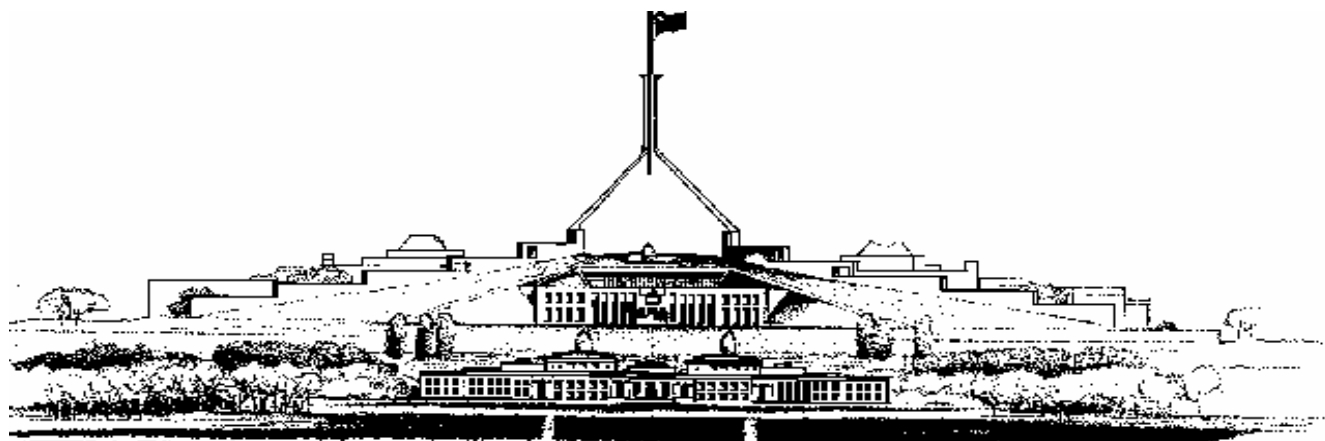




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**SENATE**

**Official Hansard**

**No. 6, 2004**

**TUESDAY, 11 MAY 2004**

FORTIETH PARLIAMENT  
FIRST SESSION—EIGHTH PERIOD

BY AUTHORITY OF THE SENATE



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### SITTING DAYS—2004

Month	Date
February	10, 11, 12
March	1, 2, 3, 4, 8, 9, 10, 11, 22, 23, 24, 25, 29, 30, 31
April	1
May	11, 12, 13
June	15, 16, 17, 21, 22, 23, 24
August	3, 4, 5, 9, 10, 11, 12, 30, 31
September	1, 2, 6, 7, 8, 9, 27, 28, 29, 30
October	5, 6, 7, 25, 26, 27, 28
November	22, 23, 24, 25, 29, 30
December	1, 2

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<i>PERTH</i>	585 AM
<i>HOBART</i>	729 AM
<i>DARWIN</i>	102.5 FM



**FORTIETH PARLIAMENT  
FIRST SESSION—EIGHTH PERIOD**

**Governor-General**

His Excellency Major-General Michael Jeffery, Companion in the Order of Australia,  
Commander of the Royal Victorian Order, Military Cross

**Senate Officeholders**

*President*—Senator the Hon. Paul Henry Calvert

*Deputy President and Chairman of Committees*—Senator John Joseph Hogg

*Temporary Chairmen of Committees*—Senators the Hon. Nick Bolkus, George Henry  
Brandis, Hedley Grant Pearson Chapman, John Clifford Cherry, Alan Baird Ferguson,  
Stephen Patrick Hutchins, Linda Jean Kirk, Susan Christine Knowles, Philip Ross Lightfoot,  
John Alexander Lindsay (Sandy) Macdonald, Gavin Mark Marshall, Jan Elizabeth McLucas  
and John Odin Wentworth Watson

*Leader of the Government in the Senate*—Senator the Hon. Robert Murray Hill

*Deputy Leader of the Government in the Senate*—Senator the Hon. Nicholas Hugh Minchin

*Leader of the Opposition in the Senate*—Senator the Hon. John Philip Faulkner

*Deputy Leader of the Opposition in the Senate*—Senator Stephen Michael Conroy

*Manager of Government Business in the Senate*—Senator the Hon. Ian Gordon Campbell

*Manager of Opposition Business in the Senate*—Senator Joseph William Ludwig

**Senate Party Leaders**

*Leader of the Liberal Party of Australia*—Senator the Hon. Robert Murray Hill

*Deputy Leader of the Liberal Party of Australia*—Senator the Hon. Nicholas Hugh Minchin

*Leader of the National Party of Australia*—Senator the Hon. Ronald Leslie Doyle Boswell

*Leader of the Australian Labor Party*—Senator the Hon. John Philip Faulkner

*Deputy Leader of the Australian Labor Party*—Senator Stephen Michael Conroy

*Leader of the Australian Democrats*—Senator Andrew John Julian Bartlett

Printed by authority of the Senate

### Members of the Senate

Senator	State or Territory	Term expires	Party
Abetz, Hon. Eric	Tas	30.6.2005	LP
Allison, Lynette Fay	Vic	30.6.2008	AD
Barnett, Guy <sup>(5)</sup>	Tas	30.6.2005	LP
Bartlett, Andrew John Julian	Qld	30.6.2008	AD
Bishop, Thomas Mark	WA	30.6.2008	ALP
Bolkus, Hon. Nick	SA	30.6.2005	ALP
Boswell, Hon. Ronald Leslie Doyle	Qld	30.6.2008	NATS
Brandis, George Henry <sup>(2)</sup>	Qld	30.6.2005	LP
Brown, Robert James	Tas	30.6.2008	AG
Buckland, Geoffrey Frederick <sup>(4)</sup>	SA	30.6.2005	ALP
Calvert, Hon. Paul Henry	Tas	30.6.2008	LP
Campbell, George	NSW	30.6.2008	ALP
Campbell, Hon. Ian Gordon	WA	30.6.2005	LP
Carr, Kim John	Vic	30.6.2005	ALP
Chapman, Hedley Grant Pearson	SA	30.6.2008	LP
Cherry, John Clifford <sup>(3)</sup>	Qld	30.6.2005	AD
Colbeck, Richard Mansell	Tas	30.6.2008	LP
Collins, Jacinta Mary Ann	Vic	30.6.2005	ALP
Conroy, Stephen Michael	Vic	30.6.2005	ALP
Cook, Hon. Peter Francis Salmon	WA	30.6.2005	ALP
Coonan, Hon. Helen Lloyd	NSW	30.6.2008	LP
Crossin, Patricia Margaret <sup>(1)</sup>	NT		ALP
Denman, Kay Janet	Tas	30.6.2005	ALP
Eggleston, Alan	WA	30.6.2008	LP
Ellison, Hon. Christopher Martin	WA	30.6.2005	LP
Evans, Christopher Vaughan	WA	30.6.2005	ALP
Faulkner, Hon. John Philip	NSW	30.6.2005	ALP
Ferguson, Alan Baird	SA	30.6.2005	LP
Ferris, Jeannie Margaret	SA	30.6.2008	LP
Fifield, Mitch <sup>(8)</sup>	Vic	30.6.2008	LP
Forshaw, Michael George	NSW	30.6.2005	ALP
Greig, Brian Andrew	WA	30.6.2005	AD
Harradine, Brian	Tas	30.6.2005	Ind
Harris, Leonard William	Qld	30.6.2005	PHON
Heffernan, Hon. William Daniel	NSW	30.6.2005	LP
Hill, Hon. Robert Murray	SA	30.6.2008	LP
Hogg, John Joseph	Qld	30.6.2008	ALP
Humphries, Gary John Joseph <sup>(1)(7)</sup>	ACT		LP
Hutchins, Stephen Patrick	NSW	30.6.2005	ALP
Johnston, David Albert Lloyd	WA	30.6.2008	LP
Kemp, Hon. Charles Roderick	Vic	30.6.2008	LP
Kirk, Linda Jean	SA	30.6.2008	ALP
Knowles, Susan Christine	WA	30.6.2005	LP
Lees, Meg Heather	SA	30.6.2005	APA
Lightfoot, Philip Ross	WA	30.6.2008	LP
Ludwig, Joseph William	Qld	30.6.2005	ALP
Lundy, Kate Alexandra <sup>(1)</sup>	ACT		ALP
Macdonald, Hon. Ian Douglas	Qld	30.6.2008	LP

Senator	State or Territory	Term expires	Party
Macdonald, John Alexander Lindsay (Sandy)	NSW	30.6.2008	NATS
McGauran, Julian John James	Vic	30.6.2005	NATS
Mackay, Susan Mary	Tas	30.6.2008	ALP
McLucas, Jan Elizabeth	Qld	30.6.2005	ALP
Marshall, Gavin Mark	Vic	30.6.2008	ALP
Mason, Brett John	Qld	30.6.2005	LP
Minchin, Hon. Nicholas Hugh	SA	30.6.2005	LP
Moore, Claire Mary	Qld	30.6.2008	ALP
Murphy, Shayne Michael	Tas	30.6.2005	Ind
Murray, Andrew James Marshall	WA	30.6.2008	AD
Nettle, Kerry Michelle	NSW	30.6.2008	AG
O'Brien, Kerry Williams Kelso	Tas	30.6.2005	ALP
Patterson, Hon. Kay Christine Lesley	Vic	30.6.2008	LP
Payne, Marise Ann	NSW	30.6.2008	LP
Ray, Hon. Robert Francis	Vic	30.6.2008	ALP
Ridgeway, Aden Derek	NSW	30.6.2005	AD
Santoro, Santo <sup>(6)</sup>	Qld	30.6.2008	LP
Scullion, Nigel Gregory <sup>(1)</sup>	NT		CLP
Sherry, Hon. Nicholas John	Tas	30.6.2008	ALP
Stephens, Ursula Mary	NSW	30.6.2008	ALP
Stott Despoja, Natasha Jessica	SA	30.6.2008	AD
Tchen, Tsebin	Vic	30.6.2005	LP
Tierney, John William	NSW	30.6.2005	LP
Troeth, Hon. Judith Mary	Vic	30.6.2005	LP
Vanstone, Hon. Amanda Eloise	SA	30.6.2005	LP
Watson, John Odin Wentworth	Tas	30.6.2008	LP
Webber, Ruth Stephanie	WA	30.6.2008	ALP
Wong, Penelope Ying Yen	SA	30.6.2008	ALP

- (1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
- (2) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. Warwick Raymond Parer, resigned.
- (3) Chosen by the Parliament of South Australia to fill a casual vacancy vice John Woodley, resigned.
- (4) Chosen by the Parliament of Queensland to fill a casual vacancy vice John Andrew Quirke, resigned.
- (5) Appointed by the Governor of Tasmania to fill a casual vacancy vice Hon. Brian Francis Gibson AM, resigned.
- (6) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.
- (7) Chosen by the Legislative Assembly of the Australian Capital Territory to fill a casual vacancy vice Hon. Margaret Reid, resigned.
- (8) Chosen by the Parliament of Victoria to fill a casual vacancy vice Hon. Richard Kenneth Robert Alston, resigned.

#### PARTY ABBREVIATIONS

AD—Australian Democrats; AG—Australian Greens; ALP—Australian Labor Party; APA—Australian Progressive Alliance; CLP—Country Labor Party; Ind—Independent; LP—Liberal Party of Australia; NATS—The Nationals; PHON—Pauline Hanson's One Nation

#### **Heads of Parliamentary Departments**

Clerk of the Senate—H. Evans

Clerk of the House of Representatives—I.C. Harris

Secretary, Department of Parliamentary Services—H.R. Penfold QC

## HOWARD MINISTRY

Prime Minister	The Hon. John Winston Howard MP
Minister for Transport and Regional Services and Deputy Prime Minister	The Hon. John Duncan Anderson MP
Treasurer	The Hon. Peter Howard Costello MP
Minister for Trade	The Hon. Mark Anthony James Vaile MP
Minister for Foreign Affairs	The Hon. Alexander John Gosse Downer MP
Minister for Defence and Leader of the Government in the Senate	Senator the Hon. Robert Murray Hill
Minister for Finance and Administration and Deputy Leader of the Government in the Senate	Senator the Hon. Nicholas Hugh Minchin
Minister for Health and Ageing and Leader of the House	The Hon. Anthony John Abbott MP
Attorney-General	The Hon. Philip Maxwell Ruddock MP
Minister for the Environment and Heritage and Vice-President of the Executive Council	The Hon. Dr David Alistair Kemp MP
Minister for Communications, Information Technology and the Arts	The Hon. Daryl Robert Williams AM, QC, MP
Minister for Agriculture, Fisheries and Forestry	The Hon. Warren Errol Truss MP
Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation	Senator the Hon. Amanda Eloise Vanstone
Minister for Education, Science and Training	The Hon. Dr Brendan John Nelson MP
Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women	Senator the Hon. Kay Christine Lesley Patterson
Minister for Industry, Tourism and Resources	The Hon. Ian Elgin Macfarlane MP
Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service	The Hon. Kevin James Andrews MP

**(The above ministers constitute the cabinet)**



## **HOWARD MINISTRY—*continued***

Minister for Justice and Customs	Senator the Hon. Christopher Martin Ellison
Minister for Fisheries, Forestry and Conservation	Senator the Hon. Ian Douglas Macdonald
Minister for the Arts and Sport	Senator the Hon. Charles Roderick Kemp
Minister for Small Business and Tourism	The Hon. Joseph Benedict Hockey MP
Minister for Science and Deputy Leader of the House	The Hon. Peter John McGauran MP
Minister for Local Government, Territories and Roads and Manager of Government Business in the Senate	Senator the Hon. Ian Campbell
Minister for Children and Youth Affairs	The Hon. Lawrence James Anthony MP
Minister for Employment Services and Minister Assisting the Minister for Defence	The Hon. Malcolm Thomas Brough MP
Special Minister of State	Senator the Hon. Eric Abetz
Minister for Veterans' Affairs	The Hon. Danna Sue Vale MP
Minister for Revenue and Assistant Treasurer	Senator the Hon. Helen Lloyd Coonan
Minister for Ageing	The Hon. Julie Isabel Bishop MP
Minister for Citizenship and Multicultural Affairs and Minister Assisting the Prime Minister	The Hon. Gary Douglas Hardgrave MP
Parliamentary Secretary to the Prime Minister	The Hon. Jacqueline Marie Kelly MP
Parliamentary Secretary to the Minister for Transport and Regional Services and Parliamentary Secretary to the Minister for Trade	The Hon. De-Anne Margaret Kelly
Parliamentary Secretary to the Treasurer	The Hon. Ross Alexander Cameron MP
Parliamentary Secretary to the Minister for Foreign Affairs	The Hon. Christine Ann Gallus MP
Parliamentary Secretary to the Minister for Defence	The Hon. Frances Esther Bailey MP
Parliamentary Secretary to the Minister for the Environment and Heritage	The Hon. Dr Sharman Nancy Stone MP
Parliamentary Secretary to the Minister for Finance and Administration	The Hon. Peter Neil Slipper MP
Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry	Senator the Hon. Judith Mary Troeth
Parliamentary Secretary to the Minister for Family and Community Services	The Hon. Christopher Maurice Pyne
Parliamentary Secretary to the Minister for Health and Ageing	The Hon. Patricia Mary Worth MP
Parliamentary Secretary to the Minister for Industry, Tourism and Resources	The Hon. Warren George Entsch MP

## SHADOW MINISTRY

Leader of the Opposition	Mark Latham MP
Deputy Leader of the Opposition and Shadow Minister for Employment, Education and Training	Jennifer Louise Macklin MP
Leader of the Opposition in the Senate, Shadow Special Minister of State and Shadow Minister for Public Administration and Accountability	Senator the Hon. John Philip Faulkner
Deputy Leader of the Opposition in the Senate and Shadow Minister for Trade, Corporate Governance and Financial Services	Senator Stephen Michael Conroy
Shadow Minister for Employment Services and Training	Anthony Norman Albanese MP
Shadow Minister for Veterans' Affairs and Shadow Minister for Customs	Senator Thomas Mark Bishop
Shadow Minister for Industry and Innovation and Shadow Minister for Science and Research	Senator Kim John Carr
Shadow Minister for Children and Youth	Senator Jacinta Mary Ann Collins
Shadow Minister for Revenue and Shadow Assistant Treasurer	David Alexander Cox MP
Shadow Treasurer and Deputy Manager of Opposition Business in the House	The Hon Simon Findlay Crean MP
Shadow Minister for Ageing and Seniors and Shadow Minister for Disabilities	Annette Louise Ellis MP
Shadow Minister for Workplace Relations and Shadow Minister for the Public Service	Craig Anthony Emerson MP
Shadow Minister for Defence	Senator Christopher Vaughan Evans
Shadow Minister for Population, Citizenship and Multicultural Affairs	Laurence Donald Thomas Ferguson MP
Shadow Minister for Urban and Regional Development and Shadow Minister for Transport and Infrastructure	Martin John Ferguson MP
Shadow Minister for Mining, Energy and Forestry	Joel Andrew Fitzgibbon MP
Shadow Minister for Health and Manager of Opposition Business in the House	Julia Eileen Gillard MP
Shadow Minister for Consumer Affairs and Assisting the Shadow Minister for Health	Alan Peter Griffin MP
Shadow Minister for Information Technology, Shadow Minister for Sport and Recreation and Shadow Minister for the Arts	Senator Kate Alexandra Lundy
Shadow Minister for Homeland Security	Robert Bruce McClelland MP

### **SHADOW MINISTRY—*continued***

Shadow Minister for Finance and Shadow Minister for Small Business	Robert Francis McMullan MP
Shadow Minister for Housing, Urban Development and Local Government	Daryl Melham MP
Shadow Minister for Reconciliation and Indigenous Affairs and Shadow Minister for Tourism, Regional Services and Territories	Senator Kerry William Kelso O'Brien
Shadow Minister for Agriculture and Fisheries	Gavan Michael O'Connor MP
Shadow Attorney-General and Assisting the Leader on the Status of Women	Nicola Louise Roxon MP
Shadow Minister for Foreign Affairs and International Security	Kevin Michael Rudd MP
Shadow Minister for Retirement Incomes and Savings	Senator the Hon. Nicholas John Sherry
Shadow Minister for Immigration	Stephen Francis Smith
Shadow Minister for Family and Community Services	Wayne Maxwell Swan MP
Shadow Minister for Communications and Shadow Minister for Community Relationships	Lindsay James Tanner MP
Shadow Minister for Sustainability, the Environment and Heritage	Kelvin John Thomson MP
Parliamentary Secretary for Industry, Innovation, Science and Research	Senator George Campbell
Parliamentary Secretary to the Leader of the Opposition	Senator the Hon. Peter Francis Salmon Cook
Parliamentary Secretary for Defence	The Hon. Graham John Edwards MP
Parliamentary Secretary for Family and Community Services	Senator Michael George Forshaw
Parliamentary Secretary for Sustainability, the Environment and Heritage	Kirsten Fiona Livermore MP
Parliamentary Secretary to the Attorney-General and for Homeland Security; Manager of Business in the Senate	Senator Joseph William Ludwig
Parliamentary Secretary to the Leader of the Opposition	John Paul Murphy MP
Parliamentary Secretary for Communications	Michelle Anne O'Byrne MP
Parliamentary Secretary for Agriculture and Resources	Peter Sid Sidebottom MP
Parliamentary Secretary for Northern Australia and Reconciliation	The Hon. Warren Edward Snowdon MP
Parliamentary Secretary for Urban and Regional Development, Transport, Infrastructure and Tourism	Christian John Zahra MP

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*Tuesday, 11 May 2004*

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

#### **REPRESENTATION OF VICTORIA**

**The PRESIDENT** (12.30 p.m.)—I table the original certificate, received through His Excellency the Governor-General, from the Governor of Victoria, of the choice by the houses of the parliament of Victoria of Senator Fifield to fill the vacancy caused by the resignation of Senator Alston.

#### **TRADE PRACTICES AMENDMENT (PERSONAL INJURIES AND DEATH)**

##### **BILL (No. 2) 2004**

##### **Second Reading**

Debate resumed from 29 March, on motion by **Senator Abetz**:

That this bill be now read a second time.

**Senator LUDWIG** (Queensland) (12.31 p.m.)—I rise to speak in the debate on the **Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004**. Senator Conroy would normally deal with this bill but is unavailable due to the budget being handed down tonight. This bill is a further instalment in the legislative response to community concerns about the rising cost of public liability insurance. Since 2002 state and territory governments have engaged in a process of reforming their negligence laws to reduce public liability claims costs. These reforms have included caps on damages, thresholds to prevent the commencement of actions in relation to minor injuries and changes to the limitation period for bringing an action.

Labor have consistently backed the state tort law reform process and called for Commonwealth action to ensure that it is effective. This bill, like the Trade Practices Amendment (Personal Injuries and Death)

Bill 2003 which the Senate debated in February, is intended to address the possibility that the state tort law reforms could be undermined by forum shopping. Both these bills respond to recommendations of the Ipp inquiry into the law of negligence. There are a number of provisions of the Trade Practices Act that could form the basis of an action for damages for personal injury or death. Concerns have been expressed to government by the insurance industry that if the Trade Practices Act is not amended, plaintiffs will seek to avoid the restrictions imposed by state and territory civil liability laws by framing an action under the Trade Practices Act. At present there is little evidence that the TPA is being used as the basis for personal injury claims. Nevertheless, Labor accept that forum shopping is technically possible. Consequently, Labor have indicated that we will support amendments to the TPA to address this potential consequence. Labor have always stressed, however, that the amendments must be proportionate to the nature of the problem. We have emphasised that there is no case for abolishing fundamental consumer rights which have stood for decades.

In the Trade Practices Amendment (Personal Injuries and Death) Bill 2003, which I shall refer to as the 2003 bill, the government sought to remove the ability of consumers and the ACCC to recover damages for personal injury and death sustained as a result of conduct breaching the unfair practices provisions in division 1 of part V of the act. Division 1 includes section 52, which prohibits companies from engaging in misleading and deceptive conduct. Many would argue that this is the most important consumer protection provision in the Trade Practices Act. The Senate took the view that the government's bill went too far. It supported amendments moved by Labor and the Democrats which were based on a proposal made by the ACCC. The amendments aligned damages

under division 1 of part V with relevant state and territory civil liability laws. The amendments would have had the effect of deterring forum shopping because they would have ensured that plaintiffs could not recover any more under the TPA than in action based on negligence. Unfortunately, the government did not accept these amendments.

As a consequence of the government's intransigence, there remains a financial incentive to engage in forum shopping. This bill covers TPA provisions relating to: firstly, unconscionable conduct in part IVA; secondly, supply by a manufacturer or importer of unsatisfactory consumer goods in division 2A of part V; and, thirdly, supply by a manufacturer or importer of defective goods in part VA. Instead of abolishing consumers' rights to seek damages for personal injuries sustained as a result of a breach of these provisions, the bill inserts a damages regime into the TPA. The bill introduces a new part VIB which imposes caps, thresholds and limitations on actions for personal injury. In broad terms, these restrictions are consistent with the approach adopted by the states and territories in their tort law reforms.

I will briefly outline some of the features of this regime. The bill inserts time limits for the commencement of litigation. Proceedings must be instituted within three years of discovering an injury. This limitation is also subject to a long stop provision. Generally speaking, no action for death or injury can be instituted more than 12 years after the act or omission that is alleged to have caused the death or injury. The bill also introduces caps and thresholds in relation to the various heads of damages. Damages for pain and suffering are capped at \$250,000. This amount is indexed to the consumer price index. Insurers have indicated that a major factor driving up claims costs has been an increase in the number of small claims. In order to address this issue, the bill inserts a

threshold. Damages will not be awarded if the court assesses that the non-economic loss incurred by the plaintiff is less than 15 per cent of the most extreme case.

Labor accept that thresholds are necessary to restore some balance to public liability arrangements. The bill also caps damages for loss of earnings capacity at two times average weekly earnings. Labor do not believe that the framework set out in part VIB is perfect. In some respects it is more restrictive than state law—for example, the cap on general damages is more than \$100,000 below the amount that can be recovered under New South Wales and Victorian civil liability laws. Labor believe that it would be preferable to simply align damages under the TPA with state and territory laws, as we proposed in the 2003 bill.

Notwithstanding this view, Labor is prepared to support the framework set out in this bill in order to ensure that the potential for forum shopping is dealt with. In March this year Senator Conroy wrote to the Minister for Revenue and Assistant Treasurer, Senator Coonan, inviting the government to extend part VIB to apply to actions brought under part V of division 1. Labor made this proposal in an attempt to break the impasse in relation to the 2003 bill and to ensure that a consistent approach applied to all provisions under the TPA that may give rise to an action for personal injury damages.

Regrettably, the minister rejected Labor's solution. The government's arguments against the compromise proposal were not convincing. The government argued that the prohibition on misleading and deceptive conduct was never intended to form the basis of an action for personal injury damages. The minister has provided no evidence to support this assertion. Labor believes that the contrary view is strongly supported by the presence of section 4K of the TPA. This section,

which was inserted in 1977, makes clear that a reference to loss or damage in the act includes injury. The government also contends that there should be no liability under section 52 for personal injury and death because it is a no-fault provision. By this it means that there is no requirement to prove that a person acted negligently or dishonestly in order for liability to arise under section 52. This argument that section 52 operates unfairly with respect to defendants has been comprehensively rebutted by the ACCC. In fact, ACCC commissioner Ms Jennifer McNeill told the Senate Economics Committee:

In a situation where a business misleads or deceives a consumer and the consumer suffers damage—in this case, personal injury—as a result, the commission thinks that, as a matter of principle, they should be held accountable and liable for that damage, irrespective of intention.

Ms McNeill said that this was ‘because it is much more within the control of the business involved whether and how the representations are made; it is not within the control of the consumer whether and how the representations are made’.

In any event, the government’s approach to the no-fault provisions is inconsistent. Under the bill we are considering today, the government proposes to allow the recovery of personal injury damages for breach of other no-fault provisions in the act. For example, section 74D of part VA gives consumers the right to bring an action for damages where goods are not of merchantable quality. In proceedings based on section 74D the consumer does not have to show that the manufacturer of the goods knew or should have known that they were flawed. Nevertheless, in this bill the government accepts that a breach of section 74D which causes personal injury should be able to form the basis of an action for damages. Labor does not believe that there is any justification for this inconsistent approach adopted by the

government. All provisions of the TPA which could form the basis of an action for personal injury damages should be treated in the same way.

The final argument made by the government is that the Ipp committee recommended the abolition of the right to seek personal injury damages for breach of section 52. The Ipp review terms of reference were very narrow. The committee was specifically instructed to develop and evaluate options to prevent individuals from commencing an action under the TPA. It did not have an open brief. Furthermore, it should be noted that the Ipp review seems to be holy writ only when the government wants it to be. In this bill, for instance, the government inserts a discount rate of five per cent for future economic loss despite the fact that the Ipp review recommended that a three per cent rate apply.

Labor believe that the parliament is entitled to make its own judgment on these matters. We are not convinced that actions for personal injury arising under division 1 of part V should be treated differently from actions for personal injury arising under other parts of the act. In order to ensure that there is a consistent approach to actions for personal injury damages under the act and to deter forum shopping, Labor will move amendments to the bill to extend the application of part VIB. It is therefore hoped that the government will reconsider its opposition to extending the scope of this part of the bill.

Labor has grave doubts about whether the government really wants to develop a balanced and workable solution to the issue of forum shopping. The government has spent the last couple of months engaging in some misleading conduct of its own. It has incorrectly told community groups that failure to pass the 2003 bill is keeping their public liability premiums high. As I am sure the min-

ister knows full well, the provisions of the TPA that we are discussing only apply to corporations engaged in trade or commerce. Consequently, they have virtually no application to the community sector.

The government has also accused Labor of obstructing attempts to reduce insurance premiums for small business. The reality is that the government must explain to small businesses why it has failed to ensure that the savings already being realised from state tort law reforms are not flowing through to them. The most recent ACCC price monitoring report issued in February showed that insurers are making substantial underwriting profits on public liability business and are set to reap a sizeable windfall. The report indicates that the state tort law reforms have begun to take effect. The ACCC found that claims costs for personal injury and death fell by 14 per cent in the first six months of 2003. Despite the fall in claims costs, insurers have indicated that premiums will continue to rise. At the start of the tort law reform process in 2002, Labor warned the government that unless the ACCC was given the power to ensure that cost savings generated by the reforms were passed on to consumers in the form of lower premiums insurers would simply pocket the savings. Regrettably, this seems to be what is now occurring. Rather than running misleading scare campaigns, the government should act to ensure that consumers benefit from tort law reform—not just the insurance companies.

Before I conclude I would like briefly to canvass some other amendments Labor will be moving in relation to the bill. Labor has been advised that the bill may have an impact on future litigation against companies in the tobacco industry. Without judging the merits of any such action, Labor does not believe that reforms intended to address concerns about public liability premiums were intended to have any impact on the prospects

of tobacco litigation. We note that most states have specifically excluded tobacco litigation from their civil liability reforms. In the committee stage, Labor will move amendments to ensure that the caps on damages and the long stop period contained in the bill do not apply in relation to tobacco cases. I will outline these amendments in more detail during the committee stage.

In conclusion, while we will move some amendments, Labor support the objective of this bill. The bill restricts damages under the TPA to ensure that the state and territory reforms are not undermined but, unlike the 2003 bill, it does not abolish fundamental consumer rights. In Labor's view this represents a more proportionate and balanced approach to the problem. The amendments that Labor will move in the committee stage will ensure that this regime applies to the other provisions of the TPA that could form the basis of an action for personal injury. We encourage the government to support these amendments so that the issue of forum shopping can finally be resolved.

**Senator MURRAY** (Western Australia) (12.46 p.m.)—The predecessor of the **Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004** was dealt with by my colleague Senator Ridgeway, but in his absence this afternoon I will take the bill forward. It is not as if I come to it as of new, in that I am a member of the Senate Economics Legislation Committee that inquired into the provisions of the Trade Practices Amendment (Personal Injuries and Death) Bill 2003, which was this bill's predecessor. That committee reported in August 2003. Because this matter has been dealt with before and because we have put our views on record at length before, I do not intend to take up the time of the chamber for the full 20-minute allocation but I do have a number of points I wish to make.

The first is an attack on the fundamental suppositions made in the Ipp review. My belief for a long time has been that if that Ipp panel had been reviewed in court, they would have thrown out some of its findings on the basis that errors of fact were apparent. They should not have come to the conclusion they did because they neither had the evidence to do so nor did they have the facts before them to do so. In that regard, that view of mine has been confirmed this morning when I reread the *Bills Digest No. 114*. I wish to quote at length from some of the remarks in the early pages of that digest:

In response to the insurance crisis, the Federal Government, in May 2002, appointed an expert panel of persons to review the operation of the laws of negligence and related provisions in the TPA and state and territory fair trading legislation. The expert panel was directed to recommend changes to personal injury law to solve the insurance crisis.

The terms of reference for the expert panel included the following statement: The award of damages for personal injury has become unaffordable and unsustainable as the principal source of compensation for those injured through the fault of another. It is desirable to examine a method for the reform of the common law with the objective of limiting liability and quantum of damages arising from personal injury and death.

That quote was taken from the review of the law of negligence final report, the Ipp report, September 2002, at page 9. The digest goes on:

From this statement it can be shown that the panel took as a given that the frequency and size of personal injury damages payouts was too large and so changes needed to be made to personal injury laws to wind this back.

There has been debate as to whether or not the expert panel should have started from this point. It has been argued that the limited range of claims statistics that were available at the time the review was being conducted meant that it would have been difficult to draw any conclusions about trends in personal injury claims and hence the

appropriateness of the law. Despite this, the expert panel made 61 recommendations which are set out in the Ipp Report, targeted at reforming personal injury laws.

In drawing that conclusion, the digest referred also to the article in the *Australian Financial Review* on 11 October 2002 titled 'Ipp report: long on notions, short on facts'. I hold to that view and so do the Australian Democrats. We think the Ipp report, with respect to these particular recommendations which affect this particular bill, was not justified and has not been validated subsequently. However, the government continues to pursue this.

The minister with responsibility for this area, the Minister for Revenue and Assistant Treasurer, is herself a barrister. My opinion of lawyers is that they are often very capable and esteemed people, but all of them will carry a brief and are prepared to pursue a brief regardless of the merits of the case opposing it. In my view, this is just one of those instances. The committee inquiry, the views of those examining this issue and the countless critics of this area all indicate that there is no evidence which justifies the provisions of this bill. In a recent letter from Assistant Treasurer Coonan to Senator Ridgeway, she did say that there are three cases which in her view—which I presume therefore reflects the government's view—indicate that the floodgates are about to be opened to litigation in an area of the Trade Practices Act which has been marked by a singular lack of litigation.

She enunciated three cases. These are *Johnson v. Golden Circle* in December 2003, *Kaouna v. Orthosports Pty Ltd* and *Robbs v. Pathology Services Pty Ltd* trading as *Mayne Health Lavery Pathology*. Three cases do not a flood make. They do not invalidate the remarks I have made. In fact, in my view, the development of jurisprudence in this area is a plus, not a minus. It develops an appropriate reference point by which personal injury and

damages can be evaluated. In the Australian Democrat minority report on the provisions of the [Trade Practices Amendment \(Personal Injuries and Death\) Bill 2003](#), Senator Ridgeway and I made a number of remarks in our conclusions. We said that the purpose of the bill—to implement the Ipp recommendations—would prevent any actions being taken or damages being awarded for personal injury and loss resulting from contravention of part V, division 1 of the TPA. We said further that there is no evidence that the TPA has been used as an avenue to bypass existing tort law. However, evidence was put forward which highlighted occasions where consumers could be faced with no avenue for redress if the bill proceeded to abolish a right of action completely under the TPA for personal injury and death. The Australian Consumers Association and the Australian Plaintiff Lawyers Association were not supportive of the bill and preferred that the Senate reject the bill outright.

I remain to be convinced that this legislation is remotely needed. I will listen to the debate and participate in the committee stage of the debate of the amendments that are before us. But I advise both the government and the opposition that, at this stage, it is my intention to recommend to my party room that we oppose the bill unless my views alter. I would do so because I, and we, believe that the whole campaign to address insurance provisions and damages provisions at law in both the state and the federal arena has often been predicated on insufficient evidence and balance. We think it has been dedicated primarily to restoring the profitability of insurance companies and not to reducing the costs of claims or indeed the restrictive conditions under which many insurance policies operate.

We have seen and debated in the Senate countless examples of people who have never had a claim in decades of operating

their business, charitable and sporting activities. We have seen those people's premiums escalate enormously. There has been no quid pro quo. No state or federal government and no minister anywhere in Australia has secured a quid pro quo from the insurance industry. They introduce these reforms, these restraints on consumer and human rights, and in return the insurance industry should actually deliver lower cost premiums and broader provisions in their policies. In fact, the whole exercise has resulted in less access at law and much more profitability to the industry.

That does not mean to say that we are troglodytes. It does not mean to say that we do not recognise that you need to reform the law to ensure bludgers and chancers cannot take advantage of it, but that is why you have judges. That is what jurisprudence is about. That is why you have the whole process of evidence and fact to work through. By and large, Australia, with some peculiar case exceptions, has not been subject to the extraordinary problems that you might expect from some of the hyperbole that I have seen printed and published. In fact, if we have to look at the prime causes of problems in the insurance industry in this country, they most of all relate to the greed of corporate bureaucrats, the mismanagement of major insurance companies and the inability to properly assess risk. They have very little to do with inadequacies in tort or any other law.

The Democrats do not believe that forum shopping has occurred to any extent. We do not believe that the early signs are there that there is going to be a flood of forum shopping resulting from the fact that the Commonwealth law, at least within the Trade Practices Act, remains a little more open and accessible to damages claims than do the tightened state laws. We do not believe that there has been sufficient justification for the large-scale limitations that have been placed on individuals' ability to take legal action in

the state law. We do not believe that those state decisions, which we think have been overkill and an overreaction, should be reflected in Commonwealth law at all. You will gather from my remarks that we are not particularly excited about, interested in or pleased by the legislation that is before us. As I said at the outset, subject to what I hear in the debate and the committee process, it is my intention to recommend to my colleagues that we consider opposing the bill outright at the third reading.

**Senator ALLISON (Victoria) (12.59 p.m.)**—I wish to address just one aspect of the **Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004**, and that is that the changes proposed in this bill, whether they were intended or not, will have the very serious effect of limiting the opportunity in Australia for suing the tobacco industry. I am grateful to the Cancer Council of Victoria for their submission, which very clearly outlines the dangers associated with this legislation for action against tobacco companies. In their submission to the inquiry into the proposed legislation they say:

The Bill imposes limits on personal injury damages for non-economic loss (Division 3) on personal injury damages for loss of earning capacity ... and on personal injury damages for gratuitous attendant care services ... provides that no exemplary or aggravated damages may be awarded in respect of death or personal injury ... and introduces new limitation periods.

It is that last point that I most want to draw the Senate's attention to. The effect of the limits on damages and removal of exemplary or aggravated damages is obvious. Again, in the view of the Cancer Council of Victoria:

... there are no policy justifications for such changes insofar as they would apply to claims against the tobacco industry—there are no public liability insurance issues.

But the new limitation periods are very significant. Under the proposal, no claim could

be brought more than 12 years following an act or an omission alleged to have caused death or disease—the so-called long-stop period—unless the period is extended by a court. Given that tobacco related disease invariably involves a long latency period, virtually no claim could be brought against the tobacco industry for tobacco related disease without the prior permission of the court. This requirement would deliver an enormous benefit to the tobacco industry.

I would be very surprised if either the Labor Party or the government thought that this was reasonable or that this was, on the part of the government, an intended outcome. This bill is supposed to be about the cost and availability of public liability insurance, not giving the tobacco industry protection against individuals or indeed the government in taking action to recover the many billions of dollars that smoking costs in health effects alone. The regulation impact statement to the first bill says:

The purpose of the Review was to assist governments to address the issue of increasing premiums for, and reduced availability of, public liability insurance. The government has acted to ensure that small business, community groups, sporting groups, recreational service providers and the like can continue to organise public events and conduct their activities.

Without giving a view about the value or otherwise of this bill—as Senator Murray indicates, we will listen to this debate—I think it is fair to say that the Democrats are very much opposed to this bill being used to give the tobacco industry a way out. The tobacco industry does not, of course, hold public liability insurance. Unlike playing football or holding a street stall, smoking is a very dangerous, life-threatening and highly addictive activity. In the United States the tobacco industry agreed to pay the US states around \$US246 billion over 25 years from 1998 as result of litigation and, as I under-



stand it, the United States Federal Justice Department is now taking steps to recover even more costs.

The Democrats would like to see the industry sued in this country, too, for its misleading, deceptive and unconscionable behaviour, for lying to smokers about the harmful effects of its product—taken as directed, I might say—and for plying its product to children. We have pressed the ACCC to take action here very aggressively. The response has been, ‘We can’t afford the legal costs.’ If a government agency cannot afford to take legal action against the tobacco industry, then individuals are certainly not going to be able to, even though some have tried and with some success. Of course, the government’s reluctance to empower the ACCC through funding is a great disappointment, given that smoking already costs an estimated \$670 million a year in smoking related diseases, and that is just in our health system.

