INTERNET
The Journals for the Senate are available at

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

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

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

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

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

THURSDAY, 9 DECEMBER

<table>
<thead>
<tr>
<th>Chamber</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Petitions—</td>
<td>Military Detention: Australian Citizens.................................................. 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Immigration: Asylum Seekers ........................................................................ 1</td>
<td></td>
</tr>
<tr>
<td>Notices—</td>
<td>Withdrawal ........................................................................................................ 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Presentation ....................................................................................................... 2</td>
<td></td>
</tr>
<tr>
<td>Business—</td>
<td>Rearrangement .................................................................................................. 3</td>
<td></td>
</tr>
<tr>
<td>Notices—</td>
<td>Presentation ....................................................................................................... 3</td>
<td></td>
</tr>
<tr>
<td>Committees—</td>
<td>Legal and Constitutional References Committee—Reference .................. 3</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Senate Voters’ Choice (Preference Allocation) Bill 2004—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>First Reading .................................................................................................. 4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Second Reading ................................................................................................. 4</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Environment: Tarkine Wilderness ..................................................................... 5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Human Cloning .................................................................................................. 5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2)—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Motion for Disallowance .................................................................................. 6</td>
<td></td>
</tr>
<tr>
<td>Committees—</td>
<td>Employment, Workplace Relations and Education Legislation Committee—Reference .... 6</td>
<td></td>
</tr>
<tr>
<td></td>
<td>International Human Rights Day ........................................................................ 6</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Foreign Affairs: East Timor ............................................................................. 8</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Forestry: Management ...................................................................................... 9</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Education: University Funding ......................................................................... 9</td>
<td></td>
</tr>
<tr>
<td>Committees—</td>
<td>Rural and Regional Affairs and Transport Legislation Committee—Meeting .......... 10</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Foreign Affairs: West Papua ............................................................................... 10</td>
<td></td>
</tr>
<tr>
<td>Business—</td>
<td>Consideration of Legislation ........................................................................... 11</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rearrangement .................................................................................................. 11</td>
<td></td>
</tr>
<tr>
<td>Committees—</td>
<td>Publications Committee—Report ...................................................................... 12</td>
<td></td>
</tr>
<tr>
<td>Budget—</td>
<td>Consideration by Legislation Committees—Additional Information ............... 12</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Consideration by Legislation Committees—Additional Information ............... 13</td>
<td></td>
</tr>
<tr>
<td>Committees—</td>
<td>Scrafton Evidence Committee—Report ............................................................. 13</td>
<td></td>
</tr>
<tr>
<td>Business—</td>
<td>Consideration of Legislation ........................................................................... 13</td>
<td></td>
</tr>
<tr>
<td>Higher Education Legislation Amendment Bill (No. 3) 2004—</td>
<td>First Reading .................................................................................................. 25</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Second Reading ................................................................................................. 25</td>
<td></td>
</tr>
<tr>
<td>Australian Passports Bill 2004,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Australian Passports (Application Fees) Bill 2004, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Australian Passports (Transitionals and Consequentials) Bill 2004—</td>
<td></td>
</tr>
<tr>
<td></td>
<td>First Reading .................................................................................................. 26</td>
<td></td>
</tr>
</tbody>
</table>
Second Reading................................................................................................................. 26
Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004—
  First Reading .................................................................................................................. 28
  Second Reading ............................................................................................................. 28
A New Tax System (Goods and Services Tax Imposition (Recipients)—General) Bill 2004,
A New Tax System (Goods and Services Tax Imposition (Recipients)—Excise) Bill 2004, and
A New Tax System (Goods and Services Tax Imposition (Recipients)—Customs) Bill 2004—
  First Reading ............................................................................................................. 29
  Second Reading ............................................................................................................. 29
Bills Returned from the House of Representatives ................................................................ 30
Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2)—
  Motion for Disallowance ............................................................................................. 30
James Hardie (Investigations and Proceedings) Bill 2004—
  Second Reading ......................................................................................................... 38
  Third Reading ............................................................................................................... 47
Tax Laws Amendment (Retirement Villages) Bill 2004—
  Consideration of House of Representatives Message ................................................... 47
Business—
  Rearrangement ........................................................................................................... 48
Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2004—
  Second Reading ......................................................................................................... 49
  Third Reading ............................................................................................................... 54
Higher Education Legislation Amendment Bill (No. 3) 2004—
  Second Reading ......................................................................................................... 54
  Third Reading ............................................................................................................... 61
Business—
  Rearrangement ........................................................................................................... 61
Governor-General’s Speech—
  Address-in-Reply ........................................................................................................ 61
Ministerial Arrangements ................................................................................................. 66
Questions Without Notice—
  James Hardie Group of Companies ............................................................................. 66
Distinguished Visitors ...................................................................................................... 68
Questions Without Notice—
  Indigenous Affairs: National Indigenous Council .......................................................... 68
  James Hardie Group of Companies ............................................................................. 69
  Howard Government: Economic Policy ......................................................................... 71
  Regional Services: Program Funding ........................................................................... 72
  Nuclear Energy: Waste Storage .................................................................................... 73
  Natural Heritage Trust .................................................................................................. 73
  Nuclear Energy: Floating Power Stations ..................................................................... 74
  Telstra: Services ............................................................................................................ 74
  Insurance: Public Liability ............................................................................................ 75
Distinguished Visitors ...................................................................................................... 77
Questions Without Notice—
  Telecommunications: Services ................................................................................... 77
  Immigration: Asylum Seekers ....................................................................................... 78
  Bushfires ....................................................................................................................... 79
  Immigration: Asylum Seekers ....................................................................................... 80
CONTENTS—continued

Questions Without Notice: Additional Answers—
   Nuclear Energy: Waste Storage ................................................................. 81
   Regional Services: Program Funding ......................................................... 81
   Natural Heritage Trust .............................................................................. 82
Questions Without Notice: Take Note of Answers—
   James Hardie Group of Companies ......................................................... 82
   Immigration: Asylum Seekers ................................................................... 88
Committees—
   Reports: Government Responses ............................................................ 89
   Reports: Government Responses ............................................................ 95
   Legal and Constitutional Legislation Committee—Documents ............... 104
   Economics References Committee—Reference ....................................... 105
   Membership ............................................................................................ 106
Documents—
   Department of Immigration and Multicultural and Indigenous Affairs .... 106
   Consideration ....................................................................................... 107
Committees—
   Employment, Workplace Relations and Education References Committee—Interim Report ................................................................. 108
   Rural and Regional Affairs and Transport Legislation Committee—Interim Report ................................................................. 109
   Legal and Constitutional References Committee—Report .................... 110
   Consideration ....................................................................................... 114
Documents—
   Consideration ....................................................................................... 114
   Leave of Absence .................................................................................. 114
Notices—
   Presentation ............................................................................................ 114
Adjournment—
   Australian Labor Party: Centenary House ............................................ 114
   Royal Commission of Inquiry into the Centenary House Lease ............ 117
   Australian Labor Party: Centenary House ............................................ 120
   Australian Democrats ............................................................................. 120
   Lyons, Dame Enid .................................................................................. 123
   Valedictory ............................................................................................. 124
   Valedictory ............................................................................................. 124
   Valedictory ............................................................................................. 125
Documents—
   Tabling .................................................................................................... 125

Questions on Notice
   Environment: Woodsreef Asbestos Mine—(Question No. 11) .............. 127
   National Electricity Code Administrator—(Question No. 55) ............... 127
   Health: National Women’s Health Program—(Question No. 88) ......... 128
   Environment: Mine Sites—(Question No. 89) ........................................ 128
Thursday, 9 December 2004

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

PETITIONS

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

Military Detention: Australian Citizens
To the honourable the President and Members of the Senate in Parliament assembled:
The Petition of the undersigned shows:
As citizens of Australia and residents of the Federal Seat of Lyne in New South Wales, we deplore the lack of support and assistance offered to two Australian Citizens David Hicks and Mamdouh Habib by the FEDERAL COALITION GOVERNMENT.

Hicks and Habib have been held in detention at Guantanamo Bay, a U.S. Naval Base on the Island of Cuba for over two years. They have been denied their basic HUMAN RIGHTS in direct contravention of the Geneva Convention on Prisoners of War (Article 5).

Your Petitioners respectfully request the House take action immediately to assist the aforementioned detainees to gain their release and to be repatriated to Australia.

by Senator Faulkner (from 51 citizens).

Immigration: Asylum Seekers
To the Honourable the President and the Members of the Senate in Parliament assembled:
Whereas the 1998 Synod of the Anglican Diocese of Melbourne carried without dissent the following motion:
“That this Synod regrets the Government’s adoption of procedures for certain people seeking political asylum in Australia which exclude them from all public income support while withholding permission to work, thereby creating a group of beggars dependent on the Churches and charities for food and the necessities of life;
and calls upon the Federal government to review such procedures immediately and remove all practices which are manifestly inhumane and in some cases in contravention of our national obligations as a signatory of the UN Covenant on Civil and Political Rights.”

We, therefore, the individual, undersigned attendees at All Saints Anglican Church, Nunawading Vic 3071, petition the House of Representatives in support of the above mentioned Motion.

AND we, as in duty bound will ever pray.

by Senator Fifield (from 33 citizens).

Petitions received.

NOTICES

Withdrawal

Senator TCHEN (Victoria) (9.31 a.m.)—I give notice that at the giving of notices on the next day of sitting I shall withdraw business of the Senate notices of motion Nos 3 and 4 standing in my name for 11 sitting days after today for the disallowance of the following instruments.

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

National Health (Private Health Insurance Levies) Regulations 2004, as contained in Statutory Rules 2004 No. 187 and made under the National Health Act 1953.

I seek leave to incorporate in Hansard the committee’s correspondence concerning these regulations.

Leave granted.

The documents read as follows—
National Health Amendment Regulations 2004 (No.2) Statutory Rules 2004 No. 186
National Health (Private Health Insurance Levies) Regulations 2004 Statutory Rules 2004 No. 187
5 August 2004
The Hon Tony Abbott MP
Minister for Health and Ageing
Parliament House
CANBERRA ACT 2600
Dear Minister


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

The Committee would appreciate your advice as soon as possible, but before 3 September 2004, to enable it to finalise its consideration of these regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

Tsebin Tchen
Chairman

2 December 2004
Senator Tsebin Tchen
Chairman
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Tchen


In response to your enquiries regarding the imposition of levies that have been collected prior to 1 July 2004, I draw the Committee’s attention to the following provisions:

- Section 9 of the Private Health Insurance (Council Administration Levy) Act 2003 which validates the imposition of the Private Health Insurance Administration Council administration levy before 1 July 2004;
- Section 11 of the Private Health Insurance (Collapsed Organization Levy) Act 2003, which validates the imposition of the collapsed organization levy before 1 July 2004;
- Section 9 of the Private Health Insurance (ACAC Review Levy) Act 2003, which validates the imposition of the Acute Care Advisory Committee review levy before 1 July 2004; and
- Section 9 of the Private Health Insurance (Reinsurance Trust Fund Levy) Act 2003, which validates the imposition of the Reinsurance Trust Fund levy before 1 July 2004.

The Committee should also have regard to the explanatory material which supplements this legislation.

No further action is required to validate the imposition of these levies that have been collected prior to these amendments.

Yours sincerely

Tony Abbott
Minister for Health and Ageing

Presentation

Senator Brown to move on the next day of sitting:
That the Senate calls on the Government to investigate the potential for a World Heritage nomination for Tasmania’s Tarkine Wilderness.

Senator Greig to move on the next day of sitting:
That the proposed accreditation of the Southern Bluefin Tuna Fisheries Management Plan (as amended), dated 10 November 2004 and made under subsection 33(3) of the Environment Protection and Biodiversity Conservation Act 1999, be opposed.
BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (9.33 a.m.)—by leave—I move:

That on Thursday, 9 December 2004:

(a) the hours of meeting shall be 9.30 am to adjournment;

(b) the routine of business from not later than 4.30 pm shall be:

(i) government business,

(ii) consideration of orders of the day relating to government documents, and

(iii) consideration of committee reports, government responses and Auditor-General’s reports;

(c) divisions may take place after 4.30 pm; and

(d) the question for the adjournment of the Senate shall be proposed after the Senate has considered the business listed in paragraph (b) above.

Question agreed to.

NOTICES

Presentation

Senator MURRAY (Western Australia) (9.34 a.m.)—by leave—I give notice that, on the next day of sitting, I shall move:

That the terms of reference for the Legal and Constitutional References Committee inquiry into the effectiveness and appropriateness of the Privacy Act 1988, be amended as follows:

Paragraph (b), after “effectiveness”, insert “including how privacy principles and processes should interact with the need for access to records”.

That will be taken up next February. I am saying that with the expectation that the motion will be agreed to.

COMMITTEES

Legal and Constitutional References Committee Reference

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.35 a.m.)—At the request of Senator Stott Despoja, I move:

That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report by 30 June 2005:

(a) the overall effectiveness and appropriateness of the Privacy Act 1988 as a means by which to protect the privacy of Australians, with particular reference to:

(i) international comparisons,

(ii) the capacity of the current legislative regime to respond to new and emerging technologies which have implications for privacy, including:

(A) ‘Smart Card’ technology and the potential for this to be used to establish a national identification regime,

(b) biometric imaging data,

(c) genetic testing and the potential disclosure and discriminatory use of such information, and

(B) microchips which can be implanted in human beings (for example, as recently authorised by the United States Food and Drug Administration), and

(iii) any legislative changes that may help to provide more comprehensive protection or improve the current regime in any way;

(b) the effectiveness of the Privacy Amendment (Private Sector) Act 2000 in extending the privacy scheme to the private sector, and any changes which may enhance its effectiveness; and

(c) the resourcing of the Office of the Federal Privacy Commissioner and whether current levels of funding and the powers available to the Federal Privacy Commis-
sioner enable her to properly fulfil her mandate.

Question agreed to.

SENATE VOTERS’ CHOICE (PREFERENCE ALLOCATION) BILL 2004

First Reading

Senator BROWN (Tasmania) (9.36 a.m.)—I move:

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.

Question agreed to.

Senator BROWN (Tasmania) (9.37 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator BROWN (Tasmania) (9.37 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

SENATE VOTERS’ CHOICE (PREFERENCE ALLOCATION) BILL 2004

Above the line voting for the Senate was introduced in 1984 to meet the problem of increasing informal votes. With 50 to 100 Senate candidates in some states, many voters either made no attempt or lost their way and so lost their vote.

While above-the-line voting gave voters an easier alternative, it also had a cost. It took the decision on preferences from the voter and gave it to the party which the voter selected.

Parties lodge their preference selection with the Australian Electoral Office two weeks before election date. This selection numbers all candidates according to the party’s dictate. On polling day, above the line voters preferences are allocated according to that dictate.

Voters might expect that the party’s choice would be for the most like minded other party put to be put second and the most unlike party to be put last.

The parties engage in negotiations, off the public record, to gain mutual preferences advantage. Policy matters can be swept aside to gain advantage through preference arrangements with otherwise hostile parties.

The perverse situation can arise where the party allocation of preferences is against the expectation of many or even most of its voters.

Election analyst Antony Green put it well when speaking after the 2004 federal election “The deals that produced the Senate outcome have shown that the group ticket voting system used is starting to distort rather than reflect the will of the electorate”.

To overcome this problem, this bill creates preferential voting above-the-line. Voters may number the parties above-the-line according to their preference.

Of course, voters retain the more exacting option of choosing candidates by below-the-line voting.

In NSW similar legislation to this was introduced after the infamous 1999 ‘table cloth’ ballot paper for the Legislative Council election (In that election a party on less than ½ of 1 percent was able to manipulate the process to win a seat in the upper house. This was done with secret deals between a number of small parties with misleading names).

The new NSW above the line preferential voting system has worked well. It was used for the state election in 2003. It did not eliminate, as some had feared, the chance of small parties to being elected. The Greens, Shooters Party and Fred Nile all won upper house seats.

However this bill is not identical to the NSW scheme. In NSW there is optional preferential voting for both the lower and upper house. Voters
are not obliged to fill all the squares above the line and can limit their preferences to say 2 or 3 parties. Under this legislation, the Senate voting scheme will remain compulsory preferential. Voters will need to number all above the line boxes. This is consistent with the House of Representatives compulsory preferential system.

This amendment to the Electoral Act enhances democracy. It provides a simple and attractive option for voters to keep control of the destiny of their vote and so the make-up of the Senate.

Senator BROWN—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

ENVIRONMENT: TARKINE WILDERNESS

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

That the Senate calls on the Government to provide further protection of Tasmania’s Tarkine wilderness, including its temperate rainforest, coastline and Aboriginal heritage, for World Heritage listing while ensuring no overall loss of jobs in the state’s forestry industry.

Question agreed to.

HUMAN CLONING

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.38 a.m.)—At the request of Senator Stott Despoja, I ask that general business notice of motion No. 49 relating to human cloning be taken as formal.

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

Senator GEORGE CAMPBELL (New South Wales) (9.39 a.m.)—by leave—Labor’s position on this motion is one of broad support but on an issue such as human cloning, which is always accorded a conscience vote in the Labor Party, it is important that our reasons for not giving formal support are outlined.

The Australian system for the regulation and oversight of human cloning and related issues was developed after broad consultation with all the parties involved. Indeed, it was a great example of a bipartisan approach that involved both state and Commonwealth levels of government. The legislation that implemented this approach was approved by the Council of Australian Governments and an act was supported by all political parties after a series of votes on conscience. The system that is now in place and operational will be assessed by a review that is due to begin this month and completed within the next 12 months. It is therefore inappropriate that the Howard government should discard this considered and bipartisan approach without public notification of the United Nations debate and future vote that has international ramifications.

This is why Labor supports the call in this motion for the Howard government to consult with the Council of Australian Governments and with the stakeholders. We also call on the government to be open and frank with the Australian people about why it has apparently dissented from Australia’s national position on human cloning in an international forum. However, the subject of this motion is such that Labor is unable to accord the motion formal support.

Senator HARRADINE (Tasmania) (9.40 a.m.)—by leave—This is an inappropriate method of dealing with probably one of the most important issues that are going to come before us at some stage—that is, the question of human cloning. There was widespread consultation. There was a painful and long debate in the chamber on the Research Involving Human Embryos Bill 2002. By a majority the bill was adopted. But the main supportive argument put forward—a fallacious argument, in my view—was that these human embryos are spare in the IVF program and therefore they may as well be used.
The cloning of human embryos to be deliberately destroyed to harvest their stem cells is an entirely different matter. I think it is entirely inappropriate to try to put this motion through as a formal motion. I agree with Senator George Campbell that there should be further discussion. In fact, the structure is there to have that.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (9.42 a.m.)—I understood that Senator George Campbell was saying they were denying formality. I move:

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.

Question negatived.
tralia during which he raised hundreds of dollars for Tibetan refugees and promoted the cause of a free Tibet.

Question put.

The Senate divided. [9.49 a.m.]

(The President—Senator the Hon. Paul Calvert)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noes</td>
<td>40</td>
</tr>
<tr>
<td>Majority</td>
<td>32</td>
</tr>
</tbody>
</table>

AYES

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

NOES

Barnett, G.      Bishop, T.M.
Boswell, R.L.D.  Buckland, G.
Calvert, P.H.    Campbell, G.
Chapman, H.G.P.  Colbeck, R.
Collins, J.M.A.  Crossin, P.M.
Denman, K.J.     Ellison, C.M.
Evans, C.V.      Faulkner, J.P.
Ferguson, A.B.   Ferris, J.M. *
Fifield, M.P.    Forshaw, M.G.
Hogg, J.J.       Humphries, G.
Johnston, D.     Kemp, C.R.
Lightfoot, P.R.  Ludwig, J.W.
Lundy, K.A.      Mackay, S.M.
McGauran, J.J.J.  McLucas, J.E.
Moore, C.        O’Brien, K.W.K.
Payne, M.A.      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 NETTLE (New South Wales)

(9.52 a.m.)—I move:

That the Senate—

(a) notes that 10 December is International Human Rights Day and joins 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.

Question put.

The Senate divided. [9.54 a.m.]

(The President—Senator the Hon. Paul Calvert)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noes</td>
<td>41</td>
</tr>
<tr>
<td>Majority</td>
<td>33</td>
</tr>
</tbody>
</table>
I move:

That the Senate—

(a) notes:

(i) that the inaugural Dr Andrew McNaughtan memorial lecture was delivered on 7 December 2004, which also marks the 29th anniversary of the Indonesian invasion of East Timor,

(ii) Dr McNaughtan’s major contribution to the struggle of the East Timorese people, including his work to achieve economic justice in relation to the Timorese claim to oil and gas reserves in the Timor Sea,

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

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

(b) calls on the Government to:

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

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

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

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

* denotes teller

Question negatived.

FOREIGN AFFAIRS: EAST TIMOR

Senator NETTLE (New South Wales) (9.57 a.m.)—I move:

That the Senate—

(a) notes:

(i) that the inaugural Dr Andrew McNaughtan memorial lecture was delivered on 7 December 2004, which also marks the 29th anniversary of the Indonesian invasion of East Timor,

(ii) Dr McNaughtan’s major contribution to the struggle of the East Timorese people, including his work to achieve economic justice in relation to the Timorese claim to oil and gas reserves in the Timor Sea,

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

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

(b) calls on the Government to:

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

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

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

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

Senator GEORGE CAMPBELL (New South Wales) (9.58 a.m.)—by leave—Labor cannot support the motion in its current form. Labor are happy to work with the minor parties on notices of motion of this nature, and in this instance we did work constructively with the senator’s office. However, we were unable to agree in the final analysis because the proposed counter amendments were contrary to existing Labor policy.
Labor strongly believe in negotiating in good faith with the Timorese on the disputed maritime boundaries between our two countries with a view to having an agreement acceptable to both sides. Our policy is that the government should do all things reasonably practicable to reach a negotiated settlement as rapidly as possible and based on the joint aspirations of both countries. We believe a negotiated settlement should be consistent with international law and the United Nations Convention on the Law of the Sea.

During the election campaign we had no objection to the maritime boundary negotiations taking place, being mindful that a settlement before the end of the year is an important requisite for the proponents of the Greater Sunrise project to commit to move the project forward. The realisation of the Greater Sunrise project would unlock revenue for both East Timor and Australia. We note with disappointment the apparent breakdown in relations between Australia and East Timor since the negotiations, despite comments by both sides prior to the federal election that the negotiations were anticipated to move rapidly to an amicable conclusion.

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

The Senate divided. [10.01 a.m.]
(The President—Senator the Hon. Paul Calvert)

Ayes............. 8
Noes............. 38
Majority......... 30

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

NOES
Barnett, G.        Bishop, T.M.
Boswell, R.L.D.    Brandis, G.H.
Buckland, G.       Calvert, P.H.
Campbell, G.       Chapman, H.G.P.
Colbeck, R.        Collins, J.M.A.
Crossin, P.M.      Denman, K.J.
Eggleston, A.      Faulkner, J.P.
Ferguson, A.B.     Ferris, J.M. *
Fifield, M.P.      Hogg, J.J.
Humphries, G.      Johnston, D.
Kemp, C.R.         Ludwig, J.W.
Lundy, K.A.        Macdonald, J.A.L.
Mackay, S.M.       McGauran, J.J.J.
McLucas, J.E.      Moore, C.
Payne, M.A.        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.

FORESTRY: MANAGEMENT

Senator BROWN (Tasmania) (10.04 a.m.)—I move:
That the Senate calls on the Government to provide further protection of identified Tasmanian high conservation value old-growth forests, rainforests, and other ecosystems while ensuring no overall loss of jobs in the state’s forestry industry through the implementation of a sustainable industry plan based on the use of plantation timber, selective use of native timber, value-adding, and downstream processing.

Question agreed to.

EDUCATION: UNIVERSITY FUNDING

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.05 a.m.)—At the request of Senator Stott Despoja, I move:
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 Sup-
port 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 underfunding 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.

Question agreed to.

FOREIGN AFFAIRS: WEST PAPUA

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.06 a.m.)—At the request of Senator Stott Despoja, I move:

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.

Question negatived.

Senator Brown—I ask that the Greens’ support for Senator Stott Despoja’s motion relating to West Papua be recorded.
BUSINESS

Consideration of Legislation

Senator GEORGE CAMPBELL (New South Wales) (10.07 a.m.)—At the request of Senator Marshall, I move:

(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.

Question agreed to.

Rearrangement

Senator LUDWIG (Queensland) (10.08 a.m.)—by leave—I would like to outline the process for today. If the President recalls, earlier this morning a motion was passed which indicated that effectively we would be dealing with what was on the Order of Business until we rise, including, in essence, the James Hardie (Investigations and Proceedings) Bill 2004, the Disability Discrimination Amendment (Education Standards) Bill 2004, the Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2004, the Higher Education Legislation Amendment Bill (No. 3) 2004 and then the address-in-reply. There seems to have been a slip in the process because that motion was not provided to the opposition and I am not sure whether it was provided to the minor parties either. Usually this place works by cooperation. Especially on what could be the last day of sitting—I suspect it will be the last day—Christmas cheer usually descends and we work cooperatively to the conclusion of the program.

I recognise that the program is, in this instance, not onerous, although it has been quite a tiring period. We still had the reasonably good process of leaders and whips meeting earlier in the week to resolve which bills will be considered and the government, as usual, provided an essential bills list. We work cooperatively through that program in dealing administratively with it. We obviously have our positions in respect of the bills: some we agree to, some we object to and some we amend. They are usually dealt with in seriatim and we alter them to suit. We do not usually add bills, even though there may be room in the program.

To be fair to the government—although I do not really wish to be, because I think sometimes they might be arrogant, but not in this respect—there is usually a reserve where the government may wish to add an urgent or unforeseen bill to the list. We have already done that once and the government went about it in what I would call ‘the right way’. They ensured that everyone was advised. I was the opposite number for that bill, so I shadowed for it—the Customs Amendment Bill 2004. We then agreed that it was an urgent bill, the government demonstrated its bona fides and were able to provide a clear indication that it was needed before we rose. In that instance the Greens and the Democrats could see the sense in that and agreed to the urgency and we were able to fit the bill in the program.

That does not seem to have occurred in this instance, and I do not hold the government to blame. They may be able to expand on this, but it seems to be just a process of getting excited about going home a bit earlier today. Normally we would expect the government to consult with the minor parties and the relevant shadow ministers in relation to additions to the Notice Paper to be dealt with before rising. They would consult to ensure that the bills could be dealt with and meet the criteria for being urgent.

I am sorry, Mr President, that this is taking more time than I originally thought, but it is important we understand where we are on
the program if we are to get home at a reasonable hour. That is entirely likely if we can gain cooperation from everyone. If we do not deal in a cooperative way and with full knowledge, legislation sometimes run off the rails. You could see that easily happening with something like the Disability Discrimination Amendment (Education Standards) Bill 2004 or the Higher Education Legislation Amendment Bill (No. 3) 2004. If somebody seeks to amend the legislation and it is agreed to, then the amendment has to go to the House and, if agreed to there, has to come back to the Senate. So the program can sometimes ‘spin out’ longer than expected.

In this instance, the government should clearly say that they will come back with a motion that is agreed to by all parties in the Senate in order to deal with the program in the hour set down. With the cooperation of everyone, I think they can find a suitable time to cease. Normally we have a sessional order for no divisions and no quorums after 4.30 p.m. and we then move to government documents at 6 p.m. I am not going to suggest a time, but it looks as though the program, with cooperation, could stay roughly within those bounds. As always, we can deal with the address-in-reply—always an important matter to be dealt with by the Senate—to completion as well. That sets down the issues that I need the government to provide some assurance on, so that we can deal cooperatively with today’s work.

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (10.13 a.m.)—by leave—The government is in the process of drafting a motion which I think will reflect much of what Senator Ludwig has said. The bills the government has for passing before the rising of the Senate today are the James Hardie (Investigations and Proceedings) Bill 2004, the Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2004 and the Higher Education Legislation Amendment Bill (No. 3) 2004 and we have a message as well relating to the Tax Laws Amendment (Retirement Villages) Bill 2004 which will have to be dealt with. On that basis, we would exclude the Disability Discrimination Amendment (Education Standards) Bill 2004 from the list. I understand the Democrats were looking at some amendment to that bill—there is some issue with that. The government will not proceed with that bill on the list, but would want the other bills I mentioned dealt with before the rising of the parliament. The approach Senator Ludwig mentioned is reasonable. We are drafting a motion to reflect that. I thought the previous motion had been circulated. I will ensure the amended motion is circulated to opposition, Democrat, Green and Independent senators and that we have a chance to deal with it prior to moving it in the chamber. That is the government thinking in relation to today’s itinerary. I think that should be achievable.

COMMITTEES
Publications Committee
Report
Senator EGGLESTON (Western Australia) (10.15 a.m.)—At the request of the Chair of the Standing Committee on Publications, Senator Watson, I present the first report of the Publications Committee.
Ordered that the report be adopted.

BUDGET
Consideration by Legislation Committees
Additional Information
Senator EGGLESTON (Western Australia) (10.16 a.m.)—On behalf of the Chair of the Employment, Workplace Relations and Education Legislation Committee, Senator Barnett, I present additional information received by the committee relating to hearings on additional and budget estimates for 2002-03 and 2003-04.
Consideration by Legislation Committees

Additional Information

Senator EGGLESTON (Western Australia) (10.16 a.m.)—On behalf of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present additional information received by the committee relating to hearings on the budget estimates for 2003-04.

COMMITTEES

Scrafton Evidence Committee

Report

Senator JACINTA COLLINS (Victoria) (10.16 a.m.)—I present the report of the Select Committee on the Scrafton Evidence, together with the Hansard record of proceedings.

Ordered that the report be printed.

Senator JACINTA COLLINS—I move:

That the Senate take note of the report.

I am pleased to speak on this report, not only as the chair of the committee but also as a member of its predecessor, the Select Committee on a Certain Maritime Incident, or the CMI committee as it became known. The CMI committee made significant headway in reconstructing what really happened during the so-called ‘children overboard’ affair. But it was forced to leave some questions unanswered, primarily because of government obstruction in banning serving and former MOPS staffers and departmental liaison officers from appearing before that committee—a ban that remains in force.

The most critical question that the CMI committee could not answer conclusively was whether the Prime Minister had lied to the Australian public about whether he was advised, before the 2001 federal election, that the ‘children overboard’ incident did not occur. As I said in my additional comments to the CMI report:

What is ... significant is that many trails lead directly to the Prime Minister’s Department, his Office and to the Prime Minister himself. Whilst it has not been claimed, nor proven, that the Prime Minister knew the truth and lied, many reports question his claim that “I never received any written contradiction of that (children thrown overboard), nor did I receive any verbal contradiction of that” and, regarding his office, “No”.

This is what makes Mr Scrafton’s evidence of his conversations with the Prime Minister on the night of 7 November 2001 so important. Mr Scrafton’s account of what he told the Prime Minister provides us with some of the missing pieces of this jigsaw.

The CMI committee knew that Mr Scrafton had told the Prime Minister that the video of the incident was ‘at best inconclusive’ as to whether any children had been thrown overboard. The new evidence that Mr Scrafton has revealed publicly suggests that he also gave the Prime Minister three other items of advice: firstly, that the photographs released in early October 2001 were definitely of the sinking of the refugee boat on 8 October and not of any children being thrown into the water the day before; secondly, that no-one in Defence that he dealt with still believed that children had been thrown overboard; and, thirdly, that an ONA report of 9 October 2001, which the Prime Minister believed confirmed the ‘children overboard’ incident, may have been based solely on ministers’ media statements and not intelligence. These points directly contradict the Prime Minister’s media statements on this issue before the 2001 election and his statements to the parliament shortly thereafter.

The Prime Minister continues to deny that he discussed anything with Mr Scrafton other than the SIEV4 video. In support of this position, the government has made a concerted effort to discredit Mr Scrafton, and the government senators’ report that I am...
tabling now continues along this vein. Through this inquiry, the committee has heard suggestions that Mr Scrafton is not to be believed simply because he has said he is not sure whether he had two or three conversations with the Prime Minister on 7 November 2001. The Prime Minister has suggested that Mr Scrafton cannot be believed because he did not give a full account of these conversations to an inquiry conducted by the Department of the Prime Minister and Cabinet in 2001.

The Prime Minister is asking us to believe his account over Mr Scrafton’s. But as yet he has produced no reasonable explanation as to why it would have taken two phone calls for Mr Scrafton to tell him a video was inconclusive. In September this year, he told journalists that his second phone call to Mr Scrafton was to tell him to release the video. But none of his staff recollect this or mention it in their statements. And it begs the question why Tony O’Leary, who was with the Prime Minister on the Wednesday night, then called Mr Scrafton on the Thursday morning to tell him the Prime Minister wanted to release the video. If the Prime Minister’s second phone call was to instruct Mr Scrafton to release the video, Mr O’Leary would have heard this and would have known his phone call to instruct Mr Scrafton to release the video was redundant.

Mr Scrafton’s account of his conversations with the Prime Minister is supported by evidence from a former senior Defence official and two military officers. Jenny McKenry says Mr Scrafton told her on 8 November 2001 that he had told the Prime Minister there was no evidence to support the ‘children overboard’ story. Major General Roger Powell and Commander Michael Noonan both recall Mr Scrafton telling them in December 2001 that he had told the Prime Minister children had not been thrown overboard. The Prime Minister has said these accounts are not evidence of what Mr Scrafton told the Prime Minister, only of what he told others of those conversations. But the Prime Minister has failed to explain why Mr Scrafton would have fabricated his version of these conversations for the purpose of telling a Defence colleague and an internal military investigation. Any reasonable person would think it much more likely that Mr Scrafton would be frank and honest with his colleagues in off-the-record conversations than that he would cook up a false story for inexplicable motives not knowing or having any foresight about how these events would subsequently pan out. The government senators’ report tabled with this report also ignores this evidence—the corroborcation from others.

Mr Scrafton’s failure to tell the Bryant inquiry about the content of his phone conversations with the Prime Minister raises more questions about the nature of the Bryant inquiry than it does about Mr Scrafton’s credibility. The inquiry’s terms of reference, as interpreted by the public servants conducting it, constrained it from inquiring into the internal workings of ministerial offices. As the CMI report found, it was in ministerial offices that important verbal advice failed to be passed on or acted on. Mr Scrafton’s evidence to this committee suggests that public servants giving evidence to the Bryant inquiry were afraid to tell the whole truth because saying anything embarrassing to this government would have professional consequences. The implications of this are disturbing—and we reflect upon this—not just for the Bryant report but for the ability of any internal inquiry investigating controversial issues to get to the truth of the matter.

One of the great furphies in this inquiry has been the suggestion that Mr Scrafton’s uncertainty over the number of phone calls with the Prime Minister discredits his evidence entirely. Mr Scrafton was up front in
telling this committee that he was not sure whether there were two or three conversations. This uncertainty is understandable. Half of the Prime Minister’s staff who made statements about the matter could not recall how many conversations there were either. Under vigorous questioning, Mr Scrafton remained certain about the key elements he had communicated to the Prime Minister on the night of 7 November 2001.

At this point I should make a comment about the alleged phone records that some have suggested discredit Mr Scrafton’s evidence. During this committee’s public hearing, a government senator selectively quoted from documents alleged to be phone records from all the mobile phones in the Lodge that night. He refused to table these documents as evidence so the committee could examine them and refused to identify their source. He did not offer Mr Scrafton the chance to view the documents for himself. This selective use of unsourced, unverified material in an effort to discredit a witness before a Senate committee should be seen for what it is: a cheap stunt put on for the media that is unworthy of the attention it received. Nothing that has been heard about those records has cast doubt on the core points of Mr Scrafton’s evidence.

The findings of this report are: the committee accepts the evidence of both Major General Powell and Commander Noonan that Mr Scrafton told them in December 2001 that he had advised the Prime Minister there was no substance to claims that children had been thrown overboard; the committee accepts Mr Scrafton’s evidence that he felt constrained by various factors in his submissions to the Bryant inquiry; the committee notes Mr Scrafton’s lack of certainty about the number and timing of his phone calls with the Prime Minister on 7 November 2001 but his certainty about the key points discussed during those conversations; the committee finds Mr Scrafton’s claim that he told the Prime Minister on 7 November 2001 that there was no evidence to substantiate the ‘children overboard’ story credible. The clear implication of his evidence is that the Prime Minister misled the Australian public in the lead-up to the 2001 federal election. Unfortunately, the government senators’ report following the committee’s report misrepresents this finding. The committee does not find Mr Scrafton overall to be credible; we simply find his claims supported by Powell, McKenry and Noonan to be credible.

As chair, I thank all those who supported the work of this committee, including those witnesses who gave their time to appear before it. In particular, I thank Mr Scrafton, who, as former committee chair Senator Ray has said, faced this day of questioning with grace and strength, knowing that by coming forward he would be subjected to vigorous scrutiny. I also thank the committee secretariat, Alistair Sands, Peta Leemen and Di Warhurst, for their work on this inquiry.

Senator BRANDIS (Queensland) (10.27 a.m.)—The poor old Australian Labor Party. For the last two months we have seen the unseemly spectacle of the Australian Labor Party refighting the 2004 election. I am sure that all of us who are professional politicians feel a little sympathy for a political party in such a devastating condition. But what we had never thought and what, I am sure, the Australian people never expected was that today, on the last day of the parliamentary year, we would see the even more absurd and ludicrous spectacle of the Australian Labor Party refighting the last election but refighting the election before last.

As anybody who took the care to sit through the ‘children overboard’ inquiry and the Scrafton inquiry and study the evidence—the Hansard and the documentary evidence—with an objective, analytical,
clinical and forensic mind knows, just as the first children overboard inquiry was a stunt, an attempt by the Australian Labor Party to refight the 2001 election, so the Scrafton inquiry, this cooked-up kangaroo court established by this Senate on the first day of the 2004 election campaign for a nakedly political purpose, was yet another attempt by the Australian Labor Party to use the processes of this place to score cheap political points. Anybody who thinks that either the ‘children overboard’ inquiry or the Scrafton inquiry was some attempt at an objective, neutral, forensic canvassing of evidence is deluding themselves.

As for Senator Collins, from whom we just heard a speech that misrepresented the position of the government senators in an egregious way, Senator Collins was not even on the Scrafton inquiry, Senator Collins was not even there on the day that Mr Scrafton was examined by this Senate committee. She was substituted after Senator Ray resigned as chairman. The matters of which Senator Collins speaks are matters of which she has no personal knowledge at all.

Mr Acting Deputy President, let me tell you what the facts are—they are in a very simple compass. Mr Scrafton, a man who had been a senior adviser to the former Minister for Defence, Mr Reith, was asked to view a video of the so-called ‘children overboard’ event, which took place on 7 October 2001. He reviewed that video on 7 November 2001. He was asked to do that by Mr Reith. He was also asked by Mr Reith to speak to the Prime Minister on the telephone—it is uncontroversial that the Prime Minister rang him—to tell him what was on the video. That was Mr Scrafton’s only relevant involvement in these events. The Prime Minister, who was in Canberra at the Lodge on the evening of 7 November 2001 with four of his senior advisers and Mrs Howard, was preparing to speak to the National Press Club the next day, 8 November 2001, in the last week of the 2001 election campaign. The ‘children overboard’ issue had bubbled to the surface again late in the campaign and Mr Howard wanted to make sure that he was fully informed of all the material facts and circumstances. Mr Howard rang Mr Scrafton on the evening of 7 November. We know that because Mr Scrafton said so and the Prime Minister said so. It is uncontroversial that there was at least one fairly lengthy telephone call.

At the Scrafton inquiry I produced the telephone records of every telephone that was at the Lodge that night, both for the landlines and the mobile phones of the Prime Minister, Mrs Howard and the four senior advisers.

