extradition provisions are in place; if not, why not.

(9) Has the Government considered a ban on betting exchanges because they provide opportunities for individuals who are unlicensed, and therefore unregulated, to lay or bet against contestants; if not, why not.
(10) Given that the Government considered amending the Interactive Gambling Act 2001 to make all exemptions under the Act (not just wagering) subject to the holding of an Australian state or (internal) territory licence at the time of its passage through the Parliament but did not do so because there was little time for consultation, will the Government now consider doing so.

(11) Why is the Government permitting offshore wagering operators to shelter behind the subsection 8A(2) exemption of the Interactive Gambling Act 2001 s8A exemption, allowing these operators to provide services to Australian residents (in New South Wales and Western Australia) that are illegal for those residents to use.

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

(1) and (2) The Australian Federal Police (AFP) has provided the following answer:

This matter is under investigation. No charges have yet been laid.

(3) and (4) The Interactive Gambling Act 2001 (IGA) establishes a complaints-based legislative framework to address community concerns about the availability and accessibility of interactive gambling in Australia. The objective of this legislation is to ensure new interactive gambling services do not exacerbate the level of problem gambling in Australia. As part of the framework established by the IGA, the ABA administers a complaints scheme under which Australian residents or companies trading in Australia are able to complain to the ABA if they believe that Australians can access prohibited Internet gambling content.

Mr Ryan emailed my predecessor on 19 June 2004 providing a commentary on a press conference involving representatives of religious and welfare organisations, and of Betfair. Mr Ryan raised a range of concerns including problem gambling, money laundering and allegedly illegal activities of Betfair. In relation to this last point, Mr Ryan notes that he has already made a complaint to the ABA and the AFP.

I note that Senator Allison and a number of other members and senators received the same email from Mr Ryan.

If Mr Ryan wishes to make a complaint and has evidence of a breach of the provisions of the IGA, then, as he has done in the past, he should provide that evidence to the appropriate authority, in this case the ABA.

(5) I note you have asked the same question of the Treasurer. I refer you to his answer.

(6) I note you have asked the same question of the Treasurer. I refer you to his answer.

(7) The Attorney-General’s Department has provided the following answer:

In Australia money laundering issues are generally addressed by the Federal Transaction Reports Act 1988 which places account opening and suspicious transaction reporting obligations on the financial services sector. In accordance with privacy principles, strict secrecy and information access provisions govern the release and circulation of information received under this legislation. Accordingly, it would be inappropriate to make comment on operational matters.

(8), (9) and (10) The IGA was established to prevent the escalation of problem gambling resulting from new interactive gambling services. The previous Minister for Communications, Information Technology and the Arts released the report of the statutory review of the operation of the IGA on 16 July 2004. The review was conducted by the Department of Communications, Information Technology and the Arts and examined a range of matters, including the growth of interactive gambling services and their social and commercial impact. Betting exchanges were considered in this context. The review found that betting exchange services retain the basic characteristics of a wagering service and do not represent a significantly new form of gambling.

The review also concluded that betting exchange operations do not pose any greater risk of exacerbating problem gambling than traditional Internet wagering services also permitted under the cur-
rent legislative framework. As a result, the Government decided not to take any regulatory action specifically in relation to betting exchanges. The Government considers that, as the licensing and regulation of gambling services is primarily a matter for the states and territories, they should pursue these issues through their existing licensing frameworks.

(11) Subsection 8A(2) of the IGA provides that an ‘excluded wagering service’, to which the offence, complaints, and advertising ban provisions do not apply, does not include continuous wagering services.

The IGA is not intended to exclude or limit the operation of a law of a State or Territory to the extent that that law is capable of operating concurrently with the IGA (s.69 refers). If any breach of state and territory laws has occurred, it is the responsibility of the relevant state or territory to investigate the matter.

**Defence: Project Sea 1390**

(Question No. 67 amended)

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

With reference to Project Sea 1390:

(1) Can an assessment be provided of how this project is proceeding.

(2) Have the problems that caused the project to be delayed by 2 years been overcome.

(3) Is there a chance that the project could be further delayed.

(4) When will the upgrade of the HMAS Sydney be completed.

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

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

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

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

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

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

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

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

(3) The upgrade project is a significant and complex undertaking. As with all such projects, the level of uncertainty and risk is carefully monitored by the Commonwealth and managed by the prime contractor. At this time, delays are being managed within the revised schedule. However, future unforeseen delays can never be ruled out. The contract contains a delivery window to allow for such occurrences.
(4) Mid-May 2005, but with a contract delivery date of 17 June 2005.

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

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

(7) Contract savings are still to be negotiated with the prime contractor.

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

(9) The performance incentive provisions of the contract have been restructured so that ADI is focused on schedule performance and the incentives are weighted towards achievement of an 18-month target schedule with payments reducing to zero at 24-months delay. It is to both Defence and ADI’s benefit to achieve earliest viable delivery of the required capability.