Our smoking rates have plateaued after dropping to just under 20 per cent of the population, but 19,000 people still die each year from smoking related disease and many of these people were addicted well before there were warnings on packs and when tobacco companies were allowed to advertise their product. Today there are still people who falsely believe that smoking a mild or a light brand of cigarette will protect their health. The industry continues to deceive consumers. There are still people who were harmed when they were exposed to smoking in utero and as children when smoking was not banned in most public spaces. There are still people who work in hotels and clubs who are being exposed regularly and who inhale other people’s smoke. People are taking up smoking at a younger and younger age and more young women are becoming addicted than ever before. The tobacco industry has, in our view, much to answer for and most definitely should not be let off the

hook with this legislation. The states have recognised this and it is good that the ALP has drafted an amendment which would exempt tobacco companies. The states have done similarly. They have introduced legislation for the same purpose, but they have excluded tobacco from its reach.

The Cancer Council of Victoria’s submission to the bill points out the government’s concern that, in the absence of the proposed changes to the Trade Practices Act, the changes to state laws which address public liability insurance problems could be undermined by resort to the act. In fact, the explanatory memorandum for the first bill says:

The Review’s recommendations were formulated to ensure that the TPA could not be used to undermine any State and Territory laws in relation to claims for damages for personal injuries or death.

In New South Wales, section 3B(1)(c) of the Civil Liability Act 2002 provides that the act does not apply in respect of:

... civil liability relating to an award of personal injury damages (within the meaning of Part 2) where the injury or death concerned resulted from smoking or other use of tobacco products ...

In Victoria, actions or claims for damages in respect of an injury resulting from smoking or other use of tobacco products or exposure to tobacco smoke are excluded from several parts of the revised Wrongs Act 1958.

In Queensland, section 5(c) of the Civil Liability Act 2003 provides:

This Act does not apply in relation to any civil claim for damages for personal injury if the harm resulting from the breach of duty owed to the claimant is or includes—

... ..

(c) an injury resulting from smoking or other use of tobacco products or exposure to tobacco smoke.

In WA, the Civil Liability Act 2002, as substantially amended by the Civil Liability Amendment Act 2003, again excludes ‘dam-



ages relating to personal injury that resulted from smoking or other use of tobacco products' from several provisions of that act. In Tasmania, section 3B(1)(b) of the Civil Liability Act 2002 provides that the act does not apply to or in respect of civil liability 'relating to an award of damages for personal injury or death where the injury or death concerned resulted from smoking or other use of tobacco products'.

To be absolutely certain that the Trade Practices Act does not undermine those state laws, it is critically important that an amendment is passed in this place and that it is accepted by the government when that goes to the House of Representatives. It would be useful if the minister could indicate if that will be agreed to. To conclude, the Cancer Council of Victoria's submission says:

... if either or both of the Trade Practices Amendment (Personal Injuries and Death) Bill 2003 and the Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004—

the one we are dealing with here today—

are passed, they ought to be amended so as not to apply to claims arising out of the use of tobacco products. The policy justifications for the proposed changes do not apply in the context of claims against the tobacco industry. Further, given the scale of the harm caused by tobacco both to individuals and to the community, the effect of legislation making litigation against the tobacco industry more difficult may be to fix the community with substantial costs that might otherwise be paid by the tobacco industry and to weaken the role of the Trade Practices Act 1974 (Cth) in regulating the conduct of the tobacco industry.

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (1.09 p.m.)—I thank honourable senators for their contributions on this important bill, the Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004. As the Senate is aware, this bill is part of the

national framework to support state and territory reforms to the law of negligence. The approach being taken was developed as a result of extensive consultation and hard work by Australian state and territory governments. It is not the sole initiative of this government but is widely supported by all other governments in Australia, industry and the community more broadly.

The reforms, as I have said, are supported by all jurisdictions and have in fact been applauded not only in Australia but also overseas and in particular by underwriters. As a result, we have seen some capacity come back into the market. In fact, reforms undertaken to implement this framework have begun to make liability insurance more affordable and available to community groups and businesses Australia wide. There was a recent initiative with community care in Australia with major insurers underwriting the availability of insurance to community groups. Indeed, there are other examples that I will get to in the course of the debate.

There is no doubt that Australia was facing a liability insurance market where the cost of cover was rising at the same time as policies were becoming harder and harder to obtain. Some community groups and small businesses in particular simply could not obtain insurance at any price. Since then this government has worked very diligently with state and territory ministers and key stakeholders to develop a national resolution. The bill before the Senate today is a key component in implementing this resolution.

It did not arise out of some fanciful notion of governments or stakeholders. The bill draws on the findings of an expert panel established at the May 2002 ministerial meeting on public liability insurance, chaired by the Hon. Justice David Ipp of the New South Wales Court of Appeal. The panel was established to assist the Australian government

and state and territory governments to formulate as far as we could a consistent and principled approach to reforming liability laws. The review concluded that in many cases a cause of action under the act that we are dealing with today—that is, the Trade Practices Act—is a real alternative to a cause of action in negligence.

Vital reforms by the states and territories of common law negligence could be undermined unless the Commonwealth made complementary changes to the act. We have already seen repeated evidence of this happening. I have already raised with the Senate a couple of cases—at least, I have now raised three cases privately with colleagues—that I have become aware of in the course of this debate over the past weeks and months in the Senate. Those familiar with the impact of law reform in other areas advise me that it generally takes two or more years before the full impact of such loopholes becomes apparent.

These reforms are not the kinds of reforms that are like turning on an electric light, where you get some immediate and measurable response. It takes some time for actuarial certainty to flow through to the way in which risks are assessed and to the way actuaries predict the costs of claims. It would be simply flying in the face of both history and experience for the Senate and indeed for my colleagues, I would have thought, to argue that there is no need to fix an obvious loophole that we now recognise until well after it has been fully exploited. That is what has happened in the past. It is really tantamount to arguing that there is no need to shut a gate before a horse bolts when the horse is standing there ready to go. The risk is already identified and well known.

The expert review clearly and deliberately recommended that the act be amended to prevent claims from being brought forward

for personal injury and death under division 1 of part V and to apply rules relating to the quantum of damages and limitation periods to other sections of the act. I am happy to report to the Senate that the state reforms do appear to be working. Australian state and territory governments who have taken action to implement key recommendations of the review now have something to show for our efforts. In the *Age* this morning there was a story by law reporter Fergus Shiel showing how effective the reforms have been in Victoria. Mr Shiel wrote that ‘personal injury claims have plummeted’ since the introduction of reforms in that state, with the number of personal injury writs down from 4,513 to 60. The problem is we already know this kind of improvement will not be sustained, nor will it be sustainable unless the Trade Practices Act is adequately amended to support the state reforms.

I want to deal very briefly with the differences between the two bills that the Senate has been asked to consider. The Australian government has introduced the [Trade Practices Amendment \(Personal Injuries and Death\) Bill 2003](#). When enacted by this parliament the bill will prevent claims being brought forward for personal injury and death under division 1 of part V. The bill we are actually debating today, the Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004, continues this reform agenda and, specifically, will implement recommendations 17 and 21 of the Ipp review. These recommended that the act be amended to apply rules relating to limitation of actions and quantum of damages to personal injury and death claims brought pursuant to an unconscionable conduct claim, which is part IVA; a contravention of the product safety and information provisions, which is division 1A of part V; a supply by a manufacturer or importer of unsatisfactory consumer goods, which is division 2A of part

V; or a supply by a manufacturer or importer of defective goods, which is part IVA.

The approach in this bill of limiting the quantum of damages and establishing a new limitation arrangement for personal injuries and death claims can be distinguished from that taken in the first bill, the Trade Practices Amendment (Personal Injuries and Death) Bill 2003 which prevents claims for damages for personal injuries and death under part V, division 1 of the act. The approach taken in the first government bill reflects the view that the Trade Practices Act was not originally intended to provide causes of action to individuals who suffer personal injury and death as a result of misleading and deceptive conduct in the absence of an element of fault. And that is the nub of the matter—in the absence of an element of fault. Allowing claims to be made under the Trade Practices Act in these circumstances sets it aside from regimes where fault is required, such as those in the state and territory governments. Obviously, if they are not aligned one will undermine the other.

By contrast, the second government bill takes into account parliament's intent that the provisions relating to product safety and information, claims against manufacturers and importers of goods, and product liability should provide a cause of action to individuals who do suffer personal injury and death. There is a very clear difference in intent. Moreover, it is not necessary to remove personal injury and death claims under part IVA as the element of fault required under these provisions will limit the potential for personal injury and death claims and, in fact, will be aligned with the state and territory tort law regimes on fault.

The government agrees with the Ipp review that limitation on actions and quantum of damages should apply to personal injury and death claims under these parts of the

Trade Practices Act. The review panel made a number of specific recommendations on the nature of the limitation periods and quantum of damages that should apply for different heads of damage in relation to personal injury and death claims across all jurisdictions. The bill being debated today will introduce a number of review measures into a new part VIB of the Trade Practices Act. Part VIB will apply these measures to personal injury and death claims brought pursuant to an unconscionable conduct claim, a contravention of the product safety and information provisions, a supply by a manufacturer or importer of unsatisfactory consumer goods or a supply by a manufacturer or importer of defective goods. So there is no suggestion that the government is not cognisant, where parliament intended to provide an action for personal injury and death in relation to certain parts of the act, that they should remain.

Part VIB will establish new limitation periods for claims and thresholds and caps on awards for various heads of damage. The bill will provide a framework for phasing in damages for non-economic loss depending on the severity of an injury, a mechanism for calculating damages for loss of earning capacity and for gratuitous attendant care services. The bill will also introduce a number of other limits on personal injury damages and will clarify the powers of courts in relevant proceedings to approve structured settlements, which is an earlier reform of this government that was supported in the Senate.

The government have chosen to incorporate the review's specific recommendations on limitation periods and quantum of damages into the act rather than referring the courts to the relevant state or territory legislation which, we have come to the view, would be much more complex. This approach, which has the support of other jurisdictions and industry, provides a clear and transparent national benchmark for the limi-

tation of actions and quantum of damages in personal injury and death claims. National benchmarks on these matters will facilitate the implementation of nationally consistent reforms giving effect to the resolutions developed and agreed to by ministers. This approach will provide greater certainty and reduced complexity for insurers and underwriters and minimise the incentive for jurisdiction-shopping behaviour by plaintiffs—because it will not make any difference where you bring your action—whilst maintaining remedies for plaintiffs injured in actionable circumstances.

In the course of the debate—and I may not have heard all of it—there was a return to a suggestion that insurer profits were really what these reforms were all about, rather than a nationally consistent scheme that will bring the balance back into the way in which risk is allocated and the way in which people are compensated for injuries. On the issue of insurer profits, there are some very important points that I think need to be made. The first is that a profitable insurance sector is absolutely vital for the wellbeing of Australia. If we do not have an insurance sector that is not going to be prey to the kind of problem that HIH faced, we in Australia are not going to be able to allocate and shift risk in the kinds of activities that we conduct, whether they be community activities or large commercial undertakings.

To talk about insurance companies making a profit as if it is some kind of terrible wrong is quite an unsustainable proposition. An insurance sector unable to make a profit is extremely bad news for any community and can lead to withdrawal of capital at best and the failure of companies leaving policyholders high and dry and uncompensated at worst. It is also important to remember that insurance company profits have grown from a very low base—in some cases from significant net losses—and that profits have been at

an unsustainably low level for several years. Underwriting profits have been rare for insurers in recent years and when compared to other financial sector operations their return on capital has hardly been outstanding. According to a recent press report that came to my attention, Australia's general insurance providers have achieved a return on equity above 10 per cent only three times since 1994. In the same period the major banks have consistently achieved a return on equity in excess of 15 per cent. But insurance will only be available while investors are willing to provide capital to the industry in the expectation of reasonable returns.

Another point that the Senate should have regard to is that, based on information provided by the Insurance Council of Australia, public liability represents only six per cent of total premium income, which puts the lie to the argument of those trying to directly link law reform to bottom-line profits. However, there is no doubt that the reforms have made public liability insurance more profitable as a line and attracted new capital to the market. Again I would remind the Senate that that is a good outcome for consumers. Just today in the *Australian Financial Review* there is a report of a plunge in insurance shares because of the pressure on premiums from increased competition. Increased competition is exactly what is needed in this market in the best interests of all Australians, and exactly what the reforms are delivering.

It is extremely disappointing that the Labor Party—I will leave the Democrats out of this—has after some years of virtual silence on this issue now jumped up at the last minute attempting to derail the reforms and please its supporters, no doubt, in some other sectors of the community. Those opposite really do need to be thinking about the interests of the community as a whole.

There was a reference during the debate to the fact that there was no evidence to support the Ipp review's claim that there was no intent in section 52 to allow personal injuries claims. Once again I draw to the Senate's attention the fact that the High Court, in *Concrete Constructions against Nelson*, held that section 52 was never intended by the parliament to extend to all conduct regardless of its nature, and there is no evidence that I can divine from looking at the parliamentary debates that parliament intended that section 52 extend to cover personal injury and death claims. I suspect that the High Court in the fullness of time, in the absence of this legislation getting through the Senate and putting it beyond doubt, will eventually be asked to affirm this view in the application of section 52 to personal injury claims.

There are a couple of foreshadowed amendments. In respect of what we might loosely call the 'tobacco amendment', I am quite frankly astonished that, although the bill has been before the parliament since 19 February and passed the House on 25 March, Labor, which has foreshadowed the amendment, chose not to circulate its proposed amendment to the government for consideration until I literally got to my feet. I know that from time to time there are comments made about lack of courtesy on the part of the government, but if there was any serious intent on the part of both the Democrats and Labor for the government to have an opportunity to consider this amendment surely it should have been provided in a more timely way. It might have got some support. As it is, it is far too precipitous for me to form a view on my feet as to the desirability of this amendment. As I have said, one would think that if Labor were seriously interested in amending the bill to constructively improve the law—and I acknowledge that that could be possible—it would discuss

or at least inform the government of its plans to make amendments.

Without any time to consider this amendment the government is put in a very difficult position by being asked to consider it. The government's amendments were recommended by an expert panel, discussed with states and territories, publicly announced and released and have had a lengthy consideration by the parliament. At least nobody is coming to consider the government's amendments unprepared.

I can say a bit about the existing law reform. On the substance of the amendments that Labor and the Democrats are seeking for special arrangements to be included for individuals who have sustained tobacco related injuries, there may be, as I have said, some basis to consider it. I am no fan of tobacco, I might say. I note that New South Wales has provided a specific exemption from the New South Wales Civil Liability Act 2002 in relation to the award of personal injury damages where the injury or death results from smoking or the use of tobacco products. Queensland, Western Australia and Tasmania have some exclusions. Exemptions of this nature are fundamentally civil liability issues and appropriately matters for state and territory law. On the face of it they are not matters for the Commonwealth and the TPA. As I have said, the bill we are debating today introduces national benchmarks on quantum and limitation of actions, and these arrangements will introduce a cap and threshold for the award of general damages. They will not have any effect on the recovery of a variety of other expenses, such as medical expenses.

Back to the main game of today, which is that I am asking the Senate to pass the government's bill, the proposed amendments to the act close a loophole that has been well identified. It is one where there is only a trickle but there will be a flood. Anyone with

any familiarity at all with the practice of an actuary will tell you that that is sufficient to have a deleterious and damaging effect on the ability of these very sensible reforms to take effect in the way in which parliament intended.

Question agreed to.

Bill read a second time.

### In Committee

Bill—by leave—taken as a whole.

**Senator LUDWIG (Queensland) (1.30 p.m.)**—I will seek some guidance from the government in respect of this: we could move the amendments all together—that is, amendments (1) to (6)—or, logically, we could split them and take (1) alone and then (2) to (6) together. Amendments (2) to (6) relate to the tobacco industry amendments and amendment (1) relates to the amendment to section 52. I do not mind which way we go, but I would need to seek leave to move them together. It depends on whether we want the debate to proceed in this way. You could nod, Senator Coonan, if you prefer that we take amendments (1) to (6) together—or you might prefer that we take amendment (1) alone and then (2) to (6) together.

**Senator COONAN (New South Wales—Minister for Revenue and Assistant Treasurer) (1.31 p.m.)**—Thank you, Senator Ludwig, for indicating a convenient way in which it might proceed but I would prefer that the two amendments be proceeded with separately.

**Senator LUDWIG (Queensland) (1.31 p.m.)**—I will do that.

**Senator Harradine**—No, you have not been given leave.

**Senator LUDWIG**—I have not yet sought leave. In fact, I do not need leave to seek to move amendment (1), which is standing in Senator Conroy's name. I was then going to seek leave for (2) to (6) to be moved

together. If it is denied at that point, I can then deal with them seriatim. So, in my view, it does not arise at this point; it arises after (1), at (2). I am happy to seek leave now in relation to the proposal that I have put to the government, but having had the government knock me back on (1) to (6) together then technically I can ask again at (2) for leave of the Senate, not now. I am in your hands, Senator Harradine.

**Senator MURRAY (Western Australia) (1.32 p.m.)**—It seems to me to be sensible that (1) be taken separately and that (2) to (6) be taken together because they all deal with the same subject matter.

**Senator LUDWIG (Queensland) (1.32 p.m.)**—I move opposition amendment (1) standing in the name of Senator Conroy:

(1) Schedule 1, item 9, page 6 (line 9), before "1A", insert "1,".

This first item amends proposed section 87E of the bill. The effect of this amendment is to ensure that the damages regime inserted by the bill applies to claims for personal injury damages brought under part V, division 1 of the bill. As the Senate is aware, the most significant provision in part V, division 1 is section 52, which prohibits misleading and deceptive conduct. Labor moved this amendment as a way of breaking the deadlock between the Senate and the House in relation to the Trade Practices Amendment (Personal Injuries and Death) Bill 2003. As noted in the second reading debate, in contrast to the bill we are considering here today, the earlier TPA bill did not simply limit damages recoverable under part V, division 1; in fact, it abolished them. The Senate supported amendments which sought to align damages with state and territory law at the time. However, and perhaps unfortunately, they were rejected by the government.

Labor cannot support the abolition of longstanding consumer rights. We are, how-

ever, concerned to ensure that the potential for forum shopping to undermine state tort reform is in fact addressed. The amendment contained in item (1) will ensure that all actions for personal injury under the Trade Practices Act are treated in the same way. It clearly deals with the problem of forum shopping. On 2 March this year, Senator Coonan told the Senate:

Cases are ... coming to light where a claim is too small to succeed at state level but can still be brought under the Trade Practices Act. While this loophole remains open, claims costs will not come down and these reforms will remain incomplete.

In other words, as I understand it, the loophole is that thresholds that apply under state law to screen out small claims do not apply under the TPA. No doubt the amendment contained in item (1) would address this issue, if that is the issue that is being ventilated by the government as a reason. The solution we have put up is a sensible one. If the government does not accept it, it will only confirm our suspicions that in fact the government does not really want a solution to this matter and is satisfied to have this debate continue for considerably more time than it has.

The other issue I want to mention while I am on my feet is about the amendments in relation to the tobacco industry. My instructions were that they were to be circulated earlier. It appears that they were not. The opposition apologises for their lateness. However, in your own summing up, Minister Coonan, you did indicate that you are aware of the tobacco industry amendments—if I can call them that by way of shorthand—through the state law tort reform process. They are familiar to you and they should not have come as any great surprise. In fact, from the argument you put in summing up I think you may agree with the amendments themselves. It seemed from the argument

that if this bill is needed then so are the tobacco amendments, given that they are also reflected in the state tort reform process—but I will leave that for the debate later on. I just wanted to put that on record, and we have also given you time now to look at those amendments so I am sure we can move forward with the debate.

**Senator MURRAY** (Western Australia) (1.37 p.m.)—We think any amendment that prohibits or attempts to restrict forum shopping is a wise one. Our case and our argument is not that people should have multiple access in multiple jurisdictions; our case and our argument is that they should have access to the TPA jurisdiction. Therefore we can have no in principle objection to Labor amendment (1) since, if I understand its consequences accurately, it does seek to achieve streamlined access to a single jurisdiction.

Having said that with respect to the amendment, I will make a couple of remarks which arise from the minister's remarks in closing the second reading debate. There are two issues I want to draw attention to. The first is that the Australian Democrats have absolutely no problem with—in fact we support—the insurance industry getting a proper return on its investment and proper profitability. But the proposition that its low profitability was a result of high claims is singularly flawed. The proposition that tort law reform is necessary to reform the insurance industry and make it more viable is singularly flawed. The whole HIH royal commission and the evidence to that commission indicated that corrupt, criminal and unprofessional behaviour resulted in a drive to the bottom of insurance costs. What they were doing was distorting their risk profile and distorting the prudential requirements that they should have paid attention to, with the result that they brought the whole industry undone.



APRA itself has been hauled from pillar to post and has been radically reformed by the government, partly because it failed to take action in time. The problem was HIH and industry behaviour, not consumer claims and consumer behaviour. What the government has done is to quite properly address this issue through CLERP 9. The Joint Standing Committee on Corporations and Financial Services is examining CLERP 9 right now. I sit on that committee. I am very much across the things which caused the crisis in the industry as a whole, and they can be sheeted home to corporate behaviour, not to consumer or claimant behaviour. It is very wrong to tie the whole HIH and industry problem back into tort law reform.

The second brief point I want to make is that the proposition that, because the state governments agree on something, and the Commonwealth government agrees with the state governments, the Senate of Australia should therefore agree is a flawed one. It is an argument; it is not a compulsion. There is no precedent, and the government's behaviour in itself indicates that there is no precedent. Quite frequently the government is faced with eight territory and state premiers at the annual COAG slugfest and the Commonwealth turns its back on them and says, 'We don't agree with you,' faced with eight coordinated views. The Commonwealth government is entirely within its rights to do so. Each issue that is agreed by the states and territories that comes to the Commonwealth parliament has to be dealt with on its merits by the Commonwealth government and by the Senate of Australia. Just because there is agreement does not mean that either the Commonwealth government or the Senate will automatically approve of it. This is one of those instances.

I can advise that the Australian Democrats' view is that this legislation, and the impetus to this legislation, is fundamentally

flawed and we seek to have it rejected. We have taken that view based on our judgment of the evidence. The government takes a different view, and it is entitled to do so. We are not further persuaded just by the idea that all the states and territories might agree on a particular issue, because like the government—and it does so regularly—we take the view that on some occasions they can be wrong.

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (1.42 p.m.)—I want to make a few very brief comments in response. I agree that this parliament should look at whatever issue we debate here on its merits and that whether others agree or not may or may not be material. But in my view the Senate is not entitled to take an idiosyncratic view of the way in which insurance operates not only in Australia but throughout the world that would fly in the face of all of the expert and other evidence that clearly indicates that the escalating claims cost was one of the factors that made the longer term sustainability of insurance, certainly in Australia, very problematic and that led largely to a withdrawal of capital from liability lines, particularly ones where premiums may have been taken out many years ago and are never going to cover the escalating costs paid out many years later in long-tail claims.

We have seen that in every insurer from general insurance through to medical indemnity. It is simply not sustainable to have to rely on premium income that is not going to cover escalating and unpredictable costs of claims. That is one of the reasons why the effect of escalating claims has underpinned the need for insurance law reform and for tort law reform, and it is one of the reasons why governments were convinced by expert evidence. To say that escalating claims costs had no impact just flies in the face of the



reality that in fact these insurance lines were largely cross-subsidised from other income.

Of course, when you have the effects of global events and downturns in equities you have situations where the way in which insurers are able to cross-subsidise some of these difficult lines becomes simply not sustainable. There are multiplicities of reasons as to why the insurance industry was under pressure. HIH was simply an exemplar of that, which was exacerbated—I agree with Senator Murray—by gross breaches of prudential behaviour. I do take issue in relation to APRA. It is true that the government found it necessary to quite substantially reform APRA in accordance with the recommendations of HIH, but the royal commission found that APRA was not responsible for the collapse of HIH. There were, indeed, many other factors. If APRA had blown the whistle at the appropriate time it may—just may—have meant that HIH stopped trading perhaps a few months earlier and not over such a substantial period.

The fundamental reason the government opposes this amendment is that it still enlarges the way claims can be brought that simply do not align with the general regime of the states and territories. So you have a disconnect in the way in which people can bring actions for personal injuries that have nothing to do with each other on liability. Whilst we are hopefully aligning the damages regime with state and territory laws, we also need to align the substantive law, or else we are going to have a disconnect on liability and an alignment on the damages regime. That does not make much sense and it certainly does not solve the problem, despite Senator Ludwig's suggestion that this was helpful. It is not and it will not in fact solve the problem that has been identified as the loophole.

Finally, on the tobacco amendment, I just want to say that I am reserving my judgment on the merit of it. I am certainly not prepared to do it on the run. As I say, it is a shame that it was not put before the government a little earlier so that we could have considered it. It is clearly a matter that I want to have regard to. As it is currently presented to me and because of the lack of time that I have had to consider it and its implications, particularly in a Commonwealth act, the government will not be supporting it.

Question agreed to.

**Senator LUDWIG (Queensland) (1.47 p.m.)**—I now seek leave of the Senate to move amendments (2) to (6) standing in Senator Conroy's name.

**Senator HARRADINE (Tasmania) (1.48 p.m.)**—The reason I am not giving leave at this stage is that I have an amendment which I hope is being circulated at the present moment. Quite frankly, I wanted a bit more time so that you would have the document in front of you. So that is why. But if it is not going to save time one way or the other I am happy to give you leave.

Leave granted.

**Senator LUDWIG (Queensland) (1.49 p.m.)**—Thank you, Senator Harradine. Given that there is one amendment, the message will come back, so there may be another opportunity for a committee stage at that point. I am not sure how these amendments will go. I move amendments (2) to (6) on sheet 4197 standing in Senator Conroy's name:

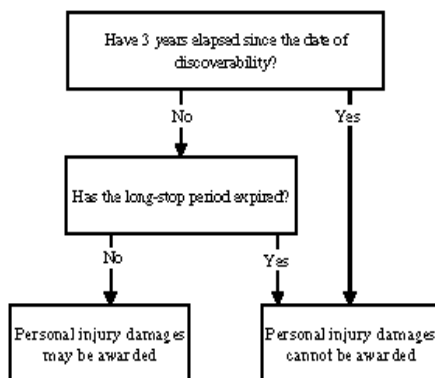
- (2) Schedule 1, item 9, page 6 (line 14) to page 7 (line 2), omit section 87F, substitute:

**87F Basic rule**

- (1) Subject to subsection (3), a court must not award personal injury damages in a proceeding to which this Part applies if the proceeding was commenced:
  - (a) after the end of the period of 3 years after the date of discoverability for

the death or injury to which the personal injury damages would relate; or

- (b) after the end of the long-stop period for that death or injury.
- (2) Subject to subsection (3), this diagram shows when this Division prevents an award of personal injury damages.



- (3) In a proceeding in respect of the death of or personal injury to a person resulting from smoking or other use of tobacco products to which this Part applies:
  - (a) a court must not award personal injury damages if the proceeding was commenced after the end of the period of 3 years after the date of discoverability for the death or injury to which the personal injury damages would relate; and
  - (b) subsections (1) and (2) do not apply.
- (3) Schedule 1, item 9, page 10 (after line 19), before section 87L, insert:

#### **87KA Application**

This Division does not apply to any proceeding in respect of the death of or a personal injury to a person resulting from smoking or other use of tobacco products.

- (4) Schedule 1, item 9, page 14 (after line 2), before section 87U, insert:

#### **87TA Application**

This Division does not apply to any proceeding in respect of the death of or a personal injury to a person resulting from smoking or other use of tobacco products.

- (5) Schedule 1, item 9, page 15 (after line 9), before section 87W, insert:

#### **87VA Application**

This Division does not apply to any proceeding in respect of the death of or a personal injury to a person resulting from smoking or other use of tobacco products.

- (6) Schedule 1, item 9, page 17 (after line 32), before section 87Y, insert:

#### **87XA Application**

This Division does not apply to any proceeding in respect of the death of or a personal injury to a person resulting from smoking or other use of tobacco products.

Those amendments relate to items that deal with the tobacco litigation. It was unfortunate that the amendments were not available to the government earlier. I think the government have indicated, perhaps not directly, that they will consider them, perhaps in more detail, to consider whether or not they are needed. We say they are, in fact, needed. The states have passed a tobacco litigation exclusion in various forms to ensure that these things are not caught up and that people's rights are not lost through other actions rather than action directed at a specific issue.

Item (2) prevents the application of the long-stop period to cases involving personal injury from the use of tobacco products. A long-stop period is set out in section 87H and is generally a period of 12 years. The bill currently provides that personal injury damages cannot be brought after the long-stop period expires. Under the amendments proposed by Labor, this long-stop period will not apply. Instead, plaintiffs in tobacco re-

lated litigation will be required to bring an action within three years after the date of discovery of the injury.

Items (3), (4), (5) and (6) ensure that the caps on the various heads of damages imposed by the bill do not apply in relation to tobacco litigation. While the damages regime in the bill does not apply to breaches of the act that occurred prior to the bill's commencement, we are aware that some in the community believe that the tobacco industry is continuing to engage in conduct in breach of the act. In recent years the ACCC has conducted some investigations in relation to tobacco and possible misleading and deceptive conduct in tobacco advertising and promotion. Labor understands that the commission has requested more funding from the government so that these investigations, in fact, can continue.

In making these particular amendments Labor is not trying to prejudice any litigation against the tobacco industry. However, Labor does not believe that the bill should inadvertently restrict the prospects of tobacco related litigation under the TPA. The Cancer Council of Victoria has stated that the litigation in the United States has revealed 'a chronicle of misleading, deceptive and unconscionable conduct in the tobacco industry'. We do not believe that this bill should deter or prevent similar claims from being tested in Australia if plaintiffs believe they in fact have a case. It was never the intention of the tort law reform process to protect the tobacco industry from litigation. Most states have recognised this and specifically excluded tobacco litigation from their civil liability reforms. These amendments are in fact intended to ensure that reforms designed to support state efforts to reduce public liability premiums do not have the unintended effect of protecting the tobacco industry from litigation. Therefore I commend them to the Senate.

**Senator MURRAY** (Western Australia) (1.52 p.m.)—There are 19,000 deaths every year from tobacco related illnesses, so we think there are 19,000 reasons to support these amendments.

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (1.53 p.m.)—I have already made my comments on these amendments. I accept Labor's contention that there was an intention to circulate them earlier. In fact, they did not get to me until, as I said, I was on my feet. In not supporting these amendments at this stage, I in no way intend to send a message or provide comfort to tobacco companies. It is a matter that the government will give serious consideration to.

Question agreed to.

**Senator HARRADINE** (Tasmania) (1.53 p.m.)—The amendment has now been circulated. It is fairly self-explanatory. I will be asking the minister if she will clarify the situation for me. I have a good number of concerns. They emerge from the fact that the states and territories are bringing in legislation which I believe will restrict the rights of injured people. These are among the most vulnerable of people in society. Frankly, whilst it is important to keep an eye on costs, it is also very important to keep our focus on the purpose of the original legislation: if persons are injured and have a case because there was negligence and other factors involved not relating to the person concerned, they should be able to be compensated. A number of examples have been provided to me to suggest that if this legislation—these amendments by the government to the Trade Practices Act—goes through there will be further uncompensated suffering. For example, there are some people so deeply psychologically traumatised after suffering a personal injury that they are in no mental state to summon the resources necessary to bring a

complaint in the required, very limited time. It is also concerning that in some states and territories, particularly here in the ACT, reforms to personal injury legislation are being applied retrospectively. That is of great concern because it affects those who have already lodged applications in the courts. Bear in mind that what the government is doing is retrospective in dealing with those particular claimants. There is also some concern that personal injury legislation is leading to serious denial of a person's basic right to seek legitimate compensation for injury.

Before moving this amendment, I will ask the minister to clarify the situation in respect of particular cases. I think that sometimes it is useful to identify particular cases so that they bring it all to mind. For example, a boy aged 12 years was severely injured during a diathermy procedure to remove a wart from the palm of his right hand. The doctor ignored the risks of fire in using alcohol with an open flame. The burns to his hand were significant. The boy has required several procedures, including several skin grafts from his thigh, to repair his hand. It is likely that he will need further skin grafts and nerve repair surgery and that he will have to wear a protective glove/sleeve for at least one year. Is that case covered, Minister?

There are a number of other cases, for example that of the parents of a one-month-old child. The child was admitted to hospital for surgery in relation to a common heart condition. Postoperatively the child was resuscitated with a bag which was faulty and poorly maintained. As a result the child developed a pneumothorax and died. There were significant adverse findings by the coroner in this case on the failure of the hospital to maintain and inspect the bag. The parents now suffer significant psychological problems. Under the government's amendments, that cannot be compensated. An elderly lady, for example, had a medication error with pharmaceu-

ticals. She was given 10 times the dose of a sedative that put her into a Parkinson's state and coma. I seek leave to continue my remarks later.

Leave granted.

Progress reported.

#### QUESTIONS WITHOUT NOTICE

##### **Iraq: Treatment of Prisoners**

**Senator FAULKNER (2.00 p.m.)**—My question is directed to Senator Hill in his capacity as Minister for Defence and Minister representing the Prime Minister and the Minister for Foreign Affairs. When was the Australian government first informed, officially or unofficially, of concerns regarding the mistreatment and abuse of civilian prisoners by coalition forces in Iraq? When did Australian liaison officers in US Central Command headquarters in the Iraq region or in the US first learn of the abuse of detainees and when was this information passed to the ADF chain of command and the government? When did Australian officials first view the damaging photos and videos now being made publicly available and when did they first know of the credence being given to these allegations as evidenced by investigations being instigated and charges being laid? What action was taken by the ADF and the government when first told of these abuses and what follow-up has occurred?

**Senator HILL**—There are a series of questions there. In relation to the photographs that we have all seen in the press in recent times, as I understand it the publishing of those photographs was the first time that Defence or ADF personnel, so either military or civilian people within Defence, saw those depictions. In relation to matters of abuse, of course we are now reminded of a CNN report in January—I think it was on about 20 or 21 January—that made reference to an investigation being carried out by the Pentagon in relation to alleged abuses. So I guess

the whole world knew from that time that there was an investigation taking place but most would not have known the details of that investigation.

I think the only other relevant bit of information is that Defence became aware in February of a report of the International Committee of the Red Cross which involved an examination of detainment practices in Iraq—I think from about March of last year through to November of last year. That was a report directed to the then occupying powers, which were the United States and Britain, and to the CPA—the Coalition Provisional Authority. It certainly alleged some unsatisfactory practices.

**Senator FAULKNER**—Mr President, I ask a supplementary question. Minister, you have indicated to the Senate that the ADF was first informed of the alleged abuse of Iraqi detainees by at least one non-government organisation in February. Given Australia's continuing and clear responsibilities as an occupying power, what action did the ADF, the government or you as minister take when these approaches were made by non-government organisations about these extraordinarily serious matters?

**Senator HILL**—I presume Senator Faulkner is referring to the report of the International Committee of the Red Cross.

**Senator Faulkner**—I am not sure it is limited to that. You mentioned that report; I am not sure if there are any others.

**Senator HILL**—That is the one I mentioned. There have been some Amnesty International reports too, but they are on the public record as I understand it. So I presume that Senator Faulkner is referring to the ICRC report. As I said, that was not directed to Australia; it was directed to the occupying powers. Under the terms of the UN Security Council resolution, the occupying powers are the United States and the United Kingdom.

**Senator Faulkner**—You've told us when you and the ADF became aware of it. What did you do about it?

**Senator HILL**—I do not think Senator Faulkner is listening to my answer, which is that that report was not presented by the International Committee of the Red Cross to Australia at all; it was presented to the occupying powers under the terms of the UN Security Council resolution, which are the United States and Britain. (*Time expired*)

#### **Howard Government: Economic Policy**

**Senator FIFIELD (2.05 p.m.)**—My question is to the Leader of the Government in the Senate, Senator Hill. Will the minister update the Senate on how the government's strong and responsible management of the Australian economy is benefiting Australian workers and their families? Is the minister aware of any alternative policies?

**Senator HILL**—That is a very good question from a new senator. I congratulate him and wish him well in his role as a senator for Victoria. The Australian economy continues to perform strongly under the responsible management of the Howard government. The latest *World Economic Outlook* from the IMF predicts that Australia's outstanding economic performance will continue with strong growth in 2004 and 2005. That is good news for Australian workers and their families. Australia's unemployment rate is now 5.6 per cent—the lowest level since June 1981; the lowest level for 23 years. More Australians are now in work than ever before.

We have helped create more than 1.3 million jobs since coming to office. That is more than 440 new jobs every day. The yearly inflation rate has declined to two per cent. That is in stark contrast to Labor's average of 5.2 per cent. Interest rates remain at historically low levels. Australian families are now saving more than \$540 every month on an aver-

age home loan thanks to the economic management of the Howard government. This strong economic performance has come about because we have made the hard but necessary decisions to get the budget back into surplus. We have been able to fund tax relief for Australian workers and their families and at the same time direct extra funding towards priority areas such as health, education and defence.

We all remember Labor's record on the economy: crippling home interest rates of 17 per cent, a record one million Australians unemployed and \$96 billion of debt racked up in Labor's last five years in government. We still hear Labor crowing about that, and Labor are now at it again. Mr Latham says they will spend billions of dollars more on services and at the same time he is promising tax cuts. Meanwhile, the shadow Treasurer, Mr Crean, says that they will run budget surpluses. It did not add up when Labor were last in government; it still does not add up. I remind the Senate that in its 13 years in office, Labor delivered nine budget deficits—an average deficit of \$12.2 billion. We can only judge the Labor Party on their record in office: big spending, high taxes, huge budget deficits. It is Australian families who pay the price through higher interest rates, higher unemployment and more tax. Mr President, despite Mr Crean's pledges to keep the budget in surplus, you should read the fine print of Labor's policy platform. Only four months old, it clearly shows Labor's intention to again run up huge budget deficits. You cannot trust Labor on economic management; you cannot trust Labor on taxes, and you cannot trust Labor on interest rates.

#### **DISTINGUISHED VISITORS**

**The PRESIDENT**—Order! I draw the attention of honourable senators to the presence in the President's gallery of members of the eighth delegation from the International

Youth Cooperation Development Centre of Vietnam sponsored by the Australian Political Exchange Council. On behalf of honourable senators I have pleasure in welcoming them to the Senate and trust that their visit will be enjoyable and informative.

**Honourable senators**—Hear, hear!

#### **QUESTIONS WITHOUT NOTICE**

##### **Iraq: Treatment of Prisoners**

**Senator CHRIS EVANS** (2.10 p.m.)—

My question is to the Minister for Defence, in his own capacity and in his capacity as representing the Minister for Foreign Affairs. Is the minister aware that the foreign minister has admitted he was aware that the US was investigating claims of mistreatment of Iraqi prisoners by US soldiers in late January this year—more than three months ago? Can the minister confirm that the foreign minister was so notified? Minister, given that you have conceded in your answer to Senator Faulkner's question that Defence would have known on 16 January this year about the accusations and investigations—given the formal notification by the US military—are you saying that you were not told at that time about these most serious allegations? Do you stand by your claims on the ABC last week that your first knowledge of the allegations of sadistic and wanton violence against prisoners in US captivity in Iraq was through the public domain in late April? Do you stand by that claim you made on the ABC or were you in fact informed by the defence department in January when, you have admitted, they became aware of these concerns?