Senator Jacinta Collins interjecting—

Senator BRANDIS—There is nothing strange about these telephone records, Senator Collins. I offered to show them to Senator Ray and Senator Faulkner, but they did not want to look at them because they did not want to see the truth. They wanted to avert their eyes from the truth. There is no suggestion that these were other than perfectly ordinary, commonplace telephone records that recorded the calls made. I have seen them, Senator Collins. Don’t call me a liar. I have seen the telephone records, and I can tell you they are completely ordinary, commonplace telephone records. They show that the Prime Minister initiated, from his mobile telephone on the evening of 7 November 2001, two telephone calls to Mr Scrafton. The first one was a longish telephone call at 8.41 p.m. that lasted some 9½ minutes, and the second one was a very brief telephone call that lasted for 51 seconds some time after 10 p.m. Mr Scrafton was at a restaurant in Sydney at the time he received those calls.

The number of telephone calls becomes important only if you have a mind that can
grasp the sequence of events and a mind that
can understand evidence which obviously
Senator Collins, with respect, you do not
have. One thing is common to all witnesses:
to Mr Scrafton, to the Prime Minister and to
the four senior advisers who were with the
Prime Minister at the Lodge on that evening
at the time that he placed the first telephone
call to Mr Scrafton, and that is that they only
talked about the contents of the video. That
is why Mr Howard was ringing Mr Scrafton,
because Mr Scrafton was the man who had
been given the job to look at the video. That
was the only involvement relevant to these
events that Mr Scrafton had. It was the only
reason why the Prime Minister would have
been ringing him. So he rang him. They had
a conversation that lasted about 9½
minutes
in which Mr Scrafton described to the Prime
Minister what he had seen, having viewed
the video earlier that day in Sydney.

How do we know that the only topic in the
first telephone conversation was the video?
Because everybody says so. And Mr Scrafton
himself said that the Prime Minister, when
they were having the telephone conversation,
adopted the practice of repeating aloud so
that the four senior advisers who were with
him in his study at the Lodge could hear
what Mr Scrafton was telling him. So we
have Mr Scrafton saying, ‘I only told the
Prime Minister about the video in that first
telephone conversation and, as I was relating
this information to him, he repeated it aloud
so that others could hear him.’ Mr Scrafton
was aware the Prime Minister was in the
company of other people. Mr Scrafton never
suggested that the Prime Minister’s reiteration
of what he, Scrafton, was telling the
Prime Minister was other than thorough and
accurate.

The Prime Minister said the same thing:
‘All Scrafton told me about was the video.’
The four people in the room with the Prime
Minister—the Secretary to the Cabinet, Mr
McClintock; the Prime Minister’s Principal
Private Secretary, Mr Nutt; his Chief of Staff,
Mr Sinodinos; and his Press Secretary, Mr
O’Leary—have all given statements, which
are appendix 4 to the report, saying the same
thing. They said that all the Prime Minister
talked about in that 9½-minute telephone
conversation with Mr Scrafton was the
video. So we are all in agreement about that.

Senator Ludwig—Were you there?

Senator BRANDIS—No, but everybody
who was there, Senator Ludwig, said the
same thing, and that is what Mr Scrafton
said. After the Labor Party lost the election
before last, the Prime Minister initiated the
Bryant inquiry. On 14 December, 37 days
after these events, when they were still fresh
in his mind and when he had no motive to
lie, Mr Scrafton appeared before the Bryant
inquiry. His statement to the Bryant inquiry
stated: ‘Mr Scrafton stated that he continued
to be marginally involved in events around
the incident’—that is, the ‘children over-
board’ incident—‘until the week before the
election and never had a sense that the original
advice was incorrect.’ That is what Mr
Scrafton said 37 days later. Then, out of the
blue, three years later at a time when another
election was about to be called, Mr Scrafton
changed his story in a material way and said,
‘Well, I actually talked about three other sub-
stantial matters—the still photographs, the
ONA report, and I told them the original re-
port about children overboard was wrong.’

Senator Jacinta Collins interjecting—

Senator BRANDIS—That is the evi-
dence, Senator Collins. The evidence is Mr
Scrafton’s own words, 37 days after the
event, when he had no motive to lie and his
sudden recollection of all these other topics,
which he could not possibly have discussed
in a brief, subsequent 51-second telephone
conversation—the only other telephone con-
versation that took place between those two
men on that evening. The conclusion of the committee is absurd and against the weight of the evidence. (Time expired)

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (10.37 a.m.)—I was a member of the Select Committee on the Scrafton Evidence and also of the original Select Committee on a Certain Maritime Incident inquiry, known more colloquially as the ‘children overboard inquiry’. This, I guess, is ‘children overboard part 2’. I would like to thank the committee secretary and staff for enduring this experience, for doing so with professionalism and politeness and for producing a capable report at the end of it. This affair has been called a lot of things: ‘children overboard’, ‘truth overboard’, ‘sanity overboard’. We have seen a couple of examples of ‘perspective overboard’ just in the last couple of contributions. The thing that is frustrating me more and more is that the real, forgotten group of people in this issue are the refugees who were on that boat who were slandered by this government, by the Prime Minister, by a range of other ministers, with a grossly false allegation and who have never received any apology, despite the fact that the facts show—

Senator Brandis—Why don’t you talk about the facts, Senator Bartlett?

Senator Ferguson interjecting—

Senator Brandis interjecting—

Senator BARTLETT—And you try to even talk about it and all you cop is a volley of abuse from the government senators, who say, ‘Talk about the facts.’ The central, No. 1, undeniable fact that not even the government members would dispute is that those refugees on that boat did not throw any children overboard. They were slandered by this Prime Minister saying, ‘We do not want people like that in this country’; they were slandered by the other government ministers. They know that it did not happen and, after three years, there has never been the faintest attempt at apologising to that group of people and those people have never had a chance to put their case on the public record. Over two inquiries we have had day after day after day of hearings and evidence from all sorts of other people, but the people who were actually at the centre of the allegation have never had a chance to put their view on the public record. The disgrace is that, three years later, not only do those people not have apologies but 14 of them, as I understand it, are still locked up on Nauru as we speak—three years later, despite never having committed a crime. That is the outrage here.

Everybody would have their view about whether or not the Prime Minister misinformed the Australian people or deliberately did not correct the record. There is now sufficient evidence out there for people to form their own opinion on that, but the full story is not out there because the government continued to prevent people from appearing. But the fact is that there is sufficient evidence for people to form a reasonably informed opinion, and people’s opinions will differ. Mine is that there is no doubt that Minister Reith was aware that the public were being misled and did nothing to correct the record. Following the extra evidence from Mr Scrafton, I think it stretches the very edges of credibility to suggest that the Prime Minister was not aware, at least by the stage of his Press Club address, before the election.

That is my opinion. The fact is that I found Mr Scrafton to be quite a credible witness. We saw a very skillfully performed typical barrister’s trick from Senator Brandis, trying to look for any tiny discrepancy in Mr Scrafton’s evidence and then blowing it up into some huge irrelevant saga to draw attention away from the basic consistency of Mr Scrafton’s evidence and the basic corroboration that Mr Scrafton received from people
he said he told it to three years ago when he had no reason to make that up at the time. People corroborated what he said. This is a person who had nothing to gain by making these statements now. He was well aware that, in putting his head up, he was going to get it kicked—and he got it kicked and he will continue to get it kicked by this government and have his reputation slurred and slandered.

Senator Ferguson—He might have had a political motive, Andrew.

Senator Brandis—Do you think he might have had a political motive?

Senator Bartlett—We will get the sort of barrage of abuse and yelling that we get even in this sort of situation when you try to simply present an opinion. All you cop is yelling and abuse. Mr Scrafton knew that that was what he would get, and he will to some extent go down with that continually being put against his name. To that extent, I think he should be congratulated on having the courage to put his hand up.

There is a legacy here. The legacy and the value of this situation is not whether or not the Senate had made a finding that somebody lied or somebody did not. I do not really think that is the value of this. But the real value of this process of the two inquiries is that I think it will be much more difficult in the future for governments to get away with the sorts of things that this government did in 2001 in deliberately not correcting the record on a significant issue when they knew that it was false, hiding behind ministerial staff, conscripting the Public Service or significant sections of a department in that aim and putting all of them in an impossible position. That will be far more difficult in the future.

I hope that in the future Senate committees will also be more willing to push the envelope in getting important witnesses to appear in areas of sufficient public interest. The other thing that clearly came out in this inquiry—and I have drawn attention to this in my additional comments—is that, if the committee originally had pressed the matter and subpoenaed Mr Scrafton and others—

Senator Brandis—Don’t blame us! It was the Labor senators who voted against your motion, Andrew; we didn’t.

Senator Bartlett—I think I will make that point in a moment—thank you. He had specifically said—and I have drawn attention to it—that, if he had been subpoenaed originally under the ‘children overboard’ inquiry back in 2002, he would have appeared. Indeed, his advice, provided to me by the Defence Legal Service at the time, was that he would have had no alternative other than to appear before the Senate if he had been subpoenaed. I would suggest that that would probably mean that certain other people, if they had been subpoenaed, would have given similar advice, and we would have also heard it from them. I think things would have been very different if we had heard from Mr Scrafton then, and people would have been required at the time to respond to whatever Mr Scrafton put forward. The extra information coming out in the context of that inquiry back in 2002 would, I think, have clearly led to further information coming out, and it would have been much more difficult for other people to resist appearing before the inquiry. Mr Reith is a special case—I would not have been surprised if he had fought it all the way to the High Court. I am not necessarily suggesting that the Senate should do that, but I think it was a grave mistake on the part of the original committee not to subpoena Mr Scrafton and the other ministerial staffers to appear.

Senator Brandis—Whose fault was that, Andrew?

Senator Bartlett—As Senator Brandis encourages me to remind the Senate, that
was because of the Labor members of the committee not supporting my motion within the committee to move for subpoenas to be issued. I have said that the government members stood back, vacated and allowed the Labor members to decide whether or not—

Senator Brandis interjecting—

Senator BARTLETT—Yes, you stood back, you abstained and you allowed the Labor members to decide whether or not to step up to the plate. Labor members did not step up to the plate, so I was left at the plate on my own and the subpoenas did not happen. The real tragedy is that that did not happen, because—as we have seen from Mr Scrafton himself—he would have appeared. It would have been far better, I think, for all sides in this debate—and for Mr Scrafton himself, in hindsight—if that had happened and if he had appeared and made his statements at that time and answered flow-on questions that would undoubtedly have arisen. That did not happen and I hope it will be a lesson to future Senate committees. I am not saying we should subpoena everybody and anybody, by any means, but when it is sufficiently serious—as I believe this was—and when there is sufficient deliberate obstruction by the government then it should be pursued. So I hope one legacy of this is that Senate committees in future will be willing to push the envelope a bit further in trying to uncover government obstructionism and trying to uncover the truth from all sides.

I think another legacy of this, part of which Mr Scrafton has to be given credit for, is that future governments will find it harder to hide behind a smokescreen of ministerial staff and the Public Service. I do not say they will not keep trying to do it—I am sure they will find ways to do it—but they will find it harder to do a direct repeat of this sort of instance. So that is a real and positive outcome from these inquiries. People can argue backwards and forwards about the politics, but I think there has been a clear step forward. Indeed, another Senate committee—the Senate Finance and Public Administration Committee—has also done an inquiry and made some recommendations into this area. So those people, particularly Mr Scrafton on showing his courage, should be congratulated.

The bottom line is that the refugees have never had their side of the story told. Many of them are now in Australia on temporary protection visas and they still have uncertainty because they do not know whether or not they will end up being forced back to Iraq in the future. There are still, three years later, 14 people imprisoned on Nauru. That is a disgrace. Whatever you might think about the Prime Minister’s honesty, the fact that he is willing to allow people who sought freedom by escaping from Nauru—

Senator Ferguson—There are no refugees!

Senator BARTLETT—Probably some of them are refugees, because the Minister for Immigration and Multicultural and Indigenous Affairs just last week reassessed some of them and found a bunch of Iraqis—27 of them—are indeed refugees, and they will come here. Why have they been locked up for three years on Nauru before they finally get to come here? That is the real outrage, and that is the peak issue. (Time expired)

Senator FERGUSON (South Australia) (10.47 a.m.)—Having listened to Senator Bartlett’s contribution to this debate, I rise to support the comments that were made by Senator Brandis earlier, where he explained in detail why we could not possibly agree with the findings that were made by the majority of the members of the committee, including Senator Bartlett.

Senator Brandis—Findings based on no evidence!
Senator FERGUSON—Correct. There is just one thing that I really want to stress at the outset here, and that is that one thing that was never questioned, and never questioned by the committee, was the timing of Mr Scrafton’s announcement and the timing of his letter to the Australian. Senator Bartlett and others have said Mr Scrafton had no motivation for doing this, except to put himself in the hot seat.

Senator Brandis—If you believe that you’d believe anything!

Senator FERGUSON—I agree. If you believe that, you would believe anything, Senator Brandis. Obviously, Mr Scrafton had plenty of motivation for writing this letter to the Australian. This is a man who, once we had got to the stage of having an inquiry, admitted lying in giving evidence. Yet we have a situation where the majority of the committee found Mr Scrafton’s evidence credible.

Senator Jacinta Collins—No, we didn’t find that!

Senator FERGUSON—I will read what you said in your finding. You found his claim that he ‘told the Prime Minister that there was no evidence’ very credible. Can I say that, by the end of the one day of hearing that we had with Mr Scrafton and other witnesses, I could not find anything credible about Mr Scrafton at all. When he was pressed at the end of the day—

Senator Brandis—It’s hard to find something credible about somebody who starts off by saying he’s a liar.

Senator FERGUSON—When he was summing up at the end of the day on all of the things that had been put to him during the day, eventually he had to admit, ‘Yes, what I did say was untrue.’ Those were his own words: ‘What I said was untrue.’ Why on earth should Mr Scrafton, after three years, change the story and change his version of the events that took place when, as Senator Brandis said, just 37 days after the supposed event he had a very clear recollection of events that took place and he told a totally different story to Ms Jennifer Bryant in the conducting of the Bryant inquiry? That is the key. If he had a clear recollection 37 days after the event, which Miss Bryant took down in conducting her inquiry, how on earth can we expect to believe that some three years later, when he revises his statement, revises his views, he has no clear recollection of how many phone calls he made, although he did insist to Mark Colvin that he had made three—

Senator Brandis—He had a perfectly clear recollection that he had made three and another perfectly clear recollection that he made two.

Senator FERGUSON—He absolutely insisted he made three, and then later on he says, ‘Perhaps I was wrong.’ He says, ‘I have a clear recollection I made three,’ and then later on he says, ‘Well, I was wrong.’ The majority report talks about his lack of certainty. I think that is about the most kind thing that anybody could ever say about his evidence. Lack of certainty: that is the most charitable definition you could put on any of the evidence that he gave to us, because in fact, right from the start, even when he was questioned in the morning and later in the day, his story changed as he went along.

There is only one thing that is quite clear from this report—that is, every public statement made by the Prime Minister has been found to be true. The Prime Minister said, ‘I clearly recollect there were only two phone calls.’ Mr Scrafton said he could not remember how many phone calls there were at all. He thought there were three, he insisted there were three and now he says, ‘I’m not sure; it could have been several.’ We have clear recollections. The Prime Minister’s public
statements have all been corroborated by other people. At no stage anywhere has any statement made by Mr Scrafton been corroborated by any other person—not one. So we have Mr Scrafton’s word—whether it be his first version, his second version or his third version. He said, ‘I didn’t tell the truth,’ and yet the majority of the committee is asking us to believe that this man has given us a credible story when, on every occasion, every public statement that the Prime Minister has made has been proved to be accurate and correct.

So when you come to decide for yourselves about who is telling the truth and who is not, you can only come to one conclusion: that the Prime Minister told the truth exactly as it was related to him. Mr Scrafton started off with one story and has been changing it ever since. He waited three years after making his original statement to the Bryant inquiry before he made a public statement in the pre-election environment, when, our colleagues opposite might suggest, he had no motivation.

I refuse to believe that Mr Scrafton had no motivation. I think he had plenty of motivation to make this statement, which was because it was the pre-election period, when other so-called ‘eminent’ Australians did so. I say ‘so-called’ because I do not know how you got on that list; I think if you happened to sign on to a letter it meant you became an eminent Australian. Mr Scrafton saw this and decided: ‘This is a time when I can have my little dig, too. I can make my contribution towards trying to defeat the incumbent government.’ I am sure that is the only motivation Mr Scrafton had.

I do not think Mr Scrafton realised that, in making his statement, there were people who would question as intensely—which my colleague Senator Brandis did that day—the change in his story. I do not think he was aware that we would put so much effort into finding out the detail, which we were able to question him on that day. When confronted with the final evidence that there were only two phone calls—not three—he became more and more reticent about committing himself to anything.

It is important for all those who read this report to spend some time reading the report of the government senators, which draws together all of the facts—not just some of them—and sets out the transcript so that people can read for themselves exactly what Mr Scrafton said when he was giving evidence before this committee. His own evidence belies any credibility that might be placed on any of the things he said over the three years. Certainly Senator Brandis and I, in listening to everything, have been able to establish that, when a person admits to a committee he is lying, for anybody then to say that they find his evidence credible is beyond belief. I want to read into the Hansard record the final part of our government senators’ report. A journalist asked the Prime Minister:

You said you had two conversations with Mr Mike Scrafton.

The Prime Minister said:

Yes, that is my recollection.

The journalist said:

What was the second one that day? Why did you feel you needed to ring him back?

The Prime Minister said:

Why did I feel ... well, look, Alex. I had two conversations with him and to my recollection—and you’re asking me—I mean, my recollection is, I had a reasonably lengthy one and then I had a very short one. As for the second one, it was probably to tell him to put the video out.

And that was the extent of the 51-second conversation. That explanation is corroborated not only by the telephone records that were produced but also by Mr Scrafton’s
original versions of the event. If people read the evidence carefully, they can only come to the conclusion which government senators came to—and that is that Mr Scrafton was not a reliable witness. The evidence that he gave before the committee was not credible. He admitted to lying. Yet the majority of committee members suggest that Mr Scrafton is a credible witness and that, for some reason or other, the Prime Minister was not telling the truth. Nothing could be further from the truth. Mr Scrafton’s own evidence is enough for us to come to the finding that he is not a credible witness and that his statements should not be believed. We do not know which one of his various statements he now believes to be the truth.

Senator FAULKNER (New South Wales) (10.56 a.m.)—I welcome the opportunity to speak on the report of the Select Committee on the Scrafton Evidence. Senators would be aware that the ‘children overboard’ issue has been a festering sore for the Howard government. It typifies the way the Howard government does business. I am pleased that the Scrafton committee has been able to fit some more of the pieces about the ‘children overboard’ issue into place. We now have more knowledge about what the Prime Minister, Mr Howard, former Defence Minister Mr Reith and members of their staff at the time knew about the ‘children overboard’ incident. We now know more about the government’s deceit during the 2001 election campaign. We now know conclusively that the Prime Minister knew that the ‘children overboard’ claims were false when he misled the Australian people at the National Press Club, just two days before the 2001 poll. We know more, as a result of the Senate Select Committee on the Scrafton Evidence, about the mendacity and deceit of the Howard government. We know more about the intimidation of public servants—public servants afraid to tell even internal inquiries about their knowledge of these events involving the Prime Minister and his staff both during and after the 2001 election. We saw again during the deliberations of the Scrafton committee how the government works.

When Mr Scrafton blew the whistle on the Prime Minister and the government, he was subjected to personal attack. That is standard operating procedure for the government. The main approach of the government was to attack the credibility and the motives of Mr Scrafton. It seemed to me—and I think it would have done to any reasonable person—that Mr Scrafton had no reason to make up his story; the only possible benefit he might have got from making these matters public was in some way to clear his conscience. But, before the Scrafton committee sat, phone records of the government somehow happened to find their way into the hands of Senator Brandis. That is another way that the Howard government does business. We do not know who provided those phone records. We do not know anything about their accuracy. The person or persons who provided those phone records could not be called to give evidence to the committee because Senator Brandis refused to identify who they were, so we could not test the evidence with them. We could not have the evidence in relation to those alleged phone records tested. But that did not seem to be of any concern at all to Senator Brandis. I have to admit that I like Senator Brandis.

Senator Jacinta Collins—No!

Senator FAULKNER—I do. I admire Senator Brandis for turning up to the committee. In fact, I would award him a gold medal for hide and effrontery for turning up to the Senate Select Committee on the Scrafton Evidence to question Mr Scrafton’s motives and challenge Mr Scrafton’s credibility. I would award Senator Brandis a gold medal for hide. I would award Senator Brandis that
medal because of what he said about the Prime Minister, who was the other key player in this matter. It takes a special amount of barefaced hypocrisy to turn up at a committee hearing and accuse Mr Scrafton of being a liar. Senator Brandis did this at a time when the national newspapers in this country were full of ‘rodentgate’. We heard Senator Brandis’s defence of ‘rodentgate’. He said, ‘I didn’t call the Prime Minister a lying rodent.’ Do you know what his defence was? He said he just called him ‘the rodent’. That was his defence: ‘I didn’t call him a lying rodent. I just called him the rodent.’ The use of the definite article was apparently very significant.

A couple of weekends ago I went into a pet shop, as I sometimes do. Our cat Bill has just celebrated his 105th birthday. In this pet shop I saw a sign marked ‘rodents’ and featuring an arrow. It must have been some word association thing, but my mind immediately went—for some reason or other, on the weekend—to Senator Brandis. For some reason or other, I followed the sign. There in this pet shop was a cage. In the cage were two rodents. They were actually rats, but they were in the rodents section. There was one rodent on the bottom of the cage. You could say it was as still as a mouse—excuse the pun. It was quite still. I thought to myself, ‘Aha, a lying rodent.’

Senator Kemp—Madam Acting Deputy President, I raise a point of order. We are well used to the contributions of someone whose own colleagues refer to him as ‘Dr Frankenstein’, but the use of quotations to impugn the reputation of a parliamentarian is not acceptable. Senator John Faulkner should be brought to order.

The ACTING DEPUTY PRESIDENT (Senator Crossin)—There is no point of order, Senator Kemp.

Senator Faulkner—The cage had a perspex or glass front. The other rodent in it was in a wheel. I do not know whether or not you call these things ‘rat wheels’. It was running around and around in ever-decreasing circles, and it reminded me of Senator Brandis’s parliamentary career after what occurred with the Scrafton committee and his comments about the Prime Minister. I thought it was a metaphor for the work of the Scrafton committee and Senator Brandis. Anyway, I do not know whether it was just word association, but even on the weekends I cannot get away from Senator Brandis and the work of the Scrafton committee. The clear message here is that a witness of credibility has exposed the Australian Prime Minister, Mr Howard, for what he is. (Time expired)

Question agreed to.

BUSINESS

Consideration of Legislation

Senator Kemp (Victoria—Minister for the Arts and Sport) (11.07 a.m.)—by leave—I move:

That the provisions of paragraphs (5) and (8) of standing order 111 not apply to the Higher Education Legislation Amendment Bill (No. 3) 2004, allowing it to be considered during this period of sittings.

Question agreed to.

Senator Kemp—I table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

Purpose of the Bill

The Bill will make amendments to the Higher Education Support Act 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 to enable the
provision of OS-HELP assistance, cross-institutional study, the repayment of advances and special purpose grants, and other technical adjustments to enhance the implementation of the higher education reforms; amend funding cap amounts in Part 7 of the Australian Research Council Act 2001 to update forward estimates; and make minor amendments to the Australian National University Act 1991.

**Reasons for Urgency**

It is important that the proposed amendments to the Higher Education Support Act 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 are passed in the 2004 Spring sittings given that higher education providers are implementing several complex reforms and new programmes towards the end of 2004 and require certainty in the legislative framework before the beginning of the 2005 calendar year. Also, students who will be seeking Commonwealth assistance in 2005 require accurate information to be provided to them before the beginning of the 2005 calendar year.

Delay in passage of this Bill until the Autumn sittings of 2005 will have a significantly negative impact on higher education providers and students. Several of the issues involving student support may become politically sensitive if amendments are not passed by the beginning of 2005, as thousands of students may be disadvantaged. In particular, the cross-institutional study provisions are highly sensitive, as students already enrolled in this manner may inadvertently cease to become Commonwealth supported in 2005 if the amendments are not made. Similarly, the OS-HELP provisions are necessary to enable students to access OS-HELP loans in 2005.

There may also be financial implications to the Commonwealth through the non-repayment of advances and special purpose grants.

It is important that the proposed amendments to the Australian Research Council Act 2001 (ARC Act) in the Bill are passed in the 2004 Spring sittings to enable the ARC to be funded at the correct levels for 2005. It is also important that the annual appropriation amounts for the Commonwealth Grant Scheme be amended to provide funding for radiation oncology places beginning in 2005 at the University of Newcastle and the Royal Melbourne Institute of Technology as Commonwealth supported students, under an agreement with the Department of Health and Ageing.

It is also important that the Australian National University Act 1991 be amended to give the Minister the flexibility to consider appointments to the ANU Council in a timely and appropriate manner.

(Circulated by authority of the Minister for Education, Science and Training)

**HIGHER EDUCATION LEGISLATION AMENDMENT BILL (No. 3) 2004**

*First Reading*

Bill received from the House of Representatives.

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.07 a.m.)—I move:

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

Question agreed to.

Bill read a first time.

*Second Reading*

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.08 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

**HIGHER EDUCATION LEGISLATION AMENDMENT BILL (No. 3) 2004**

I am pleased to be able to announce to honourable Senators the final set of higher education legislation amendments for 2004.

This Bill makes two important funding adjustments. It will amend the maximum funding amounts under the Commonwealth Grant Scheme for 2005 and 2006 to continue to provide places for Commonwealth supported students in the area of radiation oncology at the University of Newcastle and the Royal Melbourne Institute of Technology. This funding was previously made avail-
The Bill also updates the annual appropriation under the Australian Research Council Act 2001, to reflect revised forward estimates.

As part of the implementation and consultation process for the new higher education reforms this Bill is a final opportunity to make some technical enhancements to the primary legislation and respond appropriately to issues raised by the sector before the end of 2004.

As part of the Australian Government’s ongoing consultation with the higher education sector, this bill will allow Higher Education Providers to continue to operate their summer schools as they do now. This is an important measure which allows students to fast-track their course or make up for a failed unit of study.

The Bill also makes amendments to the Higher Education Support Act 2003 to enhance the implementation of some of the higher education reforms. A number of these amendments are of particular benefit to students.

The Bill will extend access to assistance under the OS-HELP scheme. OS-HELP is an important new programme that will offer students loans of up to $5,000 per six month study period to finance overseas study. The Bill will extend eligibility for this programme to include study undertaken by students at an overseas campus of an Australian higher education provider. This will assist students undertake overseas study while also maintaining the continuity of their studies at their chosen institution. The Bill will also extend access to the programme to eligible Commonwealth supported students at all Australian higher education providers.

The Bill will also allow students more time to submit their requests for Commonwealth assistance by providing that such requests are not required until the census date.

Full details of the measures in the Bill are contained in the explanatory memorandum circulated to Senators.

I commend the Bill to the Senate.

Debate (on motion by Senator Buckland) adjourned.

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

AUSTRALIAN PASSPORTS BILL 2004
AUSTRALIAN PASSPORTS (APPLICATION FEES) BILL 2004
AUSTRALIAN PASSPORTS (TRANSITIONALS AND CONSEQUENTIALS) BILL 2004

First Reading

Bills received from the House of Representatives.

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.09 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 KEMP (Victoria—Minister for the Arts and Sport) (11.09 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

AUSTRALIAN PASSPORTS BILL 2004

The package of Australian passports legislation will provide a modern legal structure to underpin our world-class passports system. It will replace the Passports Act 1938.

This package was passed by the House of Representatives on 4 August but was not debated in the Senate and lapsed when Parliament was prorogued. The bills re-introduced today are the same as the lapsed bills with the exception of a few amendments to the Australian Passports Bill, which I will highlight.

In summary, and most importantly, the legislation will ensure Australia and Australian travellers are protected by tougher laws.
The Australian Passports Bill will do this in a number of ways.

It will increase penalties for passport fraud up to A$110,000 or a 10 year jail term from $5,000 or 2 years jail in the current Act.

The bill will introduce an improved mechanism for the refusal or cancellation of passports of an Australian in cases involving specified serious crimes.

These crimes will include child sex tourism, child abduction, child pornography, sexual slavery, drug trafficking, people smuggling and terrorism.

This improved mechanism can operate:

- when a person is suspected of being likely to engage in a serious crime;
- when a person has been charged with a serious crime;
- or when a person has been sentenced for a serious crime.

As the bill makes clear, in these circumstances it is the responsibility of competent authorities, such as law enforcement agencies, to assess that a person should be prevented from travelling. The person’s passport would then be refused or cancelled to complement the law enforcement objectives.

The bill contains a package of measures aimed at minimising the problems caused by lost and stolen passports. These measures will complement the arrangements I announced during the recent APEC Joint Ministerial Meeting on trialling a Regional Movement Alert system. The trial will enable United States and Australian border officials to make immediate checks of passenger records and lost and stolen passport information.

Finally, the bill will enable us to combat identity fraud through the use of emerging technologies such as facial biometrics for ePassports. I should like to draw attention to an amendment made to the text of the bill since the House of Representatives which passed the bill on 4 August.

The provisions of the re-introduced bill now require that the minister’s determination for the use of technologies such as facial biometrics must specify:

- the nature of the personal information to be collected
- in the case of the biometric, the photograph which is already collected with the standard application
- the purpose for which it may be used
- in the case of a photograph, to assist in identifying fraudulent passport applications and detecting fraudulent use of a passport.

This amendment is based on constructive discussions with the Opposition during the last Parliament.

The Government has consistently emphasised the need to introduce these technologies in a manner which maintains community confidence in the protection of their privacy. This change underlines that philosophy.

Another important element in the passports system is children’s passports.

In some circumstances, where there is a dispute between parents about whether their child can travel internationally, officers of the Department of Foreign Affairs and Trade are required under the current Act to make decisions to resolve the dispute.

The bill proposes that, in such cases, a declaration may be made that the matter should be dealt with by a court.

I should also like to note, for the record, that the Government has made some other minor technical amendments to the text of the bill which passed the House on 4 August, in addition to the important change I have already detailed.

The re-introduced bill clarifies that a passport may be cancelled ‘administratively’ when a replacement is applied for, as well as when the replacement is issued.

Two other changes cover privacy provisions.

The first clarifies arrangements for requesting information from private sector organisations. The second removes the specific reference to disclosure of passport information for national security purposes. This ground is specifically covered under the Privacy Act.

A final change more closely aligns the legislation with administrative law principles. The lapsed bill set out a detailed regime for notice of decisions, repeating the provisions in the 1938 Act. These provisions have been removed as they overlapped
with provisions in the Administrative Appeals Tribunal Act 1975.

———

AUSTRALIAN PASSPORTS (APPLICATION FEES) BILL 2004

Each year the Australian passports system provides 1 million Australians with passports. It is important that this substantial operation be put on a sound legal footing. The Australian Passports (Application Fees) Bill will establish a simpler structure to deal with changes in costs and validity of passports. The text of this Bill is exactly the same as the bill which passed the House on 4 August.

———

AUSTRALIAN PASSPORTS (TRANSITIONALS AND CONSEQUENTIALS) BILL 2004

The text of the Australian Passports (Transitionals and Consequentials) Bill is exactly the same as the bill which passed the House on 4 August. On a practical note, I should make clear that passports issued under the 1938 Act will remain valid.

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

TAX LAWS AMENDMENT (LONG-TERM NON-REVIEWABLE CONTRACTS) BILL 2004

First Reading

Bill received from the House of Representatives.

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.10 a.m.)—I move:
That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.10 a.m.)—I move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

TAX LAWS AMENDMENT (LONG-TERM NON-REVIEWABLE CONTRACTS) BILL 2004

This Bill amends the A New Tax System (Goods and Services Tax Transition) Act 1999.

It provides for the treatment, for GST purposes, of long-term non-reviewable contracts after the GST-free transition period ends on 1 July 2005. Pre-existing contracts that have not had a review opportunity before 1 July 2005 will become subject to GST from that date. The amendments put in place a mechanism to negotiate a pricing adjustment with the recipient of the supplies to take into account the impact of the New Tax System changes.

As a result of the negotiation, the parties may adjust the price, if necessary through arbitration. Alternatively, the recipient of the supply may elect to pay the GST or may become liable for it if he or she does not accept the result of the arbitration.

Three Imposition Bills are also being introduced as part of this package to allow the imposition of GST on recipients in certain circumstances.

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

I commend this Bill.

Ordered that further consideration of the second reading of these bills be adjourned to the first day of the next period of sittings, in accordance with standing order 111.
A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—GENERAL) BILL 2004
A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—EXCISE) BILL 2004
A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—CUSTOMS) BILL 2004

First Reading

Bills received from the House of Representatives.

Senator KEMP (Victoria—Minister for the Arts and Sport) (11.11 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 KEMP (Victoria—Minister for the Arts and Sport) (11.11 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—GENERAL) BILL 2004

This bill is part of a package of four bills, with the Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 and two other bills.

Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 amends the goods and services tax law to revise the way that the law will apply in the case of long-term non-reviewable contracts when the GST-free transition period ends on 1 July 2005.

In some situations, the goods and services tax may be imposed on recipients of supplies made under these contracts. This bill is one of three imposition bills in the package and will have the effect of imposing the tax on recipients of taxable supplies to the extent that it is neither a duty of customs nor a duty of excise within the meaning of section 55 of the Constitution.

Separate imposition bills are necessary because of the requirement under the Constitution that a law imposing taxation shall deal only with one subject of taxation and laws imposing customs duty and laws imposing excise duty deal only with those duties.

Full details of the measures in the bill are contained in the explanatory memorandum to the Tax Laws Amendment (2004 Measures No. 7) Bill 2004 circulated to honourable members.

I commend the bill to the Senate.

A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—EXCISE) BILL 2004

This bill is part of a package of four bills, with the Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 and two other bills.

Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 amends the goods and services tax law to revise the way that the law will apply in the case of long-term non-reviewable contracts when the GST-free transition period ends on 1 July 2005.

In some situations, the goods and services tax may be imposed on recipients of supplies made under these contracts. This bill is one of three imposition bills in the package and will have the effect of imposing the tax on recipients of taxable supplies to the extent that it is an excise duty.

Separate imposition bills are necessary because of the requirement under the Constitution that a law imposing taxation shall deal only with one subject of taxation and laws imposing customs duty and laws imposing excise duty deal only with those duties.

Full details of the measures in the bill are contained in the explanatory memorandum to the Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 circulated to honourable members.
I commend the bill to the Senate.

A NEW TAX SYSTEM (GOODS AND SERVICES TAX IMPOSITION (RECIPIENTS)—CUSTOMS) BILL 2004

This bill is part of a package of four bills, with the Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 and two other bills.

Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 amends the goods and services tax law to revise the way that the law will apply in the case of long-term non-reviewable contracts when the GST-free transition period ends on 1 July 2005.

In some situations, the goods and services tax may be imposed on recipients of supplies made under these contracts. This bill is one of three imposition bills in the package and will have the effect of imposing the tax on recipients of taxable supplies to the extent that it is a duty of customs.

Separate imposition bills are necessary because of the requirement under the Constitution that a law imposing taxation shall deal only with one subject of taxation and laws imposing customs duty and laws imposing excise duty deal only with those duties.

Full details of the measures in the bill are contained in the explanatory memorandum to the Tax Laws Amendment (Long-Term Non-Reviewable Contracts) Bill 2004 circulated to honourable members.

I commend the bill to the Senate.

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

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives returning the following bills without amendment:

Telecommunications (Interception) Amendment (Stored Communications) Bill 2004

Surveillance Devices Bill 2004

Aviation Security Amendment Bill 2004

Message received from the House of Representatives agreeing to the amendment made by the Senate to the following bill:

National Water Commission Bill 2004

SUPERANNUATION INDUSTRY (SUPERVISION) AMENDMENT REGULATIONS 2004 (NO. 2)

Motion for Disallowance

Senator SHERRY (Tasmania) (11.13 a.m.)—I move:


On behalf of the Labor Party, as their superannuation shadow minister, I am moving the disallowance of a set of superannuation regulations. It is Labor’s view that the implementation of divisions 9.2A and 9.2B of the regulations, which we are seeking to disallow and which together prohibit a superannuation fund with fewer than 50 members from providing a defined benefit lifetime pension, is not the appropriate manner in which to deal with the tax, estate planning and other abuses that are possible under the current law. We are dealing with an issue on the last day of the sitting of parliament. The debate is occurring at a time later than I would have otherwise preferred. We have had the election period intervening, which has consequently meant we are dealing with this matter later than I would have hoped.

The Labor Party is willing to support the first part of the regulations as set out in schedule 1 which provides that contributions to accumulation funds must be allocated to a member of a fund and that benefits in an accumulation fund be fully vested in a given
member. The relevant regulations deal with the avoidance they seek to regulate in an appropriate and directed manner with no effect on those small funds that do not engage in the targeted abuse.

The original stated rationale for introducing divisions 9.2A and 9.2B was, firstly, to prevent tax minimisation through what is known as RBL compression—reasonable benefit limit compression—and, secondly, the use of defined benefit pensions for estate planning purposes. RBL compression is a technique which enables some individuals to exceed the pension retirement benefit limit—currently, just over $1.176 million; not an insignificant amount of money. That is the maximum amount that can attract concessional tax treatment and, consequently, gain a substantial tax advantage. We have an RBL in order to ensure that there is a reasonable cap on the taxation concessions available through superannuation in this country. That is not an unreasonable approach.

Admittedly, the law as it exists provides some opportunity for both tax minimisation and estate planning purposes, but it is of concern that neither Treasury nor the tax office could produce any figures to indicate the level of occurrence of these activities and of the purported loss to revenue. I assume that Senator Murray is dealing with this matter on behalf of the Democrats, and I will get to the committee hearings shortly. In addition, there is no evidence that the tax office has considered using part IVA of the Income Tax Assessment Act to attack the practice. It is a concern that, with the exception of IFSA and Treasury, all other witnesses who attended the Senate committee hearings on this provision believe that regulations 9.2A and 9.2B were poorly drafted and went beyond what was necessary to prevent the abuse that they were aimed at preventing. It was agreed at the Senate committee hearing that the regulations could be easily redrafted in a fairer and more targeted manner to achieve the same end.

An additional reason for prohibiting the payment of defined benefit pensions in small funds—doubts whether small funds are able to guarantee a lifetime income stream—was raised at the hearing by both IFSA and the Department of the Treasury. After considering this argument, Labor takes the view that the personal nature of small self-managed funds—that is, the fact that the members and the trustees are one and the same and control the investments of the funds—makes the situation different from that of a large superannuation fund where the trustee manages the fund’s investments on behalf of members. In these circumstances, it is reasonable to take the view that if members of small funds are prepared to take this risk—and nothing is risk free—effectively with their own money, they should be permitted to do so.

Treasury raised a secondary concern arising from the possible inadequacy of funds to pay a lifetime income stream and then a flow-on consequence of a drain on the social security system because of the need to pay the age pension to small fund members whose funds had failed through bad investment. Evidence suggests that the number of members of small funds who might find themselves in this position is very small—minuscule—that it would have an insignificant impact on revenue, and that alternative term income streams may also result in a recipient having insufficient funds at the end of the term and be forced onto a part age pension anyway.

Another argument that has been raised, again by IFSA and Treasury, is that of the level playing field. The view taken by these bodies is that because the members of large funds have to purchase a lifetime income stream, ensuring the members of small funds
must do so creates a level playing field by putting them in the same position as members of large funds. Labor identifies two problems with this argument. Firstly, it will not create a level playing field as there remain many fund members in large defined benefit funds who do not have to purchase an income stream from a financial institution. Secondly, small fund members will find themselves burdened with two sets of fees: the cost of running their small fund plus the cost that will be payable to another financial institution from which they must buy a lifetime income stream.

According to witnesses at the hearings, only four organisations at that time provided a lifetime pension. It is not a competitive market. They are not easy products to find, and it can be anticipated that the costs of commercial lifetime income streams will be subject to a raft of fees, charges and commissions in addition to the existing fees and charges that already exist within small superannuation funds. There was also concern about the uncertainty for small superannuation fund members if regulations 9.2A and 9.2B stand. They are faced with the uncertainty as to what in fact the rules for lifetime pensions will be, not only in the immediate future but also in the long term.

I will deal with the process. This measure that Labor is seeking to disallow highlights the lack of due process—in fact, it highlights the sheer incompetence—of the government in its attempt to introduce and change regulatory practice in this way. The story goes back to the May budget this year when the former minister, Senator Coonan, in those budget measures, announced a raft of regulatory changes in respect of DIY funds to tackle what was claimed to be a level of abuse. We are yet to see what the identified specific savings are, but this was the claim made in the budget and there was a series of regulations enacted in the area of DIY superannuation funds. Immediately, there were extensive complaints from persons who could be affected by these new regulations.

We had the May budget announcement and then on 1 June 2004 the former minister, Senator Coonan, in media release CO47/04, admitted that the government had got the regulations wrong because it had failed to realise that a new pension product it was hoping to encourage people to enter into would not be available until four months after the announced changes had taken effect. The government, in its haste in the budget announcement, suddenly realised that its attempt to redirect people to a new pension product could not work because the new pension product would not be available for four months.

But the story gets worse. The then minister, Senator Coonan, on 23 June in media release CO54/04 then had to announce a second backdown and revision—what she called a ‘clarification’—of the government’s position. The press release announced, firstly, that the regulations would take effect from 30 June 2005, not 11 May 2004, and, secondly, because of the outcry that had occurred, that a review would be held to examine whether or not a DIY, do-it-yourself, superannuation fund could continue to operate a defined benefit pension. It was conveniently announced that this review would be concluded by April 2005, obviously well after the election. There may or may not be some further changes to the regulations in this area some time after April 2005.

We had two major backdowns by the minister on behalf of the Liberal government. This highlights the incompetence, the lack of due process and the lack of thought given to the consequences of the regulations that were announced in the May budget. This is an area where you have to be very careful, because you are changing the regulations for the
structure of superannuation products. Unfortunately, this is a government that certainly at times does not give due thought to the impact on people’s lives and the necessary long-term planning that is required and that people entered into in order to purchase a post-retirement income product—in this case, a defined benefit pension. This is a government that talks the talk about the regulatory impact on small business in particular—and there are significant numbers of small business people who have DIY superannuation funds—but does not walk the walk. The government itself has admitted it did not give significant thought as to the consequences—it had to back down not once but twice—by announcing a review which is to report in 2005.

What we have here effectively puts the cart before the horse. We have regulatory changes made that impact on people looking forward to, and attempting to plan for, retirement then being subject to a review but there being no withdrawal of the regulations until the review is completed. The government should have withdrawn the regulations until the review was completed. As I have said, this is putting the cart before the horse—admitting that the regulations are wrong but maintaining the regulations until the review is completed. I predict that the government will change the regulations again after the review. That is what will happen. This is putting people in an extraordinarily uncertain position.

I have received numerous letters and emails on this issue. I am going to read to the Senate an email I received this morning from an Australian attempting to plan for their retirement. I do not have their permission to give the Senate their name. It is addressed to me. It reads:

I am not sure if this is the most appropriate forum in which to lend my support to your objection to the government’s recent proposed changes to regulations relating to self-managed superannuation funds’ ability to pay lifetime and life expectancy pensions, but for what it is worth, here is my two penneth worth.

About three years ago my wife and I on advice set up a SMSF as part of a review and subsequent change in strategy direction for some investments we had. It was always our expectation when I finally retired—my wife isn’t working—that we would simply divide the amount of money we had invested by our life expectancy at that time and supplement my other retirement incomes. The bulk of my retirement income would come from a combination of a DFRDB—that is, a defence forces benefit—and a PSS pension, both indexed. So the benefit from our SMSF, while not critical, is important. I am disappointed, if not angry, that the government has chosen to attempt to prevent us from setting up a lifetime or life expectancy pension, despite this being written into our fund trust deed. I am 55 years of age next April and retirement would most likely still be three to four years beyond that, so taking advantage of the limited window of opportunity to retire before July? next year is not really an option.

Thank you for listening.

What this highlights, regardless of what the individual concerned does finally determine to do, is the lack of certainty. Here is an individual approaching retirement and attempting to do some long-term planning for retirement. Whatever the individual decides ultimately to do, the rules have been fundamentally changed by the regulations we are seeking to disallow—and the rules may change again next year after the April review is concluded. Labor is attempting to restore the status quo until the review is completed. Then, if the government wishes to bring in a fresh set of regulations, by all means bring them in and we will deal with the regulations presented on their merits. But at least we would have had a thorough review of this issue.
There certainly is a level of abuse taking place in small superannuation funds, but it could not be identified by the Treasury although they gave us some anecdotal examples. Senator Murray was not at that hearing—which is not a criticism of him; I understand the workload that we have to carry—

Senator Murray—It’s not my portfolio either.

Senator Sherry—It is not your portfolio, but you are still here to consider the merits of Labor’s arguments. At the public hearing in Melbourne on Monday, 23 July, it struck me that the ATO and the Treasury—and this is not a personal criticism of the officers involved—simply could not sustain the argument that they were presenting. We asked for a quite detailed analysis of the sums of money and the level of risk involved and we could not obtain that information. If the Liberal government is going to act in this capricious way—admit that it probably has it wrong and announce the review—the status quo should be maintained until such time as the review is completed.

I am certainly aware of other abuses in respect of small superannuation funds, which I have to say are of a much more significant nature. Barely a week goes by when I do not pick up a copy of the Financial Review and see advertisements—false advertisements, I think—purporting that people can access their money through a small superannuation fund. Clearly these ads are misleading, and I think ASIC is finally doing something about it.

There is a level of fee abuse in respect of small superannuation funds. Many small superannuation funds contain balances that are very, very small—in the tens of thousands of dollars—that incur very significant levels of fees. These are significant issues. I am aware that some people have been misleading individuals into believing that they can put their money into a small superannuation fund and invest in their own home, art collections and Swiss chalets. These are all legitimate concerns about small superannuation funds, but they are not the issue we are dealing with here today. It seems to me extraordinary that the government would attempt to tackle a relatively confined issue in the manner in which it has. I urge the Australian Democrats to join with Labor to ensure the disallowance of divisions 9.2A and 9.2B, to restore the status quo and to reconsider this issue after the completion of the review in April next year.

Senator Murray—In this debate on the disallowance of the Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2) I am standing in for the Democrats’ portfolio holder, Senator John Cherry. Although I suppose I have an intelligent interest in this matter, I certainly cannot reach the levels of expertise in superannuation which he carries and which have contributed to great jousting with Senator Sherry before.

Senator Sherry—Don’t be modest.

Senator Murray—I should for the record acknowledge that in my opinion Senator Sherry, as well as Senator Cherry, is one of those in the parliament who have a very deep understanding of these matters. It is incumbent on me to disclose that I do have an interest in a self-managed superannuation fund. That is on the record, but I will put it on the record again. I compliment the Labor Party on bringing on this disallowance motion. Although they could have held it over for a further 13 days, I think it is far better to get the certainty of this matter established and resolved. So that is a good thing, despite it being a somewhat pressured day, as it is the last sitting day of the calendar year.
The Australian Democrats are concerned that the integrity of the superannuation system is being and has been abused by the promoters of aggressive tax planning involving the use of small self-managed superannuation funds. The Senate Economics Legislation Committee’s inquiry did not quantify the extent of the abuse—I doubt that it could—but did confirm to the Senate that this abuse is occurring. The Democrats are generally supportive of any measures to close tax abuse loopholes and we support regulations 5.04(2), 5.08 and divisions 7.1 and 7.2 which apply specifically to forfeiture arrangements and allocation of contributions to reserves within accumulation funds. The application of divisions 9.2A and 9.2B in the regulations, which apply to the provision of defined benefit pensions, has been more controversial.

The Democrats acknowledge that it is more appropriate for lifetime pensions to be paid from large superannuation funds that are better equipped to deal with the inherent mortality, investment and liquidity risks. Having said that, we do not believe that lifetime pensions should be necessarily purchased from just the large life offices. We obviously support a competitive market. In our opinion, the integrity of the taxation system has to be addressed. Strategies such as RBL compression, even if they are not widely being used at present, should be nipped in the bud—to use the Treasury’s expression. We expect the announced Treasury review of the defined benefit pensions, due to be finalised by April 2005, will include a broader review of the taxation treatment of superannuation pensions and might well occasion an adjustment of these regulations. I presume the Treasury will be informed by some of the views expressed today by all parties in the Senate.

We believe that allocated pensions and market linked pensions are more appropriate for a small self-managed fund, partly because they do not involve the annual actuarial compliance costs associated with lifetime pensions. The changes that have applied since 20 September 2004 do increase the options available to members of self-managed superannuation funds. We are also concerned by the heavy selling of self-managed superannuation by certain elements of the financial sector, often to people whose balances are so low that the high management fees are not justified. There is a clear need to educate investors with smaller superannuation balances about the high costs and risks associated with self-managed funds.

In our opinion, the government’s budget night announcement of its intention to improve the integrity of the superannuation system by addressing a range of tax avoidance strategies was admirable. However, we are concerned that simply removing the ability of small self-managed funds to pay lifetime pensions unfairly reduces the options available to legitimate members of self-managed funds. Our preference would be to correct the perceived tax avoidance opportunities that have driven the marketing of lifetime pensions from self-managed superannuation funds. Disallowance of the regulations would allow this tax avoidance and abuse to continue for another year, which is concerning. A preferable approach might be to seek to amend the regulations to address the concerns outlined by the opposition and by us.

We have come to the conclusion that, if the regulations are disallowed, wealthier Australians will continue to abuse the tax system through self-managed superannuation funds. Overall, we believe that the greater mischief that the regulations address is more important than the lesser mischief that the regulations are seen to cause. Accordingly, we will not be supporting the motion to disallow.
Senator KEMP (Victoria—Minister for the Arts and Sport) (11.38 a.m.)—The government does not support Senator Sherry’s motion to disallow these superannuation regulations. As Senator Sherry will know, these regulations were introduced to target arrangements that sought to provide tax and retirement income benefits far beyond what was intended by the parliament. In particular, the regulations address arrangements whereby individuals in non-arms-length superannuation funds could manipulate the design of a defined benefit pension to avoid reasonable benefit limits, as well as create inappropriate estate planning opportunities. Also the regulations, by requiring the minimum of 50 members, ensure that a fund providing a defined benefit pension operates on an arms-length basis and is in a satisfactory position to pool the investment and mortality risks associated with paying a defined benefit pension. Without the government’s quick and decisive action, a defined benefit pension arrangement had the potential to become a serious risk to revenue as there was clear evidence that schemes were growing rapidly.

At the Senate Economics Legislation Committee hearings that Senator Sherry attended, the Australian Taxation Office clearly identified that the number of individuals commencing do-it-yourself pensions has grown from tens in the late 1990s to thousands from the year 2000 onwards. The ATO also identified that in 2003 well in excess of $1 billion of superannuation moneys flowed to do-it-yourself pensions, yet a little over 40 per cent of these moneys were being reported for reasonable benefit purposes. The government had to act to limit the abuse of the tax system. Our intention has always been to return the tax treatment of pensions to the level playing field originally anticipated by parliament.

Of course the government is aware that the action created some transitional issues for those who wish to retire and take a complying pension from their self-managed superannuation fund. To address these concerns, the government put in place a three-pronged approach to attend to the unintended consequences that arose out of the budget measures. Firstly, the government released details of the new complying market-linked income stream now advertised as the term allocated pension. This new product combines the flexibility of an allocated pension with tax and social security benefits of a complying pension. The assets supporting the pension are eligible for the higher reasonable benefit limit, while only 50 per cent of the assets will be included in the social security assets test. It also provides for a more flexible term, offers the potential for higher investment returns over time and is expected to be less expensive to establish and administer as it does not require the involvement of an actuary. All superannuation funds, including small funds, can provide this pension. Secondly, the government introduced transitional arrangements to assist those people who genuinely are inadvertently caught up by the change of rules. Members of funds with fewer than 50 members who wish to retire have the ability to commence a complying lifetime or life expectancy pension. This transitional arrangement will continue until at least 30 June 2005.

Thirdly, the government announced a review of the feasibility of small funds providing a defined benefit pension without the prudent and tax avoidance risks. In particular, the review will examine options for small superannuation funds to provide pensions to their members, including consideration of the design features of prospective pensions that address the government’s concern and could attract complying status for taxation and social security purposes, the
management of investment liquidity and mortality risks and the likely future demand for pensions with defined benefit characteristics. The review process is well under way. Initial submissions provided to Treasury have assisted in the development of a discussion paper, which will be released shortly, outlining the key issues as well as canvassing a broad range of options for the community to comment on. The government will take into account the outcome of these consultations when considering the report on the review due in April 2005. Every sensible person believes that this clearly provides an appropriate framework and a balanced process to consider options to allow members of small funds to gain access to suitable pension products. In the meantime, the original regulations ensure that existing loopholes are not exploited while the transitional rules allow those approaching retirement to continue to access a full range of pension options.

What does the Labor Party intend to do? What does the Labor Party want? The Labor Party wants to reject the regulations. The Labor Party wants to open the floodgates to continued abuse of the do-it-yourself pension arrangements by the very wealthy at a significant cost to the taxpayer.

Senator Sherry—There is no evidence to that effect.

Senator KEMP—The Senate Economics Legislation Committee, in its report, clearly recognised tax and estate planning opportunities that were possible in the defined benefit pensions and were previously allowed to be paid from small superannuation funds, Senator Sherry. You were there; you would have heard that comment. You asked for the evidence. Those are the matters which were tendered to that committee. Senator Sherry—for reasons best known to him—and the Labor Party want to ignore that evidence. It is really an astonishing performance from Senator Sherry. I have to say. But nothing that the Labor Party does will ultimately surprise us.

Let us be clear about what the Labor Party is proposing: by disallowing the regulations the previous superannuation rules will apply. This will allow small funds to provide defined benefit pensions as well as allow new defined benefit funds to be created on an improper basis. Significantly, many funds could amend their governing rules to permit inappropriate arrangements in anticipation that they would be grandfathered by any subsequent regulation. Undoubtedly, Senator Sherry, as you and I know, there would be aggressive marketing of these schemes. The Labor Party’s disallowance of the regulations would allow open slather to unacceptable tax-planning arrangements.

Senator Sherry—What rubbish!

Senator KEMP—Senator Sherry is obviously sensitive about this issue. It is not the first time that the Labor Party has taken a very soft approach on tax avoidance. When I was Assistant Treasurer, the Labor Party was notorious for taking a soft approach on tax avoidance measures. So it comes as no surprise to me to hear Senator Sherry’s comments in this chamber today. Senator Sherry has indicated in the past that he supports the government’s review into the final pension options—it should be available to small funds. But Senator Sherry needs to understand that this is just one aspect of a balanced approach to address this important issue. Until the final outcome of the review is decided, the government believes the regulations are required to protect the integrity of the retirement income system. Senator Murray, we welcome the support of your party for the government’s position. Let me make this clear: while the government is firmly committed to providing incentives and flexibility in the retirement income system,
this must be on the basis that it is both neutral and fiscally sustainable. It is on this basis that the government does not support the opposition’s motion.

Question put:

That the motion (Senator Sherry’s) be agreed to.

The Senate divided. [11.51 a.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes………. 24

Noes………. 36

Majority…….. 12

AYES

Bishop, T.M. Bolkus, N.
Brown, B.J. Buckland, G.
Campbell, G. Collins, J.M.A.
Crossin, P.M. Denman, K.J.
Faulkner, J.P. Forshaw, M.G.
Harradine, B. Hogg, J.J.
Ludwig, J.W. Lundy, K.A.
Mackay, S.M. McLucass, J.E.
Moore, C. Nettle, K.
Sherry, N.J. Stephens, U.
Webber, R. *

NOES

Abetz, E. Allison, L.F.
Allison, L.F. Bartlett, A.J.J.
Barnett, G. Brandis, G.H.
Boswell, R.L.D. Chapman, H.G.P.
Calvert, P.H. Coonan, H.L.
Colbeck, R. Coonan, R.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Fifield, M.P. Greig, B.
Heffernan, W. Humphries, G.
Johnston, D. Kemp, C.R.
Knowles, S.C. Lees, M.H.
Lightfoot, P.R. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J. *
Minchin, N.H. Murray, A.J.M.
Patterson, K.C. Payne, M.A.
Ridgeway, A.D. Santoro, S.
Scullion, N.G. Tchen, T.
Troeth, J.M. Watson, J.O.W.

PAIRS

Carr, K.J. Cherry, J.C.
Conroy, S.M. Hill, R.M.
Cook, P.F.S. Campbell, I.G.
Evans, C.V. Vanstone, A.E.
Hutchins, S.P. Macdonald, I.
Kirk, L. Tierney, J.W.
Marshall, G. *

Stott Despoja, N.

* denotes teller

Question negatived.

JAMES HARDIE (INVESTIGATIONS AND PROCEEDINGS) BILL 2004

Second Reading

Debate resumed from 8 December, on motion by Senator Ellison:

That this bill be now read a second time.

upon which Senator Murray had moved by way of an amendment:

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 NETTLE (New South Wales) (11.54 a.m.)—Last week was the 20th anniversary of the Bhopal disaster and it is often described as the worst industrial accident in history. It was a corporate crime of enormous magnitude, and a crime that continues with Union Carbide and its parent company, Dow Chemicals, attempting to avoid their liability for the victims of Bhopal.

The James Hardie (Investigations and Proceedings) Bill 2004 seeks to address another terrible 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. It is a crime that has continued over decades. The Greens support this bill because it will allow ASIC and the DPP access to 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 breached the Corporations Act. Any action that can be taken to ensure that James Hardie is brought to justice will be supported by the Greens. The fact that this legislation is necessary reflects the extraordinary actions that James Hardie and its executive and directors have gone to to avoid liability for the death and suffering that the company has caused.

Australia has the highest per capita incidence of mesothelioma in the world. According to Australia’s leading asbestos disease experts, there were 7,515 reported incidents of mesothelioma in Australia to June 2003. In my home state of New South Wales alone, the number of reported cases in 2001 was 2,365—37.2 per cent of all reported cases at that time. That is expected to grow to 6,696 cases of mesothelioma just in New South Wales by 2020. The first case of mesothelioma was reported in Australia in 1962, and the incidence of mesothelioma has been increasing since that time. It is now contracted by more than 500 Australians per year. The incidence is not expected to peak until 2010, reflecting the widespread use of asbestos in the early 1970s. The incidence of mesothelioma is then expected to continue until at least 2020.

The time from first exposure to the onset of mesothelioma averages about 37 years. Figures suggest that for each diagnosed case of mesothelioma there are two additional cases of asbestos related lung cancer and non-malignant asbestos related disease. By 2020 about 18,000 Australians are expected to die as a result of mesothelioma. There is no cure. It is a slow and horrible death. With asbestos related lung cancer estimated to occur at a ratio of two to one to mesothelioma, the number of asbestos related cancers can be expected to be in the order of 30,000 to 40,000 Australians by the year 2020.

Asbestos is the cause of this death and misery, and James Hardie was Australia’s largest manufacturer of products containing asbestos. Australia had the highest per capita use of asbestos in the world between the 1950s and the 1970s. About every third home constructed in Australia before 1982 is thought to contain asbestos, usually in the form of asbestos cement sheeting, commonly known as fibro. Asbestos was used in fibro until about the mid-1980s. Products containing asbestos were manufactured by Hardie throughout the 20th century until the mid-1980s—things such as insulation products, fibro, pipes and friction materials, particularly brakes and clutch linings. Hardie dominated the market, particularly in fibro, throughout this period. In South Australia and Western Australia, Hardie was effectively the only commercial supplier of fibro. There is evidence that James Hardie knew the dangers of asbestos from at least the 1930s. James Hardie employees brought concerns to the company about the dangers of asbestos both to employees and product users from at least the 1950s. No warnings or directions were placed on Hardie’s fibro until 1978. No general warning regarding the danger of asbestos has ever been given by the company to the community. Asbestos was finally banned in Australian workplaces in just January of this year.

It is clear from evidence and the conclusions of the New South Wales special commission of inquiry into James Hardie that the
company systematically set out to avoid liability for the claims by victims affected by asbestos related diseases. From about 1995 James Hardie began a process of separating the main assets of the company from the asbestos-producing subsidiaries as part of a strategy to avoid its liabilities. In February 2001 James Hardie established the Medical Research and Compensation Fund, with $293 million in assets, including the remaining assets of James Hardie asbestos-producing subsidiaries. Immediately prior to their separation from the Hardie Group, these subsidiaries indemnified their former parent company for any asbestos liabilities and agreed not to sue in relation to the asset stripping that had previously taken place.

In October 2001 James Hardie gained New South Wales Supreme Court approval for a scheme of arrangement which established a new Netherlands based parent company, James Hardie Industries NV. An amount of $1.9 billion was transferred from the Australia based James Hardie companies into this new entity. James Hardie’s solicitors assured the Supreme Court that Australian asbestos victims would suffer no prejudice as a result of these arrangements as the James Hardie entities that remained in Australia would be able to call on up to $1.9 billion from the Netherlands based James Hardie Industries NV to meet the claims of future creditors, including asbestos victims. The Netherlands is a country with which Australia does not have a treaty to enforce a civil judgment obtained in Australia.

In March 2003 the lifeline for asbestos victims was cut when the Netherlands based James Hardie Industries NV unilaterally cancelled the partly paid shares worth $1.9 billion. The Australian based James Hardie entities with liability for asbestos claims also indemnified the Netherlands parent company, James Hardie Industries NV, against any claims arising from or connected with past asbestos liabilities.

Despite the assurances given to the New South Wales Supreme Court in 2001, Hardie did not alert the court, the New South Wales government or the Australian Stock Exchange to the fact that Australian James Hardie entities would no longer be able to call on the $1.9 billion from James Hardie Industries NV to meet asbestos claims. As a result of that, the funds available to the Medical Research and Compensation Fund to compensate James Hardie asbestos victims will last for only a further three to four years. This will leave a significant shortfall, given that claims are expected for at least the next 15 years and that compensation owing to Australian asbestos victims of James Hardie has been estimated to reach almost $2 billion.

The actions of James Hardie in this matter, if successful, will have the effect of preventing Australian victims of its asbestos products from successfully prosecuting claims against the assets of the company responsible for their illness. The company has sought to avoid responsibility by its corporate legal manoeuvres and money shifting. Hopefully, justice is catching up with James Hardie and, hopefully, this legislation will help deliver that justice to the victims. That is why the Greens are supporting it.

It is important, however, to remember how we got to this point and why the government has decided finally to act to introduce this legislation. The victims of James Hardie have been campaigning for justice—supported by the trade union movement and community activists, including the Greens—for many years. It is only this unflagging campaign that has created the pressure on the government to take some action and to introduce this bill, which will go some way to holding James Hardie accountable.
By allowing the corporate veil on James Hardie’s activities to be lifted and examined by ASIC and the DPP, one part of the action that needs to be taken against James Hardie will be made easier. But let us be clear: the government could and should be doing much more to assist the victims of James Hardie. For a start the government should be negotiating a treaty with the Netherlands, which would facilitate access to the bulk of James Hardie’s assets, by allowing Australian civil judgments to be enforced in the Netherlands. When the government were questioned by the Greens on this matter, they claimed that the Dutch government was unwilling to negotiate such a treaty. But, when asked by the victims of James Hardie in meetings with officials in Amsterdam, the Dutch government said they had never been approached by the Australian government.

The government at the very least should seek to reach a special arrangement with the Dutch government to ensure that the assets of the company are available to the victims of James Hardie’s asbestos. Or the government could move an amendment to relevant Commonwealth legislation, retrospectively in the case of James Hardie, to ensure that holding companies are liable to the victims of their subsidiaries in the case of injury or death and that a corporate group can be treated as a single entity for the purpose of enforcing a judgment. This is what victims of James Hardie have called for and it is supported by the ACTU. I hope that the Senate will support such legislation. The Greens certainly will.

We welcome recent indications that public pressure leading to negotiations between the ACTU and the company are achieving progress. However, there are no absolute guarantees from that process. The government can and should be doing more than implementing this legislation. The government are always extremely slow to take action against their corporate friends, even when they are responsible for corporate crimes. They are, however, happy to receive donations from the big end of town.

Let us not forget that the Liberal Party, the National Party, Labor and the Democrats, until very recently, continued to receive corporate political donations from James Hardie. According to AEC figures over the last five years, James Hardie have given as much as $750,000 in political donations to Australian political parties. Since James Hardie shielded their assets in the Netherlands, they have given the Liberal Party $71,000, the Labor Party $75,000, the National Party $15,000 and the Democrats $15,000—a total of $176,000.

Senator Stephens—We sent ours back!

Senator NETTLE—I shall go on. Earlier this year I moved a motion in the Senate calling on all political parties which had received donations from James Hardie to transfer that cash into a trust fund for the victims and their families. It was only because of the campaign in support of victims’ groups that the Labor Party decided to put $78,000 that it had received into a trust fund. The Prime Minister and the Democrats said that they would await the outcome of the New South Wales commission of inquiry before handing over the money.

The Greens have been active all year in support of the victims of James Hardie. Both I and the former member for Cunningham, Greens MP Michael Organ, moved motions urging the Howard government to boycott James Hardie products and services until victims were compensated. The motion was passed by the Senate. Michael Organ also met the Dutch ambassador and presented him with a letter, signed by 90 Dutch-Australian members of the Greens, demanding justice for the victims. The Greens have worked with the Dutch Socialist
Party towards an Australia-Netherlands treaty on court compensation orders that would help to make James Hardie pay.

Greens MLCs in the New South Wales parliament have called for the state government to boycott James Hardie products and they have moved a motion condemning the inadequate statutory compensation scheme proposed by James Hardie. Greens councillors across New South Wales have secured boycotts of James Hardie products by their local councils. The Greens have supported and participated in actions, meetings and protests across the country organised by the labour movement and the victims of James Hardie.

So, while we welcome this legislation, it is the very least that the government could do—and it has only come about as a result of the actions of the community and trade unions supporting James Hardie’s victims. However, we should not be fooled into believing that, because of this legislation or because of any other stunt that the government chooses to pull, this Prime Minister is committed to supporting Australian workers. The opposite is true. The government’s industrial relations agenda is undermining unions and collective organising in the workplace. Unions and collective organising are the single best protection for the health and safety of workers. Without unions and collective organising we will have more cases like James Hardie. We will have more companies endangering the lives of workers while they continue to operate unsafe industries and improve their profit margins along the way. James Hardie is hiding in the Netherlands while Australian asbestos victims wait for justice. The Greens will back the passage of this bill, but we call on the government to do much more. We call on the government to take serious action that will deliver the victims of James Hardie the justice that they deserve.

Senator GEORGE CAMPBELL (New South Wales) (12.08 p.m.)—It would be remiss of me to allow a bill of this nature to go through the chamber without making some comment on it, given my background in industry over many years and given the fact that I have had to deal, over those years, with many of the victims of James Hardie and James Hardie’s products. The James Hardie (Investigations and Proceedings) Bill 2004 is this government’s legislative response to what can only be described as a terrible human tragedy and a corporate crime of the worst kind. We should not mince words: the actions of this company, both current and in the past, have already cost thousands of Australian lives—and, I am sad to say, look set to claim thousands more. But it is also worth making the point that there are many thousands who have died of these diseases who have been undiagnosed and who have received no compensation as a consequence of their exposure. And there are many, many thousands of people in our community—like me—who have worked in industry, who have worked with asbestos, who have been exposed to it and who constantly live with the dread of waking up one day and finding that they have got mesothelioma or some other related asbestos disease. No-one can put a figure on what that number is likely to be in the future, because it is not only people who were exposed to these products in the workplace but also many thousands of Australians who lived in those typical fibro shacks that were built in the fifties who have been exposed to asbestos over that period of time and live with the potential of suffering the consequences of that exposure sometime in the future.

Labor strongly supports this bill, which will enhance the ability of the Australian Securities and Investments Commission, as well as the Director of Public Prosecutions, to undertake investigations and take proceed-
ings against corporate bodies of the James Hardie group as well as individual officers, employees and advisers of that group. If ever there were a group of corporate shysters who deserve to spend time behind bars, it is this lot. This bill will ensure that the Commonwealth has access to the widest possible range of documents without obstruction. James Hardie should not and will not be able to hide behind claims of legal professional privilege to deny investigators access to the materials they need to conduct their investigation.

It is sad that this legislation is needed at all, sad that James Hardie would attempt to hide behind legal privilege in order to avoid its responsibilities. But, while it is sad, it is not unexpected when you consider the outrageously immoral way this company has conducted itself on this issue over many shameful years. You cannot escape the fact that James Hardie knew for many decades that its products were extremely harmful—and indeed deadly—before it alerted the public. Once the compensation process began, its behaviour did not improve. First, there was the corporate restructure that separated subsidiary companies and transferred assets offshore to a Dutch registered legal entity—all designed, essentially, to put James Hardie’s assets out of harm’s way should the victims come seeking compensation.

Second, there was the cruel subterfuge undertaken by James Hardie in relation to the Medical Research and Compensation Foundation. This foundation was ostensibly set up by the company to ensure that the claims of victims of asbestos related diseases would be met. But the foundation was also set up as a mechanism for James Hardie to substantially avoid its liability to the victims of the products it had produced. The company claimed that the foundation was sufficiently funded to meet all claims. The reality is that it lied. It lied to the victims, it lied to the families of the victims and it lied to the community and to the government. We now know that the foundation is facing a funding shortfall of in excess of $1.5 billion and has had no choice but to call in administrators ahead of liquidation. This is not a case of James Hardie making an honest mistake, of underestimating the amount of money needed to meet its responsibilities; this was a deliberate strategy to in fact avoid those responsibilities. One only has to recall the recent performances on the 7.30 Report of the chairman of the board of James Hardie, Meredith Hellicar, which were characterised by evasion and obfuscation—which clearly demonstrated this company was still continuing to find ways and means of avoiding its liability with respect to the people who had suffered as a consequence of its actions. It is a wilful attempt by the company to rob victims of their compensation.

But, what is more, it was aided and abetted by others, some of whom I am sad to say had associations with the Labor Party, and one of whom sat in this chamber as a representative of the Labor Party: former Senator Stephen Loosley. They were also part of the process of trying to pull the wool over the public’s eyes with respect to the actions of this company and what the company was all about. They should hang their heads in shame for their actions as part of this process.

This year alone, James Hardie is predicting a profit of just under $169 million. It is also planning to pay former CEO Peter Macdonald a payout in the millions as well as awarding him a cushy consultancy deal over the forthcoming months. I am sure he is going to have a merry Christmas this year—and probably many more in years to come—when many of the victims of his activities and his company’s activities may not even last long enough to see this Christmas out. It certainly will not be a merry Christmas for those suffering from lung cancer, asbestosis
or the deadly mesothelioma, which has already taken the lives of 7,000 Australians. It has taken the life of a very close friend of mine, a former president of my union, who died at the all too early age of 50 as a result of this disease. No-one is immune. No-one is immune from the impact that asbestosis has had across our community.

But, of course, James Hardie just could not care less. It continues to refuse to do the honourable thing and provide the foundation with the funding it needs to meet both current and future claims. A recent injection of $88 million to the foundation is nothing more than a stopgap measure. Come January, the foundation will still be staring into a financial abyss. For this disgusting betrayal alone, both the board of James Hardie and former CEO Peter Macdonald deserve to celebrate their Christmas from behind bars, just as the victims of this callous indifference are imprisoned by James Hardie’s history of neglect. Through its actions, James Hardie has cast a stain on corporate responsibility. It has chosen to honour its bottom line over the lives of suffering Australians.

But if there has been any ray of hope in this sorry saga it has been the response of the community. Australians from all walks of life have voiced their outrage at the actions of this company. As a proud trade unionist, I am happy to say that both the trade union movement and Labor state governments have been at the forefront of this struggle. The ACTU and its secretary, Greg Combet, have been tireless advocates for the victims of James Hardie. As well as rallying support in the wider community, the ACTU has taken on many of the negotiations that will hopefully ensure that James Hardie provides the additional funds the foundation requires to meet fully its responsibilities to its victims.

This government delights in claiming that the trade union movement is dead, lacks relevancy and is unnecessary in today’s economic and social climate. But, if there was ever a set of circumstances that demonstrates the relevance and necessity of having trade unions, it is the way in which James Hardie sought to deal with this issue. It was the ACTU and individual unions such as the CFMEU and AMWU that kept up the fight and worked hard with the community to ensure that James Hardie could not get away from its responsibilities. The union movement will continue to stand behind the James Hardie victims until real justice in these circumstances is done and significant moral, financial and other support is provided to those victims.

The labour movement has also been active in this struggle. In my home state of New South Wales, the Carr government has put great pressure on James Hardie to do the right thing, including establishing a special commission of inquiry into the company. This inquiry, conducted by David Jackson QC, made a range of adverse findings against a number of James Hardie directors. Subsequently, the Australian Securities and Investments Commission announced it would fully investigate the issues this inquiry has raised. The New South Wales government has also announced legislation which seeks to enable asbestosis victims to take action against related corporations, including the Dutch registered entity.

Whilst this bill is a welcome offering from the federal government, it must be backed up with further vigorous action. While the government has indicated its support for the New South Wales government’s proposed legislation, there remains a lack of clarity about the enforcement of any judgments against the Dutch based Hardie entity under this legislation. This is because no treaty exists between Australia and the Netherlands. The legislation proposed by the New South Wales government and endorsed by the
Commonwealth is specifically aimed at Hardie and is retrospective. Thus, for it to be effective, a treaty would appear necessary.

The Attorney-General, however, has not gone out of his way to provide any certainty on this matter. While he has commented in favour of the legislation, he has also claimed that Dutch authorities had advised that no treaty would be necessary. Prior to this, however, he had indicated that the government would consider pursuing a treaty. No details of that advice have been provided. One wonders: why the equivocation? Why would the government not take out the insurance of seeking a treaty in addition to pursuing through normal channels the implementation of its legislation against the Dutch company?

The government must, of necessity, clear up this situation and provide certainty for the victims of James Hardie and for the New South Wales government. The government must also ensure that ASIC has the necessary resources to pursue James Hardie. The Chairman of ASIC, Jeffrey Lucy, has indicated that additional funds will be required by ASIC. If these funds are not provided by the government, this legislation we are debating today becomes little more than empty rhetoric. The government owes it to the victims of James Hardie and their families to do all it can to ensure that they receive appropriate justice. This legislation is a positive step, and I hope that in future the government will work with the ACTU, with state governments and with the many committed community groups who have been active on this issue to bring this disgraceful chapter of Australian corporate history to an honourable end.

Senator ABETZ (Tasmania—Special Minister of State) (12.23 p.m.)—The James Hardie (Investigations and Proceedings) Bill 2004 will facilitate a thorough and effective investigation by the Australian Securities and Investments Commission, ASIC, of matters arising out of the James Hardie Special Commission of Inquiry in New South Wales. It will also enable proceedings that may arise from these investigations to be brought by either ASIC or the Commonwealth Director of Public Prosecutions, the DPP. It is expected that many crucial documents will be subject to claims of privilege by James Hardie.

Honourable senators, in their contributions during the second reading debate, have gone through the detailed provisions of the bill, some of the High Court history—the decisions that have been made—and the reasons behind this bill, so I will not canvass those issues. Senator Wong and Senator Murray raised a number of queries and I will deal with those now. Senator Wong queried whether this bill should also apply to the ACCC. In this regard, I emphasise the government is very conscious of the fact that legal professional privilege is an important common-law right that should only be abrogated if there is a clear public interest in doing so. ASIC is the lead regulator in the investigation of matters raised by the James Hardie Special Commission of Inquiry. ASIC will work closely with the ACCC where this is appropriate. While it is important that no areas of potential action be overlooked, we should avoid a duplication of investigations. Such duplication would waste resources and, more importantly, could impede a quick resolution of the issues raised.

ASIC has broad powers to recover civil damages. For example, section 50 of the ASIC Act allows ASIC to begin a civil proceeding on behalf of a third party for the recovery of damages for fraud, negligence, default, breach of duty or other misconduct in the public interest. I understand that New South Wales yesterday passed legislation enabling the ACCC to use the documents from the Special Commission of Inquiry into
James Hardie. If it had chosen to, New South Wales could have removed legal professional privilege in respect of those documents. For some reason, it chose not to do so. Whilst the Commonwealth believes that a full range of remedies is available to ASIC, it will consider advice from ASIC on whether other agencies have a role to play or require additional power to play such a role. In the meantime, it is important that ASIC, as the lead regulator, be allowed to get on with its investigation.

Another issue raised by Senator Wong was whether the bill abrogates legal professional privilege in relation to claims of privilege by James Hardie officers. The answer to that question is yes. Subclause 4(1) of the bill abrogates all legal professional privilege in relation to James Hardie material for the purposes of a James Hardie investigation or a prosecution. Legal professional privilege is abrogated regardless of who is making the claim. This will ensure that ASIC has access to the information that is required for a comprehensive investigation of the James Hardie group, its directors and officers and its advisers. Subclauses 4(2), 4(3) and 4(4) have been included to avoid any doubt that legal professional privilege in relation to James Hardie material does not prevent ASIC or the DPP exercising their powers to obtain material or admitting it as evidence for a James Hardie investigation or proceeding.

The issue of ASIC’s funding and its adequacy was also raised by Senator Wong. The government is committed to ensuring that the corporations regulator is sufficiently funded to discharge all of its responsibilities. It has an annual budget of about $200 million and spends about a third of that on enforcement matters. ASIC’s current funding level is the highest it has ever been, with funding increased by more than $60 million across four years in the 2004-05 budget. The government will consider any additional funding requirements in the context of the budget processes and make any announcements in due course.

Another relevant issue Senator Wong raised was the enforcement of judgments overseas. The Australian government has been advised by Dutch and US authorities that, in general, Australian court judgments can form the basis of legal action in their respective jurisdictions. As such, it is the government’s position that treaties are not required. The government has been involved in communications with Dutch and US authorities regarding procedures for the enforcement of Australian judgments in those countries.

Senator Murray raised an issue in relation to the James Hardie letter. Senator Murray noted concerns raised by James Hardie in correspondence dated 8 December 2004. This correspondence was tabled in the Senate on the same day, which was yesterday. The key question this letter raises is whether the existing bill goes too far in abrogating legal professional privilege. The government does not agree that the bill goes too far. The bill is appropriately targeted by limiting the abrogation to material for the purposes of, or in connection with, a James Hardie investigation or related proceeding. James Hardie investigations are tightly defined in the legislation, covering those matters that were identified by the special commission of inquiry as involving possible misconduct by the James Hardie group. Restricting the current definition could exclude important material.