**Senator HILL**—The abuses I saw in the media about a fortnight ago, I saw for the first time. As I said to Senator Faulkner, it was the first time that Defence saw them, as well. So Mr Downer may well have been referring to the public reports in January of this year. He may well have been referring to the International Red Cross report; I am not



sure. But if the honourable senator wants me to refer that part of the question to Mr Downer, I will do so.

**Senator CHRIS EVANS**—Mr President, I ask a supplementary question. The minister failed, I think deliberately, to answer the question, which went to the subject of what he knew and when he knew it. I did not ask him about when he saw the pictures; I asked him when he found out about the serious allegations of the mistreatment of prisoners. I ask him, by way of a supplementary question, to answer that question. When did the minister find out about the accusations of serious mistreatment of prisoners—given that he has conceded that the defence department knew on 16 January this year?

**Senator HILL**—I have said that in January there was a report on the public record that was being investigated by the Pentagon of alleged abuses by the American military. I have said that Defence became aware of the International Red Cross report in February and I have said that we all saw recent horrible images on the television and within the newspapers in the last couple of weeks, and that was the first time that I had seen them.

#### Finance

**Senator BRANDIS** (2.13 p.m.)—My question is to the Minister for Finance and Administration, Senator Minchin. Will the minister inform the Senate of any indications as to the strength of the Australian government's finances? Will the minister outline the steps which have been taken to achieve this strong position and are there any imminent threats to it?

**Senator MINCHIN**—I thank Senator Brandis for that question. As Senator Hill has already outlined, the budget that will be brought down tonight will be brought down against the backdrop of the incredible performance of the Australian economy, both by historical Australian standards and by inter-

national standards. We have achieved that outstanding performance through hard work and good policy decisions made in the national interest, despite, often and regrettably, the opposition of the Australian Labor Party. The government's financial position is equally as strong. By taking the tough decisions we have had to take over the last eight years, we have turned the budget around from a deficit that we inherited of \$10 billion to consistent surpluses. We are one of the few developed economies in the world able to meet our necessary expenditures, keep the budget in surplus and reduce taxation.

We have now repaid some \$66 billion of the debt that Labor left us and we have reduced government net debt to just 3.9 per cent of GDP, probably the lowest in the developed world. We are saving \$5 billion every year in interest payments that we used to have to pay under Labor, so it has been a huge turnaround from the shambles we inherited. You have got to remember, as Senator Hill pointed out, that Labor in their last five or six years took our debt from some \$17 billion to \$96 billion in just that brief period of time. They were running deficits as high as \$17 billion in any one year, and they were pretty deceptive about the state of government finances. They used to count the sale of government assets as revenue to try to fool us into believing the budget was in surplus. In the 1996 election they went around telling everybody that the budget was in surplus, and when we came into office we discovered a \$10 billion deficit.

The consequences of such an approach to government fiscal policy were disastrous. If you run big deficits, if you have high debt, you are going to put upward pressure on interest rates, and that is what we experienced under Labor. They had to fund all this by finding new taxes and pulling them out of nowhere to shore up their incapacity to control government spending. We have turned

the nation around since those disastrous days of Labor, but it seems that the Labor Party have learned very little from their experience in government. Just over the past two years in opposition the Labor Party have, on their very own figures, racked up no less than \$11 billion in new spending promises. These are their own figures and their own work based on their own policy.

They have consistently told us there will be no net new spending, that they are going to find all the savings in the existing budget to fund all their new, wonderful spending programs. But when you look at what their spokesmen are actually saying, they leave a huge gap in the process. On 19 April the shadow finance minister, who seems to have usurped the shadow treasurer as their spokesman, claimed that Labor had identified \$7 billion in savings to pay for the \$11 billion. Mr Latham came out only a week later and said there were \$6 billion in savings but then Mr Crean popped up out of nowhere on Sunday and said there were actually \$8 billion in savings, so we really have no idea—and I do not think they have any idea—of what the savings are. In any event, the savings do not match the spending. There is still a big gap in relation to their spending that they said they would cover by savings—and they do not know whether those savings will be \$6 billion, \$7 billion or \$8 billion. In any event it is not \$11 billion. It is a shambles. Their two key spokesmen were ministers in the previous government that racked up all these debts and left the disastrous legacy that we had to inherit. Tonight the budget will continue the outstanding performance of this government in strong economic management and strong fiscal management, all designed to ensure Australia's strong future.

#### **Iraq: Treatment of Prisoners**

**Senator FAULKNER (2.18 p.m.)**—My question is directed to Senator Hill in his

capacity as Minister for Defence and as Minister representing the Prime Minister. Minister, you have informed the Senate about the US press statement issued on 16 January and about the International Red Cross report received by Defence or the ADF in February. My simple question to you, Minister, is: when did Defence inform you, as Australia's defence minister, that that report, the Red Cross report, had been received and when were you informed about the seriousness of its contents?

**Senator HILL**—The problem with the question is that I did not say that Defence received the Red Cross report. I said Defence became aware of the Red Cross report. In fact, I said the report was not a report to the Australian government at all; it was a report to the occupying powers—the United Kingdom and the United States. The report was, as I understand it, presented to them. It was presented to Mr Bremer and to General Sanchez and to Sir Jeremy Greenstock. I understand that they responded positively to it and that the Red Cross was pleased with that response. So it served its purpose in bringing certain matters to the attention of the occupying powers, but it was not a report to the Australian government.

What I am concerned about is that there is an implication within the Labor Party questions that, in some way, the ADF are at fault in this matter. The ADF did not manage the prisons, the ADF did not interrogate the prisoners. This is a Labor Party that a few weeks ago said the contribution of the ADF was merely symbolic. That is what Mr Latham said and he was supported by Senator Evans. Australian soldiers are putting their lives on the line every day of the week and Mr Latham gets up back home and says, 'It is just a symbolic contribution.' That is one of the most offensive things that has been said about Australians in operations—



**Senator Jacinta Collins**—That is not what he said.

**Senator HILL**—I can see one honourable senator is embarrassed by what Senator Evans did in that regard. It is one of the most offensive things that has been said about the ADF when it has been deployed in operations. What the Labor Party ought to be doing is getting behind the forces. The Labor Party should be getting behind the forces, recognising that their contribution in helping to stabilise Iraq and hand Iraq back to an Iraqi government for the benefit of all Iraqi people is a wonderful objective. That Australian forces will put their lives on the line to help achieve that objective is something of which we should all be proud. Instead of the Labor Party coming out and saying, 'We're proud of our forces and we support our forces,' they now want to drag them into some allegation that, in some way, they are associated with an abuse of prisoners. Mr President, that is an appalling attempt; it is not worthy of Senator Evans. I will say it is not even worthy of the Australian Labor Party. I suggest they get behind the forces and offer them some broad based Australian support, and they will be making a much more worthwhile contribution to the Australian public.

**Senator FAULKNER**—Mr President, I ask a supplementary question. I do not know what question Senator Hill was answering, but it certainly was not the one that I asked. What I want to know from the minister is this: you have indicated that the Australian Defence Force or Defence, as you describe it, was made aware of the International Red Cross report in February. The simple question to you, Minister, is: when did you become aware of it? Just tell the truth. Own up; tell us when you became aware of it.

**Senator Ian Campbell**—Mr President, on a point of order: the Leader of the Opposi-

tion in the Senate must under the standing orders direct the question through you. He is now screaming across the chamber at the Minister for Defence, which is entirely outside standing orders.

**Senator Faulkner**—Mr President, on a point of order: this is a point of order traditionally taken by the Manager of Government Business trying to cover up when the Leader of the Government in the Senate will not answer a direct question. This question has just been asked of him for the third time today.

**The PRESIDENT**—Senator Faulkner, that is not a point of order and you know that it is not. Senator Campbell, I hear what you say. I will make sure that, in the future, senators on both sides of the parliament address their remarks through the chair.

**Senator HILL**—I am not going to split myself from the government. The government became aware of that report in February. I accept the responsibilities that flow from that.

**Senator Chris Evans**—So you lied to the ABC?

*Honourable senators interjecting—*

**Senator Abetz**—Mr President, on a point of order: I do not know whether you heard the interjection of Senator Evans. It was clearly unparliamentary and should be withdrawn.

**The PRESIDENT**—I am sorry. I did not hear it, Senator Abetz.

**Senator Abetz**—I suggest Senator Evans knows what he said. He knows it was unparliamentary and he should withdraw it.

**The PRESIDENT**—Order! Senator Evans, if you did say something unparliamentary, I would ask you to withdraw it, but I am sorry—I did not hear it.

**Senator Chris Evans**—Mr President, I always accept your rulings. I will tell you

what I said. I asked the minister whether he lied to the ABC or to the chamber, because it is clearly contradictory. If that is unparliamentary then I will withdraw it.

**The PRESIDENT**—There is no point of order.

**Senator Faulkner**—Is he a liar? The answer is yes.

**The PRESIDENT**—Senator Faulkner, I can do without sledging from you, thank you.

#### **Iraq: Treatment of Prisoners**

**Senator BARTLETT (2.24 p.m.)**—My question is to Senator Hill representing the Prime Minister and the Minister for Defence. I note that the minister, in answer to a question from Senator Faulkner on 27 October last year, stated that Australia is ‘complying fully with the relevant obligations’ of an occupying power ‘as a member of the Coalition Provisional Authority’. Is it the case that Australia is required to ensure the welfare and personal dignity of prisoners captured by Australian forces in Iraq as part of the occupying forces? What practices has Australia had in the past to ensure the proper treatment of prisoners that we have captured and handed over to other members of the coalition? Can the government guarantee that no Iraqis captured or detained by Australian forces have been amongst those who have been subjected to mistreatment by members of the coalition forces? In the light of these recent allegations and evidence that has come to light of major abuses, is Australia now changing its practices in relation to any Iraqis that it captures or detains?

**Senator HILL**—It is true that on some occasion last year I said that, while the UN Security Council resolution only referred to the United States and the United Kingdom, we were nevertheless prepared to accept the responsibility to help stabilise Iraq, reconstruct Iraq and transfer sovereignty back to

the Iraqi people. That is now our objective and we are still intent on achieving those goals. In relation to the legal obligation that flows from the Geneva conventions, there are obligations on the detaining power—that is true. But, in the instances where Australia was associated with the capture of personnel, Australia was not the detaining power. The detaining power was the United States and they accepted the responsibility and had the facilities and manpower to detain them. Australia did not take to Iraq a capability to hold prisoners. It did not take military police or associated infrastructure for that objective. It was our intent, wherever possible, that any Iraqis that were captured would be detained by a party that had those capacities and, in the instances where Australia was associated with such capture, that party was the United States.

**Senator BARTLETT**—Mr President, I ask a supplementary question. My question specifically asked: what does Australia have in place to ensure that those people that we hand over to the United States or to the UK are properly treated? Do we have such protocols in place? Do we not have a responsibility, as an occupying power under international law, to ensure that any people that we hand over to other members of the coalition are properly handled and treated? I repeat the question: can you guarantee that anybody that we have captured and handed over to the United States for detention has been properly treated? Surely we have the responsibility, when we capture people and hand them over to somebody else, to ensure that they are not mistreated. In the light of this evidence, what are we now doing to ensure that that is the case? I presume we will still be handing people over if we capture them. How will we guarantee that they will not be subject to the sort of mistreatment that we have seen? (*Time expired*)

**Senator HILL**—The supplementary question really repeated the question. I do not think, with respect, that Senator Bartlett listened to my answer. I said that, in the instances in which Australia was associated with the capture of individuals, it was not the detaining power and therefore it is not subject to the obligations under the convention to which Senator Bartlett referred.

**Military Detention: Australian Citizens**

**Senator KIRK (2.29 p.m.)**—My question is to Senator Ellison, the Minister for Justice and Customs and the Minister representing the Attorney-General. Is the minister aware of reports that prisoners in Guantanamo Bay, detained without charge by the US government, are being subjected to a set of 20 torture techniques approved by the US Department of Defense as part of their questioning? Can the minister advise whether the Australian government is satisfied that the treatment of these prisoners, including Australian citizens, is consistent with the Geneva convention? What action has the Australian government taken to raise this issue with the United States government and when was this specific issue raised? Can the minister inform the Senate what assurances the Australian government has obtained from the US government about the treatment of Australian citizens David Hicks and Mamdouh Habib and whether these Australian citizens have been subjected to these torture techniques?

**Senator ELLISON**—This is a matter that the Australian government has taken very seriously. The government is satisfied that the Australian detainees in Guantanamo Bay are being held in a safe and humane way. No complaint has been made to the government by the International Committee of the Red Cross and we have no evidence of mistreatment in relation to Mr Hicks or Mr Habib. Neither man's lawyer has complained that

Mr Hicks or Mr Habib has been tortured. I reiterate that we have no evidence of that.

We have had Australian officials visit these men on several occasions and they have reported that Mr Hicks and Mr Habib are in good physical shape. Those are the reports that we have had direct from our own officials. We have not had any complaint from the International Committee of the Red Cross. We have had Mr Hicks's legal consultant say previously that Mr Hicks gives 'credit to those individuals who guard him, who have treated him in a decent and humane way within the limits set for them'.

Australian officials will be visiting both men in the near future and will again take the opportunity to assess their wellbeing. I reiterate that the Australian government does take the detention of its nationals, both domestically and overseas, seriously. In this particular instance, the Prime Minister has instructed our ambassador in Washington to seek assurances from US authorities that Mr Hicks and Mr Habib are being treated humanely. That is an issue which both the Attorney-General and I have raised in relation to representations made to the United States. We have no evidence at all to indicate that there is any mistreatment in relation to these two men and their detention at Guantanamo Bay.

**Senator KIRK**—Mr President, I ask a supplementary question. Can the minister confirm that the Howard government refuses to sign the optional protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment? Given serious concerns in the community regarding the treatment of the detainees at Guantanamo Bay and in Iraq, why does the Australian government refuse to take a leadership role on this important issue at an international level?

**Senator ELLISON**—We have a very fine record in relation to our actions internationally in relation to the mistreatment of people both in detention and, in particular, in relation to war crimes. Australia has made its views known internationally. We have a fine record and we stand by that record. In relation to the relevant protocol, I will take that on notice and see where we are at with the signing of it.

#### **Transport: Buses**

**Senator MURPHY (2.33 p.m.)**—My question is to Senator Ian Campbell, the Minister representing the Minister for Transport and Regional Services. The minister may be aware that in Japan public transport buses, after 15 years of service, are declared unfit for further use from both a safety and an environmental point of view. Can the minister explain why we allow such buses to be imported into Australia when none of them meet current Australian design rules—rules that Australian manufacturers are required to meet? What does this say about the government's approach to public transport safety, especially that of schoolchildren, who, in the vast majority of cases, travel in our oldest buses?

**Senator IAN CAMPBELL**—I thank Senator Murphy for a very important question. There are obviously thousands of schoolchildren around Australia travelling to and from school in buses, and their parents would want to be assured that they are as safe as possible. I have not had a briefing on the issue that Senator Murphy has raised today, but I can assure him that I will seek such a briefing because it is an important issue. That is not to say that I have not taken an interest in bus safety. In fact, within a few weeks of coming into the portfolio, I received a delegation from the School Bus Safety Action Group brought to me with the assistance of Joanna Gash, the member for

Gilmore. She is working very closely with a group of people interested in safety on school buses and particularly the issue of the wearing of seatbelts on school buses, which, clearly, if he is interested in bus safety and school bus safety in particular, Senator Murphy will care about as well. In fact that was a matter I had put on the agenda for the very latest meeting of Australian transport ministers, held in Perth roughly 10 days ago.

I certainly accept at face value what Senator Murphy says about the importation of buses. No-one would want unsafe buses to be imported into Australia and put into service without rigorous checks. Clearly there are federal and state responsibilities in this area. The states license motor vehicles that go onto the roads. I would expect that there will be federal and state issues here. I will, because Senator Murphy has raised this issue and because it is an important issue, seek detailed information from my department immediately. I will refer the relevant sections to the Minister for Transport and Regional Services and will report back to him—and, if he would like, the Senate—as quickly as possible.

#### **Defence: Military Discipline**

**Senator MOORE (2.36 p.m.)**—My question is to Senator Hill, the Minister for Defence. Is the minister aware of reports that Army personnel at Lavarack Barracks were found guilty of cruelly treating animals? Can the minister confirm what civilian investigations were carried out into this matter and what the outcome was of those investigations? What additional actions will the minister be personally undertaking to ensure that this awful and highly publicised incident is properly dealt with under the military discipline code?

**Senator HILL**—As I understand it, the individuals were prosecuted in civilian courts. They were fined \$2,000 and ordered

to do work in support of the RSPCA. I further understand that the RSPCA says it does not want their help. I can understand that. What I cannot understand is how individuals, whether intoxicated or not, could engage in such cruelty to animals. The matter is now within the command chain for commanders to make a decision on what action to take. I do not think it is appropriate that I interfere with that process. I have confidence that it will be dealt with properly.

**Senator MOORE**—Mr President, I ask a supplementary question. Does the minister support the National President of the RSL, Major General Bill Crews, who called for these six soldiers to be discharged from our Army?

**Senator HILL**—I understand the call and the sentiment behind that call but I do think it would be only fair to look at the total record of the individuals concerned. I do not know what that record is but there may be 20 years of exemplary behaviour, commitment and service behind the individuals. You may wish to take that into account in view of the final punishment. I do think it was a horrible thing to do. It is embarrassing to the ADF but it should not be allowed to tarnish the vast majority of the ADF, who would never engage in such practices and would find them truly horrific.

#### **Superannuation: Government Policy**

**Senator TCHEN** (2.39 p.m.)—My question is on a matter which is of interest to Australian families and workers. It is directed to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Will the minister inform the Senate of the Howard government's retirement income policies that will boost superannuation savings and provide choice and flexibility so Australians can retire at a time of their choice and when they are ready? Is the minister aware of any alternative policies?

**Senator COONAN**—I thank Senator Tchen for his question and for his keen interest in this government's retirement income policies. Our income policies encourage people to achieve a higher standard of living in retirement than they could on the age pension alone. They provide choice and flexibility so Australians can work while they want to and retire when they are ready. Most recently, the government announced a number of improvements to the superannuation system. One of the most significant changes the government announced was to allow people to access their superannuation without the need to retire. This will allow a person who is not ready to retire to continue to work with their employer on a part-time basis and to use part of their superannuation to supplement their income.

Rather than force people out of the work force, as indeed the Labor Party's policies would do, the government wants to give people the choice to retire when they are ready. From 1 July 2003, the government is assisting Australians to save through a superannuation co-contribution by making a matched, direct payment of up to \$1,000 to boost the retirement savings of low- to middle-income earners. Under this initiative, for workers earning up to \$27,500 the Australian government will match their own personal superannuation contributions dollar for dollar up to \$1,000 annually. The co-contribution tapers for people earning over \$27,500. The upper income threshold is \$40,000.

The government has committed more than \$1 billion in total to this initiative to help Australians save for their retirement. The super co-contribution is a targeted way to assist Australians to save. The co-contribution is expected to provide participants over 30 years with a significant boost to retirement incomes: 14.5 per cent for employees on \$20,000 and seven per cent for



employees on \$32,500. On the other hand, a two per cent cut to the contributions tax is expected to increase retirement incomes by less than one per cent over 30 years at a significant cost to revenue.

In addition, the government provides substantial tax concessions to super savings, worth over \$11 billion a year. This includes a reduction of the superannuation surcharge to further encourage those who can afford to save to do so and it includes the pension and annuity rebates, which means that those retirees who take their super as a pension have the contributions and earnings taxes that they previously paid returned to them. This government is committed to policies that help people save for their retirement and that provide both choice and flexibility so Australians can retire when they are ready.

I was asked about alternative policies. Recently, the Leader of the Opposition made a speech outlining Labor's ideas on super. The main announcement in the document appeared to reannounce a reduction in the contributions tax. However, not only have Labor failed to say how they will pay for this promise but the reduction would do little to actually increase savings, other than, of course, for higher paid employees through salary sacrifice. Salary sacrifice is not often available to Australia's battlers. Labor have fallen hook, line and sinker for the old union con job about taxes on super. The result is unfair and does little to help people improve their net retirement incomes. Labor's reduced contributions tax will cost over \$1 billion a year and will only improve retirement savings by less than one per cent. (*Time expired*)

#### Iraq

**Senator LUDWIG** (2.44 p.m.)—My question is to Senator Hill, the Minister for Defence. Does the minister have any concerns about the activities of private security firms that are employing Australians and that

are operating inside Iraq? What level of involvement, if any, has the Australian government had in authorising and monitoring the work of these firms? Is the government aware of how many Australians are currently involved in these operations and where in Iraq they are located? What measures are in place to ensure the safety of these Australians? Are Australians who are working for contractors contracted to the coalition subject to Iraq law?

**Senator HILL**—There are now a very large number of private security individuals operating within Iraq. Much of what business is taking place under the auspices of the international community in rebuilding infrastructure and the like would not be possible without the support of these security firms. Their behaviour has not been an issue for the government. If they operate in breach of the law that would be an issue within Iraq and not an issue for Australia or for Australian law. There is a civil law operating in Iraq and it is basically enforced by the occupying power through the CPA. How well the local laws are enforced I am not too sure, because we are still in the process of establishing the police force. From memory, I think there are now over 60,000 police back doing their thing in Iraq. I suspect, however, that they would not have a great deal of contact with the private security operators, who are working in some instances with support of government personnel, in some instances with support of business personnel, and in other instances with support of non-government organisations.

**Senator LUDWIG**—Mr President, I ask a supplementary question. Is it true that some of the Australians working as part of private security operations in Iraq are former members of the Australian Defence Force? Is the minister aware of how many personnel have resigned from the ADF specifically to undertake more lucrative security work in Iraq?

Does the minister consider it appropriate for former ADF troops to be involved in the work of private armies in Iraq when the security environment in that country remains volatile?

**Senator HILL**—I am aware that some soldiers, and in particular special forces soldiers who have resigned from the ADF, are working as security personnel in Iraq. As far as the government is concerned that is their business, that is the individual's choice.

**Senator Sherry**—As mercenaries?

**Senator HILL**—No, they are not mercenaries. They are security agents operating to protect the very important tasks that I have just outlined. I will have to check to try to find some numbers. I do not think it is extensive and we would not want it to be extensive. But I do know that these contractors in Iraq are being paid very large sums of money and, no doubt, that is an inducement. Other individuals leave the ADF to take more lucrative job offers as well. Obviously, the skill set of commandos and special forces is particularly appropriate for security work. (*Time expired*)

#### **Indigenous Affairs: ATSIC**

**Senator BARTLETT** (2.48 p.m.)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Reconciliation. Given that the government has announced that it intends to abolish the board of ATSIC and have its new arrangements in place by 1 July, how does it intend doing that fully without having any changes to the law made by the parliament? Given that the ATSIC Act has been passed by the Australian parliament as the law of the land, is it the case that the government is trying to abolish ATSIC, including its board of commissioners, without ensuring that the law which established these things is appropriately amended beforehand?

**Senator VANSTONE**—I thank the senator for the question. I think you will find that the new arrangements we intend to put in place are a very constructive response to what was seen generally as a crisis of leadership in ATSIC and a growing need to change the way we address Indigenous disadvantage in Australia. As I have said in this place on a number of occasions and elsewhere, our sole goal is to improve the outcomes and opportunities for Indigenous people in areas such as health, education and employment. The ATSIC experiment in separate Indigenous representations simply did not work. Indigenous people on the ground had lost confidence in ATSIC. I was in a number of the remote communities a weekend after this decision was announced and I can say that the only people that raised it with me were Indigenous people saying congratulations to the government for doing something that would finally see the money that was meant to be spent on Indigenous Australians actually get there—in other words, for them to get value for money.

We are absolutely committed to working closely with local elected and representative leaders of Indigenous organisations—and, incidentally, in consultation with state and territory governments—to deliver services in a very coordinated way. We have learnt that through the COAG trials. It is not a Liberal/Labor thing: the Commonwealth of Australia Liberal-National government has been cooperating with the Labor governments all around Australia on these trials, and we all agree that coordination is a much better way to go. We will of course have a ministerial task force to make sure that the Commonwealth inputs, not just in the COAG sites but more generally, are more effectively coordinated. We intend to have a national Indigenous council which will have people appointed on the basis of their expertise.

There is no doubt that there have been some tremendous ATSIC commissioners who have had the capacity to do the job, have had their hearts in the right place and have done the job really well. That is not true across the board. We expect that the 35 ATSIC regional councils will continue until June 2005. They will be able to provide invaluable advice to state and territory governments and to the Commonwealth on the best way we can establish better mechanisms at the local level. There will need to be legislative change—you rightly identify that, Senator. That legislation will be introduced, though I cannot give you a date at this point. But I can assure you that it is being worked on.

**Senator BARTLETT**—Mr President, I ask a supplementary question. I appreciate the last five seconds of the minister's response which answered my question. Minister, the legislative change is the opportunity for you to outline whether what you are doing is a good thing. But my supplementary question, given that you have confirmed there will need to be legislative change and that the government has stated that your changes to ATSIC will come into place by 1 July, is this: how will you make all of these changes to ATSIC properly and appropriately by 1 July? Given that ATSIC is established by an act of parliament, how will you make these changes without having an act of parliament passed by this place before 1 July? I note that the government's own program for legislation which is to pass in debate before 1 July does not include legislation to amend or abolish the ATSIC Act, so how can you make all these changes to a body established by law without modifying the law that establishes it?

**Senator VANSTONE**—Senator, I will make two points. Firstly, you may see legislation before then. Of course, if the Senate agrees with what the government wants to do

in this area I would have thought it would be very keen to pass the legislation and get on with the job of providing better services to Indigenous Australians in a much more co-ordinated way than we have been able to do in the past. No bad faith do I indicate to that in terms of what Labor did in its last 13 years in office nor indeed to our first six years. But it is over the last two years that we have really learnt from these COAG trials about the benefits of cooperation and working in a more effective way. With the cooperation of the Senate we will be able to do it. If that cooperation is not there, Senator, executive power does allow certain acts to be undertaken by the government and I can assure you that the government will be taking every step it can to protect, for example, ATSIC's assets to make sure they are not palmed off to third parties. (*Time expired*)

#### **DISTINGUISHED VISITORS**

**The PRESIDENT**—Order! I draw the attention of honourable senators to the presence in the President's Gallery of a former distinguished senator, Michael Baume.

**Honourable senators**—Hear, hear!

#### **QUESTIONS WITHOUT NOTICE**

##### **Bali: Travel Advice**

**Senator O'BRIEN** (2.53 p.m.)—My question is to Senator Ellison, Minister for Justice and Customs. Has the minister followed up the concerns of Federal Police Commissioner Mick Keelty regarding Qantas pressuring the Australian government to downgrade its travel warning on Bali? Didn't Commissioner Keelty state on 5 March:

The truth or otherwise about the allegation needs to be determined in the appropriate way first and then we need to examine ... whether anything like that happened.

Has the minister discussed further investigation into these allegations with Commissioner Keelty or with other members of the



government, and what action has the minister taken as a result of his discussions?

**Senator ELLISON**—I rely on no greater authority in relation to security aspects and especially in relation to travel advisories and the like, which is the subject of Senator O'Brien's question, than Mr Dennis Richardson, the head of ASIO. He made it very clear that there was no involvement, attempt or otherwise by Qantas in relation to the threat assessments which were made by ASIO. I certainly am not aware of any representations made by Qantas. What I am aware of is that we have a very professional body in ASIO that carries out threat assessments and that factors such as what industry might think do not come into those threat assessments. Mr Richardson has made that very clear. With respect to intelligence and the security of this nation, we have taken unprecedented measures to protect Australia's interests.

*Senator Cook interjecting—*

**The PRESIDENT**—Senator Cook, shouting across the chamber is disorderly.

**Senator ELLISON**—It is a fact that the opposition might not like, but it is there. We place a high priority on national security and advisories that we give to the travelling public. Australians as a nation travel widely and it is important that we get those travel advisories right. The threat assessment which is made in relation to those is done by ASIO and they do a very good job.

*Senator Cook interjecting—*

**The PRESIDENT**—Order! Senator Cook!

**Senator O'BRIEN**—Mr President, I ask a supplementary question. I remind the minister that my question was about whether he had had discussions with Commissioner Keelty. He declined to answer that question, and I ask him to deal with it in answering the

supplementary. Given that the AFP and other agencies work very closely with Qantas and other airlines over the security of Australians, isn't Commissioner Keelty's concern justified given that Qantas's behaviour, and potentially the government's, may have undermined the good work that has been carried out up until now? Given that he has obviously had discussions with Mr Richardson, what investigation has been carried out since the Prime Minister revealed Qantas had discussions with ASIO? Is the government investigating direct lobbying by Qantas with the Department of Foreign Affairs and Trade, and particularly the resulting actions taken by the government?

**Senator ELLISON**—Senator O'Brien fails to acknowledge that Qantas senior management have acknowledged publicly that the comment made by Mr Sullivan, who was at the Security in Government Conference on 18 March 2004, was in fact a personal remark. There was no need for me to discuss this with the Commissioner of Police. The head of ASIO has dealt with this very squarely. I have dealt with Qantas a great deal in relation to aviation security matters and no-one from Qantas has ever raised this issue with me or, to my knowledge, with the Federal Police.

#### **Aviation: Security**

**Senator SANDY MACDONALD** (2.58 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. Minister, will you update the Senate on how the government is boosting aviation security both on the ground and in the air and how this comprehensive approach will protect air travellers?

**Senator ELLISON**—Aviation security is a high priority for the Howard government. We have dealt with this with a whole-of-government approach. Minister Anderson and I have been involved in extensive meas-

ures in relation to ensuring that the skies of Australia are not only safe but secure. There have been a number of comprehensive measures which have been put in place. You see this when you travel not only domestically but also when you leave or re-enter Australia. A number of initiatives were brought in. Laptop computers and all goods and persons entering sterile areas are screened. We have increased our explosive trace detection technology and we have also increased the number of canine teams that we have for bomb detection from six to 18. As well as that we have increased significantly the number of Australian Protective Service personnel in the counter-terrorism first response role at our major airports from 244 to 400. This has been a significant increase in airport security around the nation. As well as that we have introduced a \$12.8 million initiative which funds the Australian Federal Police for the implementation of the protective security liaison officer program—an extra 20 officers dealing with security at our airports.

Senator Macdonald's question also asks what measures we have taken in air security. At the last election we said that we would implement an air security officer program. These air marshals are vital for ensuring that the public can travel with safety and security in our skies. We always said that we would implement this firstly on a domestic basis; the attacks in the United States were domestic flights. We did this; we introduced it in December 2001 and it has been operating very well. We always said that once we had that program up and running we would extend it internationally, and this we did in December last year with our air security officers covering flights between Singapore and Australia. This is a reciprocal agreement which also allows the Singapore government to place its air security officers on its national flag carrier on flights to and from Australia.

I was very pleased to announce last Saturday, with the US Ambassador, Mr Tom Schieffer, that we will now be putting air security officers on flights between the United States of America and Australia. This is a very important air route for us, a very strategic one. Our officers will be armed and they will be covert. Our air security officer program is one that is world's best practice. We have had interest expressed from overseas countries in the running of this program. This gives the travelling public the assurance that we have security in place in relation to our flights both domestically and internationally.

This, again, is a reciprocal agreement with the United States, and that country will have its air marshals on its national flag carrier on flights to and from Australia. Canada has indicated an interest in operating air security officers to Australia. It has direct flights to Australia; we do not, in turn, have direct flights to Canada, but nonetheless we are sympathetic to that request. Of course, we have negotiations pending with other countries. We are deadly serious about aviation security, and the measures which we have put in place indicate that.

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

#### QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

##### **Iraq: Treatment of Prisoners**

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (3.02 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked today relating to abuses of human rights of Iraqi prisoners.

The monstrous treatment of Iraqi prisoners that we have seen on our television sets and in newspapers and the mass media since

CBS TV broke the story on Thursday, 30 April has been appalling to all fair-minded and decent people. We have to ask the question: what is the significance of these shocking revelations? I think that on the personal level we feel for the fellow human beings who have been made to suffer and, in some cases, die as a result of this appalling and degrading treatment. We feel for their families. We also feel revulsion that US and British uniformed personnel—or, indeed, anyone—could be capable of such acts.

We must also, I believe, be very concerned about the damage these acts have already caused to the United States and broader Western interests. This damage goes far beyond the impact on the situation in Iraq. It will be felt around the world. This behaviour will fuel the hatred that motivates terrorists. It will reinforce the flawed rationale that they use to justify their acts. It will help them recruit others to the cause. It will add to the ranks of the suicide bombers. It will help them persuade the populations of Islamic countries that their cause is just, that the West is decadent and that it is indeed anti-Islamic. These abuses are of the utmost seriousness, and they must be treated as such. There can be no question that they warrant the resignation of the US Secretary of Defense, Donald Rumsfeld. The more he digs in, the more it will exacerbate the damage that has been done.

The Australian government has to lift its game as well. It is not good enough that today here in question time Senator Hill was unable to explain when and how he first became aware of these abuses, why we were not told of these abuses earlier than we were and what action the government took in response. We have a broad responsibility for all Iraqi prisoners as an occupying power and specific responsibility for the prisoners captured by Australian troops under the Geneva convention. To say that those responsible for

these atrocities have let Australia and Australian troops down by their actions is, I think, an understatement. But the government's see-no-evil attitude has let our troops down further. Foreign Minister Downer has said disingenuously that he was aware of the matter in January. Senator Hill was unable to tell us in the Senate today when he was informed of the report of the International Committee of the Red Cross. He has told us that Defence was made aware of this in February but, when asked three or four times in question time today, Senator Hill would not tell the Australian people, would not tell the Senate, when he became aware of this report. That is not good enough.

It stands in stark contrast to what he has told the public on the ABC. Perhaps he was not willing to mislead the parliament and completely expose the fact that if he told the truth here he would stand exposed on what he said on the mass media. It is a totally unbelievable situation. The government, all of us, owe it to the prisoners and owe it to the troops that captured the prisoners to ensure that the Geneva convention has squarely been applied— (*Time expired*)

**Senator HILL** (South Australia—Minister for Defence) (3.07 p.m.)—Senator Faulkner talks about Australia's responsibility under the Geneva Convention in relation to this matter, implying that in some way Australia is at fault. I made the point during question time that the prisons in Iraq are not run by Australians. The interrogation of prisoners in Iraq is not carried out by Australians. There is no suggestion here that any Australian has misbehaved in relation to these allegations, so why Senator Faulkner wants to drag Australia into this unfortunate circumstance is beyond me—unless, of course, he sees some short-term political benefit in it.

In actual fact the government are also appalled by these events. We are appalled by what we have seen on the television in the last couple of weeks and what we have seen and read in the newspapers. But, our having been appalled, the issue then is whether those who are at fault are taking appropriate action. It seems to us that they are. You can trace this right back to January, when the Pentagon put out a statement. Evidence of alleged abuses was brought before the US administration, those abuses were investigated and those at fault were prosecuted. As has been said by the US administration, if others are found to have abused they will be prosecuted as well. The British government has said exactly the same thing, and of course that is the appropriate response.

To say the very least, it is unfortunate that what seems to be a small number of individuals have caused considerable damage to the standing of the United States and, to some extent, the United Kingdom. They have caused some damage to the standing of their military forces, which is most unfortunate because their military forces are pledged to uphold, and do uphold, the highest values and standards. Nevertheless, poor behaviour has occurred and it is being responded to appropriately. Not only have the US and Britain acted in relation to the specific allegations but also, as I said in question time, my advice was that when the International Committee of the Red Cross brought to the attention of the occupying powers and to Mr Bremer as head of the CPA that its investigations had indicated problems with the detention system that should be addressed, the report was received positively by Sir Jeremy Greenstock, by General Sanchez and by Mr Bremer and actions were immediately instituted to revise the way in which prisoners were treated within the military jails of Iraq. So, whether those governments are acting on allegations against individuals who should be

prosecuted or on allegations of a broader nature about standards that the International Committee of the Red Cross does not regard as satisfactory, that has been responded to positively.

What I regret, apart from the terrible things that have occurred to certain individuals, is the fact that this has significantly undermined the values that we are seeking to take to Iraq. We may have been in Iraq primarily to address the issue of weapons of mass destruction and the threats associated with those but we also wanted the benefit of removing a tyrant whose human rights abuses against the Iraqi people are legendary, including hundreds of thousands illegally killed by him, and we wanted instead to represent a different set of values. This behaviour by a limited number of individuals has significantly diminished our case in that regard. What we need to do now of course is to make ground in nevertheless re-establishing those values to demonstrate that we are committed to helping the Iraqi people in the very difficult task of stabilising the country and passing over the responsibility of government to them. (*Time expired*)

**Senator CHRIS EVANS** (Western Australia) (3.12 p.m.)—The minister seems unable to understand why the Labor opposition and, I think, the Australian public regard this as a serious matter for Australia. It is because we are signatories to the Geneva Convention, we take our responsibilities under the convention seriously and we take seriously the agreement that the Australian government—Senator Hill's government—signed with the US and UK governments on the treatment of prisoners captured in Iraq. That document makes it very clear that Australia has an ongoing legal and moral obligation to the prisoners captured.

We know for a fact that the SAS took at least 59 prisoners while involved in their

duties inside Iraq. There is no question of accusations or charges against the ADF in this matter. There is no question that the prisoners were handed over in a short time to US or UK forces. The minister's attempt to hide behind the ADF in question time today was very poor and was reminiscent of Minister Downer's performance in the last couple of weeks. The key issue is whether or not prisoners captured by Australia have been treated properly, under the conditions of the Geneva Convention, and what this government has done to ensure that and to take those responsibilities seriously.

It was really interesting in question time today that Minister Hill refused to answer the question about when he knew about these most serious allegations. He says they are terrible allegations about the behaviour of a few. That is yet to be determined. It is increasingly looking like a systemic problem inside the jailing system in Iraq. We have had the most outrageous allegations about rape, potential murder, assault, degradation and all sorts and forms of abuse, and I think everyone is appalled by those accusations.

These accusations have been around for a long time. Senator Hill admitted today that the government knew in January. How did they know? The Pentagon put out a press release indicating that they were investigating the incidents. Mr Downer has admitted that he knew from that date. Within a couple of days CNN detailed quite serious allegations of abuse of Iraqi prisoners. We also know from what the minister said today and from what Minister Downer said before that they were aware of the Red Cross report, which was quite damning of the treatment of prisoners, back in February of this year. The minister was not clear about whether he got a copy of that report or whether he had seen it. He was disingenuous about what he had seen and when.

I think the reason is that he went on the *7.30 Report* on ABC TV on 3 May, last week, and in an interview with Kerry O'Brien basically denied knowing anything about this until such time as it was publicly revealed. I have here the relevant bits of the transcript. Senator Robert Hill, in response to a question from Kerry O'Brien, said:

If this had of come to my knowledge other than through the public domain, I would have made my inquiries and expressed my views.