It is also important to note that the bill does not expand ASIC’s investigation powers under part 3 of the ASIC Act. Rather, it allows ASIC to examine material that would otherwise be subject to legal professional privilege. This is not unprecedented. Indeed, it confirms a longstanding interpretation of ASIC’s powers dating back to the 1991 deci-
sion of the High Court in the Yuill case, which was only called into question recently.

Finally, I would like to address the second reading amendment moved by Senator Murray on behalf of the Democrats. The government will not support paragraphs (b) and (c) of Senator Murray’s amendment. The abrogation of legal professional privilege is very serious, and any consideration of abrogating this important common law right in other circumstances should be carefully considered. Today we are here to abrogate legal professional privilege to allow ASIC to conduct a comprehensive investigation into the James Hardie group, its directors and officers and its advisers.

In conclusion, I would emphasise that the government places great store in ethical behaviour by corporations. It does not condone or support companies that restructure their affairs to avoid their legal liabilities to the victims of their products. That sort of behaviour is unconscionable and should be prosecuted to the full extent of the law. The government remains of the view that James Hardie should honour its obligation to compensate those victims who have a legitimate claim against the company for asbestos-related diseases. I thank honourable senators for their contributions to this debate.

Senator Wong—Is it possible for paragraphs (a), (b) and (c) of the second reading amendment to be put in seriatim?

The ACTING DEPUTY PRESIDENT (Senator Moore)—There being no objection, that is possible. The question is that paragraph (a) of the amendment moved by Senator Murray be agreed to.

Question agreed to.

The ACTING DEPUTY PRESIDENT—The question is that paragraph (b) of the amendment moved by Senator Murray be agreed to.

Question negatived.

The ACTING DEPUTY PRESIDENT—The question is that paragraph (c) of the amendment moved by Senator Murray be agreed to.

Question negatived.

Original question, as amended, agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

TAX LAWS AMENDMENT (RETIREMENT VILLAGES) BILL 2004

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Tax Laws Amendment (Retirement Villages) Bill 2004, informing the Senate that the House has disagreed to the amendments made by the Senate and desiring the reconsideration of the amendments.

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

Senator ABETZ (Tasmania—Special Minister of State) (12.34 p.m.)—I move:

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

Senator McLUCAS (Queensland) (12.34 p.m.)—The Tax Laws Amendment (Retirement Villages) Bill 2004 is an important piece of legislation, as was discussed yesterday. It is the result of four years of urging by the retirement village sector and the Labor Party for the government to deal with the question of the application of the GST to services provided in retirement villages. The Labor Party were concerned about some elements of this legislation and therefore yesterday moved—successfully—a series of amendments. As we have just heard, they
were not agreed to by the House of Representatives. That is unfortunate for people who live in retirement villages and it is unfortunate for people who operate retirement villages. However, the substance of the bill does deliver what the industry has been calling for for a very long period of time—that is, clarification and simplification of the application of the GST. The bill ensures that operators can be clear on whether or not services are GST applicable. It is a victory for the sector and a victory for the Labor Party that finally the government has clarified the application of GST to services provided by retirement villages.

We cannot forget that when the government brought in the GST it was going to be simple. Four years later we are still tidying it up. Four years later we have just finalised the application of the GST to this area, and I am sure there are plenty more areas to cover. We will be watching the application of this legislation in the sector. We will be seeking to make sure that it provides clarity and surety to the people providing services in retirement villages. But, because of the need for this legislation, Labor will not be insisting on the amendments we made yesterday.

During the debate yesterday and during discussions with the government, there was a view put that if we did move amendments yesterday it would delay this bill to the point where we would not be able to deal with it in this sitting. The fact that we are dealing with this bill now, with plenty of time between now and close, puts a lie to that allegation. The government was in fact almost suggesting to the sector that if the amendments were moved, the opportunity to have the matter dealt with would be delayed until next year. The sector can make up their own mind about whether or not that was good advice but the simple fact that we have dealt with this bill today says very clearly that that was very false advice.

So we were not delaying the legislation. We were trying in good faith to tidy it up to make it very clear how it will be applied. That has not delayed the passage of this bill at all. I urge lobbyists and people working on behalf of various sectors to take advice on procedural matters from this government with a grain of salt and to not be bullied into making decisions based on that. The Labor Party will be supporting the motion moved by the minister. I thank the sector for their hard work over the last four years.

Senator MURRAY (Western Australia) (12.38 p.m.)—The Democrats supported Labor’s amendments yesterday because we thought they did deliver a little more certainty to a situation where people were, as we described it, often anxious. We were most interested, of course, in their first amendment, which we thought was particularly helpful. However, this bill is an important one. It does retrospectively deliver benefits worth many millions to people who have paid GST for these services and we think its intention is consistent with the original intentions of the government and the Democrats when they agreed the GST package—namely, to ensure that health services are GST free. This very much falls within that. So we certainly will not be insisting on these amendments. We support the bill fully.

The CHAIRMAN—The question is that the committee does not insist on the amendments disagreed to by the House of Representatives.

Question agreed to.

Resolution reported; report adopted.

BUSINESS

Rearrangement

Senator ABETZ (Tasmania—Special Minister of State) (12.40 p.m.)—I seek leave to move a motion to vary the order of the Senate agreed to earlier today relating to the
hours of meeting and routine of business for today.

Senator Nettle (New South Wales) (12.40 p.m.)—Before giving leave, I want to check that we are just dealing with the four bills as circulated in the draft copy of this motion to our offices—that is, the James Hardie, higher education, classification and tax bills. Are the bills that Minister Ellison mentioned before the four we are dealing with?

Senator Abetz (Tasmania—Special Minister of State) (12.41 p.m.)—We have already dealt with the first two bills on that list. Therefore, there are now only two: the classification amendment bill and the Higher Education Legislation Amendment Bill. We have already worked through the first two on the list that Senator Ellison provided earlier today.

Leave granted.

Senator Abetz (Tasmania—Special Minister of State) (12.41 p.m.)—I move:

Omit paragraph (b), substitute:

(b) the routine of business from not later than 4.30 pm shall be:

(i) government business as follows:

Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2004

Higher Education Legislation Amendment Bill (No. 3) 2004,

(ii) consideration of orders of the day relating to government documents, and

(iii) consideration of committee reports, government responses and Auditor-General’s reports.

Question agreed to.

Senator Abetz (Tasmania—Special Minister of State) (12.43 p.m.)—That intervening business be postponed till after consideration of government business order of the day no. 3, Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2004.

Question agreed to.

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

Second Reading

Debate resumed from 2 December, on motion by Senator Ellison:

That this bill be now read a second time.

Senator Ludwig (Queensland) (12.43 p.m.)—Labor clearly supports the Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2004, which will make minor amendments to the Classification (Publications, Films and Computer Games) Act 1995. Under the national classification scheme, the Classification Board is responsible for the classification, on application, of films, computer games and certain publications. The Classification Review Board makes fresh classification decisions in response to an application for review of a decision of the board. The national classification scheme plays an important role in providing guidance for consumers of film, computer games and literature but it also has a very important role to play in classifying material provided to it by Commonwealth, state and territory law enforcement agencies who are seeking information upon which to base prosecutions, particularly for the sale, distribution and use of pornographic material and child pornography.

These amendments will remove any doubt about the validity of decisions made by the Classification Board and the Classification Review Board where there have been minor technical deficiencies in the application process. The changes do not go to the substantive decisions of the board and, it is important to note, only apply to applications for classification made by law enforcement au-
thorities. Applications are made by police for unclassified material to be classified by the board with the classification then being used as part of any prosecution process.

The amendments will have the effect on applications by law enforcement agencies made both before and after commencement of this bill. The provisions do not operate to validate classification decisions that might be defective for reasons other than minor technical deficiencies related to the application, nor do they prevent any challenges to a board or review board decision based on some defect in the decision-making process. Remember also that these changes have no impact on applications made by industry for classification and any defects that might be found in their applications. The classification decision-making process will remain rigorous, and interested parties under the act will continue to have the right to appeal.

We understand that the government is of the view that all decisions made by the Classification Board and the Classification Review Board remain valid, even where there has been a procedural error in the application process. Nevertheless, Labor agree with the government that it is important that the parliament make this abundantly clear in this bill. While there is an element of retrospectivity in the operation of these amendments, Labor consider the government’s arguments—that is, that the changes are appropriate and will not result in any substantive injustice—to be sound.

Labor have been briefed and, whilst it is not appropriate to discuss details of law enforcement applications publicly, we are satisfied that the government amendments are appropriate. It is important to note that no act which was legal prior to the introduction of this bill will become illegal following its commencement. This parliament has an undeniable obligation to support our law enforcement agencies in their continuing effort to fight against the production, transfer and possession of child pornographic material. This includes removing even the most minor or technical legal uncertainty wherever it may exist.

Under these circumstances Labor will support the bill because we believe that all governments must be clear and unequivocal in their intent to prosecute serious child pornography offences and take action to ensure their laws and procedures are appropriate and permit this. The production, trade and possession of child pornography is abhorrent. There can be no qualification on our condemnation of this. This parliament would be derelict in its duty if it did not take every available step to ensure that the trade does not continue.

The recent arrests of those found in possession of child pornography by state and territory law enforcement agencies is a vital part in a worldwide effort to stamp out production, distribution and use of child pornography. This parliament must do all it can to ensure that this heinous practice is stopped and that those involved are fully prosecuted. Labor is happy to add its support to the measures in this bill that ensure a rigorous classification regime and a strong system of prosecution based on it.

Also, given that the classification bill is before us, it is a relevant time to mention that when adults make decisions about presents for children they should take the opportunity to read classification labels to ensure that the films they might send their children to are appropriate for the age of the children. Adults should also take the opportunity, when purchasing games for children, to read classification labels and ensure they are appropriate for the age of the children whom the games target.
Senator GREIG (Western Australia) (12.48 p.m.)—This bill makes some brief, although not entirely non-controversial, amendments to the classification act. Specifically, the bill provides that, if the board makes a decision on the basis of an application that did not satisfy the requirements of the act, the board’s decision will nevertheless be valid. This also applies to subsequent decisions and actions made on the basis of the original decision. Moreover, it applies to decisions by the board on an application for a review of a decision if that application did not satisfy the requirements of the act. Notably, the bill will apply retrospectively. The new provisions apply to decisions of the board, whether made before or after the enactment of this legislation.

As I understand it, the need for this legislation arises from the fact that, over the past few years, the police have made a number of applications on the incorrect form. As a consequence, if this legislation does not pass there may be some prosecutions which are jeopardised, including prosecutions for child pornography offences. Obviously, this presents a concern but it is not the only concern which the Democrats have in relation to this bill. Let us not forget the significant public interest in ensuring that our law enforcement agencies comply with their obligations under legislation.

What legislation like this does is take away a strong incentive for the police to ensure that their work complies with legislative requirements. If there are no serious consequences and no risk of jeopardising a prosecution, there is not a whole lot to prevent sloppy work. For these reasons, we Democrats do not see this bill as being purely non-controversial in the way that the government has attempted to portray it. Legislation such as this is not desirable—most particularly when it is retrospective—and it is a good indication that the police have mucked up somewhere along the line. When it is prospective, it gives them the opportunity to do so with little consequence. Despite these concerns, the Democrats have decided that we will support this legislation because, in weighing the competing interests of legislative compliance by the police on the one hand and the need to prosecute those who commit child pornography offences on the other hand, we have determined that the latter must win out.

In speaking to this bill, I want to take the opportunity to make a number of observations about Australia’s supposedly uniform and cooperative censorship system. While the government has cleverly pushed the point that prosecutions for child pornography offences may be put in jeopardy if the bill is not passed, which, as I have said, is the reason for our support, it is also important to note that the bill will also be used to allow police to prosecute those who sell non-violent erotica—that is, X-rated 18-plus materials—in those jurisdictions where selling such material is still illegal. This is something which has been confirmed by the Attorney-General’s office. Specifically, advice from his office stated:

The Bill validates decisions made in response to deficient or defective applications for classification from law enforcement authorities.

Law enforcement agencies can make applications involving material that is submitted for the purpose of investigations or prosecutions related to child pornography and other offences, including illegal sale of X or RC—refused classification—material.

In effect, the government’s bill will excuse police officers in the states which make tardy classification applications to prosecute people for selling federally classified material. That is a quite ridiculous outcome. Instead of passing a law that allows state police officers
to make mistakes in prosecuting people for selling a product that has passed all the requirements of the government’s own agency, the Office of Film and Literature Classification, the federal government should insist that the states truly adopt the ‘uniform and cooperative’ classification scheme that we are supposed to be living under.

All state censorship ministers accept the classification code when they sit to discuss censorship issues as a group but, when they go back to their states, they enact laws which are at odds with the national code. It is a joke to call this a national scheme, and the state attorneys-general may even be acting unconstitutionally in perpetrating this mythology on the Australian people. How can you argue for one set of standards—one set of morality—for Australians in Victoria and another for Australians living in Queensland? The notion that Western Australians are more offended by a certain style of video or DVD than, say, Northern Territorians or South Australians or that South Australians are more sensitive to certain types of publications is complete nonsense.

A Commonwealth must surely embody the notion of a common set of standards, but the present national classification scheme sets up an inconsistent patchwork of moral standards based on little more than location. In 2002, the Standing Committee of Censorship Ministers unanimously signed off on the guidelines for X-rated 18-plus videos and DVD materials. Ostensibly, what they were doing was agreeing with each other, on behalf of the citizens in their jurisdiction, that the guidelines for this material were acceptable for Australians. But then they went back to their respective states to preside over bans on the sale of the very same material. What sort of message does that double standard send to the people of Australia?

Why wouldn’t their acceptance of an X category for Australians negate their small-minded and politically motivated bans in their own states? Why is the federal Attorney-General not asking them to explain their acceptance of the national classification code at one level but their nonacceptance of it at another? They cannot have it both ways. Either they should have refused to ratify the guidelines for X-rated 18-plus materials or they should have regulated their own state based trade in line with the guidelines. I put it to senators that the discrepancies between which classifications are allowed to be sold at the federal and state levels have a direct impact on DVD and video black market operations in Australia and may also be fuelling the trade in child pornography that, ironically, is the core subject of the bill we are trying to deal with today.

In all states, but not the territories, there exists a thriving black market in adult video and DVD material. Like the sale of alcohol in the US during the prohibition era, this is because the product is popular, easy to produce and, when used responsibly, not socially harmful. The problem is that the state police no longer prosecute the crime of purchasing federally classified X-rated 18-plus materials for a number of reasons; the main one being that, because these products are federally classified, they are therefore legal to possess and legal to purchase. The only area that misguided state based morality can have an effect on here is the sale of such products, and that is what is criminalised. No other product in Australia is legal to purchase and legal to possess but illegal to sell. Many police officers in the states quite legally purchase X-rated 18-plus materials from their local adult shop. When they are directed to arrest that same person for the selling part of the operation, there is an extreme reluctance to do so—and understandably so.
The problem with the bind that the police find themselves in has meant that illegal operators, and even organised crime syndicates, have started to expand the sale of these products into family areas like video libraries, convenience stores, service stations and even open air markets. A recent survey carried out by industry operatives found a dozen family outlets selling adult video and DVD materials or their published equivalent in the Victorian premier’s own electorate.

With no controls in these areas, like age checks and the normal industry scrutiny, pirated videos and DVDs and unclassified and refused classification material are also starting to appear—and more frequently. The potential for child pornography to appear alongside this other contraband material in these family areas is all too real. If the states were made to adopt the national classification code that they pay lip-service to at meetings of the censorship ministers, these problems could be overcome very quickly. Illegal DVD and video material is almost impossible to find in the two jurisdictions that adhere to and enforce the national classification code—that is, the two territories, the ACT and the Northern Territory. This is entirely a problem created and maintained by state Labor attorneys, who prefer to avoid dealing with these issues for fear of upsetting the moral minority rather than be courageous and address the bad legislation that is clearly spawning a growing black market.

I am reminded here of the former Attorney-General’s second reading speech delivered in the House some years ago regarding a proposed new video category of non-violent erotica, or NVE. The then Attorney, Mr Daryl Williams, specifically mentioned the creation of black markets by organised crime if X-rated 18-plus materials were ever banned at a federal level. He backed a regulated environment then and his words should be heeded by state censorship ministers today. I take this opportunity to urge the Attorney-General to initiate a plan to ensure that the states adhere to the national classification code as it stands today.

In closing, I restate the Democrats’ view that it is disappointing that legislation such as this is required. We appreciate that it is limited to minor technical flaws in the application process rather than any substantial flaw. Nevertheless, we do believe it is important that there be strong incentives for the police to comply with their legislative obligations. By contrast, this bill gives them a legislative pardon for tardiness. The government argues in the context of a prosecution for the illegal sale of an X-rated film that:

... it remains the responsibility of the prosecution to prove beyond reasonable doubt that the defendant is guilty of an offence. Any concerns regarding the police investigation and prosecution could be raised in that context.

The point that I am trying to make is that, while we are concerned by irregularities in police investigations, our concerns run much deeper than that. From our perspective, we need to take a step back and consider whether these offences should even remain on the statute books. However, the Democrats are conscious of the fact that this bill also covers child pornography offences, and we will support the bill on the sole basis that we are not prepared to put at risk the prosecution of such offences.
response to applications from law enforcement agencies, this is not intended to create any implication that a classification resulting from an application of a commercial client should be invalid if that application had a technical defect. In other words, if the court would have considered a classification decision valid despite a defect in a commercial application, this bill will not change that result.

It is also important to note that the amendments have no impact on the decision-making provisions of the act. The formal requirements for applications are separate from the substantive provisions governing the decision-making processes of the Classification Board and the Classification Review Board. The full rigour of the classification decision-making process will continue to apply to all products admitted for classification. As a further point of clarification, this bill does no more than validate a limited class of classification decisions and the actions subsequently taken by the Classification Board, the director and the Classification Review Board in respect of those decisions. The bill does not affect the responsibility of law enforcement authorities to make proper applications for classification, and it does not otherwise impact on the rights of defendants in criminal proceedings.

I will briefly respond to three matters raised by Senator Greig. First of all, the bill does not affect the obligations of Commonwealth, state or territory police to submit applications properly. They must still use their best endeavours to follow the requirements of the act. It merely ensures that if a mistake is made in the application process that is not picked up by the OFLC then the decision made is still valid and the prosecution is not compromised. Second, the bill does not affect a defendant’s right to argue in court that the product classified was not the material seized by the police. The matter of whether the material classified by the board is the same as the material that was submitted or the same as the material seized is properly a matter that the court would need to assess.

Third, the government is aware of suggestions that X-rated films, RC films and unclassified films are being sold illegally in the states. Regulation of the availability of films and the enforcement of prohibitions or limitations on sale are state and territory responsibilities. The Office of Film and Literature Classification’s Community Liaison Scheme routinely inspects restricted premises and retail stores to educate about and advise on legal obligations. These Community Liaison Scheme officers have identified and reported breaches of legal restrictions on the sale of X-classified films to the relevant state censorship officials and nominees of enforcement agencies. The enforcement of prohibitions on sale is a state responsibility which the Commonwealth expects to be upheld under the national classification scheme. I thank honourable senators for their contributions to the debate on this bill and commend it to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

HIGHER EDUCATION LEGISLATION AMENDMENT BILL (No. 3) 2004

Second Reading

Debate resumed.

Senator BUCKLAND (South Australia) (1.04 p.m.)—I was not going to speak on the Higher Education Legislation Amendment Bill (No. 3) 2004, but I see that there is the opportunity to do that. We are starting to focus on higher education in Australia, generally because of skills shortages developing in
our country. It is a change in focus. Labor has, for a long time, campaigned to draw to the government’s attention its lack of diligence in providing adequately for higher education. It needs to put its eye on what is really happening there. Young people from country areas of Australia are disadvantaged when it comes to going any further than high school. They are disadvantaged because to do their study they need to move away to capital cities or to major centres not closely aligned to where they live. Once those young people leave their homes, they can no longer come back to where they live, because jobs are not available following their study.

Since they have been in office the government have been lacking in the attention they have paid to looking after those people in the industry, such as teachers, care people and support staff. They have not provided funding for those people to be able to properly educate our children and to properly develop their skills so that we can become the smart country that we believe we should be. My colleague Senator McLucas has indicated that she would like to speak in the debate, so I will let her do so.

Senator McLucas (Queensland) (1.07 p.m.)—Higher education is an important part of our education system in Australia, and I think you, Madam Acting Deputy President Moore, would share with me concerns about the impact of increasing fees on people who want to get into higher education. We saw, sadly, this week the reality that enrolment levels in higher education are decreasing. I think, and certainly commentators in the sector agree, that this situation has a direct link to the fact that there has been an increase in HECS fees for many students. I concur with Senator Buckland that this will be exacerbated in regional areas, where the market question does play on students’ minds and certainly those of their parents when making decisions about whether or not they can afford to enrol in higher education. I notice Senator Carr is here, and I am very pleased that he will be able to speak in the debate on the Higher Education Legislation Amendment Bill (No. 3) 2004—and probably far more powerfully than I have done.

Senator Carr (Victoria) (1.08 p.m.)—I thank the chamber for its indulgence. I did not realise the second reading debate on the Higher Education Legislation Amendment Bill (No. 3) 2004 was commencing quite so quickly, and I would like to offer a few words on the bill. The bill amends the Higher Education Support Act 2003, and it does perform some non-controversial functions, including variations to the maximum grant levels under the Commonwealth Grants Scheme to reflect the transfer of funding for radiation oncology places. It also makes what the Commonwealth calls ‘minor and technical amendments’ to the HES Act. Some of these amendments are far from minor and a lot more than technical in that they reflect the indecent haste and the shameful shemozzle that accompanied the passage of the legislation a year ago.

Senators will doubtless remember the more than 250 amendments to last year’s bill—the one that gave us the unworkable and irrational higher education funding and regulatory regime. One hundred of those amendments were from the government. They bowed to the tokenistic demands of Independent senators in order to squeeze the legislation through the parliament in the very late hours of one night. They in fact rejected all amendments that the opposition proposed. What we had was an incoherent mess. The government were seeking to apply a bandaid treatment to a rather ramshackle edifice, and once again they are now doing what they can to repair the damage that they have inflicted. That is largely what this bill is all about—another patch-up job by the Commonwealth government, under the Minister for Educa-
tion, Science and Training. Dr Nelson, to try to fix up the mess that they have created.

Let me give one example to highlight this issue about these so-called ‘minor’ and ‘technical’ amendments that the bill seeks to fix—the question of the summer schools, which under the old bill would have prevented universities from doing as they have done for years, and that is to charge tuition fees for summer schools in the upcoming summer break. Because of the paucity of the funding that is provided to universities by this government, universities depend heavily on the fee income to survive—not only overseas student fees but also fees charged for various student activities such as the summer schools program. University vice-chancellors are understandably dismayed by the prospect of losing this income, and the government for its part is embarrassed at the discovery of yet another problem that has emerged from its 2003 legislation.

The opposition will be supporting this bill, simply because we do not want to see money denied to the universities. Frankly, we do enjoy the spectacle of the government having to clean up their somewhat pathetic act in this matter. But there is another reason why I support this bill, and that is that there is cause for celebration here: the opposition have had yet another victory. Once again, we are faced with a somewhat embarrassed government that have acted improperly in terms of their connivance with what would seem to be a number of somewhat dodgy elements within the higher education sector.

I can remember two years ago, when the opposition pursued the issue of Greenwich, we had the great pleasure of watching the government having to back down on that charlatan outfit on Norfolk Island—Greenwich University. We finally got rid of Greenwich and its chancellor, the Duke of Brannagh. The duke has been forced to flee back to America with his somewhat cruddy parody of a real university—and good riddance. Greenwich was trying to pass itself off as a genuine Australian university and dragging our self-respecting genuine institutions with it into yet another swamp of primordial slime. We see now that our international reputation for excellence in higher education was in fact threatened by the failure of the government to appreciate their obligations with regard to quality assurance. So it was with great satisfaction that the Labor Party were able to point out that we are the defenders of decency and quality in the higher education sector, and we will drag this government kicking and screaming to meet their responsibilities in that regard.

This bill, in its first incarnation prior to the recent election, included a clause that would have added yet another outfit of somewhat dubious repute to a list of recognised universities for the purposes of this act. That particular outfit was known as Melbourne University Private Ltd. When the opposition and minor parties saw this, alarm bells rang. We sent the bill off to a Senate committee for inquiry into this aspect of the legislation. We were confident that such an inquiry would reveal that the credentials of Melbourne University Private would be exposed as being totally inadequate, and I am pleased to be able to report to the Senate that we were right. We have been able to show that the government was negligent in its responsibility to defend Australia’s reputation with regard to its university sector: the committee’s report was damning of the credentials of Melbourne University Private.

Government senators made a somewhat feeble attempt to defend the government’s actions and, paltry as the attempt was, it was to no avail because the government has now had to acknowledge that the emperor had no clothes. Melbourne University Private has been stripped bare in the main body of the
report of the Senate committee and the govern-
ment has accepted the thrust of that re-
commendation. Let me remind the Senate of
what we found:
The Opposition members of the committee find
MUPL wanting in several respects. The institu-
tion fails to achieve the standards required by the
MCEETYA Protocols, particularly with regard to
research profile and output. Its representatives
have failed to convince Opposition senators that
the institution is a bona fide stand-alone entity
that truly accredits its own degrees. It has an aca-
demic staff of approximately 13 persons, many of
whom are also staff members of the University of
Melbourne. Its income is derived overwhelmingly
from commercial activities such as consultancy
and English-language teaching, rather than the
 provision of undergraduate and postgraduate
award courses. While MUPL may have met the
requirement of the Victorian Government for a
minimum of three per cent of students enrolled in
award courses, this hardly makes it a genuine
university. Further, it is financially dependent on
its parent institution.
They are, I am sure many of you would say,
somewhat bland words—but behind those
words there are quite serious issues. In fact,
we had a somewhat farcical situation
whereby Melbourne University Private pre-
 sented witnesses who were strenuous in their
indignant protestations that they had been
subject to an unfair inquiry. In its communi-
cations to the committee after the hearing,
the Executive Dean, Dr Vin Massaro, said of
the inquiry’s processes:
... the University believes that its integrity has
been impugned... the University’s commercial
reputation has also suffered...
These complaints were a response to vigor-
os but quite normal and expected types of
questioning from the committee. Normally,
universities go out of their way to be open,
frank and cooperative when it comes to pro-
viding information to the Senate. It would
seem, however, that Melbourne University
Private had something to hide. Their protests
sit a bit oddly with the extraordinarily frank
admission by Melbourne University Private
Ltd Director, Mr Neil O’Keefe, who told the
committee:
It has never been argued by anybody, including
MUPL, during the review process, that this was
much more than an English language school that
had a bit of a university hanging off the end of it.
When it was established, those were some of the
very reasons why it came under such criticism.
There are good reasons for the criticism, and
it has never abated. Victorian education min-
ister Lynn Kosky was obviously dubious
about the standing and credentials of Mel-
bourne University Private. In reviewing the
entity’s accreditation in 2003, Ms Kosky
imposed a number of stringent conditions on
Melbourne University Private that had to be
met if the Victorian government was to rec-
ognise it formally as a genuine university
that met the MCEETYA national protocols
for university status. These conditions in-
cluded ‘a level of research output acceptable
to the minister’. Ms Kosky provided detailed
specifications of what that would entail.

The truth of the matter is that while Mel-
bourne University Private tried manfully to
put an impressive gloss on its current re-
search publications list, as submitted to the
Victorian minister and to the Senate commit-
tee, even a cursory examination of this list
shows just how woeful its performance actu-
ally was. Melbourne University Private Ltd
had at that time just 7½ effective full-time
academic staff members. This fact in itself
ought to give rise to a question or two about
its standing as a real university. Most univer-
sities, as I think all senators would be aware,
have hundreds of academic staff across a
range of disciplines. In fact the majority of
staff who teach the odd hour for Melbourne
University Private Ltd are employed full-
time by the University of Melbourne, its so-
called parent institution.
The 7.6 academic staff, according to the research report attached to the Melbourne University Private submission to the Senate committee, produced in the year 2003-04 a total of 8.7 research publications, weighted according to the DEST standard criteria. This claim, as questioning from the committee made clear, was entirely fallacious. It was put to the university’s representatives that, of the 8.7 weighted publications claimed, only two successfully met the DEST criterion of having been published in referred journals and the like. The rest failed dismally. Melbourne University Private claimed, for example, two undergraduate textbooks whose latest editions had been edited by a Melbourne University Private staff member. If they had looked honestly at these publications the university would have seen that they both failed on three counts, any one of which would have been sufficient to exclude them from the list: that is, they were textbooks, which disqualifies them; they were anthologies, which excludes them; and they were revised or new editions of existing works, which alone would exclude them.

I will not subject the Senate to further details along these lines but, to summarise, almost all of the so-called research publications as listed by MUPL were duds one way or another—either that or they had been submitted to scholarly journals by MUPL academics in their capacity as staff members of other universities and not of Melbourne University Private alone. The rub was this: Victorian Minister Kosky had required of them that the university produce at least one weighted research publication per academic staff member in that year. The university had manifestly failed to meet that core criterion.

I ask myself simply this: how was it that this particular institution ended up on the list for the previous bill? Surely the DEST officers had checked this before it was submitted by the minister. I can only expect—given the professionalism of that department—that they would have told the minister. Therefore, I am not surprised now that the bill is no longer on the list. I am only surprised that it was originally on the list. If we examine further the evidence that was presented at the committee, we are entitled to also question whether or not Melbourne University Private was in fact an independent stand-alone institution, because Melbourne University Private Ltd is virtually completely dependent upon the University of Melbourne—that is, its parent institution. Its degrees were accredited by the older university and most of its staff actually worked at the established University of Melbourne.

An expert witness Professor Simon Marginson told the committee:

My sense is that—

Melbourne University Private Ltd—does not currently fulfil our understanding of what a university is. It is an exception which is an anomaly in the system. It does not have a substantial staff in its own right, and the tactic has been to point to the University of Melbourne staff as the supporting staff structure, when in fact that is the structure of a university separate from the one Melbourne University Private purports to be, as a self accrediting institution. Yet it is fully controlled by the University of Melbourne. So it is an odd beast.

Former Victorian Premier John Cain also made a submission to the inquiry. In his evidence Mr Cain pointed out that Melbourne University Private was not established using private capital. He said:

Instead of it being a private university with three prestige, modern buildings on University Square that they would occupy ... all the buildings were built at public expense. They—meaning the University of Melbourne—borrowed from the National Australia Bank ... up to $22 million ... and it was a lemon. Do you know how many people from Melbourne University Private occupy those buildings? Six.

CHAMBER
According to Mr Cain, Melbourne University Private Ltd has drained public money away from the parent institution, the University of Melbourne. The reason that only six staff occupy its grand new buildings on University Square is that in reality, following a merger with another company, Melbourne Enterprise International—also owned by the University of Melbourne—MUPL is actually little more than an English language college that does a bit of consultancy on the side.

Melbourne University Private Ltd was merged with a larger consultancy and language-teaching company when it nearly went under, three years ago. That was a rescue mission for a failed commercial venture of the University of Melbourne. Actual teaching of degree courses and actual, genuine research—those core functions of a real university—are very much a minor sideshow at Melbourne University Private. And yet this travesty of a university, this caricature, has the gall to present itself as a genuine, broadly based academic teaching and research institution. And the government has the gall to try to hoodwink the parliament into listing this institution in the Higher Education Support Act as eligible for various kinds of public money as a real university, standing alongside other Australian universities.

I have no doubt that the government’s broader agenda here was to try to have Melbourne University Private put on the list, just as many other entities of dubious provenance, reputation and quality have in the past sought to be presented as genuine institutions in this country. I take the view that this is Dr Nelson’s agenda as he has announced that the national standards for universities, the MCEETYA protocols, are going to be watered down. That is what the government is going to seek to do. This will allow a whole list of private, commercial business colleges and the like to acquire recognition as universities. The day that happens will be a sorry one for this country. The minister’s agenda for the Australian university system may well destroy that system. Certainly it will lower our reputation for higher education excellence in the eyes of the world. Our valuable international reputation, and with it our most valuable export industry, will be compromised. In the meantime, the Senate, I trust, can rest assured that, for now, this bill before us does not seek to add a bogus institution to the recognised list.

The Senate inquiry embarrassed the government once again. We have shamed the government and exposed its disingenuous effort to sneak Melbourne University Private onto the list. That is a small but significant victory for the quality of higher education in this country. The Australian higher education system has the Labor Party to thank for that.

Senator ALLISON (Victoria) (1.27 p.m.)—The Higher Education Legislation Amendment Bill (No. 3) 2004 is now the third fix-it bill this year, or the fourth if you count this bill’s previous incarnation. The act is only a year old, though! We are not surprised to have a third amendment bill for the Higher Education Support Act 2003 inside a year because we knew this legislation was flawed right from the start and the problems are now becoming clearer as the sector attempts to implement the changes required by that act.

It is frustrating that the government did not listen to the criticisms made by the Democrats and other opposition parties in December last year. The Senate had the responsibility to ask what went wrong with the drafting of the original legislation and that was why the Democrats supported referring the original version of this bill to an inquiry. The manner in which the government has handled this legislation has been appalling. I would like to remind the chamber about how we found out about this particular bill prior
to the election. The Australian Vice-Chancellors Committee informed us, in early August, that the bill would be introduced within the next few days. At the time, the government expected the opposition parties to support the passage of the bill at extremely short notice and without prior warning.

In his second reading speech on the Higher Education Legislation Amendment Bill (No. 2) 2004, Dr Nelson said:

The bill ensures that Open Learning Australia is subject to all the necessary provisions in HESA so that FEE-HELP can be appropriately administered for OLA students, and that OLA is required to comply with the relevant quality and accountability requirements.

This bill makes further amendments to Open Learning Australia because the government could not even get the correction right the first time. The Democrats understand that several of the measures in the bill, especially the amendments that relate to summer schools, were developed in response to, and in consultation with, the sector and that some of these are essential for the conduct of important functions and activities of higher education institutions. But we have to ask why the problems were not identified sooner. In fact, if the government had not included the provisions regarding Melbourne University Private with the other non-controversial provisions of the bill, which we are now left with, the bill probably would have passed back in August. I hope the sector sees this for what it is: a deliberate attempt on the part of the government to force highly controversial matters through the parliament.

The government must accept full responsibility for the delays in the passage of this bill. The Democrats agree with and support the conclusions, recommendations and most of the content of the opposition senators' report to the inquiry into the provisions of the Higher Education Legislation Amend-

ment Bill (No. 3) 2004. Our supplementary report to the inquiry details our concerns with the opposition senators' report. The inquiry found conclusive evidence and numerous reasons for Melbourne University Private to be included in the table B list of providers in the Higher Education Support Act 2003. Most concerning of all was the government's apparent willingness to short-circuit the protocols and processes that uphold and protect the reputation and standing of the Australian higher education system. The opposition senators' report said:

The institution fails to achieve the standards required by the MCEETYA Protocols, particularly with regard to research profile and output. Its representatives have failed to convince Opposition senators that the institution is a bona fide stand-alone entity that truly accredits its own degrees … While MUPL may have met the requirement of the Victorian Government for a minimum of three per cent of students enrolled in award courses, this hardly makes it a genuine university. Further, it is financially dependent on its parent institution.

The Democrats agree with that. It is appropriate at this time to reflect briefly on the impact the Higher Education Support Act has had on the sector to date. Already, 23 universities have announced that they will increase their HECS fees next year, most of them by the full 25 per cent across all disciplines. Disappointingly, all three South Australian universities will increase HECS by the full 25 per cent allowed in 2005. We fear this will severely impact on student choice in South Australia and in other states.

The review of indexation that the sector had staked its hopes on will now be hastily conducted within the confines of the Department of Education, Science and Training and the government, to the obvious disappointment of university students, staff and vice-chancellors alike. The Democrats' views on the indexation of university grants are on the record and well known, so I will
not discuss those matters further today. The vice-chancellors raised their concern about the indexation review, along with a noticeably long list of other concerns, in a recent document entitled ‘Achieving the vision for Australia’s universities: making Backing Australia’s Future and Backing Australia’s Ability work’. In this document they also call on the government to provide further funding to meet the transition costs for the implementation of the new act, which they estimate has cost each university, on average, $1.2 million. The government provided each university with just $250,000 to cover the cost of implementing the changes. It is now perfectly clear that this amount is inadequate for some universities and that they believe the ongoing cost of the increased reporting requirements will also add significant costs to their already tight budgets.

The long list of problems raised by the AVCC in this document is no surprise to the Democrats. We knew the legislation and the policy were flawed from the start and fraught with serious problems. I am sure we will be hearing a lot more from the sector about the problems with the so-called higher education reforms in the coming years and in particular next year, the first year of operation under the new act. I understand that, for some universities, the implementation process is particularly difficult and time consuming. We wish all the universities the best of luck in completing their administrative changes before the commencement of the new academic year. The Democrats are pleased that the government accepted the Democrat and ALP position to remove the Melbourne University Private provisions from the bill to allow its passage. We will support the bill. (Time expired)

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.34 p.m.)—In the interests of maintaining time, I will just thank members for their contributions to the bill and for their support of the legislation. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.35 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 4 (Governor-General’s opening speech).

Question agreed to.

GOVERNOR-GENERAL’S SPEECH

Address-in-Reply

Debate resumed from 29 November, on motion by Senator Knowles:

That the address-in-reply be agreed to:

To His Excellency the Governor-General

MAY IT PLEASE YOUR EXCELLENCY—

We, the Senate of the Commonwealth of Australia in Parliament assembled, desire to express our loyalty to our Most Gracious Sovereign and to thank Your Excellency for the speech which you have been pleased to address to Parliament.

upon which Senator Bartlett had moved by way of an amendment:

That the following words be added to the address-in-reply:

“, but the Senate is of the opinion that the Government’s failure to ratify the Kyoto Protocol, to take strong action to reduce Australia’s greenhouse emissions and to urge the United States of America to do likewise, is putting at risk international efforts on climate change”.

CHAMBER
Senator MOORE (Queensland) (1.35 p.m.)—I rise to make a few comments in reply to the Governor-General’s speech at the opening of parliament. I wish to concentrate on the issues around Indigenous Australians. As we have heard this week, there has been wide interest in the reformation of the role of Indigenous Australians in our community. Whilst the Governor-General in his speech did talk about this being one of the issues the government would pick up during its fourth term, I am very much afraid of what is going to happen to the community over the next few months. Already we have seen, and we have heard in this place through other senators talking on issues that affect Indigenous Australians, that there is a growing concern, and in fact a distrust, that is overwhelming the community across our country.

In this environment it seems to me that the Governor-General, given his speech, and in particular the fourth term government must accept that it is a major responsibility of this government to pick up the concerns of Australians. I am concerned that these issues have not been effectively picked up, and in fact that they have worsened, because in this place last week we had a motion concerning the issue of Indigenous incarceration across the country. Whilst there were attempts by the government to defer this issue, describing it as a state issue, that is just not accurate. I say that, as the Governor-General pointed out that there would be concern by the government on this issue, let us see this put into action.

In terms of the process, we have seen since the first Howard government a reluctance to prioritise the issues of a strong, unified community which includes the Aboriginal voice. We saw only this week the new consultative committee being put in place. Let us hope that through this term of government there will be an understanding of the real role of Indigenous Australians and a move towards a united society.

Senator GEORGE CAMPBELL (New South Wales) (1.38 p.m.)—I rise to respond to the Governor-General’s address, in particular to the government’s arrogant and misleading claims regarding its record of economic management. If we are to take this government’s claims at face value, they are the economic managers who have done no wrong. By their reckoning every man, woman and child in Australia is living in complete economic security, and all Australian businesses have to worry about is how to spend their profits. While this government may be content to bask in false glory and indulge in endless rounds of self-congratulatory backslapping, the rest of us actually live in the real world. The truth is that the government are more interested in spin than in good economic management.

As both the election campaign and the Governor-General’s address showed, this government is highly selective when it comes to the state of our economy. It only wants to hear the good news. When confronted with bad news the government is content to turn its back and look away. But just ignoring the hard issues does not make them go away, nor does it adequately deal with them. There is no doubt that Australia’s economy is performing strongly in a number of respects, but it is equally true that this government’s inactivity and lack of policy vision in a number of key economic areas threaten our nation’s future prosperity and thus the standard of living that the next generation and those that follow will be able to enjoy.

Thanks to this government’s ineptitude, Australia’s foreign debt has spiralled out of control. Back in 1995 John Howard and Peter Costello promised that one of their main economic objectives would be to bring down
foreign debt. Who can forget the spectacle during that period of the infamous debt truck as it travelled around the country, with Peter Costello driving it and the Prime Minister sitting in the front seat, professing the disaster that Australia’s foreign debt was to the national economy. And what have they done about dealing with that issue? Nine years later they have fallen asleep at the wheel. Net foreign debt has now reached a staggering $406 billion and is nearly double the amount it was when Labor left office—a huge growth over that nine-year period. Thanks to the activities of this government, every Australian now has a personal debt burden of just on $20,000. What are the government doing to tackle the debt? The answer is painfully clear: the same as they have been doing for the last nine years—nothing. They have no strategy, they have no policies and they have no idea how to deal with the explosion of our foreign debt and our current account deficit.

In addition to the foreign debt, in the corresponding period under the Howard government we have seen an explosion in household debt. The ratio of household borrowings compared with income has ballooned from 50 per cent in the early 1990s to 150 per cent. In fact, Australian families are now amongst the most indebted in the world. It is argued by representatives of the coalition that this is not necessarily a bad thing, that this is people borrowing mortgages in order to buy property. The reality is that when you look at the breakdown of the debt, it is not just about borrowing for mortgages. Many families are selling their equity in their homes to borrow to consume. The biggest borrowing that is occurring in our economy at the moment is for the purposes of consumption, not for the purposes of purchasing assets. That bubble has to finally burst. It will not take much movement in interest rates to see this economy suffer and to see families in very serious difficulty indeed, trying to service their debt levels.

A similar story emerges with respect to our nation’s disappointing export performance. Our current account deficit has risen to $13.7 billion, which is about 6½ per cent of GDP. In its recent report card on the Australian economy the International Monetary Fund was concerned enough to highlight our CAD as a potential risk to the nation’s future economic health. Under Peter Costello, Australia has suffered 29 trade deficits in a row. Average annual growth rates in exports has more than halved when compared to Labor’s 13 years in government. Left unchecked, this gap represents a serious constraint on sustainable economic growth. Australia’s poor export performance stems from this government’s inability to think strategically about the future of our economy. In its nine years in office the government has consistently failed to invest in Australian innovation. This has cost Australia dearly in potential export revenue and jobs.

After cutting around $5 billion of support to industry between 1996 and 2000, the government attempted to correct its horrendous mistakes with the Backing Australia’s Ability package. Whilst this package contained many positive measures, it was in essence too little, too late. This year’s supposed re-vamp, Backing Australia’s Ability II, commits the same mistakes as its predecessor: on the surface the $5.3 billion program looks impressive; however, it does not allow for inflation. After peaking in 2005-06, spending under the program slumps by one-third as a proportion of GDP before slumping again to just over $1,000 million in 2010-11.

Business has reacted accordingly to these years of chronic policy failure: only four per cent of Australian firms do any research and development at all. In 2002-03 only 37 companies spent more than $10 million on R&D
and only 30 companies spent more than the equivalent of three per cent of sales on research. This is well behind world’s best practice. In Australia, private R&D spending accounts for around 0.56 per cent of one per cent of national revenue. Compare this to world leaders, Finland, whose R&D expenditure is roughly 1.2 per cent of national revenue. Australia’s private sector invests at half the rate of the US and at one-third of the rate of Japan and Finland. We are barely treading water while our competitors are investing in a better economic future and creating a competitive advantage over Australian companies seeking new export markets.

But nowhere have the government’s economic policy failures been more keenly felt than in Australia’s manufacturing sector. Since the Howard government came to power 63,800 Australians have lost their jobs in manufacturing. What is more, exports of manufactured goods have plummeted under this government’s watch. Australia now has a trade deficit in manufactured goods of over $74 billion. In 2002-03 alone, for every dollar’s worth of manufactured goods that was produced in this country for local consumption, we imported $2.55 worth of manufactured goods from overseas. Particularly disturbing is the long-term downward trend in the growth of elaborately transformed manufactures. Since this government came to power, ETM export growth rates have slumped from 17.7 per cent under Labor to a dismal 1.8 per cent. The only OECD countries we now outperform in this area are Turkey, Greece, New Zealand and Iceland.

This is probably one of the greatest travesties of the past nine years of this government. This country made enormous sacrifices in the eighties under the Hawke-Keating government to get our industrial base competitive so that we could compete in the global marketplace as part of the expansion of the global economy. This was done by getting efficiency and higher productivity into our industries and, as a consequence, we got significant growth in the export of manufactured goods. That investment made by every worker in this country during that period has been squandered by this government over the past nine years, and it has put our economy in a substantially perilous state to meet the challenges of globalisation into the future.

The sad fact is that it is these very industries, value-adding high technology manufacturing industries, that Australia needs to nurture if we are going to sustain a competitive base and a competitive economy globally well into the future. It is these industries that will provide the jobs and new export markets that will sustain our economy in the years to come. But these industries are being denied the chance to grow. Under the coalition, Australian investment in manufacturing is one-tenth of the average achieved under the previous Labor government. What is more, under the Howard government we are attracting less than one-third of the global investment we were attracting under Labor.

This whole situation has been exacerbated by the skills shortages we are suffering right across all our industries. This is now identified as a major impediment to, a major constraint on, the capacity of our industries and companies to grow, maintain their competitive edge and to compete globally with international competitors. Manufacturing, along with a host of other industries, is in the grips of a skills shortage. Manufacturing businesses of all sizes cannot find the skilled labour they require. The problem is especially acute in the traditional trades: car manufacturing, electrical, electronics and construction—the list of industry sectors suffering from a shortage of skilled labour goes on and on. In fact, over the next five years 170,000 people will be leaving the traditional trades and there will be only 40,000 new entrants coming into them.
How can you expect Australian industry to continue to create wealth, to compete effectively in the export market and to create jobs when they cannot even find enough staff to keep their businesses running, let alone grow them for the future? Once again the government has badly let down Australian industry. Until the recent election the government completely ignored the skills crisis that has been consistently raised as an issue. There have been inquiries by Senate committees in respect of the issue, and the government has stood, substantially flat footed, and allowed the crisis to continue to grow without taking any initiatives to try to address it.

We have seen a belated response to it during the last election. We have seen the government announce that they will put in place 24 technical colleges to be run by industry, the private sector. One has to ask the question: is this a genuine attempt to address the issue of skills shortages in our community or is this the start of a process to transfer the public sector capacity that exists in our TAFE system into the private sector for the delivery of skills and vocational training in the longer term? Is this in fact the start of a wind-down of our TAFE system? I think there is a genuine concern out there that that is the real strategy behind the government’s announcement of the new technical colleges. Why would the government go to the extent of introducing these technical colleges to address a skills shortage? There are ample examples around this country of existing programs in place within industry that are delivering skilled labour across a range of sectors and working very well. Those could have been built upon very effectively, very efficiently and at a minimum cost to expand the capacity of our industry to train new tradespeople.

There is the example in the construction industry of the skill centres run as a result of levies applying in that industry. There is in fact an industry training centre operating in the minister’s own electorate with a capacity to train something like 3½ thousand construction workers or apprentices a year. There are examples like Austool, at Ingleburn in the seat of Macarthur, which has been specifically set up to train toolmakers for the toolmaking industry, to address a shortage. That could have been substantially expanded at a lot less cost than that required to establish these technical colleges, and that would have been able to get people into training much more quickly. I refer also to the Hunter Valley training facility; the Australian Aviation Centre, in Brisbane; the Bosch-RMIT program, in Victoria; and the Toyota T3 program, in New South Wales. All are in existence, all are targeted at providing skilled labour for particular key industry sectors and all could have been substantially expanded at a minimum cost to our economy. They could have dealt with the issue much more rapidly than the planned technical colleges will.

Simply moving in the direction that we are moving is going to put greater pressure and strain on our underfunded TAFE network as it currently exists. The TAFE system is providing enormously effective training in a range of skills to a range of industries across the country. It is in existence, it has the resources, it has the teachers, it has the equipment, it has the knowledge, it has the understanding and it has the respect of the people who are seeking that training. It would have been a much more efficient use of taxpayers’ dollars to have focused on building and investing in those TAFE colleges rather than on moving to establish the sort of structure that the government has proposed to deal with the skills issue.

In conclusion, I simply want to make three points. The government has now set its fourth term agenda and, sadly, it looks to me as if we are about to see history simply re-
peating itself. There are long-running economic sores in this country and fragilities in the Australian economy which are currently being ignored or treated with bandaid solutions and which, in terms of their impact on the economy over the longer term, will have serious ramifications when they start to crack open. The reality is that the motherhood statements that we have heard from this government are no substitute for having a strategic vision. It is time the government showed some courage and actually identified what are the hard issues and, more importantly, started to adopt policies to address them.

Debate (on motion by Senator Minchin) adjourned.

Sitting suspended from 1.58 p.m. to 2.00 p.m.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Minister for Defence) (2.00 p.m.)—by leave—I advise the Senate that two ministers will be absent from question time today. Senator Ian Macdonald is in Micronesia attending the Western and Central Pacific Fisheries Commission and the Forum Fisheries Commission ministerial meetings. During his absence, Senator Abetz will take questions on behalf of the portfolio of Fisheries, Forestry and Conservation and Senator Rod Kemp will take questions on behalf of the portfolio of Agriculture, Fisheries and Forestry. Senator Ian Campbell is on his way to Buenos Aires for the conference of parties on the climate change convention. In his absence, Senator Chris Ellison will take questions on behalf of the portfolios of Environment and Heritage; Transport and Regional Services; and Local Government, Territories and Roads.

QUESTIONS WITHOUT NOTICE

James Hardie Group of Companies

Senator WONG (2.01 p.m.)—My question is to Senator Ellison, the Minister representing the Attorney-General. I refer the minister to today’s media report that James Hardie’s Dutch parent company may agree to legal liability for compensation payments to Hardie’s victims. Given James Hardie’s failure to honour its commitments in the past and with the uncertainty surrounding the agreement, what steps has the government taken to ensure full and abiding justice for Hardie’s victims and their families? Does the government still endorse the proposed New South Wales legislation that would ensure asbestos victims are able to take action against the parent company even though it is now based in the Netherlands? Is the minister aware that the Jackson inquiry expressed doubts whether judgments under this type of legislation, which is both retrospective and Hardie specific, would be enforceable in the Netherlands in the absence of a treaty? What action, if any, has the government taken to ensure compensation claims can be taken and enforced against Hardie’s Dutch parent company?

Senator ELLISON—We have seen today the passing of the James Hardie (Investigations and Proceedings) Bill 2004, which is designed to assist the ASIC investigation into that matter. Of course, that is one aspect of this. The Australian government is committed to ensuring that people with asbestos related diseases are accorded justice. The Australian government calls upon James Hardie to honour its duty to keep the Medical Research and Compensation Foundation afloat so that all victims receive proper compensation, by withdrawing its requirement that the foundation release it from liability.

On 5 November 2004, the Commonwealth, state and territory Ministerial Coun-
cil for Corporations agreed in principle to consider options for legislative reform in the event that the current negotiations between James Hardie, the Australian Council of Trade Unions and asbestos victims do not reach an acceptable conclusion. The Australian Securities and Investments Commission is undertaking a full investigation of the conduct of James Hardie in relation to matters raised by the New South Wales commission of inquiry and will not hesitate to prosecute contraventions of corporations legislation. Many of the recommendations that came from the New South Wales inquiry are matters that fall within the responsibility of the Treasurer. I understand the Treasurer is considering whether any legislative changes to corporate law are required in light of that inquiry’s report.

In relation to the Netherlands, I can advise that there are no formal treaties between Australia and any foreign country for the reciprocal enforcement of judgments. The only exception, as I understand it, is the United Kingdom. The reason for this, as I understand it, is the jurisdictional basis of the judgments of the European countries. Of course, the United Kingdom has a similar legal system—a common-law based system—to Australia. There is no treaty between Australia and the Netherlands or indeed other European countries in relation to the enforcement of judgments.

With respect to contact between the two countries, the Australian government made contact with the Netherlands government when the question of enforcement of Australian judgments first arose. The Netherlands government has formally confirmed the position already understood by the Attorney-General’s Department—namely, that Dutch law allows generally for conventional Australian judgments to form the basis of legal action in the Netherlands without a treaty. Whether a specific Australian judgment related to James Hardie could form the basis for legal action in the Netherlands depends on Dutch law. Proceedings would need to be commenced in the Dutch courts.

We also foreshadowed with the Netherlands government that once the New South Wales inquiry released its findings we might seek the assistance or cooperation of the Netherlands government or its authorities to give effect to the recommendations of the inquiry. The Netherlands government would consider a formal request for a treaty but has noted that it would be very unusual for the Netherlands to have such an arrangement with a non-European country and that there may be hurdles to overcome with the restrictions posed by EC law. Formal discussions have not yet taken place with the Netherlands government concerning a treaty, since the proposals on which a treaty would be based are being formulated.

This is a matter that the Australian government take seriously. We have demonstrated that in relation to this matter by the urgent passage of the James Hardie bill and, of course, we have had the cooperation of all parties in that regard. We stand ready to ensure that according to law those liabilities are met in relation to the victims that Senator Wong has referred to.

Senator Wong—Mr President, I ask a supplementary question. Is the minister confident that a treaty is not necessary? In his answer the minister referred to the Australian government’s view that they would review the findings of the Jackson inquiry. It reported in September and raised the issue of whether a treaty would in fact be necessary for the sort of legislation the New South Wales government proposes to impose. If a treaty is not necessary to enforce judgments arising from this legislation, will the minister table the advice that supports this claim? If not, why not?
**Senator ELLISON**—It is a well-established practice that the government does not table advice that it receives in relation to legal matters, but what I can say, and I reiterate, is that the Netherlands government itself has noted that it would be very unusual for the Netherlands to have such an arrangement with a non-European country. We are continuing to look at the matter but you have to remember that European countries have a different legal system from us. We have an agreement with the United Kingdom in relation to the reciprocity of judgments and that is facilitated by the fact that we are both common-law countries. With European countries, it is somewhat different. We are not dismissing this but we are continuing discussions with the Netherlands, and even the Netherlands government has pointed to the difficulties we might face in relation to this. Nonetheless, we remain committed to pursuing this issue.

**DISTINGUISHED VISITORS**

The **PRESIDENT**—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from Kenya, led by the Speaker of the National Assembly, the Hon. Francis Ole Kaparo MP. On behalf of all senators, I welcome the delegation to Canberra. With the concurrence of honourable senators, I propose to invite the Speaker to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

Mr Kaparo was seated accordingly.

**QUESTIONS WITHOUT NOTICE**

**Indigenous Affairs: National Indigenous Council**

**Senator PAYNE** (2.09 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs. Will the minister inform the Senate about the outcomes of the first meeting of the National Indigenous Council? Is the minister aware of any alternative policies?

**Senator VANSTONE**—I thank Senator Payne for her question. She, along with all senators on this side of the chamber, is determined to see an improvement in the outcomes for and service delivery to Indigenous Australians. I wish I could say that of all members opposite. I can say it of some but not of others. We have had the first meeting of the National Indigenous Council today. I am pleased to say that that meeting marks the successful beginning of a new era of Indigenous affairs—a very new era of Indigenous affairs. Indigenous Australians can now sit down with nine relevant federal cabinet ministers and express their views on a wide range of issues.

The council is made up of people with a wide range of views and experience. Some of them have not ever had the opportunity to contribute to policy making at a national level. These people are achievers in their own right. And they have not been asked to sign nor have they signed a confidentiality agreement. I mention that because, on what could be a positive day, when not only Indigenous Australians but also the government of the day recognise this historic day, we have one spoiler who says, ‘They’ve been told they can’t speak.’ Who would that be? He is sitting opposite—it is Senator Carr. Senator Carr cannot help himself.

Yesterday and for part of today the National Indigenous Council has been briefed by the most senior public servants in Australia—a courtesy, as best I know, never extended to them in the past by any Australian government. The council quizzed the most senior public servants, as I understand it, in a more effective way than any estimates committee has ever done.

**Senator Carr**—Let’s see the Hansard!
The PRESIDENT—Order! Senator Carr, you continue to shout across the chamber during question time. I ask you to desist.

Senator VANSTONE—Having met with the Prime Minister, council members are now meeting to discuss some of their own views. The council gave us advice on our three priority areas—there is a lot more to say on this—which we will take on board. Everyone but federal Labor recognises that it is time for change—Indigenous leaders and state and territory leaders recognise that there needs to be change—that what we have been doing for first Australians is not good enough. When almost everyone wants to put their political differences aside and just get on with the job, it is disappointing that only one party in Australia wants to be a spoiler and that is the federal Labor Party—not the state Labor parties. On the dawn of a new era, their shadow minister has distanced them and taken them further and further—(Time expired)

Senator PAYNE—Mr President, I ask a supplementary question. The minister outlined in her response the important capacities of the individual members of the National Indigenous Council and their engagement with the public sector today. Can the minister advise the Senate of any further outcomes of the meeting and, as I asked in my first question, any alternative policies?

Senator VANSTONE—Yes, Senator Payne, I can. One of the interesting things to me from the meeting this morning was the very strong emphasis on responsibility that must be taken by families and communities. There is a lack of understanding as to why governments have not given communities and families that responsibility in the past. To that end, I refer to a draft shared responsibility agreement, which looks pretty good to this government and to the Western Australian government and to the Western Australian community of Mulan. And who is out there spoiling? Senator Carr. He says they have been pushed into it. This poor community wants a petrol bowser and we are prepared to make an agreement with them to give them the petrol bowser. Senator Carr thinks it is a dreadful thing that, in exchange for a petrol bowser, this community will make an agreement to get better health outcomes for their children. And that man over there says that this is a bad thing. (Time expired)

James Hardie Group of Companies

Senator WEBBER (2.14 p.m.)—My question is to the Minister representing the Treasurer, Senator Minchin. I refer the minister to the Treasurer’s claim in the House last week and in a subsequent media statement that the New South Wales government had failed to meet the request of ASIC to abrogate legal and professional privilege in respect of materials and records relating to James Hardie. Given ASIC is a Commonwealth statutory agency, does the minister agree that it is a matter for the Commonwealth to determine ASIC’s powers and that it would be inappropriate for the New South Wales government to possibly put ASIC in a more favourable position under state legislation than under its own Commonwealth legislation? Is the minister aware that the New South Wales government in fact wrote to the Treasurer highlighting this issue for action some weeks ago? What action has been taken in response?

Senator MINCHIN—The minister responsible for financial services and agencies such as ASIC in this chamber is Senator Coonan, as the opposition should well know. I am happy to give Senator Coonan the opportunity to answer the question.

The PRESIDENT—If Minister Coonan is willing to answer the question, she may help the Senate.
Senator Chris Evans—Mr President, on a point of order: I appreciate your trying to help facilitate the question being answered. I just indicate that the question referred to claims made by the Treasurer. As Senator Minchin represents him in this place, I thought he was the appropriate person to ask. If the government would prefer Senator Coonan answer the question, then obviously that would assist the Senate.

The President—Thank you all very much for your cooperation but, quite frankly, if the minister can assist the Senate in answering that question I would ask her to do so. If not, we will move on to the next question.

Senator Coonan—Of course I am very happy to accommodate Senator Webber’s question. It deserves serious consideration and that is what it will get. As Senator Ellison said earlier, yesterday saw the passage of legislation that facilitated the use of evidence from the Jackson inquiry in New South Wales that would enable ASIC to take forward its considerations and come to a view about potential action that may flow from the whole of the issue to do with James Hardie. The government remains of the view—Senator Ellison and I have said so consistently in this chamber—that James Hardie should honour its obligation to fully compensate asbestos victims. I do think we need to be very clear about that; nobody is disagreeing about that. But until the results of the negotiations between James Hardie and the unions and asbestos victims represented by the ACTU are concluded it would be premature for governments to be committing themselves to particular courses of action. Obviously, it is better for everyone, particularly the victims whose interests we have to bear in mind, if you can get a resolution. It is always better than having to resort to enforcement action, although it may well be that ASIC investigations will indicate that some further actions should be taken.

As I understand it, the Commonwealth has not yet received detailed information—I may be incorrect about this and I will correct it if I need to get further information for the Senate—about Premier Carr’s proposal to retrospectively unwind the restructure. It is certainly a proposal, and we need to very carefully consider whether that would ultimately be for the benefit of asbestos victims. Our main concern is that victims receive timely compensation. In order to better look at whether there have been any infringements of the Corporations Law, there was of course first the inquiry and now ASIC has under its purview a proper inquiry and investigation. This government has acted expeditiously to ensure that ASIC can have access to information and get over some of the evidentiary and other burdens that might inhibit its investigations. I think it is fair to say that we have as our very clear focus trying to bring this matter to a satisfactory conclusion for the victims.

Senator Webber—Mr President, I ask a supplementary question. I remind both ministers that my initial question was about comments made by the Treasurer. But, seeing as ministers opposite are keen to ensure a high standard of public debate on James Hardie, will either minister ensure that the government will require the member for O’Connor to retract his outrageous claim that Hardie’s victims are ‘ambulance chasers’? Does the minister agree that Hardie’s victims are owed an apology by the member for O’Connor for these insensitive remarks? Will the government demonstrate their support for Hardie’s victims and their families by requiring an apology from Mr Tuckey?

Senator Coonan—Once again, I will try and accommodate Senator Webber’s supplementary question. I have responsibility in
this chamber to answer on behalf of the portfolio and on behalf of the government. I have said that the government has taken expeditious action to facilitate the proper investigation of this matter from the point of view of ASIC, the Commonwealth federal agency and the Commonwealth regulator. But I think we have all agreed—certainly the government supports the view—that the victims are the ones whose particular interests need to be taken into account, together of course with others. We want to facilitate the early resolution of this matter. We will continue to do everything we need to do to investigate the matter under the Corporations Law. If people are answerable under the law, then so be it.

Howard Government: Economic Policy

Senator WATSON (2.21 p.m.)—My question is directed to Senator Minchin, the Minister for Finance and Administration. Will the minister inform the Senate of how the Howard government continues to deliver sound economic management? Is the minister aware of any proposals to substantially increase government spending?

Senator MINCHIN—I thank Senator Watson for his question and acknowledge his very strong interest in sound financial management—like all of us on this side. In the course of the recent election campaign the government released the final budget outcome for the last financial year, 2003-04, which showed a surplus of $8 billion. That was the sixth surplus run by our government and has resulted in a fall in net debt to just $23.5 billion, down from the $96 billion of debt that we inherited from Labor. Of course, these surpluses have come about because our government, unlike our predecessors, does live within its means and will continue to do so. In the course of the last election campaign, for example, we made promises worth around $8.4 billion in new spending over the next four years. These promises, unlike Labor’s, were submitted in full for costing to Treasury and the Department of Finance and Administration during the campaign. They are clearly affordable. They will be delivered in full and they will leave the budget well in the black.

Of course, as with so many issues, the Labor Party have been just a touch hypocritical on this issue of the cost of election promises. Last year they criticised us for running a surplus of $7.5 billion, which they then claimed was far too big. Following this year’s budget they attacked us for running down the surplus. Of course, in the election campaign they accused us, hypocritically, of promising far too much in the way of spending and tax cuts. They attacked our relatively modest $8.4 billion in promises and at the same time they promised new spending in total worth $39.6 billion over four years—nearly five times as much as we promised. It really is the greatest spending spree ever promised by any party in the history of Australian politics. They did claim that this spending was partially offset by some savings, which we have no doubt would have failed to materialise, just like the mythical savings promised by Mayor Latham to fund the Liverpool Council spending spree. In the unlikely event that they did achieve all these savings, Labor’s net spend in the campaign would have amounted to $9.5 billion over four years—13 per cent more than we promised to spend—and that is if you assume they met all their savings.

The worst thing about their program was that the spending blow-out occurred over the forward estimates, while a lot of their savings disappeared altogether. The infamous Medicare Gold is a classic example of that phenomenon. That particular policy had a price tag of $5.8 billion per annum and was estimated by Finance to grow at 10 per cent per year—an additional $500 million every year to pay for it. It is no wonder Mr Tanner
called it a grossly irresponsible policy. Labor did not submit any policies in full to Treasury or Finance for full costing by the deadline. A lot of their policies were not submitted for costing at all. So, indeed, the cost of their promises could well have exceeded the massive $39.5 billion which was estimated.

It is clear that on 9 October the Australian people made a judgment that the coalition was best able to keep the economy strong, the budget in the black and interest rates low, and of course they were right. Today’s unemployment figures confirm the wisdom of their judgment. The unemployment rate for November was only 5.2 per cent, the lowest in nearly 30 years.

**Regional Services: Program Funding**

Senator BOLKUS (2.25 p.m.)—My question is to Senator Hill representing the Prime Minister. I draw the minister’s attention to the Prime Minister’s code of ministerial conduct, and I refer him to the Regional Partnerships letter from the former parliamentary secretary, Mrs Kelly, to the Horse Australia 2005 project, dated 26 November 2004. Is the minister aware that this letter contains advice that Mrs Kelly had written to Senator Boswell advising him of funding approval and asking him to liaise with the proponents as to the date of the announcement? Can the minister confirm that Mrs Kelly asked the proponent, would you believe, to keep the advice secret until a later time and explain why Senator Boswell did not act on the minister’s request to announce the grant? Minister, contrary to the terms of the code of ministerial conduct, why was a ministerial funding decision made contingent on an announcement by a government senator who was neither a minister nor a parliamentary secretary?

Senator HILL—I actually do not know why he did not make the announcement. I am a bit surprised that he did not make the announcement because I know that Senator Boswell is pretty keen on making announcements in Queensland to his constituents, that would seem to me to be a sensible thing to do.

Senator Chris Evans—He didn’t make the announcement. Why didn’t he make the announcement?

Senator HILL—I actually do not know why he did not make the announcement. I am a bit surprised that he did not make the announcement because I know that Senator Boswell is pretty keen on making announcements in Queensland, particularly announcements that benefit rural and regional Australia. Senator Boswell is a member of a coalition committed to helping the people of the bush, and these grants are for that purpose. We are pleased that they have been made. They can benefit local regional communities, improve their infrastructure and enable them to become more competitive. That is why the grants were made and it is a good program.
Nuclear Energy: Waste Storage

Senator ALLISON (2.29 p.m.)—My question is to the Minister representing the Minister for the Environment and Heritage. Has the minister made any progress in identifying a site for the Commonwealth nuclear waste dump? Will the minister release the short list of possible sites for storage of Commonwealth nuclear waste? Is the government still wedded to the idea of storing nuclear waste on an island and, if so, which one?

Senator ELLISON—The question Senator Allison raises is an important one. As you know, I am representing the minister today. I will take the question on notice and see if I can get back to Senator Allison before the close of question time today.

Senator ALLISON—Mr President, I ask a supplementary question. Can the minister also advise whether the government has approached any other Australian state or territory government—or a foreign country for that matter—with a view to convincing them to store Commonwealth nuclear waste on a permanent basis? If so, can the minister detail the substance of those approaches? Has the minister moved to limit generation of nuclear waste—for example, by the proposed new reactor at Sydney’s Lucas Heights—until the Commonwealth has safely stored the waste it has already generated?

Senator ELLISON—There are a number of questions in the supplementary and my previous answer applies.

Natural Heritage Trust

Senator SHERRY (2.30 p.m.)—My question is to Senator Minchin, the Minister for Finance and Administration. Is the minister aware that the annual report of the Natural Heritage Trust for 2002-03, which was tabled in parliament on Tuesday, contains an extraordinary ½ pages of account corrections, totalling $58 million? I ask whether the minister for finance is aware that the note in the Auditor-General’s certificate relating to this error states:

… there was a clear breach of section 48 of the Financial Management and Accountability Act 1997 … the accounts and records were not kept in such a way as to ensure all appropriated moneys were recorded by the Department.

Is the minister aware that, whilst the net effect of this error was $58 million, the total amount incorrectly accounted for over a three-year period was $404 million? In light of this $400-plus million breach of Commonwealth law, what action has the minister taken with regard to the Natural Heritage Trust?

Senator MINCHIN—That particular Auditor-General’s report has not been drawn to my attention. But I will seek information on it and let Senator Sherry know what action is contemplated in response to it.

Senator SHERRY—A $400 million error has not been drawn to the attention of the minister! Mr President, I ask a supplementary question. Isn’t this the third major audit report in the last month containing scathing criticisms of government financial management, including report No. 15, which highlighted $47 billion in inappropriate expenditure by three departments? We have had the Department of Defence audited accounts qualified three years in a row, with $8 billion in unaccounted assets. Isn’t the Auditor-General’s highlighting of this financial mismanagement by the government of the Natural Heritage Trust—another $400 million—just another example of the Howard government’s financial incompetence, presided over by you?

Senator MINCHIN—The title of ‘King of Financial Incompetence’ rests with the former Labor government, which presided over the most massive rort ever exploited upon the Australian people through the Cen-
tenary House lease, the report on which will be delivered this afternoon. The Australian people will realise what a scandal was overseen by the former Labor government for the benefit of the Labor Party—the greatest rent rort ever seen—and it has been this government’s job to clean up that mess in the last eight years.

**Nuclear Energy: Floating Power Stations**

**Senator BROWN (2.33 p.m.)**—My question is to the Minister representing the Minister for Foreign Affairs. It relates to the floating nuclear power stations to be produced by Russia. Has the government expressed concern that one of the first installations of these nuclear power stations will be at Kamchatka on the Pacific coast of Russia? Has the government discussed the matter with the Indonesian government, which has expressed interest in the purchase of floating nuclear power stations? What is the nature of the discussions Australian government officials have had with Russia about floating power stations, and what was the outcome of those discussions?

**Senator HILL**—Unfortunately, I do not have a brief on floating nuclear power stations. But I will refer the question to the minister, and he will have about two months to think of an appropriate answer.

**Senator BROWN**—Mr President, I ask a supplementary question. The minister should be acquainted with matters as important as this one which have been discussed between governments. I ask the minister whether he will report back to the parliament this afternoon, after consulting the Minister for Foreign Affairs, on the nature of the discussions between Australian government officials and Russian officials regarding floating nuclear power stations. Will the government report back to this parliament in the new year on the full details of those discussions, if it cannot do so this afternoon?

**Senator HILL**—I have said I will refer the question to the minister.

**Telstra: Services**

**Senator CONROY (2.35 p.m.)**—My question is to Senator Coonan, Minister for Communications, Information Technology and the Arts. I refer to Telstra’s practice of issuing mass service disruption notices following bad weather to exempt it from normal customer service standards. Is the minister aware that Telstra has issued over 100 of these notices so far this year? Does the minister agree with the Deputy Prime Minister, Mr Anderson, who recently identified a need to tighten the capacity of telecommunications carriers to obtain exemptions from their community obligation timetable in the face of claimed problems with weather? Alternatively, does the minister stand by her comments in the Senate last August when she stated:

There is certainly no evidence—at least, none that has been brought to my attention—to suggest that Telstra are using outage notices inappropriately, nor that they would do so.

If so, has the minister told the Deputy Prime Minister that he is wrong?

**Senator COONAN**—I thank Senator Conroy for the question. The important point about this question is that we do in fact have a customer service guarantee framework that allows companies to claim exemptions from time frames which they cannot meet because of circumstances beyond their control, such as severe storms, bushfires, lightning strikes and cable cuts. Where exemptions cover a large area, they come under the category of ‘mass service disruptions’. For example, some events have the potential to dramatically increase the number of faults or prevent field staff from accessing an area to remedy the fault.

To claim a mass service disruption, a provider must either contact customers indi-
Department of Communications, Information Technology and the Arts

Thursday, 9 December 2004

SENATE

75

Senator CONROY—Mr President, I ask a supplementary question. In light of the Deputy Prime Minister’s comments, will the government take action to ensure that telecommunications carriers comply with their community service obligations? Will government now adopt the recommendation of the Senate Environment, Communications, Information Technology and the Arts Committee that their customer service guaranteed regime should be amended to ensure that mass service disruption notices cannot be used by carriers to avoid their obligations to properly maintain their networks and to provide an acceptable standard of consumer service?

Senator COONAN—I have outlined what action has been taken to ensure that mass service disruptions are only used in appropriate circumstances. What I do want to remind those listening is that Labor’s consumer safeguards in telecommunications were virtually nonexistent. Not only was there not a customer service guarantee or any assistance for consumers, but also the figure I have is that under Labor the most remote customers in Australia could expect to wait up to 27 months even to get a phone. Let alone worrying about whether there was a mass service disruption, they could not even get a phone so that it could go out of order! This government take our obligation to consumers in telecommunications matters very seriously, and no customer has to wait more than 20 working days for a new phone service. It is about time that the Labor Party realises that we have built these safeguards and we will maintain them.

Insurance: Public Liability

Senator HUMPHRIES (2.41 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan, the Minister representing the Assistant Treasurer. Will the minister...
advise the Senate how the Howard government has helped make public liability insurance more affordable and more available? Is the minister aware of any alternative policies?

Senator COONAN—I thank the senator for what is a very important question. As senators would be aware, the issue of public liability insurance and the skyrocketing cost of claims and premiums was a huge issue facing the community in the last term of this government. Businesses, tourist facilities and community and sporting groups were facing premiums that were beyond their means and, in some cases, they were unable to find insurance at all. The government responded by bringing together the states and territories and embarking on a range of reforms to restore some balance to a system that was creating serious difficulties across the community. In my previous role as Assistant Treasurer, I had convened an expert committee, chaired by Justice David Ipp, to review the law of negligence and to develop principled options to limit liability and the quantum of damages. It was a reform program that was then agreed with all states and territories.

The broad thrust of the reforms implemented across Australian jurisdictions has resulted in a rebalancing of the rights of the individual against those of the community as a whole and striking a reasonable balance between the two. Happily, I can inform the Senate that the positive results of these reforms are already being seen across the country. CGU, a large insurer, has recently announced a 10 per cent reduction in premiums for public liability, citing a fall in the frequency of small claims. At the same time, QBE Australia chair Raymond Jones was quoted in the media as saying there had been a fall in the number of court cases and legal challenges.

As well as these general improvements, I have been advised of a number of positive outcomes. Senators would be aware of troubles, for instance, faced by many railway historical societies around the country. I am advised that, in an effort to resolve these problems, a group of dedicated individuals began work about 18 months ago looking at pooling insurance and working with others in their sector. We have now got, in an environment of tort law reforms, some really significant results. For example, I am informed that the Australian Railway Historical Society, based in Canberra, was just two years ago facing public liability premiums of $75,000. Members were even considering selling some of their heritage objects to be able to keep going. Now those premiums have almost halved. I am also informed that the Australian Narrow Gauge Railway Museum Society reopened on 28 November after being offered affordable premiums. The list goes on and on.

I would also commend all those involved in the good work of trying to get this liability problem under control and those involved in the government’s swift and effective response to public liability concerns, including state and territory governments who worked alongside the Australian government to bring the system back into balance. Federal Labor really does need to take a leaf out of the book of its state and territory counterparts from the Labor Party. Despite the importance of this issue, we did not see anything positive from federal Labor. There was no plan, no solution and no attempt to resolve the issue. In fact, Labor only got involved in the last stages with, I think, Senator Conroy throwing a spanner in the works and trying to send the whole thing off. It has not worked. The government’s reforms are already delivering benefits and I hope we will shortly be able to bring back the reforms to finalise what we started. We know it works. Labor should get
behind what the government have done, as have their state and territory counterparts.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I would like to draw the attention of honourable senators to the presence in the President’s gallery of Mr David Coltart MP, justice spokesman for the opposition from the parliament of Zimbabwe. I warmly welcome Mr Coltart to the Senate and trust that his visit will be both informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Telecommunications: Services

Senator LUNDY (2.46 p.m.)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. Has the minister seen this month’s report by the Telecommunications Industry Ombudsman which stated that consumer complaints about poor services increased by eight per cent to 59,850 last year? Is the minister aware that complaints about landline faults increased by 21 per cent, mobile phone connections by 80 per cent and Internet connections by 158 per cent? Given these disappointing statistics, why has the government remained obsessed with the full privatisation of Telstra? In fact, can the minister explain how the sale of Telstra will improve services for consumers? Minister, given that in question time today we have already heard how useless the consumer service guarantee is, what action will the government take to address these falling service standards in the telecommunications industry?

Senator COONAN—I am really glad that somebody on the other side has got around—the report has been out for quite a while—to asking a question about this report. Some of the findings in the TIO’s annual report about the performance of the industry in 2003-04 are not surprising. The number of complaints for the previous financial year was higher than for the year earlier, but complaints remained considerably lower than they were three years ago because complaints fell substantially. Complaints in 2003-04 were in fact 15.7 per cent lower than in 2000-01.

The number of complaints would also be expected to increase with the recent improvements in the level of consumer awareness of the TIO following the recent government information campaign. The government are serious about dealing with consumers and about consumers having access to the telecommunications ombudsman, and so we undertook an information campaign. It would be important for consumers to be able to take up their concerns with the industry ombudsman and important that they know their rights. I understand that a survey by the TIO in April 2004 revealed that the level of awareness of the TIO among residential or household telecommunications consumers increased from 47 per cent to 52 per cent since the previous survey. This is a 10.6 per cent increase in the awareness of the TIO and it may of itself be expected to cause a similar increase in the level of complaints, regardless of any change in consumer concern.

There are a number of issues that were identified in the TIO report that are being addressed. For example, the government has been actively involved in the contracts issue, advocating the development of a code of practice under telecommunications legislation to address the particular issues that have arisen in telecommunications contracts. The government has written, for example, to the CEOs of all the major carriers seeking their commitment to the code of development process and to timely and effective outcomes. This followed a formal request by the ACA for the telecommunications industry to develop a code of practice for consumer con-
tracts and to submit it to the ACA for registration.

Another issue dealt with by the ombudsman was credit management. These are issues that were identified as of most concern to consumers and they are matters to which the government is responding. In relation to credit management, the government directed the ACA in April to investigate industry arrangements to protect telecommunications consumers from Internet dumping and unexpected high bills. The ACA gave its report to me recently and I am currently considering these recommendations. So the point of the issue is that the ombudsman is there to deal with legitimate issues with telecommunications affecting consumers. The government has in fact undertaken a campaign to ensure that consumers are aware of the ombudsman and aware of their rights, and I am very pleased to see that increased awareness reflected in the annual report.

Senator LUNDY—Mr President, I ask a supplementary question. Does the minister accept that the ombudsman’s report demonstrates once again that the light touch regulation in the telecommunications industry has not delivered good outcomes for consumers? The minister mentioned, or at least paid lip-service to, unfair contracts, so I ask: will the government now act to direct the Australian Communications Authority to review all consumer codes and develop tougher regulatory standards to improve service levels?