But it came to me publicly and contemporaneously the response from the US authorities seemed to me to be the appropriate response.

So he did not know about it until it was aired on public television and he did not know about it until he had seen the US response. There is a range of questions in the *Hansard* which go to his defence and to why he did nothing, because he claims he did not know about it until just before 3 May—at the end of April or early May—when it was on public television and all through the media. This minister did not know about it.

The question you have got to ask is: why didn't Alexander Downer tell him? Is it the case that in fact the defence department did not know? We know that there was a press release from the Pentagon on 16 January. We know the minister says that Defence were aware of it. We know that the Red Cross report was known to the government in February. But here we have on 3 May the minister saying: 'Well, I only found out about it when I saw it on the TV. I was shocked but I haven't done anything about it because it was obviously all being handled well by the US and I needn't worry.' This was the tone of the interview he gave to Kerry O'Brien on ABC. Today, when asked three or four times when he knew, he slid, he ducked and he dived but he would not answer the question.

He said he does not want to break with the government's position on this. We want to

know, Minister, when you knew and why you did nothing about it. We know you did nothing about it; you have made that very clear. What we do not know now is when you knew. We know the government knew in January. We know the government got the Red Cross report in February. But you told Kerry O'Brien on the ABC on 3 May that you just found out and it was all a terrible surprise to you. Which is true? Were you lying then or are you lying now? They cannot both be true. (*Time expired*)

**Senator McGAURAN (Victoria) (3.17 p.m.)**—Like Senator Hill, I could not help but conclude from the questions today that the underlying tone was that there was an attempt by the opposition to pin some blame or some fault, no matter how indirect it may be, upon Australia's involvement with regard to these Iraqi troops. The involvement of Australia in this regard was none at all. Australia has no jurisdiction over the Iraqi prison system. Any prisoners that have come into our custody have in fact been passed over to the controlling powers, to the occupying powers. Regardless of the attempts by the opposition—their yelling and their screaming, their frantic attempts to pin some sort of fault on Australia—we utterly reject that sort of charge. Senator Faulkner came in here and said that we let our troops down with regard to this incident. Not only do we reject that but we say: what could let down our troops in Iraq more than the opposition saying that their role is nothing more than symbolic?

The treatment of the prisoners, from all those that have seen the pictures and read the articles, is to be condemned. There is absolutely no doubt that those responsible should be disciplined and punished, if not court-martialled. It has been a public relations disaster. It has been a setback, particularly in the Arab world, to the cause and the mission—to why we, as part of the coalition of the willing, went into Iraq. It was correct for

the President of the United States to apologise to the Arab world and to the president of Jordan. It ought to be stated that this incident was made public by the US, before it even came to media attention. The President said it turned his stomach. So the system is working. This incident was flushed out and will be dealt with.

Listening to the questions—and, indeed, there will be an urgency motion this afternoon—you would think that the opposition were trying to draw some moral equivalence between the former regime and the existing occupying powers. We reject any moral equivalence at all. In fact the government do not back off one bit from our involvement in Iraq, from its beginning to today. We do not back off from our part in the removal of the merciless dictator Saddam Hussein, the wider cause on the war on terror and the wider cause to bring democracy to that country in the heart of the Middle East. We have already seen some knock-on effects from our involvement—that is of course with Libya itself now deciding to cooperate with the right side of the war on terror and to dismantle its weapons of mass destruction. That, fundamentally, is the difference between the approach of the government and the approach of the opposition—the pretenders to government. We will stay and finish the job; they will not. They have never been in favour of this war. They have been anti-American throughout all of this. They seize every opportunity to twist and turn and to attempt to show moral equivalence between the mission and cause of the coalition of the willing and the former regime of Saddam Hussein. We reject any moral equivalence at all.

We should not lose sight of the advances that have already been made in Iraq. Never do they come in here and tell us about the schools and universities that have been opened up, the Marshland Arabs who now



have their lands back, the 200 newspapers, the water that has been resupplied, the electricity that has been resupplied, or the fact that the country is functioning better today—even as a war zone and a terrorist zone—than it was under the former regime. Never do you hear them in here talking about the advances. Never do you hear them in here talking about Amnesty International's own report on the former regime: the public beatings of women and the rape machine that they had in operation. Rather, they try to establish a moral equivalence between the former regime and the occupying powers.

**Senator ROBERT RAY (Victoria)** (3.22 p.m.)—I found Senator Hill's answers at question time today gravely disappointing. They were both inadequate and dissembling. All we got from Senator Hill was evasion and diversion instead of a proper series of answers regarding the shameful behaviour of occupying forces in Iraq. We got the usual coalition hegemony on patriotism, and we have just heard it again from Senator McGauran here: only they are supporting our armed forces overseas. Both Senator Hill and now Senator McGauran went on to imply that Labor is linking the brutal treatment of prisoners with our own armed forces. Nothing could be further from the truth—absolutely untrue. What a strawman argument this is; what a pathetic diversion. We are interested in what action the government took: not what our defence forces did but what action and what reaction to these events the government took.

The treatment of prisoners in Iraq becomes critical when we revisit the reasons for intervention in that country. Paramount amongst the arguments for intervention was Iraq's possession of WMD. Of course, none can be found. Indeed even the arguments for a WMD program are now highly suspect. The second proposition was that Iraq was linked to international terrorist groups, al-

though no evidence was produced at the time and certainly none has been found since. You will notice that no-one mentions that as a reason. There is a third reason: we are now reliant for justification of the intervention in Iraq on the regime change rationale. That is something that the US and the UK put up front at the start. Our government rejected it outright. They only adopted the regime change argument in retrospect when the other two main justifications for intervention disappeared. For regime change to work it must be based not only on creating a new democratic Iraq but also on the example offered by the occupying powers—and occupation is never easy. The widespread publicity of the prisoner abuse has probably spawned more terrorists in the Middle East than any other particular episode that has occurred. This is made worse as the image of cover-up and lack of transparency continues.

It seems from the answers given today that the Australian government has washed its hands of the issue. There is no need for such a toadying response. We can support, as an international citizen, various acts in Iraq for the good but we can remain in a position to critique faults. Why not? We do not have to be silent on faults. We can critique them. The major fault here was not applying the Geneva Convention to either Guantanamo Bay or in fact to Iraq. You did not have to grant prisoners Geneva Convention status; all you had to do was say, 'The provisions of the Geneva Convention will apply to these prisoners'—a quite separate concept—and none of these events could have occurred.

The second big problem is the use of contractors—something we do not generally do but something that the Americans have done to make up for shortfalls in their armed services—and here there is very little control. It seems, and I cannot rush to judgment yet, that a lot of the problems that have occurred in Iraq are to do with uniformed personnel

responding to the directions of civilian contractors employed by either the Department of Defense in the US or the CIA.

This government reacted very badly when we pointed out there were certain analogies with Vietnam. I do not think they understood that what we are talking about is the psychology of the Iraqis. Unfortunately, they are adopting a psychology similar to that of many Vietnamese. Instead of this becoming a debate about ideology, it becomes a debate about national liberation. I must say Australia trains its interrogators really well. I saw them in action as late as last Friday training our interrogators. The Geneva Convention applies. All practise interrogations are videoed. There is a doctor, a psychologist and a supervisor always available and observing these things. I hope that training will stand us in good stead well into the future. We do not want the defence minister at question time to look puzzled or defensive or confused on this issue, as he did today. There are moral imperatives here, and what a pity Minister Hill has not risen to the occasion. *(Time expired)*

**Senator STOTT DESPOJA** (South Australia) (3.28 p.m.)—I wish to speak on this motion to take note of answers concerning Iraq and I also refer to the fact that Senator Bartlett asked similar questions on behalf of the Democrats today. I join with the Labor Party colleagues who have made comments on this issue, I totally endorse the references to international humanitarian law made by Senator Ray and, as honourable senators would be aware, for this afternoon the Democrats have initiated an urgency debate on this issue. We think one of the most important aspects of this prisoner abuse and torture scandal as far as the federal parliament is concerned is Australia's involvement in the war in Iraq and whether or not we accept responsibility for the atrocities that have occurred under the occupying powers. We will

no doubt discuss this further in the urgency debate, but the Democrats strongly believe that our country has a legal and moral obligation to ensure that individuals who are detained under the occupying forces in Iraq are treated with respect for their persons, their honour, their family rights and their religious convictions, practices, manners and customs. We call on the government to ensure that this is the case and to take responsibility for its role. But the government's response so far to the allegations of prisoner abuse has revealed that this government has no consistent story, and again we heard evidence of this in question time today. We have a government that is prepared to say anything to cover its back in relation to this issue.

Looking over the comments made in recent days by the Prime Minister, the Minister for Defence and the Minister for Foreign Affairs, it seems that all of them have different takes on whether or not Australia is indeed an occupying power in Iraq at all. Then there is the issue, highlighted in question time today, as to when the government first became aware of the allegations of prisoner abuse. The Minister for Defence claims that he first became aware of the allegations when he saw the images in the media a few weeks ago, but the foreign affairs minister says that he was aware of the allegations as early as February. There is also evidence coming to light that our Prime Minister may have been aware months ago of evidence provided by Amnesty International that Iraqi prisoners were being abused. The only thing clear in our government's handling of this issue is that confusion reigns. There is no clear evidence of what this government knew and when.

In the criminal justice system, inconsistent stories are interpreted as evidence of lies. The Democrats believe that continuing overwhelming inconsistencies in the state-



ments of different government ministers suggest that, once again, this government is not giving us the entire story. The Australian community has every right to be outraged, angered and saddened, but are we really surprised? Are we really surprised by what happens in war? The only thing that seems to be liberated in war is the worst aspect of human nature, and that includes torturers liberated in war. This is no less the case if the rationale for going to war is to actually stop torture in the first place. In a civilised society there can be no ifs and no buts about the issue of torture.

Why does the Prime Minister think people went to the streets to protest against war in the first place? We were not quibbling about a few tanks or a few bombs; people protesting against the war were protesting against torture, depravity and all the things that go with it because war always involves torture. War, once embarked upon—with troops at risk and patriotism the big issue—always justifies extreme measures, and torture is one of them. If people do not believe that we have heard excuses, they should listen to Rumsfeld, Gingrich or any of the other apologists. In the last few days they have presented torture as a blip, as the exception. This is an argument that is not good enough because it involves shirking responsibility. If you can abdicate responsibility for a teeny-weeny blip then you can abdicate responsibility for everything that is done in war.

All wars potentially licence evil and liberate the worst in humankind. Those who go to war, those who lead us into war—and, most particularly, those who give us spurious reasons for war—have to take responsibility for what happens in war. There are no buts about it. The images are shocking, depraved and shameful; full stop. There are no buts in this case. They are the consequence of the decision to go to war and our government, as well as other coalition partners, have to ac-

knowledge that. That is exactly what we will be talking about in the urgency debate. It is time this government stopped trying to cover up their own actions and evidence. It is about time they took responsibility as an occupying power, as any other nation involved in this conflict must do.

Question agreed to.

### PRIVILEGE

**The PRESIDENT** (3.33 p.m.)—Senators Knowles and Humphries, by letter dated 29 March 2004, have raised a matter of privilege under standing order 81, and asked that I determine the matter in accordance with that standing order. The matter is the unauthorised disclosure of the draft report of the Community Affairs References Committee in its inquiry into poverty. There is no doubt that there was an unauthorised disclosure of the draft report of the committee. The four press reports referred to by the senators each state that a draft report was seen or obtained by the newspaper concerned.

The resolution of the Senate of 20 June 1996 requires that committees which are affected by unauthorised disclosures of their documents follow the following procedures: (a) the committee shall seek to discover the source of the disclosure, including by the chair of the committee writing to all members and staff asking them if they can explain the disclosure; (b) the committee should come to a conclusion as to whether the disclosure had a tendency substantially to interfere with the work of the committee or of the Senate, or actually caused substantial interference; and (c) if the committee concludes that there has been potential or actual substantial interference, it shall report to the Senate and the matter may be raised with the President by the chair of the committee in accordance with standing order 81.

It appears from the information provided by Senators Knowles and Humphries that the

committee has followed these steps and that the majority of the members of the committee have concluded that the disclosure did not interfere with the work of the committee. On this basis, the committee has not made a report under paragraph (c). Senators Knowles and Humphries, in effect, dissent from this conclusion of the committee and the committee's decision not to raise a matter of privilege. The order of the Senate makes it clear that it does not prevent a senator raising a matter of privilege under standing order 81. Senators Knowles and Humphries have the right to raise the matter of privilege in spite of the committee's decision.

In determining whether a motion to refer a matter to the privileges committee should have precedence, I am required to have regard to the following criteria: (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

The question which arises is whether the fact that a committee has concluded that its work was not interfered with, and that it should not raise a matter of privilege, means that the matter does not meet criterion (a). I do not think that this conclusion should be drawn. Criterion (a) in effect requires me to consider the seriousness of the matter. The seriousness of the matter, as described in that criterion, is not affected by a decision by a committee that an unauthorised disclosure has not substantially interfered with its work. It is open to the Senate to take the view that

the matter is serious regardless of that conclusion by the committee.

I therefore consider that the appropriate course is for me to give the matter precedence and leave it to the Senate to determine whether the matter should be referred to the privileges committee. The Senate may then determine what weight it should give to the conclusion of the committee that the committee's work was not interfered with. It will then be for the Senate to determine whether that conclusion should lead the Senate to refrain from any further inquiry, through the privileges committee, into the matter. I table the letter from Senators Knowles and Humphries, who may now give notice of a motion.

**Senator FERRIS (South Australia) (3.37 p.m.)**—At the request of Senator Knowles and Senator Humphries, I give notice that, on the next day of sitting, they will move:

That the following matter be referred to the Committee of Privileges:

Whether there was an unauthorised disclosure of the draft report of the Community Affairs References Committee in relation to poverty and financial hardship and whether any contempt was committed in that regard.

### PETITIONS

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

#### **Immigration: Detention Centres**

To the Honourable Members of the Senate in the Parliament Assembled.

The Petition of the undersigned draws attention to the damaging long-term effects to children of prolonged detention in Immigration Detention Centres.

Your petitioners ask the Senate, in Parliament to call on the Federal Government to release all children from immigration detention centre into the community, and to provide them with psychological counselling, education and medical services.

by **Senator Bartlett** (from 60 citizens).

#### **Constitutional Reform: Senate Powers**

From the citizens of Australia to the President of the Senate of the Parliament of Australia.

We the undersigned believe that the Prime Minister's call for Senate Reform is an attempt to dilute the powers of the Senate and to enable the Executive to have absolute control over parliament.

We urge all Senators to ensure the powers and responsibilities, of the Senate are protected in the interests of ensuring good governance on behalf of the Australian people and to oppose any moves by the current, or future, Governments to weaken the ability of the Senate to be a check and balance on the Government of the day.

by **Senator Bartlett** (from 60 citizens).

#### **Trade: Live Animal Exports**

To the Honourable the President and Members of the Senate in Parliament assembled.

The Petition of the undersigned notes the inadequate numbers of livestock available for Australian slaughter, food consumption and hides; the increase in Australian abattoir closures; the growing negative economic, employment and social impacts on rural Australia; and the unnecessary suffering endured by Australian livestock because of this nation's pursuit of trade and financial benefits at any cost. Your petitioners call on the members of the Senate to end the live export trade now in favour of developing an Australian chilled and frozen halal and kosher carcass trade using humane slaughtering practices.

by **Senator Bartlett** (from 24 citizens).

#### **Defence: Involvement in Overseas Conflict Legislation**

To the Honourable the President and Members of the Senate in Parliament assembled.

The Petition of the undersigned calls on the members of the Senate to support the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas conflict) Bill introduced by the Leader of the Australian Democrats, Senator Andrew Bartlett and the Democrats' Foreign Affairs spokesperson, Senator Natasha Stott Despoja.

Presently, the Prime Minister, through a Cabinet decision and the authority of the Defence Act, has the power to send Australian troops to an overseas conflict without the support of the United Nations, the Australian Parliament or the Australian people.

The Howard Government has been the first Government in our history to go to war without majority Parliament support. It is time to take the decision to commit troops to overseas conflict out of the hands of the Prime Minister and Cabinet, and place it with the Parliament.

by **Senator Bartlett** (from 561 citizens).

#### **Family Law**

To the Honourable the President and members of the Senate in Parliament Assembled.

The petition of the undersigned respectfully shows:

Public and private solicitors have criminally damaged every application for legal assistance to protect the rights of children and their mothers of vulnerable families from injurious harm associated with professional negligence discriminating personalities inhumanely restricting freedom of movement, emotional and mental expression retarding health and normal activities exposing the children and their mothers to sexual brutality unlawful social and church isolation using the children and their mothers for profit as dependents on the government destroying their peace and harmony as a family and forcing them to live in inadequate accommodation putting their lives and limb in danger.

And your petitioner requests the Senate should:

To have the children and their mothers of vulnerable families lawful rights represented by efficient concerned upholders of the law who have a principle code of conduct to restore truth and justice.

And your petitioners, as in duty bound, will ever pray.

by **Senator Calvert** (from one citizen).

#### **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 the Uniting Church, Parish of Chelsea and the Anglican Church at St Barnabas, Seaford and St Aidans, Carrum, Victoria petition the Senate in support of the abovementioned Motion.

And we, as in duty bound, will ever pray.

by **Senator Patterson** (from 33 citizens).

#### **Education: Educational Textbook Subsidy Scheme**

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

The Petition of the undersigned draws to the attention of the Senate, concerns that the expiration of the Educational Textbook Subsidy Scheme on June 30 will lead to an eight percent increase in the price of textbooks, which will further burden students and make education less accessible.

Your petitioners believe:

- (a) a tax on books is a tax on knowledge;
- (b) textbooks—as an essential component of education—should remain GST free;
- (c) an increase in the price of textbooks will price many students out of education, particularly those students from disadvantaged backgrounds; and,
- (d) the Educational Textbook Subsidy Scheme should be extended past June 30.

Your petitioners therefore request the Senate act to extend the Educational Textbook Subsidy Scheme indefinitely.

by **Senator Stott Despoja** (from 17,791 citizens).

#### **Workplace Relations: Paid Maternity Leave**

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

We the undersigned citizens believe that paid maternity leave is a workplace entitlement for Australian women. It overcomes the disadvantage and inequity women face as a result of the biological imperative for women to break from the workforce when they have a child.

We recognise that the International Labour Organisation (ILO) Convention 183 on Maternity Protection provides women with the right to 14 weeks paid maternity leave and Australia is now one of only two OECD countries without a national scheme of paid maternity leave.

Your petitioners request that the Senate should at the earliest opportunity pass legislation to provide a national system of Government-funded paid maternity leave which provides at least a 14 week payment for working women at least at the minimum wage, with the ability to be topped up to normal earnings at the workplace level with minimal exclusions of any class of women.

by **Senator Stott Despoja** (from 40 citizens).

#### **Taxation: Fringe Benefits Tax**

To the Honourable the President and members of the Senate assembled in Federal Parliament

The petition of certain citizens of Australia draws to the attention of the Senate, that the system of fringe benefits taxation as is proposed to operate from 1 July 2004 and as it relates to community based organisations in the disability, aged and health sector of the Australian community is discriminatory.

The proposed changes to this system will adversely impact on public organisations that provide support to disadvantaged sectors of the Australian community, and reduce their ability to

attract- and retain appropriately skilled professional staff.

Your petitioners therefore request the Senate to:

1. take immediate action to stop the changes to the criteria for acceptance, for the purposes of Fringe Benefits Tax, of organisations as Public Benevolent Institutions;
2. implement a moratorium on this proposal for change; and
3. remove the distinction between government and private organisation in the health sector for these purposes and thus enable the benefits currently applying for private sector organisations to apply to public sector organisations.

by **Senator Wong** (from 1,763 citizens).

Petitions received.

## NOTICES

### Presentation

**Senator Heffernan** to move on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 12 May 2004, from 4 pm, to take evidence for the committee's inquiry into the provisions of the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003.

**Senator Heffernan** to move on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 13 May 2004, from 4 pm to 6 pm, to take evidence for the committee's inquiry into the administration of Biosecurity Australia concerning the revised draft import risk analysis for bananas.

**Senator Heffernan** to move on the next day of sitting:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the administration of

AusSAR in relation to the search for the *Margaret J* be extended to 5 August 2004.

**Senator Payne** to move on the next day of sitting:

That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 12 May 2004, from 4.30 pm, to take evidence for the committee's inquiry into the provisions of the Migration Amendment (Judicial Review) Bill 2004.

**Senator Mason** to move on the next day of sitting:

That the Finance and Public Administration Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 13 May 2004, from 3.30 pm to 6 pm, to take evidence for the committee's inquiry into the Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002.

**Senator Ridgeway** to move on the next day of sitting:

That the time for the presentation of reports of the Rural and Regional Affairs and Transport References Committee be extended as follows:

- (a) forestry plantations—to 24 June 2004; and
- (b) rural water resource usage—to 12 August 2004.

**Senator Stott Despoja** to move on the next day of sitting:

That the Senate—

- (a) notes that on 12 May 2004 there will be national action by university students, who will be protesting against the Government's 'Backing Australia's future: Our universities' policy and, specifically, against higher education contribution scheme (HECS) increases;
- (b) supports students in their non-violent attempts to prevent the remaining universities from increasing HECS; and
- (c) condemns the Government for underfunding universities for the past 7 years to such an extent that universities are now

turning to students to provide a short-term increase in funding.

**Senator Lees** to move on the next day of sitting:

That the Senate—

(a) notes:

- (i) the excellent work of the Centre for Sustainable Energy Systems in relation to renewable energy, and
- (ii) the \$4.5 million of commercial commitment and the \$5.5 million universities commitment that the centre has acquired;
- (b) condemns the Government for not funding the centre; and
- (c) calls on the Government to rethink its opposition to and to re-fund research into renewable energy.

**Senator Ian Campbell** to move on the next day of sitting:

That consideration of the business before the Senate on Wednesday, 12 May 2004 be interrupted at approximately 5 pm, but not so as to interrupt a senator speaking, to enable Senator Fifield to make his first speech without any question before the chair.

**Senator Marshall** to move on the next day of sitting:

That the Senate—

- (a) notes that 2004 is the 150th anniversary of the Eureka rebellion, which took place in Ballarat, Victoria, on 3 December 1854;
- (b) recognises the importance of commemorating this important occasion; and
- (c) accordingly invites and authorises the President to make arrangements for the Eureka flag to be flown from two of the four flag masts at the Senate entrance for the period Monday, 29 November to and including Friday, 3 December 2004.

**Senator Brown** to move on the next day of sitting:

That the following matter be referred to the Foreign Affairs, Defence and Trade References

Committee for inquiry and report by 23 June 2004:

The Australian Government's knowledge of the mistreatment of prisoners detained under the control of the United States of America or its coalition partners in Iraq, Afghanistan and at Guantanamo Bay, with particular reference to:

- (a) when the Government or its agencies first received information about the abuse;
- (b) when and how this information first came to the notice of the Prime Minister (Mr Howard), the Minister for Foreign Affairs (Mr Downer), or other members of the Government;
- (c) what action has been taken to assure that there has been and will be no Australian involvement, or Australian acquiescence, in this matter;
- (d) how and when the Prime Minister conveyed Australia's rebuke to Washington and London;
- (e) the extent of government knowledge about abuse of prisoners in prisons in Afghanistan, including at Bagram Air Base; and
- (f) what disapprovals Australia has conveyed to the White House about the practice of placing hoods and manacles on prisoners, including Australians, at Guantanamo Bay and what other information the Government has about mistreatment of prisoners there.

**Senator Brown** to move on the next day of sitting:

That the Senate—

- (a) congratulates the German Government on its initiative proposing to host the International Conference for Renewable Energies in Bonn from 1 June to 4 June 2004, as a follow-up to the Johannesburg Earth Summit; and
- (b) calls on the Australian Government to be represented at the conference by a delegation headed by a minister.



**Senator Brown** to move on the next day of sitting:

That the Senate—

- (a) notes the German Government initiative to establish an International Renewable Energy Agency (IRENA) as an international governmental organisation in order to support and advance the active utilisation of renewable energies on a global scale; and
- (b) calls on the Australian Government to support IRENA strongly and to establish a complementary organisation in Australia.

### BUSINESS

#### Rearrangement

**Senator IAN CAMPBELL** (Western Australia—Manager of Government Business in the Senate) (3.41 p.m.)—by leave—I move:

That the hours of meeting for Tuesday, 11 May 2004 be from 12.30 pm to 6.30 pm and 8 pm to adjournment, and for Thursday, 13 May 2004 be from 9.30 am to 6 pm and 7.30 pm to adjournment, and that:

- (a) the routine of business from 8 pm on Tuesday, 11 May 2004 shall be:
  - (i) Budget statement and documents 2004-05, and
  - (ii) adjournment; and
- (b) the routine of business from 7.30 pm on Thursday, 13 May 2004 shall be:
  - (i) Budget statement and documents—party leaders and independent senators to make responses to the statement and documents for not more than 30 minutes each, and
  - (ii) adjournment.

Question agreed to.

### COMMITTEES

#### Electoral Matters Committee

##### Meeting

**Senator FERRIS** (South Australia) (3.42 p.m.)—by leave—At the request of Senator Mason, I move:

That the Joint Standing Committee on Electoral Matters be authorised to hold a public meeting during the sitting of the Senate today, from 4 pm to 6 pm, to take evidence for the committee's inquiry into electoral funding and disclosure and any amendments to the Commonwealth Electoral Act necessary in relation to political donations.

Question agreed to.

#### LEAVE OF ABSENCE

**Senator MACKAY** (Tasmania) (3.43 p.m.)—by leave—I move:

That leave of absence be granted to Senator Denman for the period 11 May to 24 June 2004, on account of ill health.

Question agreed to.

### NOTICES

#### Withdrawal

**Senator RIDGEWAY** (New South Wales) (3.43 p.m.)—by leave—Mr Deputy President, I withdraw general business notice of motion No. 844.

### COMMITTEES

#### Legal and Constitutional References Committee

##### Extension of Time

**Senator MACKAY** (Tasmania) (3.43 p.m.)—by leave—At the request of Senator Bolkus I move:

That the time for the presentation of the report of the committee on the capacity of current legal aid and access to justice arrangements to meet the community need for legal assistance be extended to 26 May 2004.

Question agreed to.

### Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Allison for today, relating to the reference of a matter to the Employment, Workplace Relations and Education References Committee, postponed till 12 May 2004.

General business notice of motion no. 850 standing in the name of Senator Allison for today, proposing the establishment of a select committee on tobacco, postponed till 12 May 2004.

### UNITED NATIONS: SECURITY COUNCIL

**Senator ALLISON** (Victoria) (3.44 p.m.)—I move:

That the Senate notes that:

(a) on 24 March 2004, the United States of America presented a draft resolution on non-proliferation to the United Nations (UN) Security Council, which required all states to enact criminal and other laws and measures to prevent terrorists and other non-state actors trafficking in and acquiring nuclear, biological and chemical weapons, related materials, and missiles and other unmanned systems of delivery;

(b) some states and non-government organisations (NGOs) are concerned that the approaches proposed in the draft resolution are discriminatory and inflammatory, and will exacerbate proliferation and security issues rather than alleviate them; and

(c) Abolition 2000, a global network of over 2 000 NGOs working for nuclear non-proliferation and disarmament, wrote to all UN members stating that the draft resolution:

(i) refers only to the prevention of proliferation and is silent, rhetorically or substantively, on ending the deployment of existing weapons and on the obligations for disarmament,

(ii) requires all states to adopt national implementation measures, thus

assuming a role for the Security Council of a global legislative body, something normally achieved through treaty negotiations requiring consensus by states, and

(iii) is being presented as a Chapter VII resolution to the Charter of the United Nations, which could open the door for the unilateral use of force by certain states to enforce the resolution in specific situations without having to return to the Security Council for any additional authorisation.

Question agreed to.

### COMMITTEES

#### Employment, Workplace Relations and Education References Committee

##### Reference

**Senator BROWN** (Tasmania) (3.45 p.m.)—I move:

That the following matters be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 24 June 2004:

(a) the functioning of the Office of the Chief Scientist; and

(b) potential conflicts of interest arising from the dual role of the Chief Scientist.

**Senator STOTT DESPOJA** (South Australia) (3.45 p.m.)—I seek leave to amend the motion standing in the name of Senator Brown. The amendment has been circulated in my name on behalf of the Democrats.

Leave granted.

**Senator STOTT DESPOJA**—I move:

Add at the end of the motion:

(c) the development of criteria for the appointment of the Chief Scientist through legislation.

Question agreed to.

Original question, as amended, agreed to.



**MATTERS OF URGENCY****Iraq: Treatment of Prisoners**

**The DEPUTY PRESIDENT**—I inform the Senate that the President has received the following letter, dated 11 May, from the Leader of the Australian Democrats, Senator Bartlett, and Senator Stott Despoja:

Dear Mr President,

Pursuant to standing order 75, we give notice that today we propose to move:

That, in the opinion of the Senate the following is a matter of urgency:

The need for the Senate to:

- (a) express its unequivocal opposition to the abuse of persons, including those classified as enemy combatants, in United States (US) detention in Iraq;
- (b) express the view that, given Australia's military participation in the invasion of Iraq, Australia has a legal and moral obligation to ensure that individuals detained by the occupying forces in Iraq are treated with respect for their persons, their honour, their family rights, their religious convictions and practices, their manners and customs;
- (c) call upon the US to at all times treat detainees humanely and provide them with protection, especially against all acts of violence or threats thereof and against insults and public curiosity;
- (d) call upon the US to bring to immediate justice any member of the armed forces who has violated the rights of persons in US detention in Iraq; and
- (e) call upon the Australian Government to immediately cease negotiations with the US for an 'Article 98 Agreement' under the Rome Statute, requiring Australia not to surrender US citizens suspected of committing crimes against humanity, to the International Criminal Court for prosecution.

Is the proposal supported?

*More than the number of senators required by the standing orders having risen in their places—*

**The DEPUTY PRESIDENT**—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today's debate. With the concurrence of the Senate, I shall ask the Clerk to set the clocks accordingly.

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (3.48 p.m.)—I move:

That, in the opinion of the Senate the following is a matter of urgency:

The need for the Senate to:

- (a) express its unequivocal opposition to the abuse of persons, including those classified as enemy combatants, in United States (US) detention in Iraq;
- (b) express the view that, given Australia's military participation in the invasion of Iraq, Australia has a legal and moral obligation to ensure that individuals detained by the occupying forces in Iraq are treated with respect for their persons, their honour, their family rights, their religious convictions and practices, their manners and customs;
- (c) call upon the US to at all times treat detainees humanely and provide them with protection, especially against all acts of violence or threats thereof and against insults and public curiosity;
- (d) call upon the US to bring to immediate justice any member of the armed forces who has violated the rights of persons in US detention in Iraq; and
- (e) call upon the Australian Government to immediately cease negotiations with the US for an 'Article 98 Agreement' under the Rome Statute, requiring Australia not to surrender US citizens suspected of committing crimes against humanity, to the International Criminal Court for prosecution.

The budget is being handed down tonight and the budget lock-up is taking place, which gives people an opportunity to scrutinise the budget in detail. I have chosen not to go into that at this stage because I believe this matter is extremely urgent and of absolute importance. The Democrats believe the Senate, representing the people of Australia, must take the first available opportunity to formally condemn the abuse, torture and mistreatment of Iraqis detained by the occupying forces in that country. We cannot pretend that we have no responsibility for what is happening in that country. It is a very serious matter, so let us not encounter during this debate the usual smokescreens that this is just some form of anti-Americanism, that this represents some support for Saddam, that this is rerunning the debate on whether we should have gone to war or, even worse, that this is some sort of attack on Australian soldiers.

On this issue, it does not matter whether you were in favour of or against the war; that has happened for worse or for better—or, some might say, a mix of both. Let us not forget, though, that in addition to this incident over 10,000 people have died as a direct consequence of that war and that they continue to die every day. We, as a country that has forces in Iraq playing a role—we all know that; it has been the subject of extensive debate—are involved in capturing Iraqis and handing them over to our coalition partners for imprisonment. We must therefore ensure that we fulfil our direct responsibility to see that those people are treated properly. Frankly, I just could not believe Senator Hill in question time today suggesting that it was none of our business, that we had no responsibility for what happened to people after we handed them over. That is absurd just as basic decency, let alone in terms of obligations under international law or basic moral obligations.

We must send a clear signal as a house of parliament that we as a nation condemn this sort of treatment of prisoners unequivocally. We owe it to the Iraqi people whose country we have invaded, allegedly on the basis of liberating them. We owe it, even more importantly, to our own defence personnel who are there in Iraq as well as to those who are part of the broader Australian armed forces, so that they know their parliament will say unequivocally, 'We will have no truck with this sort of behaviour.' We owe it indeed to the world as a whole to send a clear message, as a sovereign house of parliament, that we will defend and support the rule of law, because that is underlying all of this debate. We have a commitment to law and that commitment must be upheld. We must condemn this behaviour, we must ensure it does not happen again, we must ensure it is not widespread or endemic. It must be properly and openly investigated. (*Time expired*)

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (3.52 p.m.)—The opposition will be supporting the urgency motion. What has happened in Abu Ghraib prison is tragic; it is disgusting and it is unforgivable. It has completely undermined the whole Iraq campaign. Those Iraqis who may have been inclined to place their trust in the occupying powers to bring democracy to their battered and suffering country will have great difficulty now, given the gross breaches of human rights and of Islamic law and custom. The democracy espoused by the United States and the other occupying powers has been tarnished. The photos of the naked Iraqi man about to have dogs unleashed on him bring those responsible closer to the moral trough inhabited by Saddam Hussein.

I would like to retrace the emergence of this scandal. On 16 January the US military confirmed that an investigation into allegations of detainee abuse by 17 soldiers at Abu

Ghraib prison in Baghdad was initiated on 14 January. CNN reported the allegations included: 'US military reportedly posing for photographs with partially unclothed Iraqi prisoners' at Abu Ghraib. Three weeks ago, on 28 April, CBS TV revealed photos of US military police stacking naked Iraqi prisoners in a human pyramid, performing simulated sex and with wires positioned that appear to suggest a detainee will be electrocuted if he moves.

On 3 May a 53-page report by Major General Taguba for Lieutenant General Sanchez was leaked to the *New Yorker*. It was finished in February and kept secret in the Pentagon. It appears to have been initiated after a US guard turned whistleblower. It reveals numerous instances from October to December 2003 of 'sadistic, blatant and wanton criminal abuses'. It further reveals abuses committed by US military police, US intelligence officers and private military contractors. It also notes that a military investigation in November 2003 found 'no military police units purposely applying inappropriate confinement practices'. Six days after the release of the photos, on 5 May, Mr Howard made his first public comment:

I condemn that behaviour absolutely and unconditionally.

He failed to comment on Australia's obligations as an occupying power. On 7 May the International Red Cross revealed it had repeatedly complained to the US about the abuse of Iraqi prisoners by US troops throughout 2003. The Pentagon also admitted that at least 10 suspicious deaths of POWs in Afghanistan and Iraq are being investigated. The US Army said it was investigating possible abuses of 42 Iraqi civilians and 35 POWs.

On 9 May one of the seven US soldiers charged with abusing Iraqi prisoners, military police officer Sabrina Harman, said she

was acting under direct orders from military intelligence to 'make it hell' for inmates before interrogation. Secretary Rumsfeld was in denial. Seymour Hersh in this week's *New Yorker* stated:

... when Mr Rumsfeld was asked whether the photographs and stories from Abu Ghraib were a setback, he said, 'Oh I'm not one for instant history'. By Friday however, with some members of Congress and with editorials calling for his resignation, Rumsfeld testified at length before the Senate and House Committees and apologised for what he said was fundamentally 'un-American' ... Rumsfeld said he had not actually looked at any of the Abu Ghraib photographs until some of them appeared in press accounts, and had not reviewed the army's copies until the day before.

Senator Hill's response was similar: that he had only become aware of the situation when press reports appeared. Today he has clarified that what he meant was that he had first seen the photographs when the press reports appeared. He will not say when he first learnt about these abuses. He will not front up and say that.

Foreign Minister Downer has said Australia has no legal responsibility for any of the POWs in Iraq, including those captured by Australia. This completely ignores the fact that Australia, as one of the occupying powers, has obligations towards Iraqi prisoners in general and those taken captive by Australian forces in particular. We know, from Senate estimates, that the SAS was successful in capturing prisoners. All up, Australian troops captured more than 100 Iraqis. Exactly how many we do not know. The obligations for the protection of prisoners are outlined in the third Geneva convention and in the 1977 first optional protocol to the fourth Geneva convention. Article 3 prohibits occupying powers from allowing acts which constitute 'outrages upon personal dignity, in particular humiliating and degrading treatment'. Furthermore, articles 129 to 131 outline the sanctions to be applied to any grave breach

of the convention. John Howard reluctantly stated on 17 April 2003:

We—

that is, Australia—

have the obligation of an occupying power under the Geneva Convention. We, along with the Americans and the British have responsibilities, certainly, and we won't neglect those responsibilities.

Mr Howard has tried for months to weasel his way out of occupying power status by pointing to the United Nations naming only the US and the UK in UN resolution 1483. But legally this does not wash. Australia's occupying power status is defined by the fact of our invasion and the fact of our continuing military occupation of Iraq—facts which give effect to our obligations under The Hague and Geneva conventions. Mr Howard cannot seriously use a Security Council resolution which turns a blind eye to Australia's involvement in the invasion and occupation.

United Nations Security Council resolution 1483 does not purport to be an exhaustive list of the occupying powers, as it simply notes correspondence received from two of them—the major two. Importantly, the 'Authority' referred to in UNSCR 1483 is the Coalition Provisional Authority, the vehicle of the occupying powers for political administration in Iraq, in which Australia has continuing high-level representation. In other words, you cannot pretend not to be an occupying power while having direct representation in the political vehicle of the occupation itself—that is, the CPA.

If Mr Downer, Senator Hill and Mr Howard had had a whiff of information from our representatives in US command or within the authority about the scandalous treatment of prisoners they should have been checking this out. Mr Downer says he actually knew about reports of mistreatment in January. What then did he do? Senator Hill and Mr

Howard—belatedly—visited Iraq and had discussions three weeks ago with the interim government and Mr Bremer. Did they ask after our prisoners? Did they raise the human rights abuse allegations? Apparently not.

The abuse and torture of Iraqi prisoners is shameful. It is the worst thing that could have happened to the occupying powers, who need the trust of the Iraqi population in order to restore stability and security. Now with these potent images of brutality the 'prestige of the West', which Mr Howard used last week as yet another excuse for the Iraq war, has been severely tarnished. The images of humiliation have been plastered overnight across the faces of allied grave-stones at the World War I cemetery in Gaza by furious locals. The stark images have given Osama bin Laden and his followers—the real targets of the war on terror—huge succour.

President Bush's response—to defend Rumsfeld's administration of the Pentagon—is the wrong signal to send. His strong praise of the defence secretary will only further enrage fair-minded Iraqis. As Harlan Ullman, principal author of the 'shock and awe' doctrine and a senior adviser for the Centre for International and Strategic Studies, said last night on the *7.30 Report*, the pressure for information came from the top. President Bush and Defense Secretary Rumsfeld have to accept some responsibility.