Senator COONAN—As I have said, what the government have done is to develop a robust consumer framework. We have built these consumer frameworks in the absence of the Labor Party doing anything in 13 years to look after telco consumers. I think it is interesting that in Senator Lundy’s earlier question she asked about privatising Telstra. One thing I do know is that these consumer safeguards exist independently of government ownership or interest in Telstra.

Unfortunately for the Labor Party, they do not seem to be able to understand the difference between competition and consumer protection. They want to advocate telecommunications competition on one hand while demanding that Telstra deliver services at any cost on the other. Under Labor, all you would get with Telstra is an old-style, monopolistic public utility incapable of delivering anything for consumers. This government cares about consumers. We have built the framework to look after them and we will maintain it.

**Immigration: Asylum Seekers**

Senator NETTLE (2.51 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. The minister will recall that last year UNHCR requested that all Iraqi asylum seekers not found to be refugees should be granted temporary protection visas and be accepted into the community, pending an improvement in the security situation in Iraq. Given the current and deteriorating security situation in Iraq, does the minister still stand by her statement of 2 December this year regarding the 14 Iraqi asylum seekers currently detained on Nauru, whose claims have been rejected by her department, when she said:

 Those people who have been confirmed as non-refugees should accept the outcome and return to their home country as quickly as possible.

Will the minister act on the request from UNHCR and grant these people their visas?

Senator VANSTONE—Senator, the specific request from the UNHCR with respect to the Iraqis being reassessed does not come to mind. I think we may have instigated reassessing the Iraqis simply because we agreed, at the request of the UNHCR, to reassess the Afghans. It may have put in a request; it
may have been a simultaneous arrival at a very good idea. We redid the Iraqi caseload. The facts are that, having redone the caseload in the current conditions, some people have still been assessed not to be refugees.

Senator, as you probably know—but as I very rarely hear you mention—Australia is the third largest taker in the world of people in desperate need of resettlement, following the United States and Canada. A system that decides who are refugees and who are in need must, of course, decide who are not refugees, and the consequence for them is that they go home. So the short answer to your question—if you are asking me whether I still think they should go home—is yes.

Senator NETTLE—Mr President, I ask a supplementary question. Is the minister aware that a number of these asylum seekers have attempted to sign ‘voluntary return forms’ requesting their return to Iraq but have been told by the International Organisation for Migration that runs the detention centre in Nauru that they cannot return to Iraq because ‘the borders are closed’? Does this not make a mockery of the minister’s claim—which she has made again today—that they should ‘go back to where they came from’? Will the minister now apologise for this misleading statement and will she give these asylum seekers a visa and wish them a Merry Christmas?

Senator VANSTONE—Senator, perhaps, given my portfolio, I should wish them ‘compliments of the season’ rather than ‘merry Christmas’ because—as you will be aware—Islamic people do not celebrate Christmas; neither do the Jewish community. So ‘compliments of the season’ is usually a better sort of remark. You might like to pick up that little hint. I wish everybody here compliments of the season. I look across the chamber to this ocean of faces and I wish them a very happy and long holiday. They will need it because they are coming back to three more years of our government and three more years of opposition for them.

Bushfires

Senator BUCKLAND (2.55 p.m.)—I refer the minister representing the Minister for Local Government, Territories and Roads to the devastating impact of the bushfires that swept through New South Wales, the ACT and Victoria in January 2003, and to the onset of the 2004-05 bushfire season. Is the minister aware that the all-party parliamentary inquiry into these bushfires received more than 500 submissions from local governments, rural fire brigades, farming organisations, environmental groups and concerned citizens? On this, the last sitting day of 2004, can the minister tell the Senate why the government has not formally responded to the recommendations contained in the committee report tabled on 5 November last year—more than 13 months ago?

Senator ELLISON—I am not aware of the reason for the government not having responded to the report Senator Buckland has referred to. The Australian Institute of Criminology conducted a study into bushfires and the reasons why people light them. That is something that, in my own portfolio, as minister for justice, I want to take further. Australia experiences bushfires more often than most other countries. A lot of these bushfires are lit deliberately or are caused by the recklessness of individuals. That is something I certainly want to address. The Australian Institute of Criminology has produced an excellent report on this which I will be releasing shortly. That is within my portfolio, and it will be of great assistance in dealing with those arsonists who cause bushfires. As for the reason why there has not been a government response to the report Senator Buckland mentions, I will take that on notice.
Senator BUCKLAND—Mr President, I ask a supplementary question. Is the minister aware that a former minister for regional services pledged to develop a national firefighting strategy in partnership with the states and territories as long ago as April 2002? Could the minister tell us why the government has failed to honour his commitment to Australia’s regional communities?

Senator ELLISON—I do not accept for one moment that there has been a failure by this government to honour its commitment to develop a bushfire strategy. The state and territory governments have primary responsibility for the control of bushfires. The Commonwealth has an important part to play, but it is part of a whole-of-government approach to the issue of bushfires. I will take that on notice and get back to the Senate.

Immigration: Asylum Seekers

Senator BARTLETT (2.58 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs and it follows on from Senator Nettle’s question and the minister’s comment about people preparing themselves for three more years of this government. Minister, isn’t it the case that the Iraqis on Nauru—and, indeed, Iraqis in detention in Australia—have already had three years or more of being locked up by this government? Is it not a fact that those Iraqis on Nauru who have asked to be returned home are not able to be returned? Is it not a fact that the United Nations High Commission for Refugees’ global advisory on returning Iraqis has specifically said that Iraqis should not be returned forcibly and that governments should postpone measures intended to induce voluntary returns, including of rejected cases? Is it not also the case that the UNHCR recommends that such people—rejected refugee claimants from Iraq—be granted some form of complimentary protection, in line with human rights principles? How can the government continue to justify locking up these people, who have nowhere else to go and who have committed no crime?

Senator VANSTONE—The government will not be giving temporary protection visas to people who have been judged not to be refugees. People who come to Australia, irrespective of how they come, have their asylum claims properly heard. If they are refugees they are given either a permanent protection visa or a temporary protection visa. The choice between those two may well depend on the method of arrival. People who are judged not to be refugees are not entitled to Australia’s protection, and we do not give it. As to any comments the IOM, the International Organisation for Migration, has made recently, they have not been drawn to my attention and I will seek them out.

Senator BARTLETT—Mr President, I ask a supplementary question. This question is line with the minister’s wishing of compliments of the season, and I might say that is a very politically correct wish to these people and everybody else. The global body responsible for assessing refugee situations, the UNHCR, recommends to all countries that asylum seekers from Iraq—even those not recognised as refugees—be granted some form of complimentary protection. If those who have been locked up on Nauru or in Australia for three or more years have nowhere else to go, what does the minister recommend they do for Christmas?

Senator VANSTONE—Senator, I am not sure if you used ‘politically correct’ as a disparaging term, but I think it is somewhat offensive to say to people who are not of a Christian religion, ‘Merry Christmas,’ as if the rest of the world shares your own world view. It is a multicultural world and there are differences. I do not think there is anything
wrong with acknowledging them and choosing a form of greeting to include all people. Christians would say, ‘Merry Christmas.’ Saying, ‘Compliments of the season,’ includes all people. Not everybody happens to be of a Christian religion. Some are Muslims. Some have other religions—for example, the Jewish faith. I do not see anything wrong with that.

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Nuclear Energy: Waste Storage

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.02 p.m.)—Senator Allison asked me a question during question time in relation to the management of nuclear waste, which is the responsibility of the minister for science. I am advised that the government has embarked upon a detailed process to determine a location for the Commonwealth’s co-located waste management facility. The initial step in this process will involve identification of a site or sites which will be subject to further on-site investigation of their suitability. Whilst the government has a preference for an offshore site, both offshore and onshore siting options are being considered. This facility will be subject to a Commonwealth environmental assessment and will require regulatory approvals from the Australian Radiation Protection and Nuclear Safety Agency. If there are any other details which have not been covered in that answer, I will get back to the Senate.

Regional Services: Program Funding

Senator HILL (South Australia—Minister for Defence) (3.03 p.m.)—I have further information in response to a question asked by Senator Carr on 2 December in relation to Mr Ken Crooke. I seek leave to incorporate the answer in Hansard.

Leave granted.

The answer read as follows—

(1) Can the Minister confirm that Mr Ken Crooke was a senior member of the staff of the former Parliamentary Secretary to the Minister for Transport and Regional Services?

(2) Wasn’t Mr Crooke employed by Mrs Kelly when Mr Crooke acted for both her and A2 Dairy Marketers during negotiations for a Regional Partnerships Grant this year?

(3) Can the Minister advise the Senate on what date Mr Crooke commenced employment in Mrs Kelly’s office?

(4) Isn’t it the case that Mr Crooke was on the staff of Mrs Kelly when he represented the A2 company at negotiations with representatives of the Queensland Government on 8 July 2004?

(5) Is it the Minister’s contention that people in rural and regional areas are not concerned with the propriety and probity of government grant allocations?

(6) Is Mr Crooke still working for Mrs Kelly? When did his employment cease?

(7) Has the Prime Minister investigated Mr Crooke’s involvement with A2 Dairy Marketers including any role he had with the company in connection with the activities that led to the recent conviction of that company for false advertising? Can he confirm that on 8 July Mr Crooke, as a director of the Asia Pacific Corporation, was actually involved in negotiations with the Queensland Government with regard to the A2 company?

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

(1) Mr Crooke was employed in Mrs Kelly’s office as an Executive Assistant/Office Manager from 28 June to 4 July 2004 and as an Assistant Adviser from 5 July until 31 October 2004.
(2) Mr Crooke did not act for both Mrs Kelly and A2 Marketers during any negotiations.

(3) 28 June 2004.

(4) Mrs Kelly has issued a statement on this matter and I have nothing further to add.

(5) No.


(7) I have nothing to add to the statements made by Mrs Kelly on this matter.

Natural Heritage Trust

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.03 p.m.)—I have further information in response to the question asked of me today by Senator Sherry in relation to the Auditor-General’s report on the Natural Heritage Trust special account. I seek leave to incorporate the answer in Hansard.

Leave granted.

The answer read as follows—
The issue to which Senator Sherry refers is an old story, which was rectified over a year ago. It was canvassed in the Auditor-General’s report into Special Accounts in January of this year. The Auditor pointed out that in previous years, the Department of Environment and Heritage had duplicated the appropriations into the Natural Heritage Trust Special Account, because they had assumed that annual appropriations were required to give effect to the credits made available to the Natural Heritage Trust.

In reality, the Telstra Sale Act also included a Special Appropriation which automatically credited amounts to the NHT Special Account. This created a duplication of appropriation authority.

As a result an adjustment had to be made, and that adjustment was disclosed and fully explained in the 2002-03 annual report of the Department of Environment and Heritage.

The Auditor-General noted the correction in the context of the Department’s 2002-03 annual report this time last year.

The discussion in this year’s (2003-04) annual report for the Natural Heritage Trust is simply there to provide an accurate historical series in relation to the balances of the NHT Special Account had the duplication not occurred.

It is important to remember that these corrections deal with a technical reporting issue. They do not affect program expenditure under the Natural Heritage Trust, which has been administered in accordance with government policy.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

James Hardie Group of Companies

Senator WONG (South Australia) (3.04 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Justice and Customs (Senator Ellison) and the Minister for Communications, Information Technology and the Arts (Senator Coonan) to questions without notice asked by Senators Wong and Webber today relating to compensation payments by James Hardie Industries.

Today in question time one issue that the opposition sought information on was that of a treaty between Australia and the Netherlands. The reason we did so is that a treaty is necessary to ensure that justice is done for the victims of James Hardie. I think most people in Australia are aware that Hardie engaged in a complex corporate restructure, which included placing most of its assets into a Dutch based entity. One issue that is of great concern to victims and their families is what happens if they have a judgment against the company that is as useless as the paper on which it is written because they are unable to enforce the judgment against the company where the assets are held. We on this side of the chamber believe that the government must do everything it can to ensure that, if there are judgments in favour of victims of asbestos related diseases against
James Hardie, those judgments are able to be enforced and that the victims and their families receive appropriate compensation.

The issue of the treaty is fundamentally an issue about certainty, about peace of mind for Hardie’s victims and their families and about making sure that any judgments against Hardie are enforceable. We do not want to see seriously ill or dying Australians, or their families, left with judgments that are effectively worthless. Unfortunately on this issue what we have seen today in question time and previously is the government shillyshallying, changing positions and making commitments and then resiling from them. They have failed to provide certainty in this area. They have failed to ensure that the judgments can be enforced. On 21 September—before the release of the New South Wales special inquiry report, the Jackson report—in the Australian Financial Review the Attorney-General said:

No formal discussions have yet taken place with the Netherlands government concerning a treaty.

He also foreshadowed that the government would consider the findings of the Jackson inquiry before determining what it would do next. Then the Jackson inquiry reported subsequently. Concern was expressed by Commissioner Jackson that judgments made under legislation that was both retrospective and Hardie specific would not be able to be enforced in the Netherlands. Despite these concerns, we have had very little or no action from the Attorney-General. Instead, what he has indicated and what was again echoed today by Senator Ellison, the Minister representing the Attorney-General in this chamber, was that in general the advice from the Netherlands authorities was that conventional Australian judgments can form the basis of legal action in their respective jurisdictions.

That means two things. The first is that this government will condemn Hardie’s victims who have got a judgment under Australian legislation to another litigation process in the Netherlands instead of ensuring that any judgments under Australian legislation will be able to be enforced as of right in the Netherlands as they would be in the United Kingdom. Instead of ensuring that those judgments would be able to be enforced as of right, this government are saying to Hardie’s victims, ‘Even if you go through a litigation process here in Australia—even if you go through a process either under existing legislation or under the proposed New South Wales legislation—we still expect you to litigate in the Netherlands.’ What sort of Christmas message is that to Hardie’s victims and their families? They do deserve some certainty and they deserve to know that this government is prepared to do the work to ensure that justice is done not only in the letter of the law but also in practice so that judgments can be enforced.

The second issue that the minister indicated was that their advice was that a treaty may not be necessary because conventional judgments may not require such a treaty. Let us be very clear about this. Any judgment by a Hardie’s victim against the Netherlands company will not be under conventional legislation; it will be under very specific—Hardie specific—retrospective legislation. If the government are sure that a treaty is not required, as I understand they are now stating, they should release the advice. They should release a statement indicating precisely why that is. Why should they do that? It is because Hardie’s victims and their families deserve to know. They deserve to know whether or not they can actually enforce the judgments they receive. (Time expired)

**Senator EGGLESTON** (Western Australia) (3.09 p.m.)—The whole saga of asbestos related disease is a very sad one. Nobody can
feel anything but the greatest sympathy for the victims of asbestos related diseases, both those who suffer because of asbestos exposure from the products of James Hardie and those in Western Australia who worked in the asbestos mines in Wittenoom. These people, without any doubt whatsoever, suffer terrible consequences, often from quite short periods of exposure to asbestos. It is one of the problems that the companies encounter because not everybody who is exposed to asbestos develops asbestosis or mesotheliomas. While it has been known for a very long time that there are hazards associated with exposure to asbestos in terms of pathology in the lungs, it is very hard to know how to identify the people who are at risk.

The Hardie saga is very long-running and sad, but I think we have to accept that the liability that the James Hardie company have said they expected to be faced with was an honest miscalculation. The company have not denied a liability; they have simply said that when these figures were worked out the advice they received about the extent of the ongoing liability was not fully identified. The government, because of the controversy that surrounds this issue, has passed laws which will mean that the records of the James Hardie company can be examined and will not be covered by privilege. This will mean that if indeed there has been misrepresentation on the part of the company and attempts on their part to avoid paying compensation to victims of asbestos diseases then they will not get away with it. In fact, the company will be brought to a position where they will have to meet their liabilities, and the victims of exposure to asbestos from the products of James Hardie will be fully compensated. That compensation will go on actuarially until the people who are involved have passed away.

I believe that there has been agreement. Not only the ACTU but also the New South Wales government have reviewed various mechanisms of how legal costs might be reduced in processing claims through the Dust Diseases Tribunal, which is the specialist court in New South Wales that deals with asbestos diseases cases. I would have thought that Senator Wong might have preferred to tell us about the negotiations that have gone on between the ACTU secretary, Greg Combet, and the Hardie company on paying compensation to the victims of asbestos exposure under that company. I have heard that the company is prepared to put some $200 million into a buffer fund to ensure that there will be money to meet the claims for some years ahead so that time is given for the development of a better way of meeting the needs of these people. That, I suppose, is a victory for the union movement in this case. They probably deserve to be given due praise for the way they have operated in this matter. I think the New South Wales government’s actions are also very praiseworthy in seeking to reduce the cost of legal claims. But the fact remains, as the Treasurer said, the Commonwealth will find a solution. (Time expired)

Senator WEBBER (Western Australia) (3.14 p.m.)—I congratulate Senator Eggleston on at least acknowledging the significant contribution the ACTU and the New South Wales government have made towards trying to address the enormous injustice and tragedy of the victims of James Hardie—although I found that some of his earlier contribution could best be termed ‘another interesting defence’ of the James Hardie company. There is no doubt that the James Hardie case is one that has rightly outraged many members of the Australian community and, if they were not already outraged, they only had to watch the chair of James Hardie, Ms Hellicar, on the 7.30 Report recently. She made what I think was one of the most outrageous and staggering media performances
that I have ever seen in trying to defend the absolutely indefensible. Let us face it: James Hardie is a corporation that dealt with a product that is known to cause death—a horrible, lingering, painful death—and it has attempted to skip out on its legal and moral obligations by fleeing overseas, something that the company is still trying to defend.

James Hardie is a corporation that released only a limited amount of funding to the fund it left behind to pay compensation to its victims, a corporation that is forced by the courts to pay even more money into that fund. No matter what was right, this company has only just begun to move towards meeting its legal and moral obligations when its bottom line was starting to be affected—not for it accepting the moral obligations to look after its former and current employees; it only takes action when forced to by bad publicity and potential court action.

It is through the work of individuals, the ACTU and trade unions, as acknowledged by Senator Eggleston, and the New South Wales government—not the federal government—that have relentlessly pursued this company that we are starting to finally move towards a positive outcome. The Commonwealth’s contribution to this process has come today at the eleventh hour for most of the victims, and tragically too late for some. The New South Wales government has moved legislation that may not be enforceable because Australia does not have a treaty with the Netherlands that will ensure that the Australian court orders are able to be enforced. Still, today in question time, Minister Ellison was trying to justify the fact that he thought we may or may not need a treaty. The government is still waiting on advice to see whether they should be forced to act. This Commonwealth government cannot even get its story straight about whether or not we need a treaty, it would seem. The Attorney-General says on one day that we do not need it; and, on another day, as Minister Ellison also said today, it says, ‘We might look at it.’ It is time for the Commonwealth to treat this as a matter of utmost urgency.

Corporations throughout the world rarely operate on the basis of what is right; rather they operate on the basis of making a buck. That brings me to the matters raised by the member for O’Connor in the other place a few nights ago. He, in making a startling contribution, said that moving legislation with the benefit of hindsight should not take place. I do not know about those opposite, but I find that outrageous in this case. I should not be surprised, because that is the old flogging horse of the WA Liberals. Retrospective legislation should never be allowed according to them. Over 20 years ago it was about bottom-of-the-harbour tax schemes—something else I am sure the member for O’Connor recalls—and now it is about James Hardie not being held accountable for its practices.

One of the fundamental strengths of an effective parliamentary democracy—something that we like to claim we have here—is that of audit. The concept of audit goes beyond the narrow accounting definition. Audit is a methodical examination and review. Our institutions rely on this basic principle. We must be able to examine and review the decisions that we make, but, sadly, it would appear that the member for O’Connor does not support that concept. Instead, he would prefer to call the victims of James Hardie ‘ambulance chasers’. In fact, the member for O’Connor says that no-one could have known what the outcome would be regarding the use of asbestos products, and therefore we should run on some sort of principle of letting what happened in the past stay in the past. I do not know about you, Mr Deputy President, but I say that is just not good enough. The member for O’Connor seems to think that James Hardie should not
be singled out, because it did not know what the effects would be. (Time expired)

Senator HUMPHRIES (Australian Capital Territory) (3.19 p.m.)—I want to make it perfectly clear in this debate, if any doubt has been sown in people’s minds by virtue of what Labor senators have said, that the government does not, in this context or in any other, condone the actions of James Hardie in avoiding its obligations to those people who are victims of past practices. The government’s position is absolutely clear. The government’s position has been reinforced by legislation tabled in this sitting fortnight to strengthen investigations into James Hardie’s activities and into the process of examining compensation to victims of James Hardie’s practices. It does not support what James Hardie has done and remains of the view that James Hardie should fully honour its obligations to compensate asbestos victims.

That is not a position which is adopted because of publicity surrounding these particular cases. It is because the kinds of issues which have arisen in the context of James Hardie’s activities have the potential to undermine Australians’ confidence in the corporate sector of this country and the capacity of our legal system to properly make people in that sector accountable for their actions. We believe that there needs to be a rigorous process in the law that will allow people who are victims of practices by companies like this to be able to obtain compensation. To the extent that there have been decisions made by companies like James Hardie to avoid their obligations, we will cooperate with government and non-government institutions to be able to deal effectively with those actions to ensure that the integrity of Australian corporate law is maintained.

The proof of that is the legislation which was passed only this morning by the Senate to expressly abrogate legal professional privilege in relation to certain materials, allowing their use in investigation of James Hardie and any related proceedings. That is evidence that we will not support the corporate veil—or legal professional privilege—which James Hardie might hide behind in resisting the claims of its victims. We believe there needs to be a clear and comprehensive step taken to enable proper investigation of James Hardie’s activities and cooperation with those who are legitimately investigating what has occurred with its corporate restructuring, which apparently has allowed assets of James Hardie to be taken offshore and out of the reach of identified victims.

It is unfortunate that Labor in this debate has sought to characterise itself as the party that cares about the victims of James Hardie and that this government as somehow not believing that. I was disturbed that Senator Webber chose to accuse Senator Eggleston of somehow defending James Hardie. I listened to Senator Eggleston’s speech. He did not do that. The views of the member for O’Connor, which have been cited in the chamber today, do not represent the views of this government. They do not represent the views of this government. The views of this government are best typified by the legislation which was introduced and passed today, which will assist in tracking down the position that victims of James Hardie’s activities are now facing.

What we need to do in this process, however, is protect the integrity and the framework of Australian law. It would be easy to legislate retrospectively to change the position on any particular corporate situation that arose that gave us concern, and that might buy us a cheap headline. The Australian government cannot afford to do that. It has to make sure that the integrity of Australian law is intact and that people are able to deal effectively with their situations in that frame-
work into the future. Changing the law for
the sake of one case is dangerous. That is
why the government approached the sugges-
tion that a treaty needs to be renegotiated
with some caution. I think that is a fair posi-
tion to take and I suspect that if Labor were
in office it would take a similar position.

(Time expired)

Senator CROSSIN (Northern Territory)
(3.24 p.m.)—I rise to take note of the an-
wswers to questions asked by Senator Wong
relating to the James Hardie case and in par-
ticular the answer given by Senator Coonan.
This matter has come to light significantly
over the last couple of months because, of
course, in recent years the devastating effect
of asbestos and asbestos related illnesses
have become a matter of national concern.
We know that asbestos was used in Australia
during the last part of the century in the
manufacture of building products and we
know that one single fibre of asbestos can
give rise to asbestosis, lung cancer and terri-
ble diseases such as mesothelioma.

The situation is not going to go away in
relation to workplace injury and asbestos
related illness or deaths. If you have a look at
the reconstruction of Darwin after Cyclone
Tracy, you will see a significant number of
buildings—and are to this very day, in fact—
full of asbestos products. This issue is not
going to go away. Companies and employers
taking responsibility for their workers in re-
lation to workplace related injuries and
workplace related diseases, such as this, is
not going to go away. James Hardie needs to
finally accept responsibility for the role it has
played in this. But, even more than that, we
need the federal government to have enough
courage, enough spine, to actually take it
up to this company, to ensure that these
workers get every single thing they deserve
out of any compensation claim that they have
against this company. This is not a time to be
trying to defend the company or appease the
people affected by this disease by legislation.
It is a start, but the actions need to be much
stronger.

I want to refer to the answer that Senator
Coonan gave today in relation to the com-
ments of the member for O’Connor in the
House of Representatives the other day. The
member for O’Connor made comments like:

... if it is reasonable for a single company because
of the hysteria associated with this particular is-
sue, it is reasonable for all companies, all indi-
viduals and anybody else.

Those comments do nothing to assist the
justice which these workers should be af-
forded. To also say, ‘The fundamental issue
here is where Australia is heading in the
process of ambulance chasing,’ does nothing
to assist these people, their families with the
grief they are going through and the struggle
they are having for some form of decent
compensation.

I was delighted, of course, to hear Senator
Humphries say that the views of the member
for O’Connor were not the views of this
government. I think he said just a few min-
utes ago that those views do not represent the
views of the government. That is a welcome
relief. But why couldn’t the minister have
said that when she was asked that during
question time? That is exactly what this tak-
ing note of answers motion is about: it is
about members of the executive of this gov-
ernment not having enough courage to refute
comments like those of the member for
O’Connor. She had the opportunity and
missed that opportunity. She could have
clearly said, ‘That may well be what the
member for O’Connor said, but they are not
the views of the government. The govern-
ment does not stand by those views. The
government does not support the views of
the member for O’Connor.’ But she failed
comprehensively to do that. That is what this
is about.
This is also about ensuring that the government does everything possible to assist where these people need further protection. That is why we believe that, if this government has legal advice about whether there should be a treaty with the Netherlands, that advice, as Senator Wong said, should be made public. It should be tabled and that should be available for the victims, for their lawyers and for the ACTU to have a look at. This government is not about trying to do all it possibly can for these victims; this government is still about trying to defend its member’s comments in the House, still trying to protect this company in some shape or other. This government is not going 100 per cent of the way to ensure that the actions of this company are fully exposed and are not supported. (Time expired)

Question agreed to.

Immigration: Asylum Seekers

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.29 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to questions without notice asked by Senators Nettle and Bartlett today relating to Iraqi asylum seekers.

The questions Senator Nettle and I asked today were about Iraqi asylum seekers in detention on Nauru and in Australia. These people have not been successful in their asylum claims and have not been found to be refugees by the Australian government’s assessment processes. Up to 20 people on Nauru are in that situation and there are a number in detention in Australia.

It is bad enough that people have been locked up for years—three years in the case of people on Nauru and even longer for those in Australia; some people have been locked up for four years, losing their freedom without having committed any crime—but the sorts of answers given by Minister Vanstone today were just extraordinary. To be unaware of the clear-cut advice of the United Nations High Commission for Refugees—the global body that assesses the situation for refugees in relation to Iraq—given to all member states, of which Australia is one, is pretty poor.

The minister was asked a compelling question that every one of these people who have been through unimaginable amounts of suffering, a lot of which has been inflicted by our government, faces. They are being told: ‘You are not a refugee. You have to go to Iraq.’ But when they say, ‘Yes, we’ll go,’ they are told: ‘You can’t. It’s not safe. The borders are closed. You have to stay where you are.’ Where they are is in detention either on Nauru or, in most cases, in Baxter. The central question for those people is: what do I do? The minister was asked a straightforward, pretty clear-cut question. It does not matter what you think about the government’s refugee policy overall or its Pacific solution. The simple facts are that a group of people who have been locked up for over three years have been told that they are not refugees and that they have to go back to Iraq. They have said they want to go back but they cannot, and they have stayed locked up. It is like Catch-22.

I asked the minister the simple question of what those people are expected to do, and she talked about how saying ‘merry Christmas’ to Muslims is offensive. I do not necessarily agree with that, but that is a different debate. I think it is broadly accepted in a multicultural society that people can celebrate Christmas as a festive season rather than as a religious occasion. The minister’s response was to simply waffle on about whether or not to say ‘merry Christmas’, ‘season’s greetings’ or ‘compliments of the season’ to Muslims, when she had been
asked a direct question: what are these people, who have been locked up for three years and counting, supposed to do? That just shows her extraordinary lack of any understanding of what these people are going through and what is being done to them.

I want to read an email from somebody on Nauru—I will not mention names—about the Iraqis who were recently given their decision after the government reassessed them and 27 were found to be refugees. It is great that they were found to be refugees, but why is it that they were locked up for three years on Nauru before they were found to be refugees? Now they are supposed to be grateful that they were given protection, when there is ample evidence of what they would face if they were to go back to Iraq anyway. The email says:

These people were ordered onto the bus to go to the other camp for the decision. A woman who is there, who cannot walk well or far had to stay behind and wait for her husband to bring back the news which either meant the beginning of a new life or more of the same in the camp. She dragged herself and her walking frame over the rough ground up to the gate to sit and wait.

I have been to this camp and can picture the gate. She would have been out in the open sun, and it is very hot on Nauru all year round. It continues:

Four hours later the bus returned with the Iraqis. Even those who had received a positive decision were miserable because they could not look their friends in the face. Women wept as they drove past this woman. No-one wanted to tell her that not only were she and her husband unsuccessful but that her husband on receiving the negative decision had collapsed and was taken to hospital. The sight of this woman sitting in the hot sun waiting was more than they could bear.

That is the situation of one family who is facing total despair and a total absence of hope. It is an absolute disgrace that these people are facing that situation and it is even more unforgivable that the minister apparently does not care and is not interested in telling them what they are supposed to do. She is not even aware of the clear-cut recommendations and advice of the United Nations High Commission for Refugees which says that these people should be given complimentary protection and that all returns, whether voluntary or forced, should be suspended. (Time expired)

Question agreed to.

COMMITTEES

Reports: Government Responses

Senator HILL (South Australia—Leader of the Government in the Senate) (3.35 p.m.)—I present the government’s response to the President’s report of 24 June 2004 on outstanding government responses to parliamentary committee reports and seek leave to incorporate the document in Hansard.

Leave granted.

The document read as follows—

A CERTAIN MARITIME INCIDENT (Select)

A Certain maritime incident

The response is under consideration.

ASIO, ASIS AND DSD (Joint, Statutory)

Private review of agency security arrangements

The government is finalising its response to the report.

Intelligence on Iraq’s weapons of mass destruction

A response is not required.

Review of the listing of the Palestinian Islamic Jihad

Although there were no recommendations to be considered, measures have been taken to address the committee’s concerns.
Cybercrime
The government is currently considering the recommendations of the report, with a view to tabling a response in early 2005.

Inquiry into the trafficking of women for sexual servitude
The response to the report is nearing completion and a response will be tabled as soon as possible.

COMMUNITY AFFAIRS REFERENCES
The patient profession: time for action—Report on nursing
The draft response is currently being reviewed to include initiatives from the 2004-05 budget and election commitments. A final response is expected to be tabled in early 2005.

A hand up not a hand out: Renewing the fight against poverty—Report on poverty and financial hardship
The government has yet to respond to the report because of the time required to consider the large number of recommendations in both the majority and minority reports, as well as delays associated with the recent federal election. It is the government’s intention to respond to the report in early 2005.

Hepatitis C and the blood supply in Australia
The response is currently in the clearance process and is expected to be tabled by the end of the year.

CORPORATIONS AND SECURITIES (Joint Statutory)
Report on aspects of the regulation of proprietary companies
The government is considering the recommendations and a response will be tabled as soon as possible.

CORPORATIONS AND FINANCIAL SERVICES (Joint Statutory)
Report on the regulations and ASIC policy statements made under the Financial Services Reform Act 2001
The government is restructuring its response to this report to take into account responses for two other related reports. The comprehensive combined response will be tabled shortly.

Review of the Managed Investments Act 1998
The government is considering its response, which is affected by recent corporate governance law reforms, and will be tabled in due course.

Inquiry into Regulation 7.1.29 in Corporations Amendment Regulations 2003 (No. 3), Statutory Rules 2003 No. 85
The government is restructuring its response to this report to take into account responses for two other related reports. The comprehensive combined response will be tabled shortly.

Money matters in the bush: Inquiry into the level of banking and financial services in rural, regional and remote areas of Australia
The response is currently being updated to reflect election commitments and is expected to be tabled shortly.

Report on the ATM fee structure
The response is currently being updated to reflect election commitments and is expected to be tabled shortly.

Corporations Amendment Regulations 2003 (Batch 6); Draft Regulations: Corporations Amendment Regulations 2003/04 (Batch 7); and Draft Regulations: Corporations amendment Regulations 2004 (Batch 8)
The response is being prepared and is expected to be tabled in due course.
Corporations Amendment Regulations 7.1.29A, 7.1.35A and 7.1.40(h)
The government is restructuring its response to this report to take into account responses for two other related reports. The comprehensive combined response will be tabled shortly.

Clerp (Audit Reform and Corporate Disclosure) Bill 2003: Part 1: Enforcement, executive remuneration, continuous disclosure, shareholder participation and related matters
The report is being considered and a response will be tabled in due course.

The report is being considered and a response will be tabled in due course.

Economics Legislation
Tax Laws Amendment (2004 Measures No. 1) Bill 2004
The recommendation was addressed by government amendments to the bill which deferred the commencement of the measure regarding endorsement of charities until 1 July 2005.

Economics References
Report on the operation of the Australian Taxation Office
It is expected that a response will be tabled shortly.

Inquiry into mass marketed tax effective schemes and investor protection—Interim report
It is expected that a response will be tabled shortly.

Inquiry into mass marketed tax effective schemes and investor protection—Second report: A recommended resolution and settlement
It is expected that a response will be tabled shortly.

Inquiry into mass marketed tax effective schemes and investor protection—Final report
It is expected that a response will be tabled shortly.

A Review of Public Liability and Professional Indemnity Insurance
The response is in the process of being cleared and is expected that a response will be tabled shortly.

Employment, Workplace Relations and Education References
Bridging the Skills Divide
The response is under consideration and will be tabled as soon as possible.

Beyond Cole: The future of the construction industry: confrontation or cooperation?
The response is being considered and will be tabled as soon as possible.

Environment, Communications, Information Technology and the Arts References
The Value of Water: Inquiry into Australia’s urban water management
A response has been drafted and will be tabled in due course.

Regulating the Range, Jabiluka, Beverley and Honeymoon uranium mines
An extensive consultation process has commenced. It is unlikely that a draft response will be ready before the second half of 2005.

Libraries in the Online Environment
The response was presented out of sitting on 2 July 2004 and tabled on 3 August 2004.
Staff employed under the Members of Parliament (Staff) Act 1984
The response is under consideration and will be tabled in due course.

Administrative review of veteran and military compensation and income support
The response to this report is being finalised and will be tabled as soon as possible.

FOREIGN AFFAIRS, DEFENCE AND TRADE

Report of the Parliamentary Delegation to the Solomon Islands, 17-18 December 2003
A response is not required.

Near neighbours—good neighbours: An inquiry into Australia’s relationship with Indonesia
The response will be finalised shortly.

Inquiry into Australia’s Maritime Strategy
The interdepartmental consultation process is being finalised and a response will be tabled in due course.

Review of the Defence annual report 2002-03
The response is being finalised and will be tabled shortly.

Report of the Parliamentary Delegation to the Gulf States, 10-23 April 2004
The government does not propose to respond to the report of the visit but will respond to the recommendations in the final report of the Inquiry into Expanding Australia’s Trade and Investment Relationship with the Economies of the Gulf States.

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES

A Pacific engaged: Australia’s relations with Papua New Guinea and the island states of the south-west Pacific
The response is expected to be finalised shortly.

Voting on trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement
The response is under consideration and will be tabled as soon as possible.

The (not quite) White Paper: Australia’s foreign affairs and trade policy, Advancing the National Interest
The response was presented out of sitting on 20 July 2004 and tabled on 3 August 2004.

Inquiry into current health preparation arrangements for the deployment of Australian Defence Forces overseas
The response is under consideration.

INFORMATION TECHNOLOGIES

In the public interest: Monitoring Australia’s media
The government is preparing a response which will consider the report in the context of a number of subsequent reports that raise similar or related issues.

LEGAL AND CONSTITUTIONAL LEGISLATION

Provisions of the Sex Discrimination Amendment (Teaching Profession) Bill 2004
The government had regard to the Committee’s recommendations, but decided to proceed with the Bill in the form in which it was introduced into the Parliament.
Reconciliation: Off track
The government is considering the response and it will be tabled in due course.

State Elections (One Vote, One Value) Bill 2001 [2002]
The State Elections (One Vote, One Value) Bill 2001 [2002] lapsed upon the prorogation of the Parliament on 31 August 2004 and was discharged from the Notice Paper on 15 November 2004. The legislation was restored to the Senate Notice Paper on 17 November 2004. The Government will consider a response to the Committee’s report when the legislation is debated in the Senate.

Legal aid and access to justice
The government is considering the recommendations of the report and a response will be tabled in due course.

MEDICARE (Senate Select)
Medicare—healthcare or welfare? and Second report: Medicare Plus: the future for Medicare?
A combined response to both of these reports is being finalised and is expected to be tabled in due course.

MIGRATION (Joint, Standing)
2003 To make a contribution: Review of skilled labour migration programs 2004
The response is being finalised and will be tabled shortly.

MINISTERIAL DISCRETION IN MIGRATION MATTERS (Senate Select)
Report
The report is being considered and will be tabled in due course.

NATIONAL CAPITAL AND EXTERNAL TERRITORIES (Joint, Standing)
In the pink or in the red? Health services on Norfolk Island
Since this report was tabled the Committee has tabled the first part of its Inquiry into Governance on Norfolk Island (December 2003) and proposes to finalise the second part of that inquiry, considering the financial sustainability of the Island, in 2005. As many of the issues raised in ‘In the Pink or in the Red?’ will be considered under the Governance Inquiry’s two reports, it is not intended to respond further to this report.

NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND (Joint Statutory)
Second interim report for the s.206 inquiry: Indigenous land use agreements
The response in the final approval stage and is expected to be tabled shortly

Effectiveness of the National Native Title Tribunal in fulfilment of the Committee's duties pursuant to subparagraph 206(d)(i) of the Native Title Act 1998
The response is being finalised and will be tabled as soon as possible.

PUBLIC ACCOUNTS AND AUDIT (Joint Statutory)
Corporate governance and accountability arrangements for Commonwealth Government business enterprises, December 1999 (Report No. 372)
The government is considering its response to outstanding recommendations and a response will be tabled in due course.
Review of independent auditing by registered company auditors (Report No. 391)

The response is being considered in light of the government’s position on the CLERP 9 Act which passed through parliament in June 2004. A response to the report will be tabled as soon as possible.

Inquiry into the draft Financial Framework Legislation Amendment Bill (Report No. 395)

The response was presented out of sitting on 26 June 2004 and tabled on 3 August 2004.


The response to recommendations 2 and 3 was sent to the Committee on 23 November 2004.

Inquiry into the management and integrity of electronic information in the Commonwealth (Report No. 399)

The response to the Joint Committee of Public Accounts and Audit is an administrative response and fell due during the election period. The response is a whole of government response, coordinated by the Department of Finance (Australian Government Information Management Office) and accordingly was held over until the incoming government was operational. The response is expected to be tabled shortly.

RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION

An appropriate level of protection? The importation of salmon products: A case study of the administration of Australian quarantine and the impact of international trade arrangements

A response will be tabled during the next sitting.

Biosecurity Australia’s

The pig meat policy determination went before the Federal Court on 8-11 November 2004. It is not considered appropriate to provide a response until the decision from the Court is known.

Provisions of the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003

The bill lapsed upon the prorogation of the Parliament on 31 August 2004. The government will respond if the bill is reintroduced and does not propose to respond further at this stage.

SCRUTINY OF BILLS (Senate Standing)

Third report of 2004: The quality of explanatory memoranda accompanying bills

The response is under consideration and will be tabled in due course.