In indicating the opposition's support for this urgency motion, I want to clarify our position in relation to two aspects. Firstly, we would have liked to see the motion directed not only at the United States but at all the occupying powers. The United States is by no means the only country in the dock over the abuse of Iraqi prisoners. There are also allegations of abuse by British forces. Our own government also shares obligations as an occupying power in relation to the hu-

mane treatment of all prisoners in Iraq—obligations which, I might add, it is remarkably reluctant to acknowledge.

Secondly, while paragraph (e) of the motion is entirely consistent with the opposition's position on the negotiation with the United States of a so-called article 98 agreement, our preference would have been to keep this issue separate from that of the abuse of Iraqi prisoners. An article 98 agreement would require Australia not to surrender US citizens suspected of committing crimes against humanity to the International Criminal Court for prosecution. The inclusion of this paragraph in the motion before us implies that we are equating the prisoner abuse which is alleged to have occurred in Iraq with crimes against humanity and that we consider that those responsible for the abuse in Iraq should be brought before the International Criminal Court. Such conclusions are, at the least, premature. The allegations of abuse in Iraq have not yet been thoroughly investigated and it is not at all certain that the crimes they may be found guilty of would fall within the definition of 'crimes against humanity' and therefore come within the jurisdiction of the International Criminal Court. It should also be said that the International Criminal Court is only able to take action in the event that the US or other contracting parties are not undertaking disciplinary or remedial action. That is not the case in relation to the allegations of prisoner abuse in Iraq, given that prosecutions are under way. That said, we have no problem with the substance of the motion before the Senate and we will be supporting it. As I have said, what has happened is tragic, it is disgusting and it is unforgivable.

**Senator SANDY MACDONALD** (New South Wales) (4.05 p.m.)—Nothing I say in connection with opposing the urgency motion condones the inappropriateness of the behaviour documented with respect to the

prisoners held by the United States in Iraq. This would never be sanctioned by Australia or by the ADF involved in the war against terror or in rebuilding the peace in Iraq. These unhappy visions will not, however, make Australia cut and run. The defence and security of Australia are contributed to by good order and security in Iraq and the Middle East generally. Australia will continue to support the rebuilding of Iraq, whether it be in training its army or controlling Baghdad airspace. Our troops have the total support of the Australian government and will be funded in tonight's budget well into the future. As reported by the Prime Minister after his visit to Iraq on Anzac Day, their morale is high, their training excellent and they continue to do a very good job on behalf of world peace and on behalf of the Australian government. I can report from personal contact that serving ADF personnel consider that some opposition assertions that the putting of Australians' lives on the line in Iraq is simply symbolic is very offensive to them. Many of us in the community and the Senate would like to dissociate ourselves from those comments.

This isolated and wrong behaviour by a hopefully small group of US service men and women does not alter the fundamentals of the Saddam Hussein regime and the reasons the coalition of the willing rightly took to remove Saddam Hussein from office. This was a destabilising regime. It was horrific to its citizens. It persecuted the majority Shias. It subjugated the Kurds in the north. It was a country in breach of a host of UN resolutions. It had used weapons of mass destruction—gas—against its own citizens and against Iranians in the Iraq-Iran war. As a near neighbour of Pakistan and Afghanistan, it had acted as a haven for terror and had helped finance and give succour to those Palestinian terror groups—particularly Hamas and Hezbollah but also a number of

other jihadist groups—determined to destroy the state of Israel by violence of any kind.

There are no videotapes or photographs of Saddam's 200,000 victims, his treatment of women or his failure to educate people. There are no pictures of the mass graves of the tortured victims of his mass destruction. We get a little of what it must have been like in Saddam's regime when we see the way that some of the remnants of the Baath Party brutalised the four American contractors in Fallujah. The perpetrators of these killings are true examples of the Saddam Hussein regime. We must all hope that these people never get control again.

Admittedly, the new beginning in Iraq is proving much more difficult than any of us would have feared. The remnants of his regime—the foreign jihadists who have been attracted there—want to see Iraq subjugated again, either with a Saddam Hussein look-alike or with an Islamic dictatorship. Neither would be satisfactory. In fact, both would be disastrous, particularly for Iraq but also for the region and the world.

I must say to the Iraqi people that it should not just be America stepping up to the plate and helping with the rebuilding of Iraq; they too must step up to the plate, accept responsibility for building a new Iraq and make a considerable effort to do so. It is difficult for them. Very few of them would have seen a free country before. The Baathists were in power for about 30 years, which means that the great majority of Iraqi citizens have never had the chance to partake of a free and open society.

We must not forget that, despite all the negative publicity coming from Iraq, there have been a number of positives since March last year. The Iraqi governing council is operating and has drafted the most liberal constitution in the Arab world. School attendances are up by over 10 per cent. Many

girls are attending school for the first time. Public health funding has increased substantially. Hospitals are all operating, which was not the case before the war. Child immunisation has increased substantially. The historic marshlands have been repopulated by the Marsh Arabs. Drinkable water and electricity supplies have been increased very substantially. The oil is flowing again, obviously with some difficulty, but Iraq's international port has been substantially improved. It will be interesting to senators that before the improvements were made you had to wait for the tide before you could enter with larger ships.

In a national survey by the British firm Oxford Research International, 56 per cent of Iraqis said that their lives were better off than a year ago. The UN High Commission for Refugees, which was expecting two million refugees after the war, has had to close shop because it found that it had no takers. In fact, the population traffic has moved in the opposite direction. Not only are there signs of change in Iraq; there are signs of optimism in the region. Firstly, Gaddafi's Libya realised that the game was up and that to be regarded as an international pariah was not sensible. President Gaddafi has handed over his weapons of mass destruction. Civic movements have grown in Egypt, Saudi Arabia and Syria, which would not have happened without the democratisation of Iraq. Overall, the changes in Iraq's society have provided freedom, women's empowerment and knowledge to Iraq's society, which was devastated by Saddam Hussein.

There is a theme of anti-Americanism going through this place—opposite, specifically—and also unfortunately through the Australian community. It is very concerning to me. I will just finish with a short quote from William Shawcross, the well-known British journalist who spoke recently at the Sydney Institute. He said:

The bottom line is this. For all its faults, American commitment and American sacrifice are essential to this world. As in the 20th century, so in the 21st only America has both the power and the optimism to defend the international community against what really are forces of darkness. In this endeavour America needs its allies in the liberal democratic world—for both real and symbolic purposes. Indeed the two often march together.

I say to our American colleagues and friends: these times are sent to test us. These are difficult times. The visions that we see before us on our television screens are more than embarrassing, and they would be more than embarrassing to decent Americans too. I know they would hope that these things will not happen again. *(Time expired)*

**Senator BROWN (Tasmania)** (4.13 p.m.)—The disgusting and degrading scenes that we have seen coming out of Abu Ghraib prison and that no doubt echo what has happened in a number of other prisons in Afghanistan and elsewhere degrade all of us as human beings—it does not matter whether we are American, Iraqi or Australian. The difficulty of the speech we have just heard is the failure of the people promoting the war and occupation in Iraq to come to grips with the fact that we are all human beings and we all have the ability for great good but the potential for evil as well. The problem goes right to the President of the United States, who has classified humanity into two camps: good and evil. He has repeatedly said that you are in either one or the other and has made the defining line outside his own camp.

I blame the President of the United States for inherently being involved in the problem that we now see. This is a man who has said about human beings, no matter how despicable their behaviour: ‘We will hunt them down. We will take them out. We will smoke them out,’ and so on. Without drawing new lines he has accommodated—as indeed our own Prime Minister has accommodated—

pictures of hooded people from our own nation as well as other nations being led in manacles into a prison where they have not been charged, where they have had no legal representation, where against the Geneva convention on many other counts they have also been completely separated and cut off from their kith and kin and loved ones. The problem is that having broken international law and the Geneva convention in one place in full daylight, and supported it, no new line was drawn. Now we are going to have the subordinates brought to trial, and they are being brought swiftly to trial. But the responsibility in some measure goes all the way up the line. When we come to our own country we have to ask: when did Prime Minister Howard and Minister for Foreign Affairs Alexander Downer and indeed Minister Hill, who refused to answer this simple question in question time here just two hours ago, know about the details on the abuse in this prison that was coming from the Red Cross?

**Senator Sandy Macdonald**—He answered very clearly.

**Senator BROWN**—There are those opposite who will interject and say, ‘Everybody knew about it.’ Let me say this: these gentlemen in government committed our forces into the coalition of the willing, into the camp of President Bush and into Iraq. When they did so they took on responsibility for ensuring that international law and humanity prevailed. I ask members opposite to tell this chamber that Prime Minister Howard did not know about this last January, that he did not know about this months ago. You know that he did, and he did nothing. He knew what was going on and did nothing. So did the Minister for Foreign Affairs. So did the Minister for Defence. They failed this country when they became part of the silence, of the doing nothing. Subservience to the White



House should never replace the independent point of view— (*Time expired*)

**Senator JOHNSTON** (Western Australia) (4.17 p.m.)—May I, firstly, place on record how disturbed I felt and the great disappointment I experienced when I saw the parade of conduct of Iraqi prisoners in American imprisonment in Iraq. This has been a blow and a matter which has caused me great personal distress, as I say, given the ambitions and intentions and objectives that the Australian government joined the coalition of the willing with in going into Iraq to achieve what I believe have been very many good things.

I want to see the US government now rectify these matters—and I believe that they will. I want to see them prosecute the perpetrators in a clear and transparent fashion, as I believe most government senators and members do, and I believe that will happen. I also want to say that I believe that this conduct is extremely out of character for the United States and for the United States military. I think this has been an aberration and I think it will be arrested quickly and brought to an end and those perpetrators will be prosecuted, court-martialled, as justice would see them processed.

This motion, however, seeks to acknowledge and promote the fallacy of some sort of Australian involvement, legal or moral, in the criminal activity of the perpetrators of this sort of conduct. It is clear that they were on a frolic of their own. We were not involved, notwithstanding that Senator Brown would have you believe that we were there or have some responsibility. That is not the government of Australia. We had no responsibility in this. They were conducting criminal acts. We were not party to those. Senator Brown, for you to insinuate in this chamber that we were part of that is an absolute outrage. That you would impute on the Austra-

lian government, which has done so many good things in the recent history of this country, that we would condone or be part of this is just a disgrace. Indeed, it is ironic that Senator Bartlett would bring this motion to this chamber.

I say this in recounting the facts for the benefit of Senator Brown and Senator Bartlett and, indeed, for Senator Faulkner: there was no Australian involvement. Australia is not an occupying power. UN Security Council resolution 1483 designates the United States and the United Kingdom as the occupying powers. Australia is not an occupying power. For Senator Faulkner to insinuate, and to mislead this chamber, that we are is utterly false. I want to put that on record right here and now. Australia did not detain or accept prisoners in Iraq. The Red Cross did not pass its report to the Australian government or to the Australian ADF—we did not get it.

The sad fact here is that notwithstanding Senator Ray's high-minded words, which I want to move towards accepting, the opposition through Senator Faulkner has sought to embroil the Australian government and the Australian Defence Force in this conduct. I say to them, as I said to Senator Brown: that is an outrageous contention and one which I want to reject utterly. The Democrats, of course, suffer from a chronic abhorrence of the United States and anything American. They delight in heaping scorn and derision at the feet of the United States. In Kosovo and Bosnia the United States led the humanitarian team that saved so many lives there.

I want to talk about Gaddafi. Gaddafi's declaration and handing in of his weapons of mass destruction would not have occurred without the action taken in Iraq led by the United States. I want to talk about the civilian democratic movements that are springing up in Egypt and Syria and Saudi Arabia at



the behest and with the assistance of the United States. I want to talk about democratic reform movements throughout the Middle East because of actions that the United States has taken. I want to talk about the 70,000 people that it is estimated would have died in Iraq under Saddam Hussein in 2003 had it not been for the coalition of the willing. I want to talk about the 5,000 children per month that were dying because of sanctions but who now live. I want to talk about the 17 municipal elections that saw democratic candidates elected.

Before my time runs out I want to talk about the fact that Senator Faulkner stood here and said that this conduct undermines everything we have sought to achieve in Iraq. Let me say this: we have the most magnificent agricultural advisers teaching people in Iraq how to grow crops and horticulture. We have Australian air traffic controllers who are daily seeing tonnes and tonnes of food and relief coming into Iraq so that its people can be fed and their medicines can be administered to them. That is under the command of Wing Commander Cheryl Steele, who I will take this opportunity to say is doing a fantastic job, as are all of our Defence Force personnel in Iraq. I want to talk about our naval training team over there who are training Iraqis to have their own navy. I want to talk about HMAS *Stuart* that is protecting oil that is being exported to provide vital resources to Iraq.

Senator Faulkner says that this conduct that has been complained of stands to undermine everything we have done in Iraq. Let me tell you one thing: the biggest undermining event that has occurred since we went to war in Iraq was when the Leader of the Opposition said that our commitment was 'symbolic'. That is the greatest undermining event that has occurred to us. The Leader of the Opposition delivered to the Australian Defence Force the biggest slap in

the face and the most disgraceful and disdainful thing that I have ever heard in this parliament. There is nothing symbolic about men and women of the Australian Defence Force putting their lives on the line for peace and democracy. We have done that throughout the world in so many different theatres, in so many places, in so many peacekeeping operations. For the opposition leader to say publicly that what we are doing is symbolic typifies the superficial, facile capacity of the opposition to come to terms with real, true international responsibility to do the right thing.

The Australian Defence Force have a most magnificent record of commitment and achievement throughout the world, the Middle East particularly, in peacekeeping operations. More power to them. I want to go on record to say that I have no doubt—there is not a single, solitary question in my mind—that had we been in charge these events would not have occurred. We were not in charge. We were not there. It is not our responsibility. But I trust, and want to work hard to see, that the United States arrests this conduct, puts an end to it once and for all, and thoroughly, transparently prosecutes those perpetrators.

**Senator CHRIS EVANS** (Western Australia) (4.25 p.m.)—In supporting this motion on behalf of the Australian Labor Party I want to make it clear that we do think that Australia has some responsibilities in this matter. There is no accusation against ADF troops. Quite clearly, the ADF handed over responsibility for prisoners very early. I want to make it clear that this is not about the role of the ADF. Their conduct has not been called into question. That is not the issue here. The government—and Senator Johnston mirrored this as a member of the government—has failed to understand the importance of this issue, understand its signifi-

cance and admit to and accept Australia's responsibilities.

This issue of how the Iraqi prisoners have been treated and abused is important for a range of reasons. It is important first of all as a moral question. The whole world has been revolted by what it has now learnt about what has occurred inside the Iraqi prisons. We have been perhaps slow to voice our moral concerns. But it has had a wide range of other impacts. It has certainly undermined the standing of the coalition in Iraq because it has undermined the moral authority that we have sought to bring to Iraq and to justify the coalition's role there.

We see another example of how this has played out in the Arab world with reports today that the Commonwealth war graves in Gaza have been wrecked and vandalised and in their place have been left images of those Iraqis who were mistreated inside the coalition prisons. That is a sign of the reaction in the Arab world, a sign that this is a much bigger issue than merely the significant enough issue of the mistreatment of those particular prisoners. It is an issue that we all, as citizens of the world, have to take seriously. But it is an issue that Australia must take seriously because we are one of three coalition partners involved in the invasion of Iraq. We were the coalition of the willing. There were only three military forces committed: the US, the UK and Australia. The government has been trying to dance around the question of occupying power et cetera, but it is clear that we have responsibilities as an occupying power. We were one of the three. We therefore have responsibilities in post-war Iraq, responsibilities that have been debated in this chamber on a range of occasions and have been subject to the broader public debate about our role in Iraq.

Clearly, the government accepted those responsibilities at the time because the gov-

ernment signed an arrangement for the transfer of prisoners of war. I tried to get hold of this document during the war and post the war and was not able to get hold of it for some time because the government said that it wanted to seek the authority of the other partners in the coalition—the US and the UK—to make the document available. That document was signed on 23 March 2003 by the United States Central Commander, the air marshal in charge of the UK Command and Brigadier McNarn on behalf of the Australian National Headquarters. That was an arrangement for the transfer of prisoners of war, civil internees and civilian detainees between the forces of the United States of America, the United Kingdom of Great Britain and Northern Ireland, and Australia. It sets out our legal and moral responsibilities for prisoners of war. It envisages the transfer between the UK, the US and Australia of prisoners of war and it sets out a commitment to the Geneva convention.

It sets out ongoing commitments for those powers who have captured Iraqis and detained them even though the actual control of those prisoners may have passed to one of the other powers. I know that Australia, mainly through the SAS, officially took 59 prisoners. The SAS captured those persons while doing the very outstanding work that they performed inside Iraq. Those Iraqi prisoners were immediately handed over, largely to British authorities, for detainment. But we had a legal responsibility for those 59 detainees. There may have been others. My information that I have been available to verify is that we had 59. They were handed over to the US and the UK.

Have we honoured our commitments under this agreement? Have the Australian government on behalf of the Australian people honoured those protocols we signed up to? Those protocols envisage us having an ongoing legal and moral interest in and an

obligation to those prisoners of war. The questions we have tried to ask Senator Hill are: what has happened to those prisoners? Have they been treated appropriately? Is he satisfied that they have been treated appropriately? If not, what action has he taken to make sure that they are treated appropriately in the future? It seems to me that it would be very reasonable for us to make sure of that as part of our narrow responsibility for those 59 prisoners. I would argue that as part of the coalition and in our role as an occupying power we have a responsibility generally for prisoners taken, but clearly we have obligations in relation to at least those 59 prisoners.

The minister has been unable or unwilling to provide answers to those questions. He seems to be in denial about the capture of those prisoners, and he seems to indicate that we have no responsibilities. I do not accept that. It seems too cute by half. I saw the pictures and I have seen the reports of the SAS capturing those prisoners. The government have admitted that we captured them but are saying now that we somehow have no responsibility for them. I find that very hard to believe, particularly in the light of the formal agreement with respect to those prisoners—which the government provided. Even if it were not for that agreement, we as an occupying power and as one of the three powers in the coalition would have a broader obligation to those prisoners to take responsibility for them, to ensure they are treated humanely and to continue to satisfy ourselves that they are treated appropriately. I do not know whether any of the prisoners taken initially by Australia have ended up in the prisons in question or have been subject to mistreatment, but I think that it is reasonable to ask and that it is a reasonable matter for Minister Hill to satisfy himself and the Australian public about.

I make it very clear that there is no suggestion of any mistreatment by ADF person-

nel. There have been no accusations levelled—there is nothing but praise for the work they have done—but there is a moral obligation on us as an occupying power to take an interest in those prisoners, and in all prisoners, given our role in Iraq. The answers from the government to these concerns have been similar to those given by the governments of the UK and the USA. They have been far too slow and grudging in their responses to these most serious allegations. They have been far too flippant in dealing with what now appears to be a much more systemic abuse of prisoners than was originally thought.

The minister today again tried to talk about the treatment of the few involved in abuse. As allegation after allegation piles on top of the last and as photo after photo and video after video becomes available, it becomes clearer that issues of systemic abuse need to be addressed. There are questions about whether or not this has been authorised at higher levels, about whether or not this has been encouraged or at least condoned and about what action has been taken to deal with those higher up the chain. I am always very concerned when I see a series of privates being prosecuted for offences in a chain of command. That is not the way the military works. I have a great deal of difficulty, as I think many Australians do, swallowing the line that all of this started with a few privates inside the prison. All we are saying is that these are very serious issues. They greatly undermine the moral authority of the coalition inside Iraq. They greatly undermine the moral authority of the US, Australia and the UK in the Arab world. We are going to have to deal with these issues. I was pleased to see Senator Hill today admit the seriousness of concerns about the likely reaction. The deplorable action in relation to the Gaza war graves today was the beginning of

the repercussions and highlights the Arab reaction to these most shocking allegations.

I think we need some answers from the Australian government. We have to have some acknowledgement of our responsibility as an occupying power to ensure our reputations as Australians are protected. We must ensure that we get to the bottom of this, that the perpetrators are brought to trial and that we deal adequately and quickly with these most serious allegations. I was very disappointed by Senator Hill's responses today. He said on ABC TV only last week that the first he knew about these events was when there were public revelations on TV only a matter of days before. In recent days we have learnt that in fact the federal government knew of the Red Cross report as early as January this year. It would strike me as very odd if they did not know about the US investigations, given that we have senior military officers attached to the joint command inside Iraq. These are serious issues that the Australian government have to address. (*Time expired*)

**Senator LIGHTFOOT** (Western Australia) (4.35 p.m.)—I want to express at the beginning of my contribution to the debate on this urgency motion my disgust and feeling of revulsion—I cannot really express adequately my disappointment; it turned my stomach—at seeing those images of the American and, to a lesser degree but still significantly, the United Kingdom forces treating prisoners in such a fashion. It was horrifying, it was disgusting, it was obnoxious and it was woeful. Those behind the malevolence and malignity of this ought to be rightly prosecuted to the fullest possible legal degree. But could I say—not at all in mitigation of that; I am not offering any rebuttal whatsoever for those actions that were taken by the forces of those countries against these prisoners—that I do not see, as is the imputation offered by the other side, that any

blame whatsoever can be attributed to the Australian defence forces, the SAS or the Howard government. People of Australia should not feel personal guilt or blame for this grievous, lamentable, invidious and vexatious behaviour by armed services that are not our own.

Australia entered the war in Iraq with the United States and the United Kingdom and with the legal imprimatur of United Nations Security Council resolution 1441. At the end of the war, although not the beginning of the peace, Australia withdrew. United Nations Security Council resolution 1483 was then invoked, with the occupying powers of the United States and the United Kingdom only. For anyone to say that Australia still had a legal responsibility is quite wrong. I understand that an election is coming up. I understand the desperateness on the other side to involve the Australian government and the Australian armed services, particularly the SAS. They come from my home state of Western Australia and did a magnificent job in Iraq. I am sure everyone in this place was proud of them, except those who speak out this afternoon and impute some malevolence on the part of the SAS. Yes, the SAS took prisoners in Iraq, but the vast majority were released and sent home, and they were pleased to be released. On the assessment of senior officers of the SAS, some were detained and handed over for further interrogation, predominantly to the United States but later some to the United Kingdom as well.

Iraq is far better off today than it was at any time during the rule of the Baath Party, particularly under Saddam Hussein. To try and draw some parallel with what the United States and the United Kingdom are doing is quite wrong, mischievous and even nefarious—it is evil. Only a tiny fraction of the 140,000 people who comprise the occupying force of the United States and the 20,000-odd people from the United Kingdom has be-

haved in such a manner. The vast majority are good and decent people who want to do a job and see Iraq as a democracy, as a free nation, and it is coming. Only a tiny proportion of the country is not secure. The top one-quarter or one-third of the country predominately north of Baghdad is under the control of the Kurds—and particularly their most wonderful leader His Excellency Jalal Talabani—and is going about its peaceful business and rehabilitation. It is trying to recover from the atrocities that Saddam Hussein inflicted upon the Kurdish people. It is looking for more oil and looking to establish a democracy there to live in peace after decades and generations of suffering and after losing hundreds of thousands of its people to weapons of mass destruction.

This urgency motion and debate—no matter how abhorrent these practices have been in the past, and they are stopping now and the people responsible will be punished; court martials are starting on 19 May—only bring down the good work that is being done not just by the occupying forces of the United States and the United Kingdom but by those good and decent Iraqi people, particularly the Kurds. They are putting their lives back together and want a system of democracy and a federated Iraq where all people from all walks of life and from all different religions—and there are many of them there—can live in peace side by side, can amount to something in their lives and can hopefully one day live a life similar to that which we live in Australia or that which we emulate of the United States, the United Kingdom and other parts of the free world.

I am not pleased with this urgency motion. Yes, I support part (a). No, I do not support parts (b), (c), (d) or (e)—either in part or in full. I am proud to associate myself with all the Australian defence forces, and particularly those brave men who were right out in front—past the pointy part—of the invasion

of Iraq last year. They sent back signals that saved many of the lives of our allies. I am proud to be associated with the United Kingdom and the United States. I am not going to let the behaviour of a few people, as abhorrent and as evil as it is, to alter that opinion. They are good people. The coalition of the willing is a good organisation. We will bring nothing but good overall to the Iraqi people. At the end of the day, I hope that people on the other side recant and join our push for a better life for the Iraqi people over time. *(Time expired)*

**Senator STOTT DESPOJA** (South Australia) (4.42 p.m.)—My role on behalf of the Democrats, having moved this urgency motion, is to wrap up our views. We brought on this urgency motion because we believe this is a vital issue and one that deserves to be debated in the parliament. We have all seen the sickening pictures of Iraqi prisoners being tortured by military personnel. These are not allegations; there is evidence to substantiate what has gone on. We have heard the confessions of senior US government officials. We have all been appalled and dismayed by what we have seen so far. Indeed, we have been warned that there are more graphic, more horrific images to come.

At the most basic level this issue is about humanity—acts of torture and abuse are crimes against humanity. They are universally wrong. Regardless of nationality or culture, it is wrong to torture and abuse human beings. These acts display a disregard for human life and human dignity. While I have heard people from every party in this place place on record their abhorrence, I find it extraordinary that we are all willing to talk about these exceptions to the rule but are not willing to acknowledge that human beings—I know Senator Brown acknowledged this—are capable of not only great acts of goodness but horrendous acts as well.

This debate, whether a bit philosophical or not, is about who takes moral and legal responsibility in this context, because human beings at most are capable of such horrendous acts in wartime and in situations such as war. Anyone who goes into a war situation must understand that, and that includes our leaders who lead us into war for whatever reason, no matter how spurious. Even on the basis of the rationale of trying to prevent torture, leaders have a responsibility to acknowledge that this happens. We cannot dismiss these people, as we have done—as backwoods, trailer trash and no-goods—when we have a responsibility as citizens, as part of humanity, to acknowledge that this takes place. I am sure senators have heard of the 1971 Stanford survey that was done by Professor Zimbardo in which he talked about human ability to be responsible for such acts of sadism and degradation.

This debate today is about acknowledging that at some point we have to not only denounce these acts but accept legal and moral responsibility when we go into a war situation. The engagement of the occupying powers in these acts has called into question much of the rhetoric we have heard regarding the war in Iraq. From the outset, the British, the US and the Australian governments have cast this war as a battle between good and evil. The initial justification for this war, the weapons of mass destruction, ultimately proved false. Coalition forces have not found evidence of weapons of mass destruction, and let us not forget that this was the only possible legal justification provided by coalition forces for this military action.

I put on record again that the Australian Democrats were among those who did not believe that there was any legal basis for the war. But in the absence of that legal basis for the war coalition leaders tried to make a moral case in favour of military action, arguing for a desperate need for regime change.

Like every party in this place, the Democrats did condemn the horrific acts of torture, abuse and murder perpetrated by Saddam Hussein's regime. We did not believe that a controversial war without UN backing was the appropriate way to put an end to that regime. Time has unfortunately proven that these concerns were justified. More than a year later, insecurity and acts of terror continue to thrive within Iraq. The very nations that purported to save the Iraqi people from murder, torture and abuse by Saddam Hussein's regime have in fact seen such acts committed—torture, murder and abuse of Iraqis. We have witnessed a change from one regime which flouts human rights to potentially another.

Since the evidence of prisoner abuse first emerged, Prime Minister Howard has been among those who venture to argue that the abuse inflicted by the occupying forces cannot be compared to the abuse inflicted by Saddam Hussein's regime. There is a grave danger in talking about what is potentially a hierarchy of torture—that some acts or more acceptable than others. It is a dangerous, slippery slope. The children of Iraq have been saved from nothing if they are sexually abused and tortured by saviours. The women of Iraq have not been saved if they have been raped by their liberators. The evidence against US troops includes allegations that a 12-year-old girl was stripped naked and beaten and it is reported that yet to be released images include evidence of US soldiers raping Iraqi prisoners.

I welcome the condemnation of these abuses by the occupying powers. We acknowledge that the US has said that it wants to get the perpetrators, it wants to bring them to justice, yet it is easy sometimes to be cynical about what kind of justice and what the rule of law means when this nation in particular has flagrantly disregarded international humanitarian law. There are two ex-

amples of that. Guantanamo Bay is one example where we see a concocting of this new description of enemy combatants in order to get around international humanitarian law and Geneva conventions. The second disregard is the refusal to recognise the International Criminal Court—hence putting the ICC in the motion today—and asking nations to sign a statement that they will not surrender US citizens to the court. The Australian government is currently in negotiations with the US for one of these agreements, which is perhaps ironic given the crucial role that we played, particularly in establishing the ICC; hence the importance of that to this motion. The horrific acts that we have seen committed in Abu Ghraib and elsewhere potentially are exactly the kinds of offences that the ICC was established to deal with.

We have heard confusion from this government. We have heard different stories as to whether or not we are an occupying power, but at some point leaders who lead us into war have to take responsibility for their actions. I am sure the government knows this, and its attempt to divest its responsibilities for those acts are appalling. Unfortunately, we have not evolved to such a high plane that people giving or taking absolute power over other human beings can be trusted not to exploit it for their own base gratification. We have to acknowledge that war gives awful opportunities to people, and that is why we opposed it in the first place. *(Time expired)*

Question agreed to.

## DOCUMENTS

### Tabling

**The ACTING DEPUTY PRESIDENT (Senator Chapman)**—Pursuant to standing orders 38 and 166, I present documents listed on today's *Order of Business* at item 13 which were presented to the President, the Deputy President and temporary chairs of

committees since the Senate last sat in April. In accordance with the terms of the standing orders, the publication of the documents was authorised. In accordance with the usual practice and with the concurrence of the Senate, the list and government response will be incorporated in *Hansard*.

*The list read as follows—*

### Committee reports

Legal and Constitutional Legislation Committee—Interim report—Provisions of the Disability Discrimination Amendment Bill 2003 (received on 7 April 2004)

Joint Standing Committee on Foreign Affairs, Defence and Trade—Report—Parliamentary delegation to the Solomon Islands, 17 - 18 December 2003 (received on 6 May 2004)

### Government response to a parliamentary committee report

Joint Committee of Public Accounts and Audit—390th report—Review of Auditor-General's reports 2001-02: First, second and third quarters: Commonwealth estate property sales (received on 11 May 2004)

### Government document

Office of the Gene Technology Regulator—Quarterly report for the period 1 October—31 December 2003 (received on 6 May 2004)

### Reports of the Auditor-General

1. Report no. 39 of 2003-2004—Performance Audit—Integrity of the Electoral Roll—Follow-up Audit—Australian Electoral Commission (received on 6 April 2004)
2. Report no. 40 of 2003-2004—Performance Audit—Department of Health and Ageing's Management of the Multipurpose Services Program and the Regional Health Services Program (received on 13 April 2004)
3. Report no. 41 of 2003-2004—Performance Audit—Management of Repatriation Health Cards: Department

- of Veterans' Affairs (received on 15 April 2004)
4. Report no. 42 of 2003-2004—Business Support Process Audit—Financial Delegations for the Expenditure of Public Monies in FMA Agencies (received on 16 April 2004)
  5. Report no. 43 of 2003-2004—Performance Audit—Defence Force Preparedness Management Systems: Department of Defence (received on 23 April 2004)
  6. Report no. 44 of 2003-2004—Performance Audit—National Aboriginal Health Strategy Delivery of Housing and Infrastructure to Aboriginal and Torres Strait Islander Communities Follow-up Audit: Aboriginal and Torres Strait Islander Services (received on 27 April 2004)
  7. Report no. 45 of 2003-2004—Performance Audit—Army Individual Readiness Notice Follow-up Audit: Department of Defence (received on 29 April 2004)

#### **Statements of compliance with Senate orders**

1. Relating to lists of contracts:  
Department of Transport and Regional Services and the National Capital Authority (received on 4 May 2004)
2. Relating to indexed lists of files:  
Australian Taxation Office (received on 15 April 2004)

*The government response read as follows—*

#### **Department of Finance and Administration**

#### **EXECUTIVE MINUTE on JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT (JCPAA) REPORT 390 (tabled 28 August 2002)**

#### **Review of Auditor-General's Reports 2001-02 First, Second and Third Quarters**

##### **General comments**

The Australian National Audit Office (ANAO) *Performance Audit of Commonwealth Estate Property Sales* (Audit Report No.4, 2001-02),

tabled 1 August 2001, recommended seven areas in which the Department of Finance and Administration (Finance) should review or change the way in which it administered the Australian Government's property divestment programme. Finance disagreed with the seven ANAO recommendations at the time of the audit, for reasons noted in the audit report.

The JCPAA hearing on 31 May 2002 considered the disagreement between Finance and ANAO regarding the audit recommendations, and relations between Finance and ANAO during the audit. At the hearing, Finance further explained the disagreement it had voiced at the time of the audit, indicating that whilst there were some genuine differences regarding methodology, Finance considered it had already implemented some of the ANAO recommendations.

#### **Response to the recommendation(s)**

#### **JCPAA Recommendation No. 1, paragraph 3.57**

The Committee recommends that the Department of Finance and Administration report to the Committee on whether the substance of the Australian National Audit Office's recommendations have been accepted and are being implemented.

Finance reports to the Committee as follows:

**ANAO Recommendation No.1** ANAO recommended that Finance review the methodology for deriving the hurdle rate of return in the Australian Government Property Principles (AGPP). A hurdle rate of 14-15% was set in 1996, the year the AGPP were established. This rate was set using the Capital Asset Pricing Model. During the 2002-03 Budget considerations, the Government decided to reduce the hurdle rate to 11%, with effect from

1 July 2002. This reduction was a reflection of the Government's lower long-term cost of funds in more recent years. The methodology used to calculate the rate was refined. The ANAO expressed broad agreement with this outcome at the JCPAA hearing on

31 May 2002. The Government also decided that the hurdle rate should be reviewed annually by Finance. The annual review for 2003-04 concluded that the rate should remain at 11.0% with effect from 1 July 2003. The hurdle rate and



methodology has been reviewed again as part of the 2004-05 Budget process.

**ANAO Recommendation No.2** ANAO recommended that Finance review the payment of success fees to advisers and the allocation of responsibility to advisers where success fees are used. Finance has not used success fees as a basis for remuneration of expert advisers on major property sales since August 2001, and has no current plans to do so. Finance continues to use success fees to remunerate real estate agents executing minor sales such as residential properties. This is consistent with standard practice in the property industry. The fee scales used are those recommended by industry peak bodies.

**ANAO Recommendation No.3** ANAO recommended that Finance review contractual arrangements with property sales advisers to ensure full documentation and effective management of contractual commitments. Finance has procedures in place to ensure that all contractual arrangements, including variations to contracts, are formalised via comprehensive contract documentation and approval by appropriate delegates, and effectively managed via a range of widely accepted contract management mechanisms.

**ANAO Recommendation No.4** ANAO recommended that, for high value property sales, Finance evaluate the merits of prioritising tender evaluation criteria and documenting the consideration of these priorities in the tender evaluation process. Finance already implements tender evaluation processes that are aimed at obtaining best value for money and are appropriate to the circumstances of the tender. Finance protects the Australian Government's financial and other interests by accepting the best conforming tender, bid or offer. Conformance covers a range of issues (refer ANAO Recommendation No.5 below) and may include, for example, environment and heritage protection and other planning considerations.

**ANAO Recommendation No.5** ANAO recommended that Finance's approval process for property sale and leaseback transactions include the formal consideration of the Financial Management and Accountability Act and Regulations and the Australian Government's Property Disposals Policy, Property Principles, Procurement Guide-

lines, and the relevant Chief Executive's Instructions. Finance already considers all property sale and leaseback transactions in the context of how they will satisfy the objectives of all of the relevant policy and regulatory instruments, including those specified above. Finance will further formalise this practice by incorporating explicit relevant approval processes into Finance's procedures manual for property divestment (refer JCPAA Recommendation No.2 below).

**ANAO Recommendation No.6** ANAO recommended that Finance consider requiring all bidders in public tenders to lodge a security with their bid. Finance has previously explored this issue, and legal advice does not support this practice in most situations. However, should an appropriate situation arise, and if supported by legal advice, Finance would consider taking security deposits from registered bidders. Successful bidders are, in any event, always required to lodge substantial deposits upon exchange of contracts, with the balance due on settlement.

ANAO also recommended that Finance consider assessing the financial capability of short-listed tenderers. Finance already undertakes, on a case by case basis, appropriate business checks on preferred tenderers to assess their suitability as a purchaser and their ability to complete the sale transaction. Finance also includes in legally binding tender documentation the right to undertake security, probity and/or financial checks on prospective purchasers. Value for money considerations indicate that exhaustive checks are not necessary or cost effective for lower value property sales.

**ANAO Recommendation No.7** ANAO recommended that Finance undertake an appropriate whole-of-lease assessment of value for money on sale and long-term leaseback transactions to ensure the financial interests of the Australian Government are protected. Finance already undertakes appropriate analyses to protect the Australian Government's financial interests. The divestment approval process includes whole-of-lease assessment against the AGPP, including the hurdle rate of return specified therein (refer ANAO Recommendations 1 and 5 above). There have been no sale and leaseback transactions implemented by Finance since June 2003. Finance's

future sales will increasingly be surplus properties that are no longer required for Australian Government purposes and are less likely to involve any leaseback arrangements.

**JCPAA Recommendation No. 2, paragraph 3.59**

The Committee recommends that the Department of Finance and Administration, in consultation with the Australian National Audit Office, by June 2003, develop, publish and apply a sale management better practice guide for the disposal of future Commonwealth estate properties, underpinned by the Australian Government Property Principles.

Finance supports in principle the recommendation to encourage better practice. From a property vendor's perspective, however, Finance has reservations concerning the general publication of its detailed internal procedures. Access to this information by potential buyers in the wider market place could work against the Government's commercial interests.

Finance has compiled a comprehensive procedures manual for property divestment that forms the basis for development of a better practice guide as recommended by the JCPAA. The manual is being applied and progressively refined by Finance in the light of ongoing operational experience and consultation with key stakeholders. Finance proposes to consult with ANAO on how best to develop the manual into a better practice guide.

Finance and the Department of Defence (Defence) are the main agencies involved in divestment of Australian Government property. Finance and Defence have for some time, and on a regular basis, exchanged information on divestment practice. Finance proposes to share its views on better practice with Defence and any other interested Government agencies that may be involved in property divestment. Wider circulation is likely to serve no useful purpose and could compromise the Government's commercial interests as noted above.

Finance notes the guidance already available to Government agencies on the disposal of surplus and under-performing assets which is contained in ANAO's Better Practice Guide and Handbook

on Asset Management, developed in conjunction with ANAO's 1996 performance audit on asset management.

I J Watt

Secretary

Department of Finance and Administration

May 2004

**DISABILITY DISCRIMINATION  
AMENDMENT BILL 2003**

**Report of Legal and Constitutional Legislation Committee**

**The ACTING DEPUTY PRESIDENT (Senator Chapman)**—I present the report of the Senate Legal and Constitutional Legislation Committee on the provisions of the Disability Discrimination Amendment Bill 2003, which was received on 15 April 2004, together with documents presented to the committee.

Ordered that the report be printed.

**COMMITTEES**

**Economics Legislation Committee**

**Additional Information**

**Senator McGAURAN (Victoria) (4.50 p.m.)**—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present additional information received by the committee relating to the committee's inquiry on the provisions of the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and related bill.

**Foreign Affairs, Defence and Trade  
Committee: Joint**

**Report**

**Senator SANDY MACDONALD (New South Wales) (4.51 p.m.)**—by leave—I move:

That the Senate take note of the report.

Just before Christmas in December 2003 six members of the Joint Standing Committee on Foreign Affairs, Defence and Trade visited the Solomon Islands. The delegation's objec-

tives included observing progress with the Regional Assistance Mission to the Solomon Islands, RAMSI, and noting the key outcomes and support provided to the Solomon Islands. The delegation met with the Prime Minister, senior ministers and Solomon Islands community representatives. In addition, a range of briefings were provided by Australian government officials headed by Nick Warner, who is the senior DFAT official there.

The delegation was able to express on behalf of the parliament its appreciation for the outstanding contribution made by personnel of the Australian Defence Force, the Australian Federal Police and a range of aid and coordinating bodies. As parliamentarians and senators we have a responsibility to visit our personnel who are serving overseas and that particularly applies at Christmastime, so I was delighted to be part of this delegation. As always, I was impressed by their professionalism and their training. We always think that our ADF personnel, our Federal Police who accompany them and our other coordinating personnel are good, but it is a great pleasure to see how really good they are in an operation like that.

The Solomon Islands was a failing state. Lawlessness and rampant gun use were features of the community before the RAMSI intervention. Collapsing public institutions, corruption and ineffectiveness, together with a declining economy, presented a bleak future for our South Pacific neighbour. Australia, with a number of other countries in the region—and it was interesting that we were flying in Royal New Zealand Air Force helicopters—responded effectively and appropriately to the Solomon Islands' request for assistance in the middle of last year. I had visited the Solomons in April as part of a Senate inquiry into the Pacific. It was in a very sick state at that time. It was very interesting to be able to go back six months later

and see how much had been improved. RAMSI halted the downward spiral of events occurring in the Solomon Islands. Law and order were quickly re-established without a shot being fired. With law and order under control RAMSI was soon able to begin making inroads into improving the government's financial framework and accountability and ensuring that the government institutions were more effective in achieving their objectives.

The delegation concluded that Australia's assistance to the Solomon Islands through RAMSI should continue until the Solomon Islands' government and the Australian government are confident of developments and that there will be no decline in conditions as assistance is slowly wound down. The committee recommended that the Department of Foreign Affairs and Trade provide detailed information about the regional assistance mission in its annual report. In addition, while RAMSI remains a critical part of the Solomon Islands recovery the Minister for Foreign Affairs should make an annual ministerial statement to the house reporting on the progress of RAMSI.

In conclusion I would like to thank the groups that we met with in the Solomon Islands, the Prime Minister of the Solomon Islands, the Hon. Sir Allan Kemakeza, ministers, parliamentarians and representatives of RAMSI, the Australian Defence Force, the Australian Federal Police, the defence forces of other countries and a range of aid agencies. I understand that the report has been tabled. I commend the report to the Senate.

Question agreed to.

#### **Membership**

**The ACTING DEPUTY PRESIDENT (Senator Chapman)**—The President has received letters from party leaders seeking variations to the membership of certain committees.

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (4.56 p.m.)—by leave—I move:

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

**Economics Legislation and References Committees—**

Appointed—Participating member:  
Senator Fifield

**Employment, Workplace Relations and Education Legislation and References Committees—**

Appointed—Participating member:  
Senator Fifield

**Environment, Communications, Information Technology and the Arts Legislation Committee—**

Appointed—

Senator Allison

Substitute members:

Senator Greig to replace Senator Allison for matters relating to the Information Technology portfolio

Senator Ridgeway to replace Senator Allison for matters relating to the Arts portfolio

Senator Cherry to replace Senator Allison for matters relating to the Communications portfolio

Discharged—Senator Bartlett

**Finance and Public Administration Legislation and References Committees—**

Appointed—Participating member:  
Senator Fifield

**Foreign Affairs, Defence and Trade Legislation and References Committees—**

Appointed—Participating member:  
Senator Fifield.

Question agreed to.

**BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:

Superannuation Legislation Amendment (Family Law) Bill 2002

Telecommunications (Interception) Amendment Bill 2004

**AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 2) 2003**

**Consideration of House of Representatives Message**

Message received from the House of Representatives acquainting the Senate that the House of Representatives has agreed to the amendments made to amendments (6) to (8).

**BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Message received from the House of Representatives returning the following bill without amendment:

Health and Ageing Legislation Amendment Bill 2003 [2004]

**CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) AMENDMENT BILL 2004**

**SURVEILLANCE DEVICES BILL 2004**

**WORKPLACE RELATIONS AMENDMENT (AWARD SIMPLIFICATION) BILL 2002**

**First Reading**

Bills received from the House of Representatives.

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (4.58 p.m.)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be

moving a motion to have the bills listed separately on the *Notice Paper*. I move:

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

Question agreed to.

Bills read a first time.

### Second Reading

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (4.58 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

*The speeches read as follows—*

#### CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) AMENDMENT BILL 2004

The Classification (Publications, Films and Computer Games) Amendment Bill (the Bill) will make a number of procedural amendments to the Classification (Publications, Films and Computer Games) Act 1995 (the Classification Act).

The Classification Act is part of the Commonwealth's contribution to the national cooperative classification scheme agreed to by the Commonwealth and the States and Territories, which commenced on 1 January 1996. All State and Territory Censorship Ministers have indicated their support for the changes proposed by the Bill.

The national classification scheme assists consumers to choose films and computer games by assigning a classification and consumer advice to classified products.

The Bill merely renames the existing classification types and does not affect the criteria used to classify films and computer games. Classification decisions are made in accordance with section 11 of the Classification Act, and with the National Classification Code and the classification guidelines.

Both the National Classification Code and the classification guidelines will require amendment to reflect the changes to the names of the classifi-

cation types. However, the changes will be procedural in nature and will not otherwise affect the criteria used to classify films and computer games.

The amendments will improve the operation of the national classification scheme in two main ways.

First, the amendments will implement common classification types for films and computer games.

These amendments follow and complement recent changes to the classification guidelines agreed to by the Commonwealth and the States and Territories.

The combined Guidelines for the Classification of Films and Computer Games, which came into operation on 30 March 2003, replaced the previously separate Guidelines for the Classification of Films and Videotapes and Guidelines for the Classification of Computer Games.

Submissions to the review of the previous guidelines indicated that members of the public sought clear and easily understandable classification categories and supported the creation of a single set of classification symbols for films and computer games.

Similar conclusions can also be drawn from research commissioned by the Office of Film and Literature Classification (OFLC).

In a study conducted in March 2002, 71% of people agreed that the same classification symbols should be used for films and computer games. This research also indicated that there are poor levels of awareness of the computer games classification scheme. For example, the study found that only 43% of the population are aware that computer games are classified. This contrasts dramatically with 97% awareness of the film classification symbols.

Bearing in mind the results of this research and the fundamental policy objective of a universal classification scheme, the Bill introduces common classification types for films and computer games based on the well known film classifications. This will significantly assist consumer decision-making regarding classified products.

The new common classification types for films and computer games will be known as G, PG, M, MA15+ and RC. R18+ and X18+ classifications will apply to films only.

The second major purpose of the Bill is the creation of a more effective distinction between those classification types that are advisory in nature (being G, PG and M) and those to which legally enforceable restrictions apply (being MA15+, R18+ and X18+).

This distinction will be achieved by the removal of age references from the unrestricted classification types and use of age references for the restricted classification types only. This distinction will also assist consumers to identify the relative hierarchy of classification types.

Given the substantial difference in the material permissible in the advisory and restricted classifications, this amendment is expected to be of great assistance to consumers, particularly parents. It will also help address some of the confusion currently experienced about the difference between the M and the MA classification types.

The Attorney-General's Department and the OFLC have consulted extensively about the proposed changes. Since November 2003, consultation meetings have been held with consumers (including parents), film exhibitors, film distributors, computer games distributors, home entertainment distributors, generalist retailers, specialist retailers, the video, DVD and computer games rental industry and television. The Government responded to the issues raised during that consultation process.

The Bill makes consequential amendments to the Broadcasting Services Act 1992 (the Broadcasting Services Act). Provisions of the Broadcasting Services Act apply the classification system administered by the OFLC to television Codes of Practice, internet content and datacasting.

Within the Broadcasting Services Act there are references to particular classification types. Such references are amended by the Bill to ensure consistency between the OFLC classifications and their application and use on media regulated under the Broadcasting Services Act.

The amendments to the Broadcasting Services Act do not change any of the regulatory require-

ments under that Act. For example, restrictions on the times that material classified MA can be shown on television will apply to both programs already classified as MA as well as those that will, after the commencement of the proposed amendments, be classified MA15+.

Following passage of the Bill, the Director of the Classification Board intends to determine, under section 8 of the Classification Act, new markings for films and computer games.

The markings prescribe the classification symbol and description that goes with each of the various classification types and specify the requirements about the display of classification information. This includes, for example, the size, location and duration of symbols, classification descriptors and consumer advice on classified products and related advertising.

In recognition of the potential impact of these changes on industry, particularly cinema, retailers and video stores, it is proposed that the new Determination of Markings will enable products classified prior to the commencement of the proposed amendments to carry the old classification marking or the new classification marking. Any products classified after commencement of the proposed amendments will be required to carry the new markings.

During development of the Bill, most stakeholders expressed strong support for a common classification system across all media. This was consistent with OFLC research findings. Therefore the Government is keen to see a common approach based on the Determination of Markings issued by the Director.

In particular, for computer games, films and programs classified MA15+, the Government expects consumers to be informed that such products are not suitable for people under the age of 15—which is the defining feature of this classification under the National Classification Code.

The Government also expects the OFLC and television to continue to work on the development of consistent messages.

The OFLC will conduct national education activities to ensure the community understands the new classification types. These activities will raise awareness of all the classification types.

Under the national classification scheme, the enforcement of classification decisions is the responsibility of the States and Territories. Accordingly, each jurisdiction has enacted complementary classification enforcement legislation.

Implementation of the proposed amendments will also involve amendments to State and Territory legislation. It is anticipated that the State and Territory legislation will follow the passage of this Bill.

Consequential changes will need to be made in the National Classification Code as part of the transition to common classification types. These amendments have been agreed in principle by Censorship Ministers and will be formalised prior to the Bill's commencement. In accordance with the requirements of the 1995 Intergovernmental Agreement on Censorship, the amendments to the Code will then be tabled in both Houses of Parliament.

The principal purpose of the national classification scheme is to inform the choices of consumers. The simple amendments made by this Bill, in conjunction with public education activities by the OFLC, will go a long way toward better meeting the important objectives of the scheme.

#### **SURVEILLANCE DEVICES BILL 2004**

Australia's law enforcement personnel are always striving to stay ahead of the criminals.

Our police forces rely on a variety of tools to investigate, catch and prosecute criminal groups which are becoming ever more organised and sophisticated.

One increasingly important tool is the use of surveillance devices.

A surveillance device can be anything from an ordinary set of binoculars, a tiny microphone or camera hidden in a suspect's vehicle to a piece of software to capture the input of information to a computer.

The current surveillance device laws available to Commonwealth law enforcement are not up to the job of 21<sup>st</sup> century policing.

This Bill began as an initiative of the Leaders' Summit on Terrorism and Multi-Jurisdictional Crime held on 5 April 2002.

A Joint Working Group of Commonwealth and State and Territory officials was established by the Standing Committee of Attorneys-General and the Australasian Police Ministers' Council.

The Joint Working Group developed comprehensive model laws for all Australian jurisdictions to improve the effectiveness of cross-border criminal investigations in the areas of controlled operations, assumed identities, protection of witness identity and electronic surveillance.

These model laws were released in a public discussion paper to solicit feedback from groups and individuals on the suitability of these proposed powers.

This Bill implements the electronic surveillance model Bill, tailoring it to the needs of the Commonwealth.

The Surveillance Devices Bill 2004 will allow the Commonwealth to consolidate and modernise its now somewhat outdated surveillance device laws and provide law enforcement agencies with access to the surveillance tools necessary to protect Australians and to investigate crime.

The Bill allows officers of the Australian Federal Police, the Australian Crime Commission or a State or Territory police force investigating a Commonwealth offence to use a greater range of surveillance devices.

The Bill will allow for data surveillance devices, optical surveillance devices and tracking devices in addition to listening devices which are currently permitted.

To restrict Commonwealth law enforcement to the use of devices which are only capable of recording spoken words is simply not adequate.

As criminal and terrorist groups make use of sophisticated technology, our police must be able to match and better them.

This Bill does not prohibit the use of surveillance devices, but rather establishes a structured process for the use of surveillance devices, where such use would ordinarily be prohibited under a State or Territory law.

The Bill also allows for a surveillance device warrant to be issued in relation to a wider range of offences.



The current listening device provisions allow for a warrant to be obtained only in respect of a very limited number of specified offences.

For example, the current listening device provisions make no reference to terrorism offences, people trafficking and child sex tourism.

This Bill proposes that, in line with the electronic surveillance model Bill, a surveillance device warrant will be available for any Commonwealth offence, or State offence with a federal aspect, which carries a maximum penalty of at least three years imprisonment.

This offence threshold ensures that an appropriate balance is struck between the public interest that law enforcement investigate serious offences and the privacy interests of individual Australians.

Two other types of offences are also specified as offences for which a warrant may be obtained.

These are offences against the Financial Transaction Reports Act 1989, which relate to the failure to declare the import or export of money in excess of A\$10,000 and operating a bank account in a false name.

These are included because they are frequently indicative of more serious underlying criminal conduct.

Various offences against the Fisheries Management Act 1991 are also included to assist Australia in the logistically difficult task of protecting the fisheries resources in the Australian Fishing Zone.

The Bill will also allow surveillance device warrants to be issued where a child recovery order has been issued by the Family Court to assist with the location and safe recovery of any child who is subject to an order.

Depending upon the type of device involved, the Bill will require that either a warrant or a police authorisation be obtained.

Less intrusive surveillance may be carried out without a warrant.

There is nothing unusual about this.

Police, throughout our history and across jurisdictions, have engaged in certain types of surveillance without a warrant.

For example, this might include using a pair of binoculars to watch a group of terrorist suspects scout a location for a possible attack.

This is routine police work and must not be subject to unnecessary restrictions which would destroy police effectiveness.

The power contained in this Bill for police to conduct such surveillance is arguably not necessary, however, it has been included here to clarify the law on this issue.

Importantly, the Bill makes clear that, where police surveillance is more intrusive, a warrant or internal authorisation must be obtained.

For example, where optical surveillance involves entry upon private land, a full warrant would be needed, to be issued either by a federal judge or a nominated Administrative Appeals Tribunal member.

Under this Bill, tracking devices can also be used by law enforcement officers without a warrant but with the authorisation of a senior officer of their agency where it does not involve entry onto private land or interference with the interior of a vehicle.

An officer who may authorise use of a tracking device must be at least a senior executive officer (or of Superintendent rank in State or Territory police forces) who has been authorised in writing by the Commissioner.

An internal authorisation, rather than a full warrant, is permissible in these cases because of the lower level of intrusion involved.

The Bill also permits emergency authorisations to be given by a senior executive officer of the law enforcement agency to a law enforcement officer for the use of a surveillance device in circumstances that are characterised by urgency.

The Bill provides for three such situations: where there is an imminent threat of serious risk to a person or substantial damage to property, to recover a child the subject of a recovery order, and, where there is a risk of the loss of evidence in relation to important specified Commonwealth offences, including terrorism, serious drug offences, treason, espionage and aggravated people smuggling.



The Bill brings the extra-territorial use of surveillance devices into a legislative frame-work for the first time.

The technical expertise of Australian law enforcement, particularly the AFP, has been used to great effect in this region and elsewhere, in cooperation with foreign Governments.

For example, Australian expertise in a variety of fields, in conjunction with the Indonesian police, was critically important to the investigation of the 2002 Bali bombings.

Where Australian law enforcement wish to use surveillance devices overseas, they will now need to do so subject to an Australian warrant which will bring this use under the record-keeping and reporting requirements of Australian law.

The Bill sets out the requirements for permission from the relevant foreign Governments and the limited circumstances in which extra-territorial surveillance can take place without such permission.

Generally speaking, the exceptions relate to use of surveillance devices on foreign-flagged vessels in the waters around Australia.

These extra-territorial provisions will enable Australia to more effectively tackle crime beyond our shores and in particular, will assist with the ecologically sustainable management of Commonwealth fisheries.

The extra-territorial use of surveillance devices will also complement recently introduced extra-territorial offences that allow the AFP to investigate Commonwealth offences offshore with the permission of the foreign country.

These provisions are in accordance with international law.

In recognition of the privacy implications of this Bill, the Bill imposes a range of strong accountability measures.

The most intrusive types of surveillance must be subject to the scrutiny of a judge or AAT member before the surveillance begins, or, in the case of an emergency authorisation, within two business days after the authorisation has been given.

The subsequent use, disclosure or communication of material gathered by, or relating to, a surveillance device is subject to stringent restrictions.

For example, it is an offence to communicate such material unless it is covered by one of the exceptions.

And record-keeping requirements ensure that all documents relevant to surveillance device use under warrant or authorisation must be kept to establish a proper compliance paper-trail.

Chief Officers of law enforcement agencies using Commonwealth warrants and authorisations must submit detailed reports, both after a warrant or authorisation has expired and also annually.

The Bill also imposes a duty on the Chief Officers to destroy surveillance device material when it is not longer relevant to one of the permitted purposes in the Bill.

The Bill contains strong powers for the Commonwealth Ombudsman to inspect law enforcement agencies.

The Ombudsman must report on a six-monthly basis to the Attorney-General who in turn must table these reports in Parliament.

Importantly, the Ombudsman has the power to compel law enforcement officers to answer questions or produce relevant documents.

This Bill will greatly increase the capacity of Australian law enforcement agencies to investigate serious offences, including terrorism, while maintaining an appropriate respect for the privacy of all Australians.

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#### WORKPLACE RELATIONS AMENDMENT (AWARD SIMPLIFICATION) BILL 2002

Australia's Workplace Relations system needs progressive, evolutionary change.

Despite falls in unemployment, it remains the duty of this Government through Parliament to do whatever we reasonably can to create jobs.

Reforms since 1996 have resulted in fewer strikes, lower inflation, higher productivity and lower interest rates. This Government has helped Australian families improve their living standards with more choice and more disposable income.

The reforms to awards in this bill will continue to maintain a safety net of minimum wages and conditions to protect the low paid and disadvantaged in the work force.

The Government is now in a position to introduce a further single issue bill drawn from the More Jobs, Better Pay bill 1999.

The award simplification process under the 1996 Act has been beneficial to employers and employees. Since July 1998 over 1,400 obsolete awards have been set aside, and over 1,000 have been simplified.

Award simplification has established a fairer and more streamlined safety net of minimum wages and conditions of employment. It has also facilitated agreement making and more productive workplaces.

It is now appropriate for the Parliament to enact measures for further targeted simplification. Overly complex and restrictive awards hinder agreement making at individual workplaces and act as a barrier to continued employment growth.

This bill amends the Workplace Relations Act to tighten and clarify allowable award matters. Provisions will be removed which duplicate other legislative entitlements, or which are more appropriately dealt with at the workplace.

This bill will more clearly define and specify allowable award matters. For example, redundancy pay will only relate to genuine redundancy, and not to resignation by an employee. The range of matters currently referred to as 'other like forms of leave' will be more closely specified and the bill clarifies matters that are isolated from an award.

The current provisions of section 89A which allow matters that are incidental to the specified allowable award matters and necessary for the effective operation of the award are amended to include only matters which are essential for the purpose of making a particular provision operate in a practical way. This bill will ensure that awards maintain a safety net system but one that is appropriately streamlined.

I commend the bill to the Senate.

Debate (on motion by **Senator Crossin**) adjourned.

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

## ASSENT

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

Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Act 2004 (Act No. 28, 2004).

Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Act 2004 (Act No. 29, 2004)

Australian Crime Commission Amendment Act 2004 (Act No. 30, 2004).

Migration Agents Registration Application Charge Amendment Act 2004 (Act No. 31, 2004).

Dairy Produce Amendment Act 2004 (Act No. 32, 2004)

Family Assistance Legislation Amendment (Extension of Time Limits) Act 2004 (Act No. 33, 2004)

Commonwealth Electoral Amendment (Representation in the House of Representatives) Act 2004 (Act No. 34, 2004).

Communications Legislation Amendment Act (No. 1) 2004 (Act No. 35, 2004)

Textile, Clothing and Footwear Strategic Investment Program Amendment Act 2004 (Act No. 36, 2004).

Appropriation Act (No. 3) 2003-2004 (Act No. 37, 2004)

Appropriation Act (No. 4) 2003-2004 (Act No. 38, 2004)

Appropriation (Parliamentary Departments) Act (No. 2) 2003-2004 (Act No. 39, 2004).

Age Discrimination (Consequential Provisions) Act 2004 (Act No. 40, 2004)

Energy Grants (Cleaner Fuels) Scheme Act 2004 (Act No. 41, 2004)

Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Act 2004 (Act No. 42, 2004).

Customs Tariff Amendment Act (No. 1) 2004 (Act No. 43, 2004)

Excise Tariff Amendment Act (No. 1) 2004 (Act No. 44, 2004)

Higher Education Legislation Amendment Act 2004 (Act No. 45, 2004).

Customs Tariff Amendment (Greater Sunrise) Act 2004 (Act No. 46, 2004).

Greater Sunrise Unitisation Agreement Implementation Act 2004 (Act No. 47, 2004).

Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2004 (Act No. 48, 2004)

Privacy Amendment Act 2004 (Act No. 49, 2004).

Health and Ageing Legislation Amendment Act 2004 (Act No. 50, 2004).

Military Rehabilitation and Compensation Act 2004 (Act No. 51, 2004)

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004 (Act No. 52, 2004)

Superannuation Safety Amendment Act 2004 (Act No. 53, 2004)

Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2004 (Act No. 54, 2004)

Telecommunications (Interception) Amendment Act 2004 (Act No. 55, 2004)

Taxation Laws (Clearing and Settlement Facility Support) Act 2004 (Act No. 56, 2004)

Intelligence Services Amendment Act 2004 (Act No. 57, 2004).

Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004 (Act No. 58, 2004).

## COMMITTEES

### Procedure Committee

#### Report

Consideration resumed from 4 December 2003.

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (5.00 p.m.)—I move:

That the recommendations of the Procedure Committee in its third report of 2003 be adopted, as follows:

- (1) That the Senate considers that any future parliamentary addresses by visiting foreign heads of state should be received by a meeting of the House of Representatives in the House chamber, to which all senators are invited as guests.
- (2) That the annual Tax Expenditures Statement stands referred to legislation committees for consideration by the committees during their examination of the estimates of government expenditure under standing order 26.

**Senator BROWN** (Tasmania) (5.00 p.m.)—I move an amendment on behalf of the Australian Greens:

Omit “should be received by a meeting of the House of Representatives in the House chamber, to which all senators are invited as guests”, substitute “be received by a meeting of senators and members held in the Great Hall of Parliament House, Canberra”.

The Greens have been very strong on this issue throughout. Before President Bush and President Hu visited this parliament and were given the extraordinary privilege of speaking in the House of Representatives to the two chambers of parliament, gathered together but separate, last October, we moved to have both President Bush and President Hu address this parliament in the Great Hall. We believe that should be the future practice and this amendment gives effect to that. We do not believe that this chamber should be put in an ancillary position at the side of the House of Representatives with addresses from visiting heads of state. We believe that the proper process here is for heads of state, who are essentially strangers when they come to this parliament, to address both houses—and indeed other people—in the Great Hall.

The practice that is being recommended by the Procedure Committee is not consistent with the constitutional arrangement whereby the two chambers of this parliament are equal but separate. I reiterate that it was entirely wrong of the Speaker of the House of Representatives—and insofar as the committee finds that the President of this place was complicit—to prohibit Senator Nettle and me from a sitting of the Senate when President Hu visited in October last year. The outcome of that unsatisfactory arrangement and the breach of proper procedure and defence of this chamber and its rights is being compounded by the motion that is now before this parliament.

We should not be subservient or copycats of arrangements made in other parliaments. I remind senators that the standing orders of this place, and indeed the constitution, indicate that the people who should speak in this chamber are the people elected by the Australian public to this chamber. We have an excellent provision in the Great Hall for receiving other people including the heads of states of the great powers and indeed of any other country. That is where their addresses should be given to the members of parliament and to the people of Australia. These chambers are for the elected representatives of this country.

Joint sittings become impossibly difficult to sort out in terms of which rules of which house are to be applied. I might say that the arrangement that is now being put in place here effectively makes senators subservient to the Speaker of another place when visiting heads of state come to address the parliament. They will of course be addressing the house of assembly and not the parliament, but I would bet right here and now that that truth will not be observed by future prime ministers and future governments. They will be inviting the heads of state not to address

the House of Representatives but to address the parliament of Australia.

Under the terms of this motion that will not be the case. Let us make that very clear: they will be addressing the House of Representatives with senators invited to sit at the back with their rights to take place in debate removed and with their rights to represent their constituents in this country removed, as we saw on 23 and 24 October last year. We believe this is a mistake. We believe this is not consistent with the intention of the Constitution or the electors of this parliament. Sure, it may be an arrangement that is satisfactory to other parties within this parliament, but we beg to disagree—and disagree very forcibly. We believe the better arrangement is for such great events as speeches from visiting heads of state to be held in the Great Hall. That is among its ostensible purposes. That is the rightful place for such speeches to be given.

**Senator ROBERT RAY (Victoria) (5.05 p.m.)**—This recommendation was the unanimous view of the Procedure Committee but this matter was also referred to the Privileges Committee for consideration, which unanimously endorsed the Procedure Committee report. It does arise out of events of October last year. Senator Brown has alluded to the fact that it is probably almost impossible to write rules for a genuine joint sitting with absolute equality between the two chambers. Senator Brown is wrong when he says the only people who can speak here are those who are elected. I do recall the Governor-General popping in to open parliament every now and then.

**Senator Brown**—That's constitutionally provided for.

**Senator ROBERT RAY**—It is constitutionally provided for, and the House of Representatives members have to come over here and sit up the back and all the rest. I

think it is just a balance. If you are going to go ahead with what are called joint sittings, joint meetings or an assemblage of all parliamentarians it is fair enough that those be on the House of Representatives side. I do not know whether Senator Brown will be sitting up the back. I will never know, because I do not go to joint sittings. I went to one in 1991 and I have not been to one since, because I find them the most insufferably boring and tedious events. I do not know how we can really duce some visiting dignitary by inflicting that on them. That is beyond me, but apparently it does work. If it does work—if we can get an extra trade concession or something else by having a joint meeting—good on them.

What I am most concerned about is how parliamentary privilege applies. Frankly, I cannot work out any way it can apply to joint sittings as they have been held in the past. It is simply a nightmare. I think the simplest solution that the Labor Party has found is to meet in the House of Representatives and operate under their rules. If I go over tonight and listen to the budget, I go over there in exactly that capacity: I operate under their rules and, if I misbehave, I might be disciplined by them—who knows?

**Senator Brown**—But it is a meeting of the House and not the—

**Senator ROBERT RAY**—It depends how this is going to be purported in future, Senator Brown. If it is going to be purported for a meeting à la the United States Congress, that would be a wrong representation, once we come to these arrangements. It is a meeting to which all parliamentarians are invited—nothing more; nothing less. All those questions of privilege and standing orders disappear because only one set applies, because the meeting is occurring in the House of Representatives. So we disagree with Senator Brown on this matter. We think

that the proposal coming out of the Procedure Committee and endorsed by the Privileges Committee is the very simple way of approaching these matters. It is not totally satisfactory. Incidentally, I do not like the idea of meeting in the Great Hall. I do not find it a very attractive place for meetings, frankly. One of the reasons you have these meetings in a parliamentary chamber is the atmospherics.

**Senator Faulkner**—You have been there, though, haven't you?

**Senator ROBERT RAY**—To the Great Hall?

**Senator Faulkner**—Yes. You certainly haven't been to the House of Representatives.

**Senator ROBERT RAY**—No, I have never been to the House of Representatives since we have moved up the hill. That is true. And I would have been in the House of Representatives in 1969 but for a deficit of votes in the seat of Henty, where I just missed out by nine per cent, and I am not offended by the fact that I was not elected then. In conclusion, we are not going to agree with the Greens on this matter. I do not say that with any animus at all. We just have a different view of these things. I think that this solution from the Procedure Committee is a simple one—not brilliant but simple and adequate—and I think we will be able to proceed that way in future.

**Senator ALLISON (Victoria) (5.09 p.m.)**—The Democrats will support this motion. We think it is time that this whole matter was tidied up and that there were protocols that everybody understood and agreed to. We had the situation where some heads of government were entertained in the Great Hall and others were invited to address the chamber. There was always a doubt about whether it was the Senate or the House of Representatives, and essentially it was a bit

of a mess. We have always said that we thought the Great Hall was an appropriate place. I accept Senator Ray's comments about the atmosphere. It is a great place for a dinner but not necessarily a great place for people hearing well, seeing the speaker and so forth. If they are up the back of the Great Hall, you are unlikely even to be able to see. So, in that respect, I think it is useful work that the Procedure Committee has done in making this recommendation.

We will support Senator Brown's amendment about the Great Hall because it has been our view for some time that that is the appropriate place. You still have a difficulty here if the House of Representatives or the government—or whoever makes the decision—chooses not to have a head of state address the parliament in whichever chamber. I do not think that has yet been resolved. Do you have to be a country of a certain size before it warrants an invitation to address the chamber? We have not dealt with that very important issue, so we will still get anomalies and difficulties. For that reason, I think our preference would be to stick with the Great Hall. But if that amendment is not passed, we will support this change.

Question put:

That the amendment (Senator Brown's) be agreed to.

The Senate divided. [5.16 p.m.]

(The President—Senator the Hon. Paul Calvert)

Ayes.....	7
Noes.....	<u>43</u>
Majority.....	36

AYES

Allison, L.F. \*

Greig, B.

Nettle, K.

Stott Despoja, N.

Brown, B.J.

Murray, A.J.M.

Ridgeway, A.D.

NOES

Barnett, G.

Buckland, G.

Campbell, G.

Carr, K.J.

Colbeck, R.

Cook, P.F.S.

Crossin, P.M.

Evans, C.V.

Fifield, M.P.

Heffernan, W.

Humphries, G.

Johnston, D.

Knowles, S.C.

Lundy, K.A.

Marshall, G.

McLucas, J.E.

Payne, M.A.

Santoro, S.

Sherry, N.J.

Tchen, T.

Watson, J.O.W.

Wong, P.

Bishop, T.M.

Calvert, P.H.

Campbell, I.G.

Chapman, H.G.P.

Collins, J.M.A.

Coonan, H.L.

Eggleston, A.

Ferris, J.M.

Forshaw, M.G.

Hogg, J.J.

Hutchins, S.P.

Kirk, L.

Lightfoot, P.R.

Mackay, S.M.

McGauran, J.J.J. \*

Moore, C.

Ray, R.F.

Scullion, N.G.

Stephens, U.

Troeth, J.M.

Webber, R.

\* denotes teller

Question negatived.

Original question agreed to.

**Senator Brown**—Mr President, I ask that the Senate record the Greens opposition to the motion.

#### SEX DISCRIMINATION AMENDMENT (TEACHING PROFESSION) BILL 2004

##### Report of Legal and Constitutional Legislation Committee

**Senator McGAURAN** (Victoria) (5.20 p.m.)—On behalf of the Chair of the Legal and Constitutional Legislation Committee, Senator Payne, I present the report of the committee on the provisions of the Sex Discrimination Amendment (Teaching Profession) Bill 2004, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.



## COMMITTEES

### Procedure Committee

#### Report

Consideration resumed from 29 March.

**Senator TROETH** (Victoria—  
Parliamentary Secretary to the Minister for  
Agriculture, Fisheries and Forestry) (5.21  
p.m.)—I move:

- (1) That standing order 61, relating to the consideration of government documents, be amended as set out in the report with immediate effect.
- (2) That the following orders operate as temporary orders until the conclusion of the 2004 June sittings:
  - (a) if a division is called for on Thursday after 4.30 pm, the matter before the Senate shall be adjourned until the next day of sitting at a time fixed by the Senate; and
  - (b) if objection is made to a motion being taken as a formal motion, a proposal to suspend standing orders to allow the motion to be moved shall not be received by the President and put to the Senate unless 5 senators, including the mover of the motion, rise in their places to indicate support for the suspension motion.

**Senator BROWN** (Tasmania) (5.22 p.m.)—by leave—Firstly, I would like to suggest that this motion be separated. I put that suggestion forward because I will be voting differently on the two parts of the motion. Secondly, I want to explain why the Greens will be opposing the second part of the motion. We do not believe that any component of the Senate proceedings should be made secondary, which is effectively what this motion does. It means that private members time on Thursday afternoons will be made a matter of no determination if there is a division, whereas at all other times the Senate can make a determination.

The Greens are strong defenders of private members time; there is too little of it in the Senate. All the crossbench senators, and indeed the opposition, value private members time greatly. Effectively what is being said is that after 4.30 p.m. there are planes to be caught and if you are going back to Western Australia, Tasmania or the Northern Territory—and I understand that—it is much better to do that and not to have a vote in the chamber at that time on Thursday afternoons. I do not accept that. Change the sitting times if we must, but retain the right at all times for a deliberation when matters are being debated, not least during private members time. In my books, it will make private members time after 4.30 p.m. on Thursdays a subsidiary matter to government time. I do not know whether there is another explanation for this. I note that the vote will be put off until the next day of sitting. I believe we should not entertain that. More importantly, the second component of this motion states:

- (b) if objection is made to a motion being taken as a formal motion, a proposal to suspend standing orders to allow the motion to be moved shall not be received by the President and put to the Senate unless 5 senators, including the mover ... indicate support ...

This is another move to repress the increasing diversity of this place. As we know, and we saw it today, urgency motions can only be gotten up when supported by five senators—that means the Labor Party, the coalition or the Democrats. If urgency motions come from the Independents, the Greens or One Nation, unless they can get four people from other parties or four individuals to support them they will never, ever put one up. In fact, I have had one or two in all of my time in this place, and they were successful through the support of either the Democrats or Labor. There is an impediment to urgency motions coming forward from this corner of

the house if you do not have more than five members.

The motion before the Senate effectively will extend to formal motions where there is a proposal to suspend standing orders to allow the motion to be moved and debated. You will need five members to support that process. It effectively means that the rest of the Senate will be able to remove consideration and a vote on a motion which may be very important to the individual and a supporter in this place. However, whereas two are required now for a division and for this process, five will be required in future. I cannot support a move to take away existing rights of Independent senators or smaller parties in this place in this way, and that is exactly what this will do. I do not know who will be here after the next election or five elections from now, but I am aware that there is a general tendency by the bigger parties in particular to use numbers to keep newcomers at bay. The simplest expression of that, and it applies right around the country, is to put Independents on the right-hand side of the ballot paper when everybody else goes into a ballot to see what place they get on the ballot paper. As far as Independents are concerned, they are always on the right-hand side; they never, ever get the left-hand column. Therefore, Independents get the donkey vote. Who legislated that? Not the Independents. It was legislated by the big parties of the day in all parliaments in Australia, as far as I am aware, and it is wrong.

Here we have a proposal to further remove existing powers of Independents and smaller parties of fewer than five members in this place, and I oppose it. It is not fair. There will be all sorts of arguments about time saved and so on. We should have more private members time, and the resort to moving that 'a motion being taken as a formal motion, a proposal to suspend standing orders to allow the motion to be moved' is not used

frequently. In fact it has been used much less frequently in recent times than five or six years ago. This is a trial, but, as we know, trials are brought in simply to be converted into standing orders a little way down the track. We oppose the motion.

**Senator IAN CAMPBELL** (Western Australia—Minister for Local Government, Territories and Roads) (5.28 p.m.)—At the outset I make it clear that I am not speaking in my ministerial capacity and therefore am not seeking to close the debate. I would seek to wear a hat either as a member of the committee or as a private senator, which I can do. Senator Brown, in relation to the 4.30 p.m. provision of part (2)(a) of the motion, we are very happy to have that voted on separately and will be happy to give leave if that is what is required.

Senator Brown, when talking about part (2)(a) of the motion moved by Senator Troeth, mentioned the need for this change. We say quite clearly that of course it is only on a trial basis. It is only for this session. It will, effectively, apply to only three Thursdays, from memory—we have only three sitting weeks in this session—this week's and two other Thursdays. It is being done on that basis because the consensus in the Procedure Committee was that it was a change that we would like to see. We would like to see how it operates and whether the sorts of problems that Senator Brown envisages occur. We would then have the chance to review it in the next set of sittings.

The reason for the 4.30 p.m. cut-off is as Senator Brown has predicted. It is to allow senators the same opportunity that our friends and colleagues in the other place have, and that is to get home to their constituencies at a reasonable time on Thursday evenings. It will enable them to travel to the airport without having to engage in a stressful race. It will enable them to catch aero-



planes that take many of them to the most remote parts of this incredibly large continent. Some go to North Queensland, some go to Queensland, some go to Western Australia—I declare my strong vested interest in that regard—others go to the Northern Territory, as Senator Brown mentioned, and still others go to Tasmania. That is, without any shadow of a doubt, the reason it is being done. There is no secret agenda there.

We want to ensure that senators can get home to their constituencies on Thursday nights without having to engage in a stressful and sometimes dangerous race to the airport. A lot of highly stressed individuals around Australia and around the world actually die doing that. A lot of people have heart attacks at airports and on the way to airports. There may not be much sympathy out there for politicians rushing to airports, but I think that those of us who spend much of our lives racing to airports know that it is not a good thing to do. So we are seeking to avoid that.

Currently, the standing order provides, almost identically, that no divisions will be taken after six o'clock. That provision was in fact put there for a similar reason, but the practical reality of airline schedules—and, I think, the practical reality after 14 September 2001, when Ansett effectively collapsed—is that there are fewer services and fewer options to get out of Canberra and travel to one of those far-flung parts of the continent. Six o'clock may have worked relatively well up until 14 September 2001, but there are now simply far fewer flights and far fewer options on Thursday evenings when you are trying to shift a couple of hundred senators and members and many hundreds more staff out of Canberra to destinations around the nation. That is the reason.

I do not think that this diminishes the value of the business that is being conducted in the Senate at the time. A good example is

that you can still have votes; it is simply that you cannot have divisions. If something is controversial and needs to be voted on, then the Procedure Committee has come up with a sensible, rational and fair way of dealing with such a contested vote, and that is to have it the next time the Senate sits and everyone is here. I make the point that it does not diminish the quality or the importance of the debate that may be going on after 4.30 p.m. In fact, earlier on a Thursday—at 12.45 p.m.—it is the practice of the Senate to deal with large volumes of government legislation in what is called the non-controversial timeslot. The Senate goes through a process of working out what legislation we can deal with at that time. I make the point that legislation dealt with at that time is no less important; it is simply not legislation that requires anything other than an affirmative vote. We take votes on all of that legislation. The amount of legislation that goes through in that timeslot is quite substantial. I would hazard a guess and say that, on average, it is probably three or four bills every week. Over 20 sitting weeks that is a massive number of bills. That does not mean that those pieces of legislation are less important. So I ask Senator Brown to consider that argument.