SUPERANNUATION AND FINANCIAL SERVICES (Senate Select)

Report on early access to superannuation benefits

The government is considering the recommendations.

SUPERANNUATION (Senate Select)

Superannuation and standards of living in retirement—Report on the adequacy of tax arrangements for superannuation and related policy

The calling of the election intervened in the process of the government finalising its response to the recommendations of this report.

Planning for retirement

The government is considering the recommendations.

Draft Superannuation Industry (Supervision) Amendment Regulations 2003 and draft Retirement Savings Account Amendment Regulations 2003

The regulations considered by the Senate Select Committee on Superannuation were disallowed by the Senate on 18 September 2003, chiefly on the basis of issues raised during the Committee’s investigation of the draft regulations.

In response, the government prepared revised regulations that addressed some of the concerns raised by the Committee
in its report. The revised regulations were gazetted on 10 October 2003.

The government considers, and in supporting the revised regulations the Senate agreed, that other issues raised did not require government intervention in the context of the portability debate. No further response is anticipated.

**TREATIES (Joint, Standing)**

- **Treaties tabled May and June 2003 (53rd Report)**
  
  The response was tabled on 2 December 2004.

- **Treaties tabled 9 September 2003 (55th Report)**
  
  The response was tabled on 2 December 2004.

- **Treaties tabled on 8 October 2003 (56th Report)**
  
  The response was tabled on 12 August 2004.

  
  The response is being finalised and will be tabled in due course.

- **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (58th Report)**
  
  The government does not propose to respond to this report as the recommendations are in accordance with government policy.

- **Treaties tabled in December 2003 (59th Report)**
  
  In each case the Committee supports and recommends that binding treaty action be taken and a response from the government is not required.

- **Treaties tabled on 2 March 2003 (60th Report)**
  
  The response was tabled on 2 December 2004.

**The Australia-United States Free Trade Agreement (61st Report)**

The report is being considered and a response will be tabled as soon as possible.

**Reports: Government Responses**

The **DEPUTY PRESIDENT**—In accordance with the usual practice, I table a report of parliamentary committee reports to which the government has not responded within the prescribed period. The report has been circulated to honourable senators. With the concurrence of the Senate, the report will be incorporated in *Hansard*.

*The document read as follows—*

**PRESIDENT’S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS AS AT 9 DECEMBER 2004**

**PREFACE**

This document continues the practice of presenting to the Senate twice each year a list of government responses to Senate and joint committee reports as well as responses which remain outstanding.

The practice of presenting this list to the Senate is in accordance with the resolution of the Senate of 14 March 1973 and the undertaking by successive governments to respond to parliamentary committee reports in timely fashion. On 26 May 1978 the then Minister for Administrative Services (Senator Withers) informed the Senate that within six months of the tabling of a committee report, the responsible minister would make a statement in the Parliament outlining the action the government proposed to take in relation to the report. The period for responses was reduced from six months to three months in 1983 by the then incoming government. The then Leader of the Government in the Senate announced this change on 24 August 1983. The method of response continued to be by way of statement. Subsequently, on 16 October 1991 the then government advised that responses to committee reports would be made by letter to a committee chair, with the let-
ter being tabled in the Senate at the earliest opportunity. The current government in June 1996 affirmed its commitment to respond to relevant parliamentary committee reports within three months of their presentation.

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Selection of Bills, Privileges, Procedure, Publications, Regulations and Ordinances, Senators’ Interests and Scrutiny of Bills. However, such reports will be included if they require a response. Government responses to reports of the Public Works Committee are normally reflected in motions in the House of Representatives for the approval of works after the relevant report has been presented and considered.

Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and subsequently tabled by, the committee. Agencies responding to administrative recommendations are required to provide an executive minute within 6 months of the tabling of a report. The committee monitors the provision of such responses.

An entry on this list for a report of the JCPAA containing only administrative recommendations is annotated to indicate that the response is to be provided in the form of an executive minute. Consequently, any other government response is not required. However, any reports containing policy recommendations are included in this report as requiring a government response. Legislation and other committees report on bills and the provisions of bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the bill, and therefore require a response, are listed. The list also does not include reports by legislation committees on estimates or scrutiny of annual reports, unless recommendations are made that require a response.”

A guide to the legend used in the ‘Date response presented/made to the Senate’ column

* See document tabled in the Senate on 9 December 2004, entitled Government Responses to Parliamentary Committee Reports—Response to the schedule tabled by the President of the Senate on 24 June 2004, for Government interim/final response.

** Report contains administrative recommendations only—response is to be provided direct to the committee in the form of an executive minute.

<table>
<thead>
<tr>
<th>Committee and title of report</th>
<th>Date report tabled</th>
<th>Date response presented/made to the Senate</th>
<th>Response made within specified period (3 months)</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>A Certain Maritime Incident (Select)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report on a Certain Maritime Incident</td>
<td>23.10.02</td>
<td><em>(interim)</em></td>
<td>No</td>
</tr>
<tr>
<td>Administration of Indigenous Affairs (Select)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interim report</td>
<td>16.11.04 (presented 31.8.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td><em>ASIO, ASIS and DSD (Joint Statutory)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private review of agency security arrangements</td>
<td>13.10.03</td>
<td><em>(interim)</em></td>
<td>No</td>
</tr>
<tr>
<td>Intelligence on Iraq’s weapons of mass destruction</td>
<td>1.3.04</td>
<td><em>(final)</em></td>
<td>No</td>
</tr>
<tr>
<td>Review of the listing of the Palestinian Islamic Jihad</td>
<td>16.6.04</td>
<td><em>(final)</em></td>
<td>No</td>
</tr>
<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
<td>Response made within specified period (3 months)</td>
</tr>
<tr>
<td>-------------------------------------------------------------------</td>
<td>--------------------</td>
<td>--------------------------------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td><strong>Australian Crime Commission (Joint Statutory)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cybercrime</td>
<td>24.3.04</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>Inquiry into the trafficking of women for sexual servitude</td>
<td>24.6.04</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>Examination of the annual report of the National Crime Authority and the Australian Crime Commission</td>
<td>16.11.04 (presented 31.8.04)</td>
<td>Not required -</td>
<td></td>
</tr>
<tr>
<td><strong>Community Affairs Legislation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tobacco advertising prohibition</td>
<td>16.11.04 (presented 30.9.04)</td>
<td>-</td>
<td>Time not expired</td>
</tr>
<tr>
<td><strong>Community Affairs References</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The patient profession: Time for action—Report on nursing</td>
<td>26.6.02</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>A hand up not a hand out: Renewing the fight against poverty—Report on poverty and financial hardship</td>
<td>11.3.04</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>Hepatitis C and the blood supply in Australia</td>
<td>17.6.04</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children</td>
<td>30.8.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Inquiry into aged care—Interim report</td>
<td>16.11.04 (presented 30.9.04)</td>
<td>Not required -</td>
<td></td>
</tr>
<tr>
<td><strong>Corporations and Securities (Joint Statutory)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report on aspects of the regulation of proprietary companies</td>
<td>8.3.01</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td><strong>Corporations and Financial Services (Joint Statutory)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report on the regulations and ASIC policy statements made under the Financial Services Reform Act 2001</td>
<td>23.10.02</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>Review of the Managed Investments Act 1998</td>
<td>12.12.02</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>Inquiry into Regulation 7.1.29 in Corporations Amendment Regulations 2003 (No. 3), Statutory Rules 2003 No. 85</td>
<td>26.6.03</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>Money matters in the bush: Inquiry into the level of banking and financial services in rural, regional and remote areas of Australia</td>
<td>10.02.04 (presented 15.01.04)</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>Report on the ATM fee structure</td>
<td>10.02.04 (presented 15.01.04)</td>
<td>*(interim) No</td>
<td></td>
</tr>
<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
<td>Response made within specified period (3 months)</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>------------------------------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>Corporations Amendment Regulations 2003 (Batch 6); Draft Regulations: Corporations Amendment Regulations 2003/04 (Batch 7); and Draft Regulations: Corporations Amendment Regulations 2004 (Batch 8)</td>
<td>24.3.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Corporations Amendment Regulations 7.1.29A, 7.1.35A and 7.1.40(h)</td>
<td>15.6.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Corporate insolvency laws: a stocktake</td>
<td>3.8.04 (presented 30.6.04)</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td><strong>Economics Legislation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax Laws Amendment (2004 Measures No. 1) Bill 2004</td>
<td>12.5.04</td>
<td>*(final)</td>
<td>No</td>
</tr>
<tr>
<td><strong>Economics References</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report on the operation of the Australian Taxation Office</td>
<td>9.3.00</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Inquiry into mass marketed tax effective schemes and investor protection—Interim report</td>
<td>25.6.01</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Inquiry into mass marketed tax effective schemes and investor protection—Second report: A recommended resolution and settlement</td>
<td>27.9.01</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Inquiry into mass marketed tax effective schemes and investor protection—Final report</td>
<td>12.2.02 (presented 11.2.02)</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>A review of public liability and professional indemnity insurance</td>
<td>21.10.02</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Report on the structure and effects of the Australian taxation system</td>
<td>25.6.04</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td><strong>Employment, Workplace Relations and Education Legislation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inquiry into the proposed amendment in the form of Schedule 1B to the Workplace Relations Amendment (Codifying Contempts) Bill 2004—Interim report</td>
<td>16.11.04 (presented 27.10.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
<td>Response made within specified period (3 months)</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------------------</td>
<td>-------------------</td>
<td>------------------------------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td><strong>Employment, Workplace Relations and Education References</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bridging the skills divide</td>
<td>24.11.03 (presented 6.11.03)</td>
<td><em>(interim)</em></td>
<td>No</td>
</tr>
<tr>
<td>Beyond Cole: The future of the construction industry: confrontation or cooperation?</td>
<td>21.6.04</td>
<td><em>(interim)</em></td>
<td>No</td>
</tr>
<tr>
<td>Office of the Chief Scientist</td>
<td>5.8.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Commonwealth funding for schools</td>
<td>11.8.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Inquiry into lifelong learning—Interim report</td>
<td>16.11.04 (presented 20.10.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td>Inquiry into indigenous training and employment—Interim report</td>
<td>16.11.04 (presented 20.10.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td>Inquiry into student income support—Interim report</td>
<td>16.11.04 (presented 20.10.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td><strong>Environment, Communications, Information Technology and the Arts References</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The value of water: Inquiry into Australia’s urban water management</td>
<td>5.12.02</td>
<td><em>(interim)</em></td>
<td>No</td>
</tr>
<tr>
<td>Regulating the Ranger, Jabiluka, Beverley and Honeymoon uranium mines</td>
<td>14.10.03</td>
<td><em>(interim)</em></td>
<td>No</td>
</tr>
<tr>
<td>Libraries in the online environment</td>
<td>16.10.03</td>
<td>3.8.04 (presented 2.7.04)</td>
<td>No</td>
</tr>
<tr>
<td>The Australian telecommunications network</td>
<td>5.8.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Competition in broadband services</td>
<td>10.8.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Budgetary and environmental implications of the Government’s Energy White Paper—Interim report</td>
<td>16.11.04 (presented 2.9.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td>Turning back the tide—the invasive species challenge: Report on the regulation, control and management of invasive species and the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002</td>
<td>8.12.04</td>
<td>-</td>
<td>Time not expired</td>
</tr>
<tr>
<td><strong>Finance and Public Administration References</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recruitment and training in the Australian Public Service</td>
<td>18.9.03</td>
<td><em>(interim)</em></td>
<td>No</td>
</tr>
<tr>
<td>Staff employed under <em>Members of Parliament (Staff) Act 1984</em></td>
<td>16.10.03</td>
<td><em>(interim)</em></td>
<td>No</td>
</tr>
<tr>
<td>Administrative review of veteran and military compensation and income support</td>
<td>4.12.03</td>
<td><em>(interim)</em></td>
<td>No</td>
</tr>
<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
<td>Response made within specified period (3 months)</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------</td>
<td>-------------------------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>Inquiry into Government advertising and accountability—Interim report</td>
<td>16.11.04 (presented 3.9.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td><strong>Foreign Affairs, Defence and Trade (Joint Standing)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report of the Parliamentary Delegation to the Solomon Islands, 17-18 December 2003</td>
<td>11.5.04 (presented 6.5.04)</td>
<td>*(final)</td>
<td>No</td>
</tr>
<tr>
<td>Near neighbours—good neighbours: An inquiry into Australia’s relationship with Indonesia</td>
<td>15.6.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Australia’s maritime strategy</td>
<td>21.6.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Report of the Parliamentary Delegation to the Gulf States, 10-23 April 2004</td>
<td>3.8.04</td>
<td>*(final)</td>
<td>No</td>
</tr>
<tr>
<td>Human rights and good governance in the Asia Pacific</td>
<td>24.6.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Watching brief on the war on terrorism</td>
<td>3.8.04 (presented 29.6.04)</td>
<td>2.12.04</td>
<td>No</td>
</tr>
<tr>
<td>Australia’s engagement with the World Trade Organisation</td>
<td>3.8.04 (presented 2.7.04)</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Review of the Defence Annual Report 2002-03</td>
<td>11.8.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td><strong>Foreign Affairs, Defence and Trade Legislation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aspects of the <em>Veterans Entitlements Act 1986</em> and the Military Compensation Scheme</td>
<td>18.9.03</td>
<td>12.8.04</td>
<td>No</td>
</tr>
<tr>
<td><strong>Foreign Affairs, Defence and Trade References</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A Pacific engaged: Australia’s relations with Papua New Guinea and the island states of the south-west Pacific</td>
<td>12.8.03</td>
<td>1.4.04 - Presiding Officers’ response, *(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Voting on trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement</td>
<td>27.11.03</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>The (not quite) White Paper: Australia’s foreign affairs and trade policy, <em>Advancing the National Interest</em></td>
<td>4.12.03</td>
<td>3.8.04 (presented 20.7.04)</td>
<td>No</td>
</tr>
<tr>
<td>Bali 2002: Security threats to Australians in South East Asia</td>
<td>12.8.04</td>
<td>2.12.04</td>
<td>No</td>
</tr>
<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
<td>Response made within specified period (3 months)</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------</td>
<td>-------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Taking stock: Current health preparation arrangements for the deployment of Australian Defence Forces overseas</td>
<td>12.8.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Effectiveness of Australia’s military justice system—Interim report</td>
<td>16.11.04 (presented 8.9.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td>Free Trade Agreement between Australia and the United States of America (Select)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Final report</td>
<td>5.8.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Information Technologies (Select)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In the public interest: Monitoring Australia's media</td>
<td>13.4.00</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Legal and Constitutional Legislation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provisions of the Sex Discrimination Amendment (Teaching Profession) Bill 2004</td>
<td>11.5.04</td>
<td>*(final)</td>
<td>No</td>
</tr>
<tr>
<td>Legal and Constitutional References</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reconciliation: Off track</td>
<td>9.10.03</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>State Elections (One Vote, One Value) Bill 2001 [2002]</td>
<td>3.3.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Legal aid and access to justice</td>
<td>15.6.04 (presented 8.6.04)</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>The road to a republic</td>
<td>16.11.04 (presented 31.8.04)</td>
<td>-</td>
<td>Time not expired</td>
</tr>
<tr>
<td>Inquiry into Australian expatriates—Interim report</td>
<td>16.11.04 (presented 1.10.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td>Lindeberg Grievance (Select)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report</td>
<td>16.11.04 (presented 15.11.04)</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td>Medicare (Select)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicare—healthcare or welfare?</td>
<td>30.10.03</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Migration (Joint Standing)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To make a contribution: Review of skilled labour migration programs 2004</td>
<td>29.3.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Ministerial Discretion in Migration Matters (Select)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report</td>
<td>31.3.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>National Capital and External Territories (Joint Statutory)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In the pink or in the red? Health services on Norfolk Island</td>
<td>6.8.01 (presented 9.7.01)</td>
<td>*(final)</td>
<td>No</td>
</tr>
<tr>
<td>Norfolk Island electoral matters</td>
<td>26.8.02</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Not a town centre: The proposal for pay parking in the parliamentary zone</td>
<td>13.10.03</td>
<td>29.11.04 (presented 23.11.04)</td>
<td>No</td>
</tr>
<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
<td>Response made within specified period (3 months)</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Quis custodiet ipsos custodes? Inquiry into governance on Norfolk Island</td>
<td>3.12.03</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>A national capital, a place to live: Inquiry into the role of the National Capital Authority</td>
<td>3.8.04 (presented 2.7.04)</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Norfolk Island: Review of the annual reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage</td>
<td>3.8.04 (presented 2.7.04)</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Indian Ocean territories: Review of the annual reports of the Department of Transport and Regional Services and the Department of Environment and Heritage</td>
<td>16.11.04 (presented 31.8.04)</td>
<td>-</td>
<td>Time not expired</td>
</tr>
<tr>
<td>Difficult choices: Inquiry into the role of the National Capital Authority in determining the extent of redevelopment of the Pierces Creek Settlement in the ACT</td>
<td>16.11.04 (presented 31.8.04)</td>
<td>-</td>
<td>Time not expired</td>
</tr>
<tr>
<td>Native Title and the Aboriginal and Torres Strait Islander Land Fund (Joint Statutory)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second interim report for the s.206 inquiry: Indigenous land use agreements</td>
<td>26.9.01</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Effectiveness of the National Native Title Tribunal</td>
<td>4.12.03</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Public Accounts and Audit (Joint Statutory)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate governance and accountability arrangements for Commonwealth government business enterprises, December 1999 (Report No. 372)</td>
<td>16.2.00</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Review of independent auditing by registered company auditors (Report No. 391)</td>
<td>18.9.02</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Inquiry into the draft Financial Framework Legislation Amendment Bill (Report No. 395)</td>
<td>20.8.03</td>
<td>3.8.04 (presented 26.6.04)</td>
<td>No</td>
</tr>
<tr>
<td>Inquiry into the management and integrity of electronic information in the Commonwealth (Report No. 399)</td>
<td>1.4.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Review of aviation security in Australia (Report No. 400)</td>
<td>25.6.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Annual report 2003-2004 (Report 401)</td>
<td>11.8.04</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td>Committee and title of report</td>
<td>Date report tabled</td>
<td>Date response presented/made to the Senate</td>
<td>Response made within specified period (3 months)</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td><strong>Rural and Regional Affairs and Transport Legislation</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>An appropriate level of protection? The importation of salmon products: A case study of the administration of Australian quarantine and the impact of international trade arrangements</td>
<td>7.6.00</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Australian Wool Innovation Limited—Application and expenditure of funds advanced under Statutory Funding Agreement dated 31 December 2000</td>
<td>12.2.04</td>
<td>2.12.04</td>
<td>No</td>
</tr>
<tr>
<td>Biosecurity Australia’s import risk analysis for pig meat</td>
<td>13.5.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Provisions of the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003</td>
<td>17.6.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Administration of the Civil Aviation Safety Authority—Interim report</td>
<td>5.8.04</td>
<td>Not required</td>
<td>-</td>
</tr>
<tr>
<td>Administration of AusSAR in relation to the search for the Margaret J</td>
<td>12.8.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td><strong>Rural and Regional Affairs and Transport References</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rural water use</td>
<td>12.8.04</td>
<td>-</td>
<td>No</td>
</tr>
<tr>
<td>Australian forest plantations: A review of Plantations for Australia: The 2020 Vision</td>
<td>16.11.04</td>
<td>(pre-presented 2.9.04)</td>
<td>Time not expired</td>
</tr>
<tr>
<td><strong>Scranton Evidence (Select)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report</td>
<td>9.12.04</td>
<td>-</td>
<td>Time not expired</td>
</tr>
<tr>
<td><strong>Scrutiny of Bills</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third report of 2004: The quality of explanatory memoranda accompanying bills</td>
<td>24.3.04</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td><strong>Superannuation and Financial Services (Select)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report on early access to superannuation benefits</td>
<td>12.2.02 (presented 31.1.02)</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td><strong>Superannuation (Select)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax arrangements for superannuation and related policy</td>
<td>12.12.02</td>
<td>*(interim)</td>
<td>No</td>
</tr>
<tr>
<td>Planning for retirement</td>
<td>11.8.03</td>
<td>*(interim)</td>
<td>No</td>
</tr>
</tbody>
</table>
### Draft Superannuation Industry (Supervision) Amendment Regulations 2003 and Draft Retirement Savings Account Amendment Regulations 2003

<table>
<thead>
<tr>
<th>Date report</th>
<th>Date response presented/made to the Senate</th>
<th>Response made within specified period (3 months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.9.03</td>
<td>*(final)</td>
<td>No</td>
</tr>
</tbody>
</table>

### Treaties (Joint Standing)

<table>
<thead>
<tr>
<th>Treaties tabled</th>
<th>Date response presented/made to the Senate</th>
<th>Response made within specified period (3 months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treaties tabled in May and June 2003 (53rd report)</td>
<td>20.8.03</td>
<td>No</td>
</tr>
<tr>
<td>Treaties tabled on 9 September 2003 (55th report)</td>
<td>16.10.03</td>
<td>No</td>
</tr>
<tr>
<td>Treaties tabled on 8 October 2003 (56th report)</td>
<td>1.12.03</td>
<td>No</td>
</tr>
<tr>
<td>Convention for the Safety of Life at Sea, 1974 and the International Ship and Port Facility (ISPS) Code (57th report)</td>
<td>4.12.03</td>
<td>*(interim) No</td>
</tr>
<tr>
<td>Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (58th report)</td>
<td>23.3.04</td>
<td>*(final) No</td>
</tr>
<tr>
<td>Treaties tabled in December 2003 (59th report)</td>
<td>31.3.04</td>
<td>*(final) No</td>
</tr>
<tr>
<td>Treaties tabled on 2 March 2004 (60th report)</td>
<td>16.6.04</td>
<td>2.12.04 No</td>
</tr>
<tr>
<td>The Australia-United States Free Trade Agreement (61st report)</td>
<td>23.6.04</td>
<td>*(interim) No</td>
</tr>
<tr>
<td>Treaties tabled on 30 March 2004 (62nd report)</td>
<td>5.8.04</td>
<td>- No</td>
</tr>
</tbody>
</table>

---

**Legal and Constitutional Legislation Committee Documents**

**Senator FERRIS** (South Australia) (3.36 p.m.)—On behalf of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present submissions received by the committee on the committee’s inquiry into the provisions of the Marriage Legislation Amendment Bill 2004.

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (3.37 p.m.)—by leave—I move:

That the Senate take note of the documents.

I expect that many of the submissions, certainly the substantive ones, would be on the web site of the Legal and Constitutional Legislation Committee from the last parliament. I recommend people look through those submissions if they are interested in the detail. I think it appropriate to speak on this matter because it revisits and plays a part in what I still believe was an appalling process and an appalling decision by the Senate before the last election to truncate the inquiry—basically to negate it—despite the large public interest, and to guillotine the Marriage Legislation Amendment Bill 2004 through the Senate.

I do not want to revisit the content of that legislation. There were some strong views expressed across the spectrum, including by me and many other Democrats. As I said at
Thursday, 9 December 2004

the time, I thought it was extremely unwise to pass it. Beyond simply the wisdom or otherwise of passing that legislation, the fact that the decision was made to pass it after having been referred to the committee was very unfortunate. The submissions that have been tabled signal the enormous amount of public interest in the issue. A lot of the public expressed views that disagreed very strongly with mine. But preventing the committee from working through the specifics of the real issues underlying the bill and trying to dig below some of the heat and into the real guts of the matter actually did broader damage than whether or not it was a good bill.

It is good that submissions are still available, that they are presented to the Senate and that people can still access and absorb them. The truncated inquiry prevented the opportunity for public hearings, particularly, and an exchange of views in what is usually the somewhat less heated environment of the Senate committee process. With senators questioning, witnesses tend to cool down the rhetoric and to emphasise things in a more rational way. It often can be beneficial for all of us to test our strongly held views against strongly held counterviews. To negate the opportunity for that to happen just to enable the bill to be guillotined was really very unfortunate. It compounded my broader view of how unfortunate it was that the bill was passed. I suppose my views are coloured by that. Maybe if I thought the bill was fantastic, I would be somewhat less concerned about it.

It is fairly unusual to push a bill through while it is still before a committee. I can think of one other example. Prior to the 2001 election, one of the pieces of migration legislation which were guillotined through the Senate was also before a committee. The legislation was pushed through anyway. That process is pretty uncommon and I hope that it remains very uncommon. For that reason, I felt it was appropriate to specifically draw attention to and elaborate on some of my concerns and to express the very strong wish that the process does not happen again before June or indeed after the end of June when the government will have a majority in this place. Obviously, by virtue of that majority, they will be able to stop things going to committees.

This is an example—even when the government does not have the numbers in this place—of how the Senate allows itself, from time to time, to follow processes that are far from ideal. When we look at our key role as a house of review and at the value of the Senate committee system, which allows the public to express and exchange their views with senators, questioning and testing viewpoints and evidence in a public forum, on the Hansard record and under parliamentary privilege, we see that it is an incredibly valuable process—particularly the public engagement. It is always unfortunate if it is truncated, as it was on this occasion.

I certainly hope that some of the issues and views expressed from all sides of the debate are still taken on board. Those views have just been tabled and I expect that the substantive submissions will still be available on the committee web site.

Question agreed to.

Economics References Committee
Reference

Senator STEPHENS (New South Wales)
(3.43 p.m.)—by leave—I move:

That the following matters be referred to the Economics References Committee for inquiry and report by the first sitting day in September 2005:

Possible links between household debt, demand for imported goods and Australia’s current account deficit, with particular reference to:

(a) current levels of household debt and whether these are historically high (as a
proportion of household income or otherwise);

(b) factors, including the lending policies of banks and other financial institutions, that contribute to household debt levels;

(c) the extent to which demand for imported goods contributes to household debt levels;

(d) the extent to which demand for imported goods by Australian households contributes to the current account deficit;

(e) risks for households and the economy of high household debt levels;

(f) whether there is a case for addressing the lending policies of banks and other credit providers and if so, what practical options are available;

(g) whether there are other measures that might be taken in place of possible restrictions on lending practices which would be as effective;

(h) whether any Commonwealth social and economic policy settings should be changed as a result of matters identified above;

(i) whether there is a need for any other form of regulatory intervention in relation to this issue; and

(j) any related matters.

Question agreed to.

Membership

The DEPUTY PRESIDENT—The President has received a letter from a party leader seeking variations to the membership of certain committees.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.43 p.m.)—by leave—I move:

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

Foreign Affairs, Defence and Trade References Committee—

Appointed—Substitute member: Senator Bartlett to replace Senator Ridgeway for the committee’s inquiry into the effectiveness of the Australian military justice system

Legal and Constitutional References Committee—

Appointed—Participating member: Senator Murray.

Question agreed to.

DOCUMENTS

Department of Immigration and Multicultural and Indigenous Affairs

Debate resumed from 2 December, on motion by Senator Buckland:

That the Senate take note of the document.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.46 p.m.)—I have spoken a couple of times today on immigration related matters, particularly to address the situation faced by asylum seekers and refugees in Australia, so I will not address that aspect of the report. I want to speak slightly more broadly about the role of immigration and the role of the Department of Immigration and Multicultural and Indigenous Affairs. I hope senators and the government would acknowledge that whilst on many occasions I have been critical of aspects of the Migration Act and the way that it is administered—I think that is our role in this place—I have certainly also acknowledged the enormous difficulty and complexity of this area, in part because of the way the law is structured and because it inevitably deals with a hard subject matter.

Given that situation, the reports that deal with the administration of the department are important. The broader challenge of trying to engage with millions and millions of people—and there are literally millions of people every year who in some shape or form
use the Migration Act: every person who enters or leaves this country is doing so under the powers of the Migration Act, whether it is for the briefest of visits or to settle permanently—is to continue to look at the changing nature of migration in Australia. We have, in many ways, the benefit of a consciously determined migration program in this country and a regime that has surrounded that for over 50 years. Many other countries around the world are only now starting to think about a proper regulatory regime for regulating settlement type migration. We have a big advantage there.

The debate about migration in Australia is often very simplistic—whether we should have massive increases in numbers or change the composition. Those debates are important as far as they go, but I think we need to acknowledge that the vast majority of migration issues are not to do with how we often think of it—of people pulling up roots from one country far away and then settling here. Although people still do that—some senators in this chamber were born in one country and then uprooted with their families, settled somewhere else and put down roots—there is much more temporary movement these days. The number of people coming to Australia, even on longer term visas, temporarily rather than permanently is dramatically increasing. So, whenever we talk about migration intake, numbers and composition, we should be conscious that permanent migration of people into Australia and permanent departures are in a minority. That is not a bad thing; it is the reality. We need to do more to get our head around that when we have debates about how migration should work.

That is why I have concerns about the innate discriminatory nature of our migration regime. Earlier this week, we had questions in this place about a child whose family was being prevented from getting permanent residency in Australia because their child has autism. It is a clear example of the basic, undeniable fact that our Migration Act is discriminatory. Every day it discriminates against people on the grounds of disability, gender, marital status, sexuality, age and their general health—just to name some. That is not completely avoidable, but we can do a lot more to reduce that, particularly in this era with a lot more temporary movement of people. We want to be able to encourage movement into and out of Australia and encourage engagement with the world. We cannot have all these discriminatory barriers, particularly when they are able to operate in such an arbitrary way. That is an area that needs more focus, and it is certainly an area that I and the Australian Democrats will be paying more attention to. There is more to say about the issue but, given the time, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following orders of the day relating to government documents were considered:


Australian War Memorial—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


Housing Assistance Act 1996—Report for 2002-03 on the operation of the 1999 Commonwealth-State Housing Agreement [Final]. Motion of Senator Buckland to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.
Repatriation Medical Authority—Report for 2003-04—Corrigendum. Motion of Senator Buckland to take note of document agreed to.

Australian Centre for International Agricultural Research—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Great Barrier Reef Marine Park Authority—Report for 2003-04. Motion of Senator Bartlett debate was adjourned till Thursday at general business.


Department of the Environment and Heritage—Report for 2003-04, including the final annual report of the Australian Heritage Commission. Motion of Senator Buckland to take note of document agreed to.

Aboriginal and Torres Strait Islander Services—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.


National Oceans Office—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

Australian Institute of Marine Science—Report for 2003-04. Motion of Senator Buckland to take note of document agreed to.

Sydney Harbour Federation Trust—Report for 2003-04. Motion of Senator Buckland to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

**COMMITTEES**

Employment, Workplace Relations and Education References Committee

Inquiry into student income support, is an interim report. These documents are basically short documents put in by the committees at the prorogation of the parliament before the last election. This inquiry into student income support was established on the initiative of the Australian Democrats and Senator Natasha Stott Despoja. It is an area of the education debate that has not had sufficient attention. The big debates we have had in this chamber around the future of higher education, universities, training and TAFE have been very important but they have tended to exclude or very much downplay a major aspect affecting the ability of Australians to access education, and that is the adequacy of student income support.

It does not matter how low or high the fees are, how good the courses are, how good the staffing ratios are or how good the ability to get into courses is if you do not have enough income to survive while studying. This is an issue not just for school leavers but also for mature age people—people
in their 40s or over who are seeking to retrain as, in many cases, they are required to these days. In many cases they are encouraged or compelled to by the changing nature of the work force. We are all aware of the continuing change in the work force and industry and the need to upgrade skills or develop new skills to be able to continue to participate in the work force. In many cases it is older people even more so than younger people who simply cannot access adequate income support while they are studying to afford to undertake that education. It is an important issue.

For that reason the Democrats have continued to push the reference. It was pleasing that the Senate agreed to recommence the inquiry. It was initially set up in March this year but the Senate yesterday agreed to re-adopt the inquiry to report by mid-June next year. There have already been 131 submissions, including a large number from individual students, groups representing students and universities. That shows the level of interest that is already there. It is a welcome sign that the committee will continue to look at this. As I understand it, public hearings have not yet been held, and the committee has indicated that they will be necessary.

I take this opportunity to draw the Senate’s attention to the background of the inquiry and the report and the importance of it as well as the Democrats’ commitment to the issue, which has been somewhat ignored or put to one side by the other parties. We very much encourage people who do have an interest to engage with this inquiry to try to find ways to address what is in some ways the biggest barrier to Australians being able to access real opportunities into the future to enable them to get the most out of what this country can offer them.

Question agreed to.

Rural and Regional Affairs and Transport Legislation Committee
Interim Report

Debate resumed from 2 December, on motion by Senator Webber:

That the Senate take note of the report.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (3.55 p.m.)—This interim report of the Rural and Regional Affairs and Transport Legislation Committee titled Provisions of the National Animal Welfare Bill 2003 was required because of the election and the committee being dissolved on the resumption of parliament. It deals with the National Animal Welfare Bill 2003 [2004], a bill which I introduced to this place. It is a private senator’s bill. As the interim report says, the committee could not complete the inquiry in the previous parliament but that if the bill were reintroduced in the next parliament and referred to the committee then the committee would recommence the inquiry. That bill has been reintroduced. At this stage I have not determined whether to seek to re-refer it to the committee but, as senators would know, it is an area that I and the Democrats more broadly have a strong interest in.

There is no doubt that we need better animal welfare standards in this country and better enforcement of the standards. In particular, we need to do better at the federal level. Not only do we need a nationally coordinated approach but the federal government must take its own responsibility seriously in areas where it does have direct responsibility; and it does have direct responsibility in relation to the import and export of animals, not just in the case of the notorious live sheep and cattle trade but many other animals imported into and exported from this country live—for example, dogs and native wildlife. Other animals are imported and exported into and out of research facilities
and zoos and for other reasons. Those imports and exports happen with very little consideration given to the animal welfare implications and I believe they need to be addressed. Whether this bill is the best way to do it is one question, but there is no doubt that using Senate committees can be immensely valuable to inquire into private members’ bills to generate greater awareness and discussion about an issue. The bill may not be the best way to deal with it, but it generates a requirement for the public and the Senate to consider what is the best way to deal with a genuine problem.

Indeed, we saw that today with the report of the Senate Environment, Communications, Information Technology and the Arts Committee into invasive species. That committee also considered my private senator’s bill. I do not know whether I should draw attention to the fact that the committee unanimously decided that my bill was not the way to go and could not be supported. Even the Democrat on the committee, Senator Cherry, the chair, decided that my bill was not the way to go. But the report said that the process of referring the bill to the committee had been very successful in moving the issue out of the realm of debate amongst a small number of cognoscenti and into the public domain where people who had a specialist interest were able to engage with the political and parliamentary process to look at ways of addressing a serious environmental issue—weeds and invasive species. I am pleased to see that the committee came down with a large number of unanimous recommendations. It did far more than just reject my bill. It proposed a number of recommendations to address and to get better action at a national level on a much underrated environmental problem— weedy and invasive species.

This report addressed what I think is another underaddressed problem at the political and parliamentary level—that is, animal welfare standards at the national level. It is certainly appropriate to draw attention to this interim report as a way of signalling where that process is up to. The bill has been reintroduced into the Senate. We must look at the best way to use that to try and generate further engagement on an issue that does need attention and that does attract public interest. This is something that the Democrats and I will continue to explore over the life of this parliament.

Question agreed to.

Legal and Constitutional References
Committee Report

Debate resumed from 2 December, on motion by Senator Stott Despoja:

That the Senate take note of the report.

Senator BARTLETT (Queensland—Leader of the Australian Democrats) (4.01 p.m.)—This report is titled The road to a republic and came from an inquiry into, as the title would suggest, the best way forward towards Australia becoming a republic if and when the nation chooses to do so. It is a report that was criticised by some in the community as being a waste of time. People said, ‘Well, we had a referendum on that. Any more discussion is a waste of time.’ I think that is a very misguided approach. There is no doubt that the majority of the Australian people would like to see Australia become a republic, and the debate is about how that should best happen. I think it is appropriate to have a process for engaging with the community about how best it should happen in a way that takes it out of the heated political environment that you get around the time of referendums and leading up to them. So I think it is a valuable report.

This inquiry was another initiative of the Democrats. I gave a commitment as Leader of the Democrats some time back that we would seek to initiate a report on this issue.
We were able to do so, and I thank members of the committee, including my Democrat colleague Senator Stott Despoja, for their contribution to the inquiry. The key aspect that I think needs to be emphasised is the importance of respecting and acknowledging all the different views in the community about how best we could move towards a republic—and indeed those views of the people in the community who do not believe it is a good idea, do not believe it is necessary or do not believe it is a sufficiently worthwhile priority to put resources and energy towards. It is certainly my view and that of my Democrats colleagues, indeed it is our party’s policy, that we should seek to become a republic. As to the nature and structure of that republic, that has to be a matter for the Australian people. In some ways, the process of determining that can add to the richness and value of the republic itself when it is eventually adopted by vote of the Australian people.

I should say that, whilst my language may suggest that I think it is inevitable, I actually do not think it is inevitable that we become a republic. All sorts of things can happen and can change. It certainly will not happen in and of itself by osmosis; it does need people in the community to continue to promote the idea. Certainly that is something I am committed to. I do not know whether it is appropriate or necessary to disclose this, but I am a member of the Australian Republican Movement and a former office-bearer. I would like to put in a belated apology for missing their AGM in Queensland last week. I thought I would be able to get to that, but I did not. I believe that organisation, particularly in the last year or so, has done a lot of valuable work at grassroots level trying to engage people in the ongoing debate. This is not something that is going to happen in a hurry; it could well be some time. That is why I am personally disappointed that we did not take the opportunity while it was there.

The key thing is to ensure that there is another opportunity for those of us who believe it is the way to go, and I think it is a majority of the community who believe that. The debate should continue, but there is no reason why the debate should be an aggressive or abusive one—it can be not only civilised but also constructive. As I said before, sometimes the process of having a debate, even with people who disagree with going down that path, can value-add to the eventual outcome. I spoke before on another document about the history of Australia in relation to migration—and, flowing on from that, our history as a multicultural nation—and the benefits of engaging more with the world. I am, speaking individually, somebody who believes there are more benefits than costs in globalisation. I think we need to be wary of the dangers, but we nonetheless need to engage with it. Multiculturalism and our immigration system is a key aspect of doing that.

I have absolutely no doubt that, whilst the benefits cannot be quantified in a dollar and cents sort of way, there would be significant economic, cultural, social and, dare I say, almost spiritual benefit to Australia if we were to become a republic, particularly in the way we present ourselves to the rest of the world and the way we engage with the rest of the world. I am talking about not just our own region in South-East Asia and the Pacific but also our more traditional areas of engagement like North America and Europe. I believe they will perceive us differently as a republic. Even the UK would in my view perceive us differently, and in some ways more positively, if we were to become a republic. It would value add to how we engage with the world in the globalised 21st century. I think it would be of extra benefit to us in all sorts of immeasurable ways. That does not mean we have to rush it inappropriately or
try to force it down the throat of people who are still less than willing to receive it. It is something that, nonetheless, we should continue to promote and engage with. I believe the Senate, as is often the case, through its committee processes here has done a valuable job in helping move things down that path. I not only commend the report to the Senate and to the community but also commend the broader aim of continuing down the road to a republic to all Australians.

Senator WEBBER (Western Australia) (4.06 p.m.)—I also rise to make a brief contribution on this report and on the issue of Australia becoming a republic. I would like to echo the sentiments expressed by Senator Bartlett about the need to continue this debate within the Australian political community as well as in the wider community, and to pay tribute to the hard work done by the Australian Republican Movement. I would like to congratulate the Western Australian branch of ARM—of which I am a member, just as Senator Bartlett is a keen member in Queensland—for the fine work they did in assisting the committee at its hearings in Perth for this report. I know many members of ARM in Perth—a lot of them everyday members of our community—were keen to contribute not only in terms of written submissions but also in providing oral evidence. Some members have campaigned long, hard and tirelessly on this issue, such as Professor Craven, who has now left Notre Dame University for the Curtin University of Technology.

For anyone within this parliament who thinks that it is a waste of time, that we should no longer consider this issue, that the Australian community has ‘had its say and made its views known’, I would urge them to read the first speeches of some of the newer members of the House of Representatives. It may sound very odd that I would refer people to Liberal members, but I would particularly refer them to the contributions made by Mr Andrew Robb and Mr Malcolm Turnbull, who have chosen, at their first possible opportunity, to make a contribution in the Australian parliament to keep the fight and the debate on this issue alive. They demonstrate a true bipartisan commitment to pursuing this debate and moving it forward in the Australian community.

Western Australian senators have a long and proud history of pursuing this issue and working hard on it in a bipartisan way. The ARM in Western Australia was a bit of a favourite of my predecessor, former Senator McKiernan, and there has been strong support from Senator Cook, Senator Eggleston and Senator Andrew Murray. They have all done whatever they can to support the public debate on the need for Australia to become a republic and for Australians, particularly Western Australians, to get involved in the debate about what kind of republic we may become when that day—which I believe is inevitable—occurs. It will not come as a surprise to anyone that Senator McKiernan, being of Irish descent, is a staunch supporter, but it has been a very happy and cross-party community pursuing that issue within Western Australia.

As Senator Bartlett has mentioned previously and also today, for Australia to continue to have as its head of state someone from another nation, when we are one of the youngest, most thriving and multicultural nations in the world, is a little ironic. On the one hand we had Senator Vanstone earlier today championing the fact that the Australian community is so multicultural and diverse—we go out of our way as a parliament and as a community to celebrate that diversity and this government has introduced initiatives like Harmony Day—but, at the same time in a rather jaded and not necessarily relevant insistence, we persist in having the head of state of another country as our offi-
cial head of state. Anyone in this parliament who has travelled overseas, either for personal reasons or on official or semi-official business, will realise how confusing that can be, particularly to some of our Asian neighbours.

The Labor Party has for a long time pursued the issue of Australia finding its place in its own region and participating as an equal within ASEAN, within Asia and within the wider Pacific, and this government has now got on board. A lot of these countries have a monarch as their head of state. For us to insist that our head of state is someone who comes from another country—not from our own sovereign country but from another country—is not only somewhat confusing to people out there but also shows how we are still struggling to come to terms where our place is in this world. Is it in this region as a strong, independent, vibrant nation, making our contribution? Or is it part of an older group of nations, an older subset of the world community?

At the same time, we are all very proud of Australia’s contribution to the formation of one of the world’s youngest nations, Timor Leste, assisting them with the formation of their own government and to no longer be a foreign occupied country, as when Indonesia annexed it, or under other colonial power. We now celebrate their independence and have assisted them with electing their own president and government. We see our role in the region as being a fierce champion of the rights of the people of Timor Leste. At the same time, in this place and in other parts of the Australian community, there are those who think that Australia should not have its own president, its own head of state or its own values that would allow it to take its place as an equal in the region. This is a debate that needs to be pursued long and hard, but with the kind of approach we have had in Western Australia. We are only going to achieve the inevitable outcome if it is pursued, as it has been in Western Australia, in a cross-party, friendly way where we all work together towards a common principle rather than focus on the things that divide us. This will mean that we can have the debate about the kind of republic we want to become first and then we can put that to the Australian people.

That is one of the many reasons I was very proud during the election campaign to see that our leader, Mark Latham, gave the commitment that, if a Labor government were elected, Australia would move towards becoming a republic. I acknowledge that that was also a commitment given by the Australian Democrats. It is perhaps a bit sad that those opposite could not see it in their hearts to make a similar commitment to work with this side of the chamber and in the other place to deliver to the Australian people what it is they really want. They do want to become a republic. The only debate left is about what kind of republic we will become, who will be the head of state, how we will select that person and when it will happen. In my view, sooner rather than later, obviously, would be much better, but I think it is inevitable.

It is up to those opposite to take the lead that, as I say, has been shown by Mr Robb, Mr Turnbull and others in the other place to work towards the inevitable and to be part of the debate for change that, I think, will enhance Australia’s self-confidence, give us a role within our region and enhance our standing as a nation throughout the world. There is nothing wrong with saying that we want and are ready to be an independent viable nation with our own head of state, no matter how that is selected.

Senator Abetz—We’re all that and more.

Senator WEBBER—I beg to differ, Senator Abetz. But there is nothing wrong
with sending that message to the world and to be proud of who we are, about who our head of state is and about showing that face to the rest of the world. There is nothing scary about that; it is inevitable. So I would urge those opposite to get on board, to be part of the constructive debate that is happening within our community, to be part of the constructive debate that has happened within the Senate committee and its inquiry and to work with us to achieve the inevitable rather than constantly resist change.

I find it somewhat ironic that, at a time when we are all led to believe, and we read, that the British monarchy is happy for Australia to become a republic and the British monarchy is happy for us to select our own head of state in whichever way we would choose, it is only people within Australia, only those who are perhaps more conservative and more shy of change within the Australian political spectrum, who are balking at this change and not working with those of us who are going to be here to make that change inevitable.

Question agreed to.

Consideration

The following orders of the day relating to committee reports and government responses were considered:

Legal and Constitutional References Committee—Interim report—Inquiry into Australian expatriates. Motion of Senator Wong to take note of report agreed to.


DOCU-MENTS

Consideration

The following order of the day relating to reports of the Auditor-General was considered:

Auditor-General—Audit report no. 14 of 2004-05—Performance audit—Management and promotion of citizenship services: Department of Immigration and Multicultural and Indigenous Affairs. Motion of Senator Webber to take note of document agreed to.

LEAVE OF ABSENCE

Senator ABETZ (Tasmania—Special Minister of State) (4.17 p.m.)—I move:

That leave of absence be granted to every member of the Senate from the termination of the sitting today to the day on which the Senate next meets.

Question agreed to.

NOTICES

Presentation

Senator BROWN (Tasmania) (4.18 p.m.)—I seek leave to give notice of a motion.

Leave not granted.

ADJOURNMENT

Senator ABETZ (Tasmania—Special Minister of State) (4.19 p.m.)—I move:

That the Senate do now adjourn.

Royal Commission of Inquiry into the Centenary House Lease

Senator ABETZ (Tasmania—Special Minister of State) (4.19 p.m.)—The Centenary House scandal, which has continued for well over a decade, is now fully exposed, courtesy of the David Hunt report of the Inquiry into the Centenary House Lease, which was tabled in the other place just a few moments ago. Centenary House is a rort which has now given the Australian Labor Party some $42 million above and beyond normal market rates. At this stage, I must apologise
to the Senate, because for a lengthy period of time I have been misleading the chamber by suggesting that it was only a $36 million rort. The royal commissioner has exposed the rort to the extent of $42 million.

Most honourable senators would be aware that this was a lease arrangement entered into by the Australian Labor Party to rent property to the Commonwealth government, which at the time was overseen by the Australian Labor Party. What this royal commission has shown is that Labor’s ministerial maladministration conveniently gave the Labor Party a $42 million windfall, which a Labor appointed royal commission just happened not to thoroughly investigate. Indeed, there appears as though there was nearly some sort of invisible hand in the whole deal to allow this convergence of events which gave Labor this $42 million benefit. Allow me to quote from page 173 of the report, where the royal commissioner states:

The very marked impression gained from the proceedings in the 1994 Inquiry—that is, the Labor Party appointed inquiry—is that it was in the interests of all parties to demonstrate that the Centenary House lease had been properly negotiated and represented a prudent transaction offering value to the Commonwealth for expenditure. The extent to which there was unanimity between all the parties is strikingly apparent ...

The fix was in in relation to this lease by the Australian Labor Party, and the royal commission exposes a litany of events that gave Labor that $42 million windfall. Indeed, the convergence of convenience was so strong that, if I were a betting man, I reckon that if I had such luck I would only need to buy one Lotto ticket because I would win the jackpot straight off.

In relation to the negotiations, this is what the commissioner found:

There had been no negotiation of the terms of the lease in the commonly understood sense of give and take ... the terms finally agreed had been decided in advance by the Lend Lease representatives of John Curtin House ...

The departmental officer who was put into the position to negotiate had ‘negligible experience in negotiating leases and was thoroughly out of his depth in relation to this lease’. One wonders why the Minister for Administrative Services at the time, Senator Bolkus, allowed that to occur in his department. The senior minister was Mr Beazley.

It then talks about the party’s respective strengths. The commissioner said:

Nor were the needs or wishes of any other Commonwealth agency at that time so great as to require the abandonment of ordinary principles of common sense in the negotiations for the Centenary House lease.

He then found that Mr Collins, the departmental official:

... never understood the strength of the Commonwealth’s position or, if he did, he failed to take advantage of that strength.

He then commented on fixing the starting rent, and this is very interesting. He said:

None of the valuers who gave evidence ... had previously seen a lease in which the starting rent was fixed by reference to the market as it had stood some two-and-three-quarter years before the lease commenced and then escalated by a fixed and predetermined percentage up to that commencement.

His Honour went on:

There was no sensible reason for the Commonwealth to have agreed to the course it followed. He then went on to describe the 15-year term as ‘imprudent’. As a good judicial officer, he used very conservative language. On page xvii he said:

When Senator Warwick Parer gave publicity—
Senator Chris Evans interjecting—

Senator ABETZ—If Senator Evans were to be quiet he would listen to this fix. It is a gross embarrassment to his administration and he knows it.

Opposition senators interjecting—

Senator ABETZ—On page xvii it said:

When Senator Warwick Parer gave publicity to the terms of the proposed lease ... Mr Taylor took no action to investigate whether the terms were reasonable, and his failure to do so contributed to the Audit Office’s failure ...

Once again there is a convergence of everybody just happening not to follow up as they were required to do. It went on:

Mr Jacobs, having responsibility for the Office’s corporate affairs, informed Mr Taylor that inquiries were being made ... as to what was behind the allegations ...

But guess what? Once again very conveniently:

... but Mr Jacobs never became aware of the results of those inquiries.

He said that they were going to inquire but then never bothered to follow up. The report continued:

His failure to follow the matter up also contributed to the Audit Office’s failure to act appropriately.

So as we go along we see a picture painted of everybody involved in this—conveniently—not acting properly in the circumstances.

Senator Chris Evans—Is that what the royal commission found?

Senator ABETZ—The royal commission found that Mr Collins was inadequately supervised by his superiors and was not subject to proper controls. Why not? I suggest possibly it was because the fix was in.

Senator Chris Evans—Mr President, I rise on a point of order. Senator Abetz is desperately trying to make something out of the royal commission report that is not included. He is casting aspersions on individuals and on the Australian Labor Party in a desperate attempt to try and make the royal commission report more than it is. I would ask you to call him to order and not let him denigrate and cast aspersions on senators and other members.

The PRESIDENT—Senator Abetz, I will listen carefully to what you have to say.

Senator ABETZ—Mr President, this is just a time-wasting exercise by Senator Evans, who is understandably embarrassed. When Senator Parer first publicised the proposed lease, a ministerial press release was prepared—and guess what it did? It omitted all reference to the escalator clauses that we have condemned year after year. Do you know what the finding of the commissioner was? He said:

There is no logical explanation for this omission ... The omission was neither an oversight nor a mistake.

What does that suggest? It suggests the cover-up; the cover-up was well and truly in.

There was an improper $50,000 offer made by the Labor Party’s agents Lend Lease. That was made by a Mrs Morris—

Senator Chris Evans—And what was the finding? None!

Senator ABETZ—The offer was therefore improper. That was the finding, Senator Evans, and Mrs Morris knew it.

Senator Chris Evans interjecting—

Senator ABETZ—Mr President, do you know what the Labor Party did for Mrs Morris?

Senator Chris Evans—Apologise and resign! You are a fraud.
Senator ABETZ—After having engaged in this improper conduct, conduct which she herself admits was improper, do you know what Labor did? Mrs Morris was rewarded for her negotiation skills with a string of appointments by a Labor government—Landcom 1996, Sydney Harbour Foreshore Authority 1999—

Senator Chris Evans—Step outside and make those claims!

Senator ABETZ—City West Development Corporation 1995, Energy Australia 1995. You wonder why they would seek to appoint somebody that a royal commission has found—

The PRESIDENT—Order! Senator Evans, that remark was unparliamentary and I would ask you to withdraw.

Senator Chris Evans—I withdraw, Mr President. On a point of order, Mr President, could I draw to your attention that the minister just blackguarded an individual, accusing the person of improper conduct, none of which is a finding of the royal commission report? Is he going to slur everybody who was mentioned or is he going to actually discuss the findings of the royal commissioner?

The PRESIDENT—Senator Abetz has not used any unparliamentary language yet in my opinion.

Senator ABETZ—For the edification and gross embarrassment of Senator Evans, can I refer him to page xxi of the report where His Honour said:

The offer was therefore improper, and Mrs Morris knew it—

It is not me slagging off at Mrs Morris; it is David Hunt QC. And, what is more, Mrs Morris agrees with me! She agrees that it was improper; she told the royal commissioner that. You are now suggesting that my repeating Mrs Morris’s own words is somehow defamatory. Senator Evans, I can understand why you were sacked as defence spokesman. What I cannot understand is why the Labor Party made you Leader of the Opposition in the Senate.

The PRESIDENT—Order! Senator Abetz. I ask you to address your remarks through the chair.

Senator ABETZ—The Australian Labor Party has for a very long time sought—

Opposition senators interjecting—

Senator ABETZ—to hide behind the Morling inquiry as the justification for Centenary House. Now, like the emperor with his new clothes, Mr Latham is exposed. The Morling inquiry was nothing but a facade. It provides no support whatsoever to the Labor Party’s claims. On page 171 Mr Hunt deals with the significant differences in a number of areas. Time does not allow me to elaborate, but there are one, two, three, four, five, six substantial areas where he disagrees. The Labor Party continually come into this place and say, ‘Chief executive officers are being paid outrageous sums of money. It might be legal but it is immoral.’ Yet today they will get up in this place and say, ‘We might be legal with the $42 million rip-off of the Australian taxpayer,’ but they know it is immoral. All the findings show it is immoral and Labor ought to cough up. (Time expired)

Royal Commission of Inquiry into the Centenary House Lease

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (4.30 p.m.)—I have great pleasure in rising in tonight’s adjournment debate to address some remarks to the Royal Commission of Inquiry into the Centenary House Lease. Isn’t it interesting that just after four o’clock on the last day of sitting Senator Abetz sneaks into the chamber, without having tabled the report in the Senate, and tries to put his spin on a tremendous embarrassment for him, a tremendous blow to the po-
political campaign that the Liberals have waged on this issue for 10 years now. And what has the royal commission found? That there is no case to answer. It clears the Labor Party and it does not support any of the outrageous accusations that Senator Abetz, Senator Brandis and Senator Ian Campbell have tried to make as the basis of their political careers for the last 10 years.

I would be embarrassed if I were you, Senator Abetz, because you wasted $3.8 million of taxpayers’ money for a second royal commission that found nothing, that found that you were wrong. You sneak in here and you do not quote the report; you try and find subclauses that might help you maintain the innuendo that was not supported. The royal commission said:

... it is appropriate that I do state that no ... criticism should be levelled at the conduct of John Curtin House Ltd or the Australian Labor Party.

That is the finding of the royal commission. Your low attack on the Labor Party over 10 years has come to nothing—two royal commissions, no result.

Senator Abetz—Mr President, I rise on a point of order.

Senator Wong—You’re very sensitive today.

Senator Abetz—No, it is just along the lines of Senator Evans’s points of order. If he wants to address remarks to me he should not do it across the chamber but through the President in the third person.

The PRESIDENT—I think Senator Evans is well aware of the fact that he should not respond to interjections and he should address his remarks through the chair.

Senator CHRIS EVANS—Quite right, Mr President. I am sorry if Senator Abetz is getting sensitive, but he ought to be sensitive and he ought to be embarrassed. ‘What a waste!’ is what taxpayers ought to think. An-
Centenary House lease was not the first nor the last lease entered into by the Commonwealth which included a long term, a fixed escalator and no provision review. The royal commission also found, despite the arguments that Senator Abetz and others have been making for the last 10 years time and time again, that no renegotiation was possible. The government’s own royal commission found no renegotiation of the lease was possible.

So what have we got? We have got $3.8 million of taxpayers’ money wasted again. The minister, Senator Abetz, and Senator Brandis and Senator Ian Campbell ought to start paying that out of their wages. We will organise a repayment scheme for you, because you have had your second royal commission and it was a complete dud. Why do we have you sneaking in here at four o’clock? I could not get a copy. It was not tabled in the Senate. Why? Because they were embarrassed. They did not want to show it. Senator Abetz had a copy. Did we have a copy? No. Why not? Because it was not tabled in the Senate. Why wasn’t it tabled? Because of its indictment of your political career, failure after failure. You have banged on for 10 years and you have got nothing.

Senator Barnett, you would laugh. I know you want his spot. Quite frankly, this will improve your chances, because it proves again that Senator Abetz ain’t got it. He ain’t got it and he ain’t delivered. He has been prepared, along with John Howard, to waste taxpayers’ money time and time again in pursuing political objectives. And what did they get out of this? They got nothing. All the findings made it very clear that there was no impropriety.

Think about it: you want to put political heat on the opposition over an important issue. You have had the report for a week, I believe. You have had Monday, Tuesday, Wednesday and Thursday. They had four question times in which they could have attacked us, they could have ridiculed us—and they could have really hurt us with clause 23(1)b on page 21 or whatever! But what did they do? They snuck around; they hid the report. Senator Abetz kept it in his pocket until Thursday afternoon at four o’clock. When everyone is going home, when the parliament is over for the week—

Honourable senators interjecting—

The PRESIDENT—Order! There is too much noise in the chamber. Senator Abetz, you are making enough noise for the whole opposition, I think. Come to order.

Senator CHRIS EVANS—Senator Abetz sneaks in and says, ‘It does really support me. If you look at clause 37(b) on page 122, that almost says what I would like it to say.’

Well, it does not, Senator Abetz. It does not say anything else. What it says is that you have got a fizzer, mate—and you have made the taxpayer pay for it again. Two royal commissions have been complete fizzlies. The main finding was that there was no suggestion of corruption, fraud or political impropriety on the part of any person involved in the lease of Centenary House to the Australian National Audit Office.

We did not hear you quote a lot from the report, because you do not like it. You did not have the courage to table it. You did not have the courage to bring it in on Monday, Tuesday or Wednesday, but on Thursday, at a time when everyone is about to go home, you thought you would come in and make a few remarks and say: ‘This really does support me. The written word does not, but if you interpret it through my understanding of all these matters this is terribly damaging.’ If this is the best damage you can do to us, mate, carry on, because you are not up to it!

The PRESIDENT—Through the chair.
**Senator CHRIS EVANS**—Sorry, Mr President. Senator Abetz is not up to it. But what really irks me is not the royal commission—

*Senator Abetz interjecting—*

**Senator CHRIS EVANS**—Where are Senator Ian Campbell and Senator Brandis, the other great heroes of this charge, the other political geniuses behind this? They are not here. You would think that, if this were such a political embarrassment to the Labor Party, they would be making the most of it. But you did not bring it in on Monday, Tuesday or Wednesday and you did not come in here today and table the report and give us the advantage of reading it—because you do not like it! Why? Because it says you fell on your face. But what is really irking is that you spent three—

*Senator Abetz—You keep believing it.***

**Senator CHRIS EVANS**—I believe it, and you will hear about it a lot. You spent $3.8 million of taxpayers’ money—again, another waste. It was not the first royal commission but the second. You thought: ‘We’ll have another go at it. Ten years on we will have another go. Maybe we can find a royal commissioner who will support our argument.’ Well they did not. They found a royal commissioner who did a thorough job and said there was no finding of impropriety; that what you had been banging on about for 10 years was a complete waste of time—that it was a slur, a denigration of good people for a cheap political point. And you were prepared to waste taxpayers’ money to denigrate your political opponents. I do not mind you having a go at us. We will take it head on. We will not sneak in when parliament is about to go home and try to have a go. We will do it up front. But you come in late, sneak in and try to make a cheap political point, to try to misrepresent what is an absolute indictment of you. I know why Senator Barnett and the other Tasmanians are so sick of you—because you ain’t up to the job!

*Senator Abetz interjecting—*

**The PRESIDENT**—Order! Interjections are disorderly too, Senator.

**Senator CHRIS EVANS**—Mr President, I ought to direct my comments through you, but I do get angry and upset that taxpayers’ money has been wasted on a political witch-hunt which has totally vindicated the Labor Party and totally refuted all the innuendo. All the slimy little claims made by Senator Abetz over the years have been refuted completely by the royal commission. He ought to apologise and he ought to think about how he might help recompense the taxpayers for the waste of money that he spent on the royal commission. His political career is in tatters again because the one thing he had was slurring the Labor Party—and the royal commission said that it was a fizzer, that there was nothing in it.

*Senator Abetz—You’re a new leader; make a difference.***

**The PRESIDENT**—Order! Senator, continual interjection is disorderly.

**Senator CHRIS EVANS**—The findings completely absolve the Labor Party of any impropriety at all.

**Royal Commission of Inquiry into the Centenary House Lease**

**Australian Democrats**

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (4.40 p.m.)—I always thought the adjournment debate at the end of the year was meant to involve expressions of Christmas cheer and all those sorts of things.

**Senator Chris Evans**—By the way, happy Christmas!

**The PRESIDENT**—Perhaps we might have a change of tone now, Senator.
Senator BARTLETT—I will do my best. As always, I think the major parties sometimes cannot help themselves, getting into the furious accusations and finger pointing and, to some extent, missing the issues that actually affect the community. Having said that, the Democrats were not opposed to the idea of investigating this particular issue that has been the subject of the last couple of speakers. Indeed, to some extent the government did so by picking up on a Senate motion that was moved by the Democrats and supported by the Senate. But if they are in any way wanting to suggest that they did so for any reasons other than political expediency and politically driven motives leading up to the election, they would prove that they were genuine about public accountability by also picking up the frequently repeated Senate resolutions calling for royal commissions into issues of much greater significance, particularly repeated resolutions calling for a royal commission nationally into child sexual assault, to which the government have continually said: ‘No, it’s a waste of money. It’s not the best use of resources.’ As Senator Evans said, we have had five royal commissions under the life of this government, two of them into this Centenary House issue. We do not object to that being looked into; we do object to very serious, chronic problems affecting the future of this nation and the lives of hundreds of thousands of Australians continuing to be ignored. We urge the government once again to reconsider supporting taking up those Senate resolutions to adopt inquiries into child sexual assault and also the frequently repeated resolution to have a proper independent inquiry into the SIEVX, which might not seem as important or have as much political point scoring opportunity as the Centenary House lease but did involve the death of 353 people. I think it is appropriate that all the questions relating to that be answered.

As part of this closing debate for the year, I wish all senators and people in the parliament, particularly the parliamentary staff, a merry Christmas. We did have a curious assertion from the minister for multicultural affairs today that saying merry Christmas might be offensive to Muslims, which I found a bit bizarre. I think Muslim Australians can cope quite well with the concept that Christmas is more than just a narrow Christian festival. People who are not practising Christians—such as me, for that matter—are still quite able to cope with being wished a merry Christmas without feeling that I am having religion pushed down my throat. I thought it was quite an odd assertion from the minister for multiculturalism, although it was done as a way of avoiding the real question and the real challenge of people who are not going to have a merry Christmas whether they are Muslim, Christian or anything else, which is the people who are continually locked up in detention centres by this government in Australia and on Nauru. I do not know what those detained on Christmas Island who are mainly Buddhists would think. I am sure they could cope with being wished a merry Christmas. I am sure they would be much happier if they were given some freedom. Either way, I wish people a merry Christmas and a good break, particularly those people who service all of us here—the staff, the attendants, the clerks and the many other people who work in this building day after day who are not the focus of the spotlight but who are in many ways just as critical to keeping democracy churning over.

We started out this last sitting fortnight with the condolence motion and debate for Janine Haines, a former leader of the Democrats and often stated to be the best leader of the Democrats—certainly so far. I would like to take this opportunity to repeat on behalf of the Democrats our distress at her
premature passing, our acknowledgment of her great contribution to the parliament, and our condolences and compassion to her family. In her final year in the Senate Janine Haines actually occupied the seat where I am now standing and it is an honour in that sense to follow, I suppose you could say, in her footsteps by standing in the spot that she stood in. This is the last time that I will be standing here and speaking from this spot as leader of the Democrats. The leadership will be changing over next week and Senator Lyn Allison will be taking on that role. I wish her well in that role and certainly offer her my support, as she has provided support to me as deputy for the last couple of years.

I would also like to thank the Democrat membership, who have been through a lot in recent times. They have had a difficult year and a difficult last couple of months. I would also especially like to take the opportunity to thank, on the public record, all of the staff of Democrat parliamentarians, particularly those on my personal and electorate staff, who have also been through a very difficult year. The people I have on staff currently are a fantastic group of people. They are very well organised and incredibly capable, and they put in an enormous amount of work with very little acknowledgment and often a lot of criticism. They are responsible for an enormous amount of achievement through this Senate.

Despite the Democrats’ very disappointing, very poor election result I will always defend the enormous amount of achievements we gained as a Senate team with the support of those staff through our work in the Senate, making a difference and improving laws that improve people’s lives. Whilst obviously you need to keep getting elected to this place in order to make a difference, that is why you do it—to improve people’s lives and to make sure that issues that would otherwise be forgotten are addressed and acknowledged. I am very proud of what the Democrats, with the staff group that are working for the senators at the moment, have achieved in the last few years in an enormous number of areas—too many to go through at the moment. Clearly, we are improving things and making a positive difference to people’s lives in ways that will bear fruit for decades. I will always defend that legacy and I will always acknowledge the particular role that the staff, and the Democrats membership more broadly, have played. To quote Clint Eastwood in one of his movies, ‘Deserve’s got nothing to do with it.’ The Democrat membership and the staff did not deserve the situation they have now but that is the way things happen sometimes.

As leader of the Democrats, I accept the election result—as I always have done—and I accept responsibility for it. There is no doubt that in a number of key areas—small in number but nonetheless big in importance—over the past five years, the Democrats as a parliamentary party stuffed up in a big way. That has to be acknowledged and the people who were let down should be apologised to. But I remain convinced that there is a strong need for a party to fill the role that the Democrats played: strongly speaking out for and promoting justice, freedom, opportunity and environmental protection—but in a way that sees business, big and small, as part of the solution, not part of the problem, as parts of the Left in this country do. Business, big and small, plays a crucial role in generating wealth and opportunity and, indeed, ways of improving environmental protection, and freedom and justice. We need to look for ways of working in with those people and that part of our society and our economy, whilst being aware of the potential downsides. We need a party that is independent of both the major parties and not tied to dogmatic ideological views. That is a role that is still very much needed and it is
certainly one that I am keen to continue to play.

We also need a strong Senate. It was very frustrating during the last election campaign to be unable to get the message out there about the possibility of this government getting control of the Senate. We had a lot of media interest in the government having control of the Senate after the election—which was a little bit late. It is now a reality and I acknowledge that that is a result of the expressed views and votes of the Australian people. We need a Senate that will be independent of the government but will work constructively. Certainly we will seek to continue to work constructively whilst holding and strongly pursuing our own independent views. We will continue to do our best in that regard.

When we have had a bit of a rest, after Christmas and the new year, we will be back next year for a very small number of sitting days. There will be a historically low number of sitting days before 30 June so we will only very briefly see each other in this chamber, now and then, whilst the government waits until it gets the numbers. That is unfortunate but there is plenty of work to do out in the broader community and there are plenty of issues that still need addressing. There are plenty of people who have issues, concerns and needs that are being ignored by the major parties. The Democrats—and I personally—will continue to do all we can inside and outside this chamber to make sure there is a voice for those issues.

Lyons, Dame Enid

Senator Barnett (Tasmania) (4.50 p.m.)—I rise in the adjournment debate to pay tribute to the memory of Dame Enid Lyons. She was born on 9 July 1897 and lived to the ripe old age of 84, when she died on 2 September 1981. She has been referred to in a number of publications and books, including *Prime Minister’s Wives* by Diane Langmore, where she says:

Enid Lyons, wife of Joseph Aloysius Lyons, was the only Australian Prime Minister’s wife who, having played an exceptionally prominent part in her husband’s public life, went on to a political career of her own: she became the first woman member of the House of Representatives.

Yes, she was married to a famous Tasmanian, a former Tasmanian Premier. Joseph Lyons, a member of the United Australia Party, became Prime Minister and was sworn in on 6 January 1932. He died in office of a heart attack on Good Friday, 7 April 1939.

Dame Enid had many qualities. In *Prime Minister’s Wives*, Diane Langmore says:

The firm upbringing given Enid by her mother equipped her for her later life. Through her she developed ambition, determination, a strong sense of duty and responsibility, civic awareness, a strict morality and a skill in the use and appreciation of the English language. But that was only half her inheritance. In childhood Enid also had a sneaking attraction to the very different qualities of her father: his lightheartedness, his wit, his colourful vernacular speech and his gift for anecdote uninhibited by concern for veracity.

Interestingly, Dame Enid and Joseph Lyons met in Hobart when Joe was Premier of the state of Tasmania. She was aged only 17 years and he was aged 35, in fact over twice her age. They were married in Hobart. Fun- nily enough, they honeymooned at the premiers conference in Sydney, which certainly shows a depth of dedication to her husband. It is fascinating that a couple would have a honeymoon at such an event as that.

Dame Enid was elected to parliament on 21 August 1943 and she gave her maiden speech on 29 September 1943. I want to read an extract from her maiden speech to highlight the type of woman that she was and the contribution that she made to this country of ours. I also want to refer to yesterday’s book launch of *Speaking for Australia: Parliament*.
tary Speeches that Shaped a Nation, edited by Senator Rod Kemp and launched by the Prime Minister. I congratulate Senator Kemp on its launch and I am sure it will be well received. In that book is the maiden speech of Dame Enid Lyons. She talks about the fact that she was the first woman member of the House of Representatives and how she wanted to be considered and have her contribution considered on its merit. She spoke in her maiden speech about the character of the nation and how important it was to stick by things such as hatred of oppression, the love of a fair go, a passion for justice and those types of qualities.

She spoke of other issues such as decentralisation and the declining birthrate. She spoke of the housing issues and the effects of the war. But in her concluding remarks, she said this:

... I bear the name of one of whom it was said in this chamber that to him the problems of government were not problems of blue books, not problems of statistics, but problems of human values and human hearts and human feelings. That, it seems to me, is a concept of government that we might well cherish. It is certainly one that I hold very dear. I hope that I shall never forget that everything that takes place in this chamber goes out somewhere to strike a human heart, to influence the life of some fellow being, and I believe this, too, with all my heart that the duty of every government, whether in this country or any other, is to see that no man, because of the condition of his life, shall ever need lose his vision of the city of God.

What a wonderful quote and something that is still true today. The Senate passed a motion of regret on 8 September 1981 after Dame Enid’s death. That motion read:

That the Senate expresses its deep regret at the death on 2 September 1981 of the Honourable Dame Enid Muriel Lyons, a member of the House of Representatives for the division of Darwin from 1943 to 1951, Vice-President of the Executive Council from 1949 to 1951—of course, that was in the government of Sir Robert Gordon Menzies who was a great Liberal Prime Minister of this country—and widow of the former Prime Minister the Right Honourable J. A. Lyons, places on record its appreciation of her long and meritorious public service and tenders its profound sympathy.

There were a number of other contributions made in the Senate at that time, including those from a fine Tasmanian senator at the time, Brian Archer, and the Acting Prime Minister at the time, Mr Doug Anthony. I will not read them now but they are on the record and highlight her contribution and the fact that she was not only the first Australian woman to become a member of the House of Representatives but a fine and outstanding Australian.

Valedictory

Senator HILL (South Australia—Leader of the Government in the Senate) (4.56 p.m.)—I shall take only a moment. I want to thank all of those who serve the Senate and who support us in our work as senators—the clerks, the attendants, the Table Office, all of the staff of the Senate, security, Comcar—and so I could go on. They all do a marvellous job and treat us well, and we appreciate that. On that note, I want to wish everyone a happy Christmas.

Valedictory

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (4.57 p.m.)—by leave—I would like to join with the Leader of the Government in the Senate, Senator Hill, in indicating my thanks to all the staff and people who allow us to function in this place. They give unstinting service and courtesy, even though I am sure many of us have been difficult to
deal with, particularly in the last few weeks—

Senator Hill—Speak for yourself!

Senator CHRIS EVANS—I do speak for myself—as we have become more tired and grumpy. Obviously from the Labor Party point of view it has not been a great period. I am thankful, too, to all the Labor senators and their staff for their strong support. I do wish all those associated with the Senate and the parliament a happy Christmas. I hope they get to spend some quality time with families and friends and that they have a safe and prosperous Christmas period. We look forward to seeing them all again, but not too soon, in the new year.

Valedictory

The PRESIDENT (4.58 p.m.)—I think it is rather appropriate that the President have the last word, as always. At this stage of the 2004 sittings I also would like to thank the officers of the parliament for their assistance to me and to the Senate during the year. I particularly thank the Clerk and the other clerks at the table, the Usher of the Black Rod and all the other staff in the Senate department for their wonderful work during the year.

This year, on 1 February, saw the creation of the new Department of Parliamentary Services. It is a tribute to all the staff of the three former departments affected by the amalgamation that the new department has been established smoothly. I particularly record my appreciation to Hilary Penfold, the secretary to the department, who has worked hard and diligently with her staff to make the transition so successful.

When visitors come into this building from overseas or from other parts of Australia they are amazed to see that this is really a small village. I always remind people of how much goes on behind the scenes—underground, in the gardens and out of the public gaze—to make Australia’s parliament function. I thank all those parliamentary staff who are essential to this institution. I would particularly like to thank the Deputy President, Senator Hogg, who has characteristically provided very loyal support to me in the administration of the chair. I thank him and the panel of temporary chairmen of committees for their service during the year. I think we would all agree, too, that the managers of business and the whips deserve a special mention for getting us out of here at five o’clock on a Thursday night, which has not happened for a long time, as I recall, given the heavy load of business on the agenda this week.

It has been a disrupted year for the Senate because of the election. I think the Christmas break affords us all an opportunity to recharge our batteries and to take a moment to reflect that we are very fortunate to live in Australia, a country that is governed by a robust, as we heard this afternoon, open and scrutinised democracy. I wish all honourable senators and their families a very happy Christmas and a very prosperous new year.

Senate adjourned at 5.01 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Department of Defence—Special purpose flights—Schedule for the period January to June 2004;

Parliamentarians’ travel paid by the Department of Finance and Administration—January to June 2004 dated December 2004; and

Former parliamentarians’ travel paid by the Department of Finance and Administration—January to June 2004 dated December 2004.

The following documents were tabled by the Clerk:


Civil Aviation Act—Regulations—Statutory Rules 2004 No. 345.


Diplomatic Privileges and Immunities Act—Diplomatic Privileges and Immunities Regulations—Certificates under regulation 5A, dated 2 December 2004 [2].


PR 2004/112.


QUESTIONS ON NOTICE

The following answers to questions were circulated:

Environment: Woodsreef Asbestos Mine

(Question No. 11)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 21 October 2004:

With reference to the abandoned Woodsreef asbestos mine, located east of Barraba in New South Wales:

(1) Is the Government aware of any study as to whether the tailings dump from the mine currently constitutes either: (a) a health hazard to nearby communities; or (b) a pollutant risk to river systems, whether localised or impacting significant components of the Murray-Darling river system.

(2) Given the interest of Pacific Magnesium Corporation in re-opening the site in order to extract magnesium from the tailings, is the Government aware of any assessment of the environmental impact of such a development.

(3) (a) Has there been any rehabilitation work performed on the site since the mine was closed; (b) are there any plans for such work to be commenced; and (c) is such work dependent upon a decision as to whether the site will be reopened for the extraction of magnesium.

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

(1) (a) and (b) I am advised that the New South Wales Department of Mineral Resources report “Woodsreef: A Study Of Risk” found that:

- Asbestos inhalation was considered to be the dominant health risk presented by the site, accounting for 90% of the total risks. The risks however were not considered to be significant given the low level of exposure.
- Ecological and public health risks due to chemical pollution and leaching were considered to be negligible.
- Risks due to failure of the waste and tailings dumps were considered to be negligible.

(2) No formal environmental impact assessment process has been initiated under NSW legislation or the Environment Protection and Biodiversity Conservation Act 1999.

(3) (a) Yes. (b) I am advised that in answer to a question in the New South Wales Parliament in May 2004 the Minister for Resources stated that the New South Wales Derelict Mines Committee may consider allocating funds for rehabilitation works at Woodsreef in 2005. (c) The nature and extent of rehabilitation work undertaken at the Woodsreef site is a matter for the New South Wales Government.

National Electricity Code Administrator

(Question No. 55)

Senator Marshall asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 17 November 2004:

(1) Can the Minister provide all budgetary details, including amounts of appropriation and relevant budget lines, for all expenditure on the National Electricity Code Administrator (NECA) in the:

(a) 2003-04 Budget; and

(b) 2004-05 Budget.
(2) Can the Treasurer provide an explanation of any difference in expenditure in the 2003-04 Budget and the 2004-05 Budget; if not, why not.

**Senator Minchin**—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator’s question:

(1) The Australian Government provides no funding for the National Electricity Code Administrator (NECA).

(2) Not applicable.

**Health: National Women’s Health Program**

(Question No. 88)

**Senator Brown** asked the Minister representing the Minister for Health and Ageing, upon notice, on 17 November 2004:

With reference to funding for the National Women’s Health Program:

Will the National Women’s Health Program be excluded from the Public Health Outcomes Funding Agreement; if so, what alternative funding provision is being made for funding women’s health services nationally and regionally, including the Women’s Health Program in Tasmania.

**Senator Patterson**—The Minister for Health and Ageing has provided the following answer to the honourable senator’s question:

The Australian Government assists states and territories, through a funding contribution made under the bilateral Public Health Outcome Funding Agreements 2004-2009 (PHOFAs), to achieve health outcomes for a number of public health areas, including women’s health programs. The Australian Government’s offer to jurisdictions fully expends the forward estimates for PHOFA programs. Under these Agreements, states and territories will receive a pool of funds and are responsible for making service-level funding decisions in line with local needs and priorities.

The PHOFA agreements, which have been signed by seven states and territories, explicitly acknowledge the importance of women’s health services and provide for jurisdictions to use Australian Government funds to implement the whole range of women’s health services. The Tasmanian Minister for Health and Human Services signed the renewed agreement on this basis on 30 September 2004.

Under the PHOFAs, states and territories are required to report annually on a number of performance measures. These include a number of performance indicators specifically related to the delivery of women’s health programs. The final set of performance indicators are currently with jurisdictions for final comments and will be available for public release once they are finalised.

**Environment: Mine Sites**

(Question No. 89)

**Senator Brown** asked the Minister for the Environment and Heritage, upon notice, on 18 November 2004:

With reference to the rehabilitation of mine sites in Tasmania: What strategy does the Government have for remediation of the impact of mining on the environment of the west coast of Tasmania, including Macquarie Harbour and the Tasmanian Wilderness World Heritage Area.

**Senator Ian Campbell**—The answer to the honourable senator’s question is as follows:

State and Territory governments are responsible for the regulation and management of mine closures and mine site rehabilitation.
The Government’s strategy for management of the Wilderness World Heritage Area may be found in the Tasmanian Wilderness World Heritage Area Management Plan 1999. This plan documents the joint management arrangements between the Tasmanian and Commonwealth Governments for the World Heritage Area.