In relation to the suspension of standing orders seeking the declaration of a motion as formal, I point out that it is already practice in the Senate that, for an urgency motion to be declared, five senators are required to stand in their places. That is standard, existing Senate practice if you want an urgency motion debated. You need that for matters of public importance as well. So it is not some sort of conspiracy to crack down on Independent senators; it is a process that brings into line existing Senate practice in relation to urgency motions and motions to deal with matters of public importance.

In relation to providing time for private senators' matters or non-government busi-

ness, I point out that there are very few parts of the Senate schedule where government business is guaranteed. This afternoon is a good example of that. Since the end of question time I do not think we have dealt with any government business. We are now here at 5.36 p.m., and for some hours this afternoon we have been dealing with everything but government business. The Minister for Revenue and Assistant Treasurer has come in to ask about her bill on whatever she is dealing with at the moment. We have told her, Senator Murray and others who are interested to come back in perhaps half an hour when this debate has finished. That is a fact. In many sections of the week, government business time is that amount of time that is left over after we have dealt with everything else.

I am not saying that the government gets a bad shake out of this place. The reality is that through negotiations and discussion—and, 90 per cent of the time, through very good will on behalf of the opposition, Senator Brown, the Democrats, and Senator Harradine and other Independents—we ensure that we balance business between what the government needs to deal with the legislative program and what other senators need for dealing with formal motions, urgency motions, matters of public importance and even private members' bills on Thursday afternoons. I think that through it all Senator Brown would, if he were fair, say that we strike a reasonable balance in these things, and that is what we seek to do. I commend the Procedure Committee for bringing forward these proposals to amend the standing orders and create some temporary orders for the balance of these sittings—albeit the very shortest sittings in the Senate calendar this year; I think there are only 10 sitting days to go.

**The ACTING DEPUTY PRESIDENT (Senator McLucas)**—By way of clarification:

we will deal with paragraphs (2)(a) and (2)(b) separately, Senator Brown.

**Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.38 p.m.)**—I address myself to both of these issues. It is important for the Senate to understand that the recommendations of the Procedure Committee on the substantive issues in relation to when a division can be called—what time on Thursday afternoons in the first instance—and the procedures relating to formal motions are compromise recommendations. They are issues that the Procedure Committee has been examining for some time, particularly in relation to the question of how to deal with formal motions, and there is recognition by the committee that it is useful in this circumstance for us to recommend that a sessional order apply. The Procedure Committee is not recommending a change to the standing orders at this point; it is recommending temporary orders be put in place.

The first issue is that if a division is called for on Thursday after 4.30 p.m. then that matter be held over until the Senate next sits. I think this is a quite unremarkable change, I really do. Current standing order 57(3) states:

If a division is called for on Thursday after 6 pm, the matter before the Senate shall be adjourned until the next day of sitting at a time fixed by the Senate.

All this temporary sessional order of the Senate does is amend the time of 6 p.m. to 4.30 p.m. My maths might be wrong but I think that means, given that this would apply to the end of the current sittings period, it will be effective for only three sitting weeks—this week and the last two weeks of June, given that we have an estimates fortnight situated between them. We are talking about a proposed temporary order of the Senate to apply for three Thursdays that

changes the time of this particular standing order—that is, from 6 p.m. to 4.30 p.m. I do not see this as a radical change; it is a compromise from the Procedure Committee. There is an element of, ‘Let’s have a look at this; let’s see how it works for a very limited period of time.’ There is an element of the Procedure Committee having another look at it to see if a further sessional order is warranted or, as sometimes happens, proposing the consideration of a change to the Senate standing orders. It is pretty unremarkable, I have got to say. If there is a matter of great moment and dispute that leads to a division being required after 4.30 p.m., it is not as though the division will not happen—it will just not happen then. It will happen, but it just will not happen after 4.30 on the Thursday afternoon.

**Senator Robert Ray**—It never happens anyway.

**Senator FAULKNER**—That is absolutely right, Senator Ray. How often do you actually have a division called for on a Thursday between 4.30 p.m. and 6 p.m.? How often does it occur? It is very, very rare. Let us not turn this into some sort of international incident or claim that it is a massive denial of democratic rights; it is not. But if perchance it does not work, and I think that is rather unlikely, the Procedure Committee can have a look at it in the very near future. I would like to think, given the spirit with which it dealt with this proposal in the first instance, it will come forward with a sensible recommendation.

Having said that about the first of the proposals that have exercised Senator Brown a little, let me now turn to the second one—which I think is a more substantive issue. This goes to the way formal motions are dealt with in this chamber. Every senator in this chamber knows—

**Senator Allison**—The third one; is that what you’re talking about?

**Senator FAULKNER**—(2)(b).

**Senator Hogg**—Or not to be.

**Senator FAULKNER**—That is the question. Can we divide on it? Paragraph (2)(b) is a matter of greater substance, and most senators in this chamber know it is also a matter which has concerned the opposition for a considerable period.

One useful thing I think the Procedure Committee has done is produce this report, which gives a valuable history of the way formal motions have developed. Their use has changed since they were included in the first set of Senate standing orders in 1903. It is a massive change; but most of that evolution has occurred over recent years. I think the Senate would be aware that the opposition have been concerned that some motions adopted by the Senate—particularly motions on foreign policy—run the risk of being misunderstood by other sovereign governments. The distinction between the Senate agreeing to a motion and the executive government adopting a position is something that is not well understood. It is a very poor mechanism to adopt. It is a very blunt instrument for us to deal with.

One of the great weaknesses of these formal notices of motion is that senators are asked to either agree or disagree with formality: you either agree with the motion as it is moved by the senator or you do not. The capacity for amendment is not available to any senator, except on occasions when it occurs by negotiation—and that is a small minority of occasions. You cannot amend it. In some areas the nuances of these motions are important. It does make a difference how motions are worded, and small amendments can make a difference. So it is a blunt instrument. If you agree to formality, you are forced to vote either in favour of it or against it.

What is the alternative? It is to declare such a motion 'not formal'. If you declare such a motion not formal, it is then the right of the senator who has proposed the motion to move a suspension of standing orders—an automatic right. As a result of amendments to the standing orders proposed by me when I was Manager of Government Business in the Senate in the good old days when Labor was in government, those debates on the suspension of standing orders are now limited to half an hour, five minutes per speaker. But it is still a half-hour chunk out of the day. At the end of the day, you determine an issue by voting on whether to suspend standing orders to debate the motion or not. Again, it is an unsatisfactory situation.

I do not say that this has necessarily been abused by senators. You could say that this mechanism has been abused; I do not say that. This is a mechanism available to senators in the Senate standing orders. There have been absurd congratulatory motions concerning sports men, women and others—some have been for quite significant achievements, but some have been for the odd achievement or the odd issue that was pretty trifling—and the chairs themselves have attempted at times to rule such things out of order. But it is the issue of substance that is of concern to the opposition, and we have argued for a long time that it ought to be of concern to the government, particularly in the area of foreign policy. The government have not shared those concerns. They share them now, but they were not willing to act when the opposition made strenuous attempts after Labor lost government in 1996 to see if we could make some changes to the way this particular provision of the standing orders worked. We were unsuccessful in that. Now there is a broader acceptance, we need to do something about it.

It is said that this is antidemocratic in some way, that it stifles the voice of minori-

ties in the chamber. I do not think that is true. I do not think a substantive argument can be made to suggest that that is the case. Frankly, if you are unable to get five senators to stand in their place to call on a debate for the suspension of standing orders, you have got Buckley's of getting to 39. That is the truth. That is the hard, bottom line politics of this. If you cannot get five people to stand up in their place to bring on a debate about a matter, what chance have you got, really, of seeing such a thing being carried? At the end of the day, so much of the way this chamber works is by negotiation off chamber—in the margins. That is how it works. Most of these sorts of debates are the exception, not the rule. Most of these sorts of matters are matters of negotiation between whips, between managers and between others—at times even party leaders have some responsibilities in these areas. There are senators in the government and in the opposition responsible for chamber management, and those on the crossbenches also take an active role in chamber management.

I frankly believe that this is the case on key issues, on priority issues. When a senator believes that something is of sufficient significance that it ought to be brought on for an opportunity to consider whether a formal motion should be agreed to, I am not in much doubt that a senator will not receive support. But it does put a brake on this procedure. It does send a signal to all of us in the Senate that this is a procedure, a mechanism, in the standing orders that has spun out of control over the past number of years. This is an attempt to say, 'Is there a sensible, fair and reasonable way of trying to adopt a procedure that is going to work in the best interests of the Senate as a whole?'

I think you can make a very strong argument, by the way, for more dedicated time for non-government business—or general business, as it is described. I believe that in

the not too far distant future in this chamber we will hear more arguments presenting that point of view. I think governments of any political persuasion, if they are smart, will say: 'This is quite reasonable. If we can dedicate more time to that, it might be a good idea but, on the other hand, let us see if we can dedicate some time to government business.' The point that the Manager of Government Business in the Senate makes about the capacity for government business time to be gobbled up on a pretty regular basis has some truth to it, but there is a quid pro quo in this sort of thing—if you want more general business time with the capacity for non-government senators to debate business in this place, the other side of the ledger is more dedicated time for government business.

This is the sort of thing we ought to be looking at if we are serious about reform in this chamber. I would commend that to the government, the opposition, the minor parties and the Independents as a way forward in dealing with some of these age-old problems. I believe that, on this particular occasion, the Procedure Committee has taken a pretty balanced view of what is a difficult, growing and quite serious problem. That is where the opposition come from on this matter. We accept that the debate on general business motions—the mechanism of general business notices of motion—has evolved and developed in a way that was never intended. This proposed mechanism, which will apply for about 12 sitting days only, is a start to addressing it. I am all in favour of the Procedure Committee, after it has applied for what will literally be a handful of days, taking a good hard look at how effective it has been, seeing whether it stands the test of scrutiny and applying its mind to how this issue should be addressed in the future. The opposition have identified it as a problem for a long time now. We believe the Procedure

Committee has adopted a balanced view; it is a compromise position. I personally believe, as do my colleagues, that it is likely to be an improvement. We certainly believe it is worth testing and trialling for the few remaining weeks of this session. It is for all those reasons—and they are important reasons—that the opposition will support this proposal.

**Senator ALLISON (Victoria) (5.56 p.m.)**—I rise to indicate that the Democrats will not support the no divisions provision, 2(a), or the formality suspension of standing orders provision, 2(b). I will take 2(b) first so I can respond to Senator Faulkner's remarks. Some figures have just been passed to me. Senator Faulkner said this has spun out of control and that it is a serious problem that needs to be addressed because it was never intended that this procedure be so demanding on the Senate's time. My response is that, in 2002, there were three motions to suspend standing orders. From the records I have, there were more in 1994, 1995 and 1996 than at any other time. There were 10 in 1994, 14 in 1995 and 19 in 1996, so it is hardly a problem that has suddenly emerged as a big issue and a great time waster. I think it is exaggerating the problem, to say the least.

It is a poor solution to what is really a nonexistent problem. The number of senators required to support this measure is totally arbitrary. It has some connection with being in support of an urgency motion or a matter of public importance, but that is all. Otherwise you could just say that it is designed to keep those who cannot muster five senators from doing this. Of course, what we know is that standing orders are suspended largely by the crossbench. I am the whip of the Democrats, and we have seven senators. Even with a lot of forewarning and notice, it can be quite difficult to muster five people into the chamber at one point in time, not because it is difficult to contact them or anything of that

sort but because people have other commitments such as meetings they cannot get out of or committee work. There is a whole range of reasons why people find it difficult to get into the chamber at a point in time. Often we have to wait a length of time, so it is also time wasting. I would argue that we need to reform that system. From our point of view, it is an unnecessary barrier to a process that should be available.

You cannot do anything but conclude that this is about the non-Democrat, non-Labor and non-government members of the Senate—those who are Independents or with other parties such as the Greens—and I do not think that is fair. One of the major problems is that we never know when formality will be denied, so it could be there is not the requirement for someone who denies formality to have five people behind them in support of that denial. If we are going to go down this path, maybe that is what should happen. But that has not been considered in this proposal. Maybe that is the compromise Senator Faulkner is talking about, although I must say that I do not remember that being proposed by anybody in the Procedure Committee.

It is a mechanism which allows us to debate difficult motions, and there is nothing wrong with that. There is no other way of debating motions at the present time. If formality is denied, it ought to be for a good reason and there ought to be an opportunity for people to say what the reason for denial is and for others to have a different view and to express that. It is a democratic process. It is about getting on the record, getting on the *Hansard*, why it is that this motion is deemed not to be appropriate to vote on at this point in time. It is a poor solution, in our view. The number of people required to suspend standing orders is arbitrary. The point has been made that you are not going to reach 39 if you cannot reach five. If that is

the case, why not make the required number 38? That would bring you closer to knowing whether the motion was likely to be supported. Since when has there been a requirement to demonstrate an ability to win a vote before, say, going to a division? Is the next thing going to be that you cannot call a division unless you have five or, again, 38 supporters? That presupposes that everybody has made up their mind at that point in time. It just does not make any sense. One can only conclude that this is a procedural change meant to stop a problem that does not exist.

It is not going to be a trial. It does not matter how many weeks we have. There were only three suspensions in 2002; it may be six months before we have another suspension of standing orders. Should we manufacture one just so that we can see how it works? Is that what we ought to do? I think it is silly to call this a trial. It is not a trial. We are just going to change it, and that is how it will go.

I turn to the issue of not having divisions after 4.30 p.m. on Thursdays. I cannot see any logical reason for this. For some time in this place consideration has been given to those people who have to travel very long distances to get back to their constituents or to their families—which in some cases I think are more important—and pairs have been provided. There have been informal arrangements made in this place. I guarantee that after 4.30 on Thursdays there is not going to be a full complement in this place in any case. That is the arrangement we have been operating under for a very long time. There is no pressing need to suddenly change the rules. Senator Ian Campbell said that this change was not a reflection on the importance of general business. Then I would say: what about we move it? If general business is no less important, then let us shift it to Monday, Tuesday or Wednesday.

As it is, private senators' bills are shoved to the end of the week, and that in itself suggests that they are not as important. They are rarely voted on. Sometimes they are, but only when pressure can be applied by the senator, who is usually from the crossbench. Normally there is some time wasting and there are some deliberate attempts to frustrate the process of this place. The reward is given often informally and usually by the ALP, who say, 'We'll allow this to go to the vote,' with agreement from the government. Otherwise it is talked out, as we in this place all know. To say that no lesser importance is being given to general business on a Thursday by not having a vote is a nonsense. It is not clear to me what happens if a vote is taken on the next day of sitting. That next day of sitting may be weeks and weeks later if that Thursday happens to be at the end of a sitting period. How will people remember what the debate was all about, even if the next sitting day is the following Monday? It hardly seems possible that disconnecting the vote from the debate is a democratic step forward.

Again, it is no real trial. I do not even know if we will have a bill to deal with on the Thursdays remaining in this so-called trial period. No protocol has been established, as I said, for what happens when we do come to the vote. Will there be on the next day of sitting further debate before we have the vote? Who knows? Will the vote be held at the beginning of the day or at the end of the day? How does that all work? It is not at all clear to me. This has just not been thought through.

The other thing about Thursdays is that government members in particular constantly complain about the fact that we have committee meetings during sitting times and at other times between sittings and that we do not take the opportunity to use the Fridays at the end of a sitting week. I do not know how

many times I have been lectured about the apparent reluctance of senators to stay over on Thursday nights in order to do what is expected of them—that is, stay here on Fridays and do committee work. The signal being sent is that Fridays are not days on which we expect to work in Canberra.

The Democrats would like to see real reform in this area but not reform that would take away the need for us to be in this place and that would further diminish the importance of this chamber and of attendance in this place. We think real reform should be about making sure that there is more time given in general business to dealing with private senators' bills, that there is no fixed period within which the debate must be completed and that there is an opportunity for the vote to be taken on that legislation so that we can see how both government and opposition members—and other members of the crossbench—will vote. That is a reasonable ask, and we should move to a system which is not just dependent on individual senators making or not making a nuisance of themselves, on informal arrangements that might be a quid pro quo or on deals done over a range of matters that are often not transparent or obvious to the rest of the chamber. That is where we need reform to general business.

In replying to the comments about general business taking up so much time, there is general business and there is general business. We have spent a lot of time this afternoon talking about what is a critically important issue. It might not be government business, but it is about the business of the Senate and it is no less important than dealing with government business. If there is not enough time for government business, let us have that debate. Let us talk about longer sitting times if that is what is necessary. Let us talk about ways in which we can facilitate government legislation. But, as we know, for almost as long as I can remember govern-



ment business has been put up which is not necessary—either because we have rejected it in the past and are going to reject it again or because the government is not ready. Let us fix those problems so that we have an orderly sitting, particularly at the end of a parliamentary sitting, to deal with government business instead of talking about reform in general business time.

**Senator ROBERT RAY (Victoria) (6.08 p.m.)**—I thank Senator Allison for allowing these matters to proceed to debate today because, in the general tradition of the Procedure Committee, unless we have unanimous consent we do not put matters forward. Senator Allison has graciously allowed us to debate these issues here because other members of the committee felt strongly about it, and her dissent was noted in the report quite properly.

Senator Allison is a bit confused about one thing: the purpose of five people standing in their place. She says that there has hardly been any suspension of standing orders. That is true, but do you want to know why? Because it is a waste of time. Therefore, people allow formality and vote things down just to avoid a whole series of motions for the suspension of standing orders. What this rule does is empower people to challenge the formality of the motion. That is what it is about. Forget the dissembling from Senator Ian Campbell here today that this is just bringing it into line with urgency or MPI motions. We sat through the debate, so we know that is utter rubbish, and why that was put forward here today I have no idea. What we see as a problem in this chamber is an occasional or at times a persistent abuse of the formality process. As Senator Faulkner said, some motions are put up here that should never, ever be considered formally. They are complex and have foreign affairs knock-on complications. They should be challenged, they should be relegated to

somewhere else and not determined. That is precisely the reason this particular rule is being introduced. It is a fairly generous one. It does not set the bar too high, but it makes it a little more difficult to grandstand in this place.

Senator Allison talks about a reduction in democratic rights. If the procedures of this place are abused, all our democratic rights are reduced. That is the problem I have with this. Every time we leave a weakness in the standing orders, it is exploited by minority groups. Sometimes I think that is a good thing; sometimes it is a bad thing. This merely puts a brake on it. And, as we have pointed out, it will be tested over only a few parliamentary days. Senator Allison is quite right, though, when she says that usually when these things are tested they become an inevitability. There is an element of that, and that should be put on the record.

On the question of not having divisions after 4.30 on Thursdays, the reality of this chamber is that, if you do not want to take a vote on Thursday general business, you talk it out. There is nothing we can do about that. Governments often do it; sometimes oppositions do it. Therefore, it is irrelevant to say that we are curbing the rights of senators to have a vote on something. We are not at all. We are probably making it a little more likely. Senator Allison has said—and she might be right—that this may allow too many people to leave the chamber. That is up to the political parties. I have never shot through from here on a Thursday night, and neither has Senator Faulkner. A lot of us stay because we believe it is our duty to stay.

**Senator Patterson**—As do some of us on this side, too.

**Senator ROBERT RAY**—We have had only one vacuous contribution from your side, so I am glad you have doubled it, Senator Patterson. That was good of you.

**Senator Patterson**—It wasn't vacuous; it was fact.

**Senator ROBERT RAY**—The point being that I do not at all resent my Western Australian, North Queensland or Northern Territory colleagues heading off on a Thursday night, but I as a Victorian do not believe that I should go when the chamber sits potentially to 8.40 at night.

There have been a number of complaints—mostly from the Greens, the Democrats and other minority groups—that not enough time is devoted to general business. I am sympathetic to that. And herein lies the answer in my view. If we do not have divisions after 4.30, I cannot see any reason why general business—which currently runs between approximately 4.30 and 6 or earlier if we get to it—cannot run through to eight o'clock. This would allow the Labor Party to give up its almost monopoly on general business. I think the Democrats get a run once a year.

**Senator Murray**—Once or twice a year.

**Senator ROBERT RAY**—Same with the Greens—maybe once a year. It is very hard for us to go back to the other issue and say that, instead of considering this matter formally, you should put it to general business, because if there is no time in general business they are left in a catch-22 position. There is absolutely no reason in these circumstances, with no quorums after 4.30, that we could not run general business through to eight o'clock, then have documents, then have committee reports and then have the adjournment. Then you would be able to sit down and negotiate and say: 'I'm sorry, Democrats, but the Labor Party want first crack at this. We want from four o'clock to six o'clock to discuss it. But, by the way, after six o'clock your motion comes up.' Ironically, even though we have not got to a determination position, the no-quorum, no-

division rule at 4.30 may in fact greatly increase general business. I am certainly going to raise that proposal—I think I discussed it with Senator Allison informally once—at the next Procedure Committee meeting because I do believe we do not devote enough time to general business matters.

There is no question that the five people standing in their place rule slightly affects minority parties. The reason is that it was intended to—let us be honest—because we believe they are exploiting standing orders. It is not a massive hurdle to jump, and I hope people take a responsible attitude to it. It will mean that far more formal motions will be challenged and declared not formal, once this temporary standing order comes in. By having this rule as a sessional order, if something goes disastrously wrong with it, at least we can dump it.

**The ACTING DEPUTY PRESIDENT (Senator Chapman)**—The question is that paragraph (1) be agreed to.

Question agreed to.

**The ACTING DEPUTY PRESIDENT**—The question is that paragraph 2(a) be agreed to.

Question agreed to.

**Senator Allison**—Mr Acting Deputy President, I ask that the Senate record our no votes for that vote and the following one.

**The ACTING DEPUTY PRESIDENT**—That will be recorded. The question is that paragraph 2(b) be agreed to.

Question agreed to.

#### ANTI-TERRORISM BILL 2004

#### Report of Senate Legal and Constitutional Legislation Committee

**Senator EGGLESTON** (Western Australia) (6.17 p.m.)—On behalf of the Chair of the Senate Legal and Constitutional Legislation Committee, Senator Payne, I present the

report of the committee on the provisions of the Anti-terrorism Bill 2004, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**TRADE PRACTICES AMENDMENT  
(PERSONAL INJURIES AND DEATH)  
BILL (No. 2) 2004**

**In Committee**

Consideration resumed.

**Senator HARRADINE** (Tasmania) (6.17 p.m.)—I was going to go straight to the proposed amendment and seek some answers from the minister. I notice Senator Coonan is not here at present. I wanted to ask the minister a question about the effect of clause 87J, which appears on page 9. Clause 87J deals with the effect of minority or incapacity. It states:

In working out whether the period of 3 years after the date of discoverability, or the long-stop period, has expired, disregard any period during which the plaintiff has been:

- (a) a minor who is not in the custody of a capable parent or guardian; or
- (b) an incapacitated person in respect of whom there is no guardian, and no other person to manage all or part of the person's estate ...

Has the minister considered the essence of my proposed amendment? Does she consider that the amendment I am thinking about moving would not be necessary? The amendment that I am proposing reads:

- (3) Where a court is satisfied that a person is unable to commence a proceeding within 3 years because of factors which prevent the person commencing the proceeding such as:
  - (a) the person is a minor; or
  - (b) the person is incapacitated; or
  - (c) the person is 65 years of age or more;
 the court may extend the period of 3 years to 4 years.

My question to the minister is: is that already totally covered by 87J?

**Senator PATTERSON** (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.20 p.m.)—I think that Senator Harradine will know that this is not my area of expertise. However, I did come across some of these issues when we were addressing the medical indemnity issue. The senator has referred to two scenarios that he is particularly concerned about. The first scenario was that of a 12-year-old boy who was injured in a surgical procedure. I am advised this type of situation will already be covered by the bill we are debating today. Any period during which there is no guardian or capable parent to bring an action will be disregarded for the purpose of calculating the date of discoverability or long-stop periods. As an additional protection for a period when there is a capable parent or guardian, the date of discoverability will only be determined on the basis of facts that a capable parent or guardian knows or ought to know. If it could not be reasonably determined that an injury had occurred, an element of discoverability would not be met and time for commencing an action would not run.

The second scenario that Senator Harradine has raised was that of a one-month-old child injured in hospital due to negligence. Similar protections, I am advised, would operate for determining the date of discoverability in this situation as I have just outlined. In addition, similar protections would also operate to cover personal injuries and personal injury claims by incapacitated persons during any period without a guardian, assuming of course that the requirements for TPA liability could be met. There are adequate protections in place for each of these groups, assuming they can establish the additional requirements for TPA liability. I will

now leave the expert to take over. I am sure you will get much better answers.

**Senator HARRADINE** (Tasmania) (6.22 p.m.)—I think Senator Patterson filled the role perfectly. Clause 87J says the period does not start running where:

... an incapacitated person in respect of whom there is no guardian, and no other person to manage all or part of the person's estate, under a law of a State or Territory relating to the protection of incapacitated persons.

Minister, does the statement delivered by Senator Patterson apply to incapacitated persons?

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (6.23 p.m.)—Yes, that situation would apply. The whole scheme of the proposed section is to cover, appropriately, personal injuries claims by incapacitated persons during any period without a guardian. That, of course, assumes that the conditions for liability for the Trade Practices Act could be met. Provided someone could be liable, someone incapacitated will be protected for the period that they do not have a competent person to take action on their behalf.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

### Third Reading

**Senator COONAN** (New South Wales—Minister for Revenue and Assistant Treasurer) (6.25 p.m.)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [6.30 p.m.]

(The Acting Deputy President—Senator H.G.P. Chapman)

Ayes.....	43
Noes.....	9
Majority.....	34

### AYES

Abetz, E.	Barnett, G.
Bishop, T.M.	Brandis, G.H.
Buckland, G.	Campbell, G.
Chapman, H.G.P.	Colbeck, R.
Collins, J.M.A.	Cook, P.F.S.
Coonan, H.L.	Crossin, P.M.
Eggleston, A. *	Evans, C.V.
Faulkner, J.P.	Ferris, J.M.
Fifield, M.P.	Forshaw, M.G.
Hogg, J.J.	Humphries, G.
Hutchins, S.P.	Johnston, D.
Kirk, L.	Knowles, S.C.
Lundy, K.A.	Mackay, S.M.
Marshall, G.	Mason, B.J.
McGauran, J.J.J.	McLucas, J.E.
Moore, C.	O'Brien, K.W.K.
Patterson, K.C.	Payne, M.A.
Ray, R.F.	Santoro, S.
Scullion, N.G.	Stephens, U.
Tchen, T.	Troeth, J.M.
Watson, J.O.W.	Webber, R.
Wong, P.	

### NOES

Allison, L.F. *	Brown, B.J.
Cherry, J.C.	Greig, B.
Harradine, B.	Murray, A.J.M.
Nettle, K.	Ridgeway, A.D.
Stott Despoja, N.	

\* denotes teller

Question agreed to.

Bill read a third time.

**Sitting suspended from 6.33 p.m. to 8.00 p.m.**

### BUDGET

#### Statement and Documents

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (8.00 p.m.)—I table the budget statement for 2004-05 and also the following documents:

#### Budget papers—

No. 1—Budget Strategy and Outlook 2004-05.
No. 2—Budget Measures 2004-05.
No. 3—Federal Financial Relations 2004-05.
No. 4—Agency Resourcing 2004-05.

**Ministerial statements—2004-05**

Australia's international development cooperation 2004-05—Statement by the Minister for Foreign Affairs (Mr Downer), dated 11 May 2004.

Regional partnerships for growth and security—Statement by Minister for Transport and Regional Services (Mr Anderson), Minister for Local Government, Territories and Roads (Senator Ian Campbell), and Parliamentary Secretary to the Minister for Transport and Regional Services and the Minister for Trade (Ms Kelly), dated 11 May 2004.

A sustainability strategy for the Australian continent: Environment budget statement—Minister for the Environment and Heritage (Mr Kemp), dated 11 May 2004.

Rural and Regional Australia: Sustaining the nation 2004-05—Statement by the Minister for Agriculture, Fisheries and Forestry (Mr Truss), Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald), and Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth), dated 11 May 2004.

**Senator MINCHIN**—I seek leave to move a motion in relation to the budget statement and documents.

Leave granted.

**Senator MINCHIN**—I move:

That the Senate take note of the statement and documents.

Debate (on motion by **Senator Buckland**) adjourned.

**Proposed Expenditure****Consideration by Legislation Committees**

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (8.01 p.m.)—I table the following documents:

Particulars of proposed expenditure for the service of the year ending on 30 June 2005 [Appropriation Bill (No. 1) 2004-2005]

Particulars of certain proposed expenditure in respect of the year ending on 30 June 2005 [Appropriation Bill (No. 2) 2004-2005]

Particulars of proposed expenditure in relation to the parliamentary departments in respect of the year ending on 30 June 2005 [Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005].

**Senator MINCHIN**—I seek leave to move a motion to refer the particulars documents to legislation committees.

Leave granted.

**Senator MINCHIN**—I move:

That:

- (1) The particulars documents be referred to legislation committees for examination and report in accordance with the order of the Senate of 3 December 2003 relating to estimates hearings.
- (2) Legislation committees consider the proposed expenditure in accordance with the allocation of departments to committees agreed to on 11 November 1998, as varied on 13 February 2002.

Question agreed to.

**Portfolio Budget Statements**

**The PRESIDENT**—I table the portfolio budget statements for 2004-05 for the Department of the Senate and the Department of Parliamentary Services. Copies are available from the Senate Table Office.

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (8.02 p.m.)—I table portfolio budget statements for 2004-05 for portfolios and executive departments in accordance with the list circulated in the chamber. Copies are available from the Senate Table Office.

*The list read as follows—*

Agriculture, Fisheries and Forestry portfolio.

Attorney-General's portfolio.

Communications, Information Technology and the Arts portfolio.

Defence and Defence Housing Authority.  
 Education, Science and Training portfolio.  
 Employment and Workplace Relations portfolio.  
 Environment and Heritage portfolio.  
 Family and Community Services portfolio.  
 Finance and Administration portfolio.  
 Foreign Affairs and Trade portfolio.  
 Health and Ageing portfolio.  
 Immigration and Multicultural and Indigenous Affairs portfolio.  
 Industry, Tourism and Resources portfolio.  
 Prime Minister and Cabinet portfolio.  
 Transport and Regional Services portfolio.  
 Treasury portfolio.  
 Veterans' Affairs.

### Proposed Expenditure

#### Consideration by Legislation Committees

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (8.02 p.m.)—I table the following documents:

Particulars of proposed supplementary expenditure in respect of the year ending on 30 June 2004 [Appropriation Bill (No. 5) 2003-2004]

Particulars of certain proposed supplementary expenditure in respect of the year ending on 30 June 2004 [Appropriation Bill (No. 6) 2003-2004]

**Senator MINCHIN**—I seek leave to move a motion to refer the particulars documents to legislation committees.

Leave granted.

**Senator MINCHIN**—I move:

That the particulars documents be referred to legislation committees for examination and report, together with the particulars referred earlier today.

Question agreed to.

### Portfolio Budget Statements

**Senator MINCHIN** (South Australia—Minister for Finance and Administration)

(8.03 p.m.)—I table portfolio supplementary estimates statements for 2003-04 in accordance with the list circulated in the chamber. Copies are available from the Senate Table Office.

*The list read as follows—*

Communications, Information Technology and the Arts portfolio.

Employment and Workplace Relations portfolio.

Environment and Heritage portfolio.

Health and Ageing portfolio.

Immigration and Multicultural and Indigenous Affairs portfolio.

Prime Minister and Cabinet portfolio.

Transport and Regional Services portfolio.

Treasury portfolio.

### ADJOURNMENT

**The PRESIDENT**—Order! I propose the question:

That the Senate do now adjourn.

### Budget 2004-05

**Senator MURRAY** (Western Australia) (8.03 p.m.)—The budget speech I have just heard has left me speechless.

**Senator Faulkner**—Well, what are you making a speech for?

**Senator MURRAY**—That is a good point. There was so much pork in it that I feel absolutely full up, and it is very difficult to speak when you are full. There are not many things that surprise me as much as that budget did. I am going to focus on an area where I perhaps have more expertise than I have in some of the other areas that were covered. The area I want to discuss first is the tax cut area. It was obvious from last year's discourse by the Leader of the Opposition, who was then shadow Treasurer, by the Prime Minister and by the Treasurer that big tax cuts were inevitable. It was the Australian Democrats' view that the way to approach tax cuts was to lower the rate and



broaden the base. I heard discussion today about lowering the rates for higher and middle income earners, but those higher and middle income earners who benefit from a lower rate for themselves did not have that paid for by broadening the base. The Democrats believe that to address issues of equity in tax you need to begin with low income earners. On that basis we have been arguing for a significant increase in the tax free threshold rate from its present level of over \$6,000 to somewhere up to \$10,000. I remind the chamber that it would have cost around \$18 billion to raise the tax free threshold to \$20,000.

However, the government has not gone that route. So we are faced with a circumstance where the government is going to bring to the Senate a tax cut regime that will need Senate approval. There are only two parties which can make that happen. The Greens will have a lot to say but will have absolutely no effect. I would remind the media that, until 1 July 2005 and even then depending on the outcome of the election this year, the Greens will continue to have no effect on deliberations of this kind. If you look at the Greens record over the last number of years, you will find that they are best characterised by saying no, but whether they say no or yes has been irrelevant in numerical terms, although not irrelevant in political terms. I acknowledge Senator Brown and Senator Nettle as being extremely capable in political terms but in numerical terms on legislation they will be irrelevant not only for this budget but for the next budget. So it is left to Labor and us. If Labor agree with the government's tax cuts recommendation, through it will go. If Labor disagree, it will be up to us, and I can assure the government that we will want more attention paid to low-income earners. It is not that we do not recognise the virtue of assisting middle-income

earners, but we think low-income earners have the priority.

In turning to issues of tax and spend, the Democrats believe that the priority for expenditure is on those issues which consumers and voters feel very strongly about, namely health and education. I would note that the budget speech did address new expenditure in both those areas, some of which looked pretty attractive. But the issue for us has always been how we would pay for them. The Democrats have been at pains over many years to be very precise about our ability to pay for matters that are important to the community's needs, and we have not been afraid to put our money where our mouth is. It was the Democrats, with the coalition, who provided what is now nearly \$30 billion worth of revenue through the GST. That was opposed, as you would recall, by both the Labor Party and the Greens, yet both parties—like us—demand extra expenditure in health and education. I am absolutely certain that there is no possibility whatsoever that Labor will ever walk away from the GST because of the certain income stream which has been guaranteed for essential expenditure in the states. The Greens, however, have a policy of abolishing the GST.

All these thoughts were brought to my mind by one of those powder puff interviews which it seems Senator Brown often receives these days. In this case it was the *Sunday Sunrise* interview on Channel 7 by its chief political correspondent, Mark Riley. I know there is no-one in this chamber more capable of combating tough questioning and being able to handle himself—Senator Brown is no baby—but this powder puff interview was quite extraordinary because not only did they fail to elicit the fact that Senator Brown and Senator Nettle cannot influence any of the legislative outcomes which will emerge from the budget but they failed to ask the most basic of questions. Senator Brown, quite



rightly, pushed hard for greater expenditure on health, education and other areas. The next question that should have been asked—and was not—was: ‘How are you going to pay for that?’

There are ways of paying for that. One of the ways the Greens do intend to pay for it is by increasing taxes quite considerably. They opposed the reduction in corporate taxes which Labor and the Democrats supported. Those reductions were accompanied by broadening the base and, as a result, the increase in corporate taxation since that date has been quite extravagant. It has been very, very significant. I do not think the Greens at that time understood that that would be the consequence, and I do not think they understand that if they abolish the GST, as they choose to do, they are going to have to raise direct taxes by the \$30 billion that they would so save. So I would expect an interviewer like Mark Riley, who is not inexperienced, to ask a few tough questions like: ‘You want to do this, that and the other. How are you going to pay for it? What are you going to do? What are your views on taxation? And do you have or are you likely to have the numbers to deliver those outcomes?’ I am sure, knowing Senator Brown and his abilities, he would have had an answer for those questions, but those questions were not asked.

That means that the Democrats and Labor will be left with the choice of determining the Senate view not only for this budget but for the 2005 budget, and on this budget hangs a great deal because it is a huge budget and a very significant expenditure leap for the government. I look forward hopefully to the challenge of negotiating with the Treasurer on these matters—that is, if Labor opens the door and gives us the opportunity to do so.

### **Anzac Day: Gallipoli**

**Senator FORSHAW** (New South Wales) (8.13 p.m.)—Tonight I rise to make some remarks regarding the Anzac Day ceremonies in Gallipoli this year, which I was very privileged to attend. I note that my colleague Senator Bishop, who is here in the chamber, was there representing the opposition in his capacity as shadow minister for veterans’ affairs. It is truly a ceremony that each year many Australians find moving and memorable, and I certainly had that same experience.

Despite the official warnings in the travel advisories from the Department of Foreign Affairs and Trade, it was estimated that some 12,000 to 15,000 people, mostly Australians, attended the ceremonies. That is particularly significant, given the increased security requirements that were in place at Gallipoli and of course throughout the world. Indeed, it appears that the travel advisories warning Australians not to undertake unnecessary travel to Turkey had, if anything, the opposite effect, as this was one of the largest crowds ever in attendance at Anzac Cove. On 25 April, Anzac Day, four ceremonies are held. The first of course is the dawn service at Anzac Cove. It was a bitterly cold night, it was windy and there had been rain. But that did not prevent the many thousands of Australians—many of them young people, but I also met some elderly Australians—from braving the elements that night and the following morning to attend. Indeed, it has become synonymous with the ceremonies at Anzac Cove on Anzac Day that many people camp at the site overnight. It was a serene site indeed to see the candles and the torchlights flickering amongst the hills as we waited for dawn to break.

Anzac Cove and the Gallipoli peninsula itself are largely untouched, except for the memorials and the graves of so many known and so many more unknown soldiers who

died on both sides of the conflict in 1915. The weather, the distances that people had to travel and the terrain, as I said, did not deter those from attending the ceremonies. You get the clear feeling in this special place that the elements people may have had to endure for a few hours were so insignificant compared to those endured by the original Anzacs, by the allied soldiers and by the Turkish soldiers defending their country in 1915.

It may sound trite or maudlin, but you certainly feel that you are standing on sacred ground. Because of the increased security arrangements this year, many of those attending—unlike those of us in the official party who had the privilege of being able to access the site in a much easier way by car, boat or coach—had to walk kilometre after kilometre, firstly to the Anzac Cove service itself and then to each of the ceremonies that took place at different locations. I understand that people walked between 15 and 20 kilometres throughout the day to attend each ceremony.

The next ceremony of course is the special one held at Lone Pine, which is significant for Australia. That morning I heard one of the best speeches I have ever heard at an Anzac Day service, or indeed at any other commemorative service, given by Ambassador Jonathan Philp. It was inspirational and it captured perfectly the atmosphere of remembrance and celebration. I quote some words from Ambassador Jonathan Philp's speech. He commenced by saying:

More than 2000 years ago, and not far from here, Pericles said of his nation's dead: "Monuments may rise and tablets be set up to them in their own land, but on far-off shores there is an abiding memorial that no pen or chisel has traced; it is graven not on stone or brass, but on the living hearts of humanity. Take these men for your example".

Ambassador Philp went on to speak about the development of a generosity of spirit between the Australians, other allied soldiers

and the Turkish soldiers that occurred in the tragic battle. He said:

It is the Turkish spirit of generosity and reconciliation that has led to the creation of this Gallipoli National Peace Park, and I wish particularly to thank you for the hospitality you show us all during these days of commemoration each year; and for the security you have provided in these difficult times to ensure our services are conducted peacefully.

In 1991, the last surviving Anzacs were asked how their opinions of the Turks had changed at Gallipoli. Most had no opinion before they came. One man, Albert Kyle, who was stationed here at Lone Pine, said he had heard the Turks were barbarians who took great delight in slaughtering. But once at Gallipoli, he found, in his words, that they were "brave, enterprising and humorous". Others called them "clean fighters", "valiant, honest soldiers", men who "fought tenaciously, fairly and were to be treated with respect". The Australians thought the Turks badly fed, but they happily accepted the Turkish cigarettes thrown to them in exchange for food. When they finally departed the Peninsular, some Australians left a meal ready for their enemy. It is strange to us that they should have taken breaks from trying to kill each other to throw notes and presents from trench to trench, but it is a mark of the respect the Anzacs and the Turkish soldiers had for each other.

In his closing remarks, Ambassador Philp said:

This place is Turkish today. The Turks fought bitterly in 1915 to keep it theirs, and no Australian will come again to claim the land. Instead we claim their hospitality, which they give generously, and together we remember the terrible experience we shared here, and the spirit, the legend of the Anzacs, and of Ataturk and his men.

It is important to note that Turkey has renamed the landing beach at North Beach, Gallipoli as Anzac Cove. And it was Mustafa Kemal Ataturk himself who, in 1934, said these now famous and moving words:

Those heroes that shed their blood and lost their lives ... You are now lying in the soil of a

friendly country. Therefore rest in peace. There is no difference between the Johnnies and the Mehments to us where they lie side by side here in this country of ours ...

You, the mothers, who sent their sons from far away countries, wipe away your tears; your sons are now lying in our bosom and are in peace. After having lost their lives on this land they have become our sons as well.

I quote those words particularly because we will all recall that last year there were some very offensive and inaccurate reports in the Australian media about supposed plans by the Turkish authorities to charge admission fees to people attending the services. Those claims were totally wrong, and the people who wrote those articles should be ashamed of themselves. One thing you experience when you attend these ceremonies is the generosity of spirit and the hospitality and respect shown by the Turkish authorities to this special place for Australia and New Zealand.

I conclude by thanking the Minister for Veterans' Affairs, Mrs Danna Vale, and the Minister for Defence, Senator Robert Hill, who was in attendance at the ceremonies. I also thank Air Vice-Marshal Gary Beck of the Office of Australian War Graves, the Australian Ambassador to Turkey, Jon Philp, and all those others associated with the services this year. As I said, it was great privilege to attend and a moment I will never forget. I note that next year is the 90th anniversary of the landing of 1915, and that indeed will be a memorable experience for those who attend.

#### **Budget 2004-05**

**Senator BARTLETT** (Queensland—Leader of the Australian Democrats) (8.24 p.m.)—I would like to speak tonight about the situation facing the Senate over the next month or so in particular, and potentially over the next few months, depending on the decisions of the Prime Minister. Unfortu-

nately, it is pretty much totally in the hands and the mind of the Prime Minister as to when he decides to call an election. That is not a situation that the Democrats like. We believe we should have fixed terms. Nonetheless, that is not a situation we have.

The budget tonight has of course increased speculation that arrangements are being made to set things up for an August election. That may be the case and it may not. From the point of view of the Democrats, I assure the public and the Senate that we will continue to do our job regardless and at the pace necessary to ensure that the responsibilities of the Senate are fulfilled—that is, the appropriate and complete scrutiny of all of the budget proposals. It should be emphasised that the budget is simply a range of proposals. It is a bunch of proposed spending measures contained in appropriation bills and other proposed revenue and expenditure measures that will be brought forward later in other pieces of legislation. It is constitutionally appropriate, and indeed important, that the Senate fulfils its function of examining those proposals.

The Treasurer made a fair bit of note, as Treasurers are wont to do, of the good economic fundamentals underpinning this budget and of the current economic situation of the country. I would have to say that there are some good economic fundamentals underpinning this budget and that good, sound economic management is important. That is why the Democrats have always emphasised the need to be responsible in our balance of power role in the Senate. As part of acknowledging that there are some good, sound economic fundamentals, the Senate should take an appropriate degree of credit for those fundamentals. The government cannot have it both ways: it cannot complain that the Senate stops it from doing its job but when the Senate does pass all those different legislative and expenditure measures and eco-

conomic levers that enable these conditions to come into place say that it is all the government's doing and that the Senate had nothing to do with it. Of course the Senate has had an essential role, as it should, in ensuring that the overall appropriate balance of economic, social and environmental priorities is as right as is possible.

So, given that we have held that key balance of power role for many years now, sometimes on our own and sometimes in a shared capacity, the Democrats unashamedly assert some credit for some of the good economic components and underpinnings that this budget outlines. As we never tire of saying, there is a lot more to good governance than a nice set of statistics. The fact is that the strong call from a large proportion of the community for significant resourcing and investment in services for the entire community has been pretty much totally ignored by this government, and that is a grave disappointment. In a range of areas the Democrats outlined and costed responsible measures as proposals that could be put forward by this government to invest public money back into the overall public good. The ongoing gaps in Medicare, the continual problem of affordable housing, the problem of inadequacies in education, university costs, ongoing support for training and the lack of investment in the environment have all been pretty much ignored in this budget, and that is a grave disappointment and a major failing. Indeed, for a government that started out eight years ago talking about budget honesty, the degree of dishonesty and doublespeak contained in all the budget materials seem to get worse every year.

The budget for the environment is a classic case: there is virtually no significant new money, and any significant extra amounts are three or four years into the future. Most of the other amounts are, to use that quaint phrase, 'reprioritised money', which is a nice

phrase for stripping money from one program and putting it into something else—rebadging it and making it sound as though you have a great new spending measure. This environment budget is littered with those. We have something that at first glance looks good in terms of extra resources for the Great Barrier Reef. I know that that is an area dear to your heart, Madam Acting Deputy President McLucas, and it is also an area that the Democrats have campaigned on long and hard. We have given the government credit for expanding the number of protected areas—as I am sure Senator Ian Macdonald would acknowledge, also coming from that part of Queensland. But we also called for extra resources to ensure that those extra protected areas were properly managed.

Some of that extra money will be provided to the marine park authority, and that is welcome, but what we find it is that that money has been taken out of the existing funding for the Natural Heritage Trust. We also find that the only new money has been provided to be paid to commercial fishers to restructure them and compensate them for their inability to fish in those areas. It is appropriate that they get money, but that money comes from the environment budget; it does not come from the forestry and fisheries budget. There is extraordinary deceit and false labelling throughout this budget. I am sure that we will find more over the coming month or so as the Senate does its job of scrutinising it.

As I have emphasised, the Senate and the Democrats unashamedly take some of the credit for the positive economic position that this country is in. That is because of the responsible role that we and the Senate have played, and we will continue that approach. We will take a responsible, constructive approach and do our job. Our job means scrutinising the expenditure, as we do and as the Labor Party does. It also means examining

the proposals, and that includes the proposed income tax cuts. Doing our job means not supporting unfair measures—measures that will increase the gap between rich and poor. I find it extraordinary that everybody earning less than \$52,000 a year will get nothing in terms of income tax relief. Instead, those people will get family assistance. The family assistance changes are positive overall, but they still fall short of the fundamental of putting in place a workplace entitlement of paid maternity leave. It astonishes me that this government continues to avoid that fundamental.

The Democrats will expand further and respond more fully at the usual time—on Thursday evening—with our more comprehensive budget reply. But, given the prospect of the Prime Minister putting an early election in front of the Senate—trying to bully and rush us into passing these measures so he can give out his big handouts to people in the lead-up to the election—I simply say that, while we will not hold things up, we are certainly not going to be rushed in doing our job. We are not going to rush through measures to meet the Prime Minister's electoral timetable or fit in with what suits his electoral needs in terms of doling out the cash grants leading up to an election. We will do it at the appropriate pace to ensure proper scrutiny.

There is all this talk about tax relief for middle- and high-income earners. We have not said that we will be obstructionist and oppose all income tax changes. We have acknowledged that income tax relief for middle Australia, middle-income workers and lower income people is welcome and desirable. But we need to look at what a middle-income earner actually is. The change that the Prime Minister wants to bring in from 1 July relates to people who earn more than \$70,000. According to statistics from August 2002, only 20 per cent of people earn \$1,000 a week

through employment income. So only 20 per cent of people actually earn over \$50,000-odd a year—or perhaps \$55,000 a year, to adjust a bit since those statistics came out. A lot of people below that income are missing out. Also, let us not forget single-income people without children, who will not even get the benefits of the extra family payments. There are a lot of gaps here for lower income people. That is what we will focus on before we determine the most responsible approach for the Senate to take in response to some of the key measures in this budget.

**Senate adjourned at 8.35 p.m.**

**QUESTIONS WITHOUT NOTICE:  
ADDITIONAL ANSWERS**

**Health: Parkinson's Disease**

**Senator IAN CAMPBELL** (Western Australia—Minister for Local Government, Territories and Roads)—I have further information in answer to a question asked by Senator Allison on 29 March 2004 concerning Parkinson's Disease. I seek leave to incorporate the answer in *Hansard*.

Leave granted.

*The answer read as follows—*

**SENATOR ALLISON**—My question is directed to Senator Campbell, representing the Minister for Health and Ageing.

Is the Minister aware that Parkinson's is the second most common degenerative neurological condition after Alzheimer's, with 40,000 people suffering from the disease? Given the emphasis this government has placed on challenges facing Australia as our population ages, what resources have been made available to people suffering from this disease? Can the minister explain why the state based support groups for Parkinson's sufferers and their carers receive no federal funding, while for instance, the multiple sclerosis societies, also very worthwhile organisations, do? Can the minister confirm that while MS sufferers receive on average \$1,200 in annual funding, sufferers of Parkinson's Disease set just \$2?

**Supplementary question**

I asked the minister to explain why the State based support groups for Parkinson's sufferers and their carers receive no federal funding while, for instance, the multiple sclerosis societies, also very worthwhile organisations, do. Can the minister go back to the question that I ask and explain why there is this difference?

**SENATOR IAN CAMPBELL**—The Minister for Health and Ageing has provided the following answer to the honourable senator's question:

The Department of Health and Ageing is unaware of any funding being provided to MS Societies through its programs.

For your information, the Minister for Health and Ageing, the Hon Tony Abbott has approved the establishment of the Neuroscience Consultative Task Force and associated expenditure. This is the Australian Government's main response to the Prime Minister's Science, Engineering and Innovation Council (PMSEIC) Brain and Mind Disorders! Impact of the Neurosciences report.

The report finds that brain and mind disorders pose the highest health, economic and social capital attrition burden to Australia of any disease group. These disorders will require novel means of prevention and cost-effective treatment achieved through intensified cross-disciplinary scientific research in order to understand their biological basis.

The Neuroscience Consultative Task Force will integrate neuroscience and psychiatric research with social science, frontier technologies and industry to help position Australia's scientific capacity to reduce the burden of brain and mind disorders, including Parkinson's disease.

**Health: Codalgin Forte**

**Senator IAN CAMPBELL** (Western Australia—Minister for Local Government, Territories and Roads)—I have further information in answer to a question asked by Senator Allison on 31 March 2004 concerning the prescription drug Codalgin Forte. I seek leave to incorporate the answer in *Hansard*.

Leave granted.

*The answer read as follows—*

**SENATOR ALLISON**—My question is directed to Senator Campbell, representing the Minister for Health and Ageing.

Can the Minister explain why consumers were not told that some batches of the prescription drug, Codalgin Forte, lacked its most important ingredient Codeine, despite the fact that a recall of 240,000 packages was ordered? Is the Minister aware that pharmacists say that patients who do not know about this problem may be upping their dose to get the pain relief that they need and that this has the potential to cause liver damage? Is the Minister aware that pharmacists are also concerned that these patients may be in great danger of overdose and breathing difficulties if they now take Codalgin Forte with codeine? Why has the TGA failed to provide consumers with potentially life saving information?

Given the massive recall undertaken with Pan Pharmaceuticals where, in fact, no contamination or danger in natural supplement tablets or capsules was ever detected, can the Minister assure us that the lack of public recall here—when we know there was, in fact, a real danger and a real safety and quality issue—is not due to the fact that Sigma is a business at the big end of town?

**SENATOR IAN CAMPBELL**—The Minister for Health and Ageing has provided the following answer to the honourable senator's question:

Sigma Pharmaceuticals initiated a retail-level recall of the medicine Codalgin Forte (containing paracetamol and codeine phosphate), which is used as an analgesic, because of problems associated with the manufacture of the medicine.

It was discovered that a small percentage (<1%) of Codalgin Forte tablets were erroneously substituted with tablets containing only paracetamol as the active ingredient.

There were no safety issues leading to this recall. There could have been issues around pain management for some patients. It is true that the addition of codeine does improve pain control for most patients, above that expected from paracetamol alone. All doctors and pharmacists were informed of the nature of the recall by Sigma, so they could take this into account in pain management decisions for patients present-

ing with residual pain. Codalgin Forte is a prescription medicine, so most patients would go back to their doctor or pharmacist if they were experiencing problems.

A consumer level recall was not initiated because there was no risk of injury from the lack of codeine, and, as a prescription medicine, patients on Codalgin Forte would be under supervision of health professionals. Given the small extent of substitution a large number of patients could have been unnecessarily inconvenienced by a consumer level recall.

Unlike the circumstances surrounding the recent recall of products manufactured by Pan Pharmaceuticals, this recall was initiated by Sigma. There is no evidence of fraudulent behaviour on behalf of the company, and Sigma have been open and honest about the circumstances surrounding the recall of the medicine.

The recall arose when a pharmacist advised Sigma on 23 February that a consumer had found a paracetamol tablet in their pack of Codalgin Forte. Sigma advised the Therapeutic Goods Administration (TGA) on the same day and voluntarily ceased operations at its Croydon Mount Dandenong Road site immediately.

Sigma worked over the next few days with the TGA, to investigate the cause of the problem and to identify whether there was a need for any recall action. It was found that this was an isolated incident, where 13 000 paracetamol tablets were mixed with 1.4 million Codalgin Forte tablets.

Both Sigma and the TGA agreed that the plant affected would not reopen until both were satisfied that all issues had been addressed. Sigma had also agreed with TGA that it would not ship any stock from its Croydon site until the matter was resolved. The issue is now resolved, with action undertaken to prevent recurrence, and manufacturing has recommenced.

This is how it should work when companies are acting responsibly. Problems that may arise are identified early, remedial action is taken, and steps are put into place to prevent recurrence. The contrast with Pan Pharmaceuticals couldn't be greater.

Senator Allison's question suggests there was no danger posed by the Pan Pharmaceuticals' products. Clearly there is danger when:

- The endemic bad practices of the manufacturing company, Pan Pharmaceuticals, included:
  - substitution of ingredients
  - falsification of records to say products contained ingredients in the specified amounts when they did not
  - no testing of the quality and quantities of ingredients before manufacture and records fraudulently produced to say final product testing had been undertaken
  - no cleaning of machines between batch runs, which produced the possibility of the contamination of some low-risk products with prescription medicine ingredients and even veterinary medicines.

An example of a dangerous outcome from these practices is where Pan products, claiming to have the necessary amount of folate in them to prevent neural tube defects if taken by women before and immediately after pregnancy, do not contain the required 'levels of folate'.

- The expert advisory group, comprised of five Professors plus the Chair of the Medicines Evaluation Committee, all expert and eminent in their field, stated 'that the multiple failures of GMP identified in the auditors' report, in the opinion of the Expert Advisory Group, create risks of death, serious illness, and serious injury ... and that the risk will increase over time and that the risk could be realised at any time'.

The risks posed by the Pan products was best summed up by The Business Review Weekly article of 4-10 October 2004 with its story of the Clover Corporation clinical trial, which was testing whether increasing doses of omega 3 fatty acids in pregnancy reduced the likelihood or symptoms of post-natal depression. The sunflower oil capsules were to be given to the placebo group. To make the capsules, Pan used tuna oil that Clover had delivered to it in August 2002. The sunflower oil was from Pan's own stock. But when the university took delivery of the capsules,



the contents of the sunflower and tuna oil capsules were rancid. In addition—unknown to Clover—in the process of making the capsules, the tuna oil had been diluted with sunflower oil. Clover had to recall the capsules.

## DOCUMENTS

### Tabling

The following government documents were tabled:

Department of Immigration and Multicultural and Indigenous Affairs—Access and equity report for 2003.

*Native Title Act 1993*—Native title representative bodies—Central Land Council—Report for 2002-03—Addendum.

*Tobacco Advertising Prohibition Act 1992*—Report for 2003 pursuant to section 34A of the Act.

Trade 2004—Statement by the Minister for Trade (Mr Vaile).

### Tabling

The following documents were tabled by the Clerk:

Aboriginal and Torres Strait Islander Commission Act—Review panel convened by the Minister under section 141—Final boundary recommendations.

Aged Care Act—Determinations under section 52-1—ACA Ch. 3 No. 2/2004-ACA Ch. 3 No. 4/2004.

Australian Bureau of Statistics Act—Proposal No. 3 of 2004.

Australian Postal Corporation Act—Regulations—Statutory Rules 2004 No. 58.

Christmas Island Act—Regulations 2004 No. 1 (*Water Agencies (Powers) Act 1984* (WA) (CI)).

Civil Aviation Act—

Civil Aviation Safety Regulations—Airworthiness Directives—Part—

105, dated 22 and 25 March; and 1 [13], and 2 [26] April 2004.

107, dated 1 [3] April 2004.

Civil Aviation Regulations—

Exemption No. CASA EX19/2004.

Instruments Nos CASA 113/04, CASA 131/04, CASA 138/04, CASA 161/04, CASA 169/04, CASA 190/04 and CASA 195/04.

Class Rulings CR 2004/30-CR 2004/44.

Cocos (Keeling) Islands Act—Regulations 2004 No. 1 (*Water Agencies (Powers) Act 1984* (WA) (CKI)).

Crimes (Overseas) Act—Regulations—Statutory Rules 2004 No. 61.

Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act—Regulations—Statutory Rules 2004 No. 62.

Criminal Code Act—Regulations—Statutory Rules 2004 No. 83.

Customs Act—Regulations—Statutory Rules 2004 No. 72.

Defence Act—Determination under section—

58B—Defence Determinations 2004/9-2004/17.

58H—Defence Force Remuneration Tribunal—Determinations Nos 2 and 3 of 2004.

Defence Force (Home Loans Assistance) Act—Declaration of Warlike Service (Operation Tanager), dated 1 April 2004.

Diplomatic Privileges and Immunities Act—Diplomatic Privileges and Immunities Regulations—Certificates under regulation 5A, dated 30 March 2004 [2].

Disability Services Act—

Disability Services (Eligibility—Wage Phase-in Services and Targeted Support Services) Standards 2004.

Disability Services (Eligible Services) Approval 2004.

Environment Protection and Biodiversity Conservation Act—

Instrument amending list of—

- 
- Exempt native specimens under section 303DB, dated 24 March 2004.
- Specimens suitable for live import under section 303EB, dated 18, 24 and 31 March 2004.
- Pulu Keeling National Park—
- Comments on representations on the draft management plan.
- Management Plan [second].
- Federal Magistrates Act—Rules of Court—Statutory Rules 2004 No. 54.
- Financial Management and Accountability Act—Regulations—Statutory Rules 2004 No. 57.
- Fisheries Management Act—
- Heard Island and McDonald Islands Fishery Management Plan 2002—Directions Nos HIMIFD 5-HIMIFD 8.
- Regulations—Statutory Rules 2004 No. 70.
- Fisheries Management Act and Fishing Levy Act—Regulations—Statutory Rules 2004 No. 71.
- Foreign Evidence Act—Regulations—Statutory Rules 2004 No. 63.
- Goods and Services Tax Determination GSTD 2004/2.
- Goods and Services Tax Rulings GSTR 2004/2 and GSTR 2004/3.
- Great Barrier Reef Marine Park Act—Regulations—Statutory Rules 2004 No. 60.
- Hazardous Waste (Regulation of Exports and Imports) Act—Regulations—Statutory Rules 2004 No. 73.
- Health Insurance Act—
- Health Insurance (Amendment) Determination HS/04/2004.
- Health Insurance (Eligible Collection Centres) Approval Principles 2004.
- Health Insurance (Indium-labelled Octreotide Study) Determination HS/03/2004.
- Health Insurance (LeukoScan) Determination HS/02/2004.
- Regulations—Statutory Rules 2004 Nos 64-67 and 75-77.
- Higher Education Funding Act—Determination under section 15—Determination No. T12-2004.
- Income Tax Assessment Act 1936*—Regulations—Statutory Rules 2004 No. 80.
- Lands Acquisition Act—Regulations—Statutory Rules 2004 No. 82.
- Medical Indemnity (Prudential Supervision and Product Standards) Act—Regulations—Statutory Rules 2004 No. 81.
- Migration Act—
- Direction under section 499—Direction No. 34.
- Statement for period 1 July to 31 December 2003 under section—
- 33, dated 24 March 2004.
- 91L, dated 24 February 2004 [2].
- Miscellaneous Taxation Ruling MT 2004/D1 (Draft).
- Motor Vehicle Standards Act—Motor Vehicle Standards (Approval to Place Used Import Plates) Determination 2004.
- National Health Act—
- Declarations Nos PB 5-PB 7 of 2004.
- Determination—
- AOS5/2004.
- No. PB 8 of 2004.
- PHB 2/2004, PHB 4/2004 and PHB 5/2004.
- Petroleum Excise (Prices) Act—Regulations—Statutory Rules 2004 No. 69.
- Product Ruling—
- PR 2002/140 (Notice of Withdrawal).
- PR 2003/67 (Addendum).
- PR 2004/35-PR 2004/53.
- Product Stewardship (Oil) Act—Regulations—Statutory Rules 2004 No. 74.
- Remuneration Tribunal Act—Determination—
-

2004/3: Official Travel by Office Holders.

2004/4: Official Travel by Office Holders.

2004/5: Members of Parliament—Travelling Allowance.

2004/6: Remuneration and Allowances for Holders of Public Offices.

2004/7: Parliamentary Office Holders—Additional Salary.

2004/8: Remuneration and Allowances for Holders of Public Offices.

2004/9: Specified Statutory Officers—Remuneration and Allowances.

2004/10: Members of Parliament—Entitlements.

Report No. 1 of 2004—Ministers of State—Salaries Additional to the Basic Parliamentary Salary.

Social Security Act—Social Security (Attribution of Income—Ineligible Deductions) Determination 2004.

Space Activities Act—Regulations—Statutory Rules 2004 No. 79.

Spam Act—Regulations—Statutory Rules 2004 No. 56.

Taxation Determination—

TD 92/124 (Addendum) and TD 92/161 (Notice of Withdrawal).

TD 2004/4—TD 2004/13.

Taxation Ruling TR 2004/3.

Telecommunications Act—Regulations—Statutory Rules 2004 No. 59.

Telecommunications (Numbering Charges) Act—Telecommunications (Amounts of Annual Charge) Determination 2004.

Therapeutic Goods Act—

Regulations—Statutory Rules 2004 No. 78.

Therapeutic Goods Orders Nos 61A and 72.

Trans-Tasman Mutual Recognition Act—Regulations—Statutory Rules 2004 No. 68.

Veterans' Entitlements Act—Instrument under section 90—Veterans' Entitlements (Treatment Principles—Community Nursing Guidelines Repeal) Instrument 3/2004.

### PROCLAMATIONS

Proclamations by His Excellency the Governor-General were tabled, notifying that he had proclaimed the following provisions of Acts to come into operation on the dates specified:

*Health Legislation Amendment (Private Health Insurance Reform) Act 2004—*

(a) item 58 and items 67 to 69 of Schedule 1—23 April 2004; and

(b) items 1 to 24 and items 25 to 27 of Schedule 1—1 July 2004.

(*Gazette* No. S 125, 22 April 2004).

*Navigation Act 1912—*Division 12C of part IV—27 May 2004 (*Gazette* No. GN 17, 28 April 2004).

*Protection of the Sea (Prevention of Pollution from Ships) Act 1983—*Division 2 of Part IIIB—27 May 2004 (*Gazette* No. GN 17, 28 April 2004).

*Workplace Relations Amendment (Improved Remedies for Unprotected Action) Act 2004—*Schedule 1—30 April 2004 (*Gazette* No. GN 17, 28 April 2004).

*Workplace Relations Amendment (Transmission of Business) Act 2004—*Schedule 1—30 April 2004 (*Gazette* No. GN 17, 28 April 2004).

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**QUESTIONS ON NOTICE**

The following answers to questions were circulated:

**Drought: Exceptional Circumstances Declarations****(Question No. 628)**

**Senator McLucas** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 13 September 2002:

- (1) How many applications for Exceptional Circumstances (EC) declarations have been lodged since 1996.
- (2) How many applications have resulted in EC declarations.
- (3) With respect to EC declarations, can the following information be provided: (a) the source of the applications (state government or peak body); (b) the geographic regions or industries concerned; (c) the dates on which the applications were lodged; and (d) the dates on which the declarations were made.
- (4) Were any EC declarations made concerning geographic regions contained wholly or partly within the electorates of Gwydir or Wide Bay.
- (5) With respect to unsuccessful applications, can the following information be provided: (a) the source of the applications (state government or peak body); (b) the geographic regions or industries concerned; (c) the dates on which the applications were lodged; and (d) the dates on which the decisions to refuse the declarations were made.
- (6) Of the unsuccessful applications, were any made concerning geographic regions contained wholly or partly within the electorates of Gwydir or Wide Bay.
- (7) With respect to all unsuccessful applications, has the Government provided other special assistance, including ex gratia income support, to the regions or industries identified in the applications.
- (8) Was any such special assistance given to geographic regions contained wholly or partly within the electorates of Gwydir or Wide Bay.
- (9) Have there been any occasions since 1996 in which the Government has not accepted the recommendation of the Rural Adjustment Scheme Advisory Council (RASAC) or the National Rural Advisory Council (NRAC) in respect to EC applications; if so, can details of these occasions and the applications concerned be provided.
- (10) Have there been any occasions since 1996 in which EC applications have not been subject to an independent assessment by the RASAC or NRAC; if so, can details of these occasions and the applications concerned be provided.
- (11) In the case of each EC declaration: (a) what was the income threshold used; (b) did all applications meet the income threshold criterion; if not, can details be provided where applications for an EC declaration were made despite the income threshold not being met; and (c) for each of these applications: (i) what was the income level identified in the application, and (ii) what was the applicable income threshold.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

- (1) Between 29 March 1996 and 25 March 2004, there have been 115 applications for Drought Exceptional Circumstances (DEC) and/or EC assistance.
- (2) 73.

(3) The following Table provides the requested information for all EC declarations.

Number	(a) Application Source	(b) Geographic Regions	(c) Lodgement Date	(d) EC Declaration Date
1	NSW Government	Balranald, Cobar, Nyngan (part), Wilcannia and Bathurst (part) RLPBs	29-03-96	13-06-96
2	VIC Government	South and West Gippsland	28-05-97	29-07-97
3	QLD Government	South Burnett Region	12-06-97	29-08-97
4	NSW Government	Monaro Region A	19-09-97	24-02-98
5	VIC Government	East Gippsland	05-01-98	30-03-98
6	Tasmanian Government	Flinders Island	27-01-98	08-04-98
7	NSW Government	Monaro Region B	09-02-98	08-04-98
8	NSW Government	Monaro Region C	25-06-98	30-08-98
9	NSW Government	Wentworth RLPB and part of the Broken Hill RLPB	22-07-98	15-09-98
10	VIC Government	East Gippsland extension	17-08-98	04-03-99
11	NSW Government	Batlow Region C	22-03-99	07-07-99
12	VIC Government	Millewa and the eastern and southern part of the Mallee	31-05-99	03-08-99
13	Tasmanian Government	Central Highlands region	18-08-99	25-05-00
14	Tasmanian Government	Annex part of Southern Midlands region	16-08-00	27-11-00
15	WA Government	South coast and south eastern wheatbelt region	22-11-00	02-02-01
16	QLD Government	Eastern Darling Downs region	22-03-01	22-08-01
17	WA Government	Hyden/Kondinin and Kukerin/Nyabing	21-06-01	03-08-01
18	WA Government	Northern Wheatbelt region	22-10-01	07-03-02
19	NSW Government	Bourke/Brewarrina	10-09-02	13-11-02
20	QLD Government	Peak Downs	28-10-02	19-12-02
21	NSW Government	Majority Western Division	12-11-02	23-12-02
22	NSW Government	Riverina	18-11-02	19-01-03 (dryland livestock producers) and 06-02-03 (irrigated dairy producers)
23	NSW Government	Walgett/Coonamble	12-11-02	04-02-03
24	QLD Government	South West QLD	23-12-02	05-02-03 (livestock producers and non-irrigated croppers)
25	SA Government	Central North East Pastoral Region	04-12-02	05-02-03
26	NSW Government	Nyngan	20-12-02	06-02-03
27	NSW Government	Hay	20-12-02	06-02-03
28	NSW Government	Grafton/Kempsey	12-11-02	06-02-03
29	NSW Government	Casino	06-12-02	06-02-03
30	NSW Government	Condobolin (Divisions C and D) Division A of Narrandera	20-12-02	06-02-03
31	NSW Government	Northern New England	18-11-02	06-02-03
32	NSW Government	Central North (North West)	06-12-02	06-02-03
33	VIC Government	Goulburn/Loddon/Campaspe	26-11-02	06-02-03

Number	(a) Application Source	(b) Geographic Regions	(c) Lodgement Date	(d) EC Declaration Date
34	VIC Government	North Western Mallee (including Eastern Mallee)	26-11-02 (for Eastern Mallee) and 13-12-02 (addendum for rest of NW Mallee)	18-03-03 (for eastern Mallee only)
35	NSW Government	Eastern Riverina	21-02-03	28-03-03
36	QLD Government	Sunshine Coast	14-02-03	31-03-03
37	QLD Government	Western Downs and Maranoa	07-03-03	17-04-03
38	NSW Government	South Coast and Moss Vale	14-03-03	09-05-03
39	VIC Government	Central Victoria	18-03-03	09-05-03
40	VIC Government	North East Victoria	18-03-03	09-05-03
41	QLD Government	Southern South East	01-04-03	23-05-03
42	QLD Government	Central Coastal Region	01-04-03	23-05-03
43	NSW Government	South West Slopes and Plains	01-04-03	23-05-03
44	NSW Government	Young	01-04-03	06-06-03
45	WA Government	Southern Rangelands	01-04-03	2-07-03
46	NSW Government	South West Slopes and Plains	01-04-03	23-05-03 (dryland livestock & 2-failed croppers)
47	QLD Government	Southern South East	01-04-03	23-05-03 (30/10/03 – horticulturists approved after review)
48	QLD Government	Central Coastal Region	01-04-03	23-05-03 (Review decisions on 15-09-03 and 30-10-03 approved pig producers, & horticulture and nursery producers respectively)
49	VIC Government	Northern Victoria	10-04-03	05-08-03
50	QLD Government	Burnet	23-05-03	15-09-03
51	NSW Government	Armidale	11-06-03	12-08-03
52	NSW Government	Northern New England	11-06-03	12-08-03
53	NSW Government	Forbes	11-06-03	12-08-03
54	QLD Government	Murweh	24-06-03	12-08-03
55	NSW Government	East Hume	08-07-03	29-08-03
56	QLD Government	Central Darling Downs	18-07-03	15-09-03
57	QLD Government	Southern Darling Downs	18-07-03	15-09-03
58	QLD Government	Northern Darling Downs	18-07-03	15-09-03
59	VIC Government	Central and East Gippsland	25-07-03	23-12-03
60	QLD Government	Atherton Tablelands	06-08-03	24-10-03
61	NSW Government	Dubbo	07-08-03	23-10-03
62	NSW Government	Condobolin Divisions A & B	11-08-03	21-10-03
63	NSW Government	Molong	13-08-03	23-10-03
64	NSW Government	Central Tablelands	20-08-03	02-10-03
65	NSW Government	Mudgee-Merriwa	22-08-03	02-10-03
66	NSW Government	Braidwood	22-08-03	02-10-03
67	NSW Government	Gundagai East	02-09-03	13-11-03
68	NSW Government	Goulburn and Yass	02-09-03	13-11-03
69	NSW Government	Young Broadacre	26-09-03	10-12-03
70	QLD Government	Mackay-Whitsunday	29-09-03	12-01-04

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Number	(a) Application Source	(b) Geographic Regions	(c) Lodgement Date	(d) EC Declaration Date
71	QLD Government	Central Mid West Including Aramac Shire	08-10-03	23-12-03
72	QLD Government	Emerald Bauhinia	13-10-03	23-12-03
73	QLD Government	Pig producers in Shires that are State drought declared, and dairy and horticulture producers in Burnet	03-11-03	24-03-04

(4) The South Burnett Region, which was reinstated into DEC in August 1997 and the Sunshine Coast Region (2003) are partly in the Wide Bay electorate, based on the boundary indicated on the Australian Electoral Commission website. The Bourke/Brewarrina, Western Division (including Cobar) (2002) and Nyngan, Walgett-Coonamble and North West regions (2003) are either wholly or partly within the Gwydir electorate, based on the boundary indicated on the Australian Electoral Commission website.

(5) The following Table provides the requested information for all (42) unsuccessful DEC/EC applications.

Number	(a) Application Source	(b) Geographic Regions/ Industry	(c) Lodgement Date	(d) Refusal Date
1	NT Government	Alice Springs Region	20-08-96	07-07-97
2	NSW and VIC Governments	Region around Hume Dam	14-11-96 25-11-96	NA see Q10
3	WA Government	South Coast Region	02-97	15-10-97
4	NSW Government	Cooma-Monaro Region B	06-08-97	19-09-97 (withdrawn)
5	NSW Government	Wentworth RLPB	04-09-97	31-12-97
6	Pork Council of Australia	Pork Industry	23-04-98	10-06-98
7	NSW Government	OJD affected producers	28-07-98	NA see Q10
8	NSW Government	Hay	04-11-98	NA see Q10
9	WA Government	Southern wheatbelt region	04-11-98	31-03-99
10	SA Government	Central North East Region	04-11-98	31-03-99
11	NSW Government	North West Region	04-11-98	25-05-99
12	VIC Government	Mallee Region	21-12-98	31-03-99
13	VIC Government	Wimmera Region	21-12-98	13-08-99
14	QLD Government	Southern and central grain region	22-12-98	03-00 (Lapsed)
15	Tasmanian Government	Central Highlands region	16-02-99	31-03-99
16	NSW Government	Southern grains belt region	11-03-99	28-06-99
17	NSW Government	Crookwell, Evans and Oberon Shires	16-03-99	31-03-99
18	QLD Government	Far north region	17-05-99	15-12-99
19	NSW Government	Mangrove Mountain	21-06-99	30-06-00
20	NSW Government	Wentworth RLPB and part of the Broken Hill RLPB	29-09-99	06-03-00
21	NSW Government	Broken Hill RLPB extension	20-10-99	06-03-00
22	SA Government	Central North East Region	04-11-99	06-03-00
23	VIC Government	Mallee extension	13-06-00	20-02-01
24	WA Government	South coast and south eastern wheatbelt region extension	19-03-01	16-05-01
25	WA Government	Jerramungup and South Eastern Ravensthorpe	21-06-01	03-08-01



Number	(a) Application Source	(b) Geographic Regions/ Industry	(c) Lodgement Date	(d) Refusal Date
26	QLD Government	Eastern Darling Downs re- gion extension	19-09-01	03-01-02
27	WA Government	South eastern Wheatbelt region	22-10-01	05-04-02
28	SA Government	Southern Mallee (No. 1)	04-12-02	05-02-03
29	NSW Government	Northern Tablelands	21-02-03	28-03-03
30	QLD Government	Stanthorpe and Inglewood	14-03-03	09-05-03
31	VIC Government	Wimmera	18-03-03	09-05-03
32	VIC Government	Central East Victoria	18-03-03	09-05-03
33	NSW Government	Central and Southern Table- lands	21-03-03	09-05-03
34	NSW Government	Central West Slopes and Plains	21-03-03	09-05-03
35	SA Government	Southern Mallee (No.2)	14-05-03	29-06-03*
36	NSW Government	Hunter-Maitland	01-10-03	31-12-03*
37	NSW Government	Wonboyn Lake Estuary, Oysters	07-10-03	31-12-03*
38	QLD Government	North West Ashy Downs	28-08-03	22-10-03*
39	NSW Government	Northern New England and Armidale Addendum	03-11-03	18-12-03*
40	VIC Government	Central Victoria – Adden- dums of Golden Plains*, Whittlesea and Ballarat*	08-07-03	12-08-03* except for Whittlesea which received EC on 29-10-03
41	VIC Government	Southern Central East	08-07-03	26-08-03
42	NSW Government	Gloucester RLPB	19-01-04	16-03-04*

\*Indicates EC applications were not assessed by NRAC and were rejected on the basis of prima facie assessment.

- (6) Based on the boundary indicated on the Australian Electoral Commission website, the NSW Government's 1998 application for the North West Region and the applications for the Northern Tablelands, Central West Slopes and Plains and Central and Southern Tablelands regions (2003) cover areas at least partly within the Gwydir electorate.

Based on the boundary indicated on the Australian Electoral Commission website, the QLD Government's 1998 application for the Southern and Central Grain Region covers an area partly within the Wide Bay electorate.

In addition, there is the potential that the 1998 Pork industry application may have applied, on a limited basis, to the Gwydir and Wide Bay electorates, depending on pork producer locations at the time of the application. Also, on the same basis, the NSW Government's 1998 application for OJD affected producers may have applied to farmers in the Gwydir electorate.

- (7) The Australian Government provided special assistance to the following: the South Coast Region of WA in 1997; the pork industry in 1998; the North West Region of NSW in 1998; Crookwell, Evans and Oberon Shires in 1999; Mangrove Mountain NSW in 1999; the Central North East Region of SA in 1999; the Jerramungup and South Eastern Ravensthorpe areas of in 2001; and the South Eastern Wheatbelt of WA in 2001.

The Australian Government announced on 19 September 2002 that interim income support would be available once a prima facie case had been established and the EC application is referred to NRAC for full assessment.

On 9 December 2002, the Australian Government introduced interim income support and interest rate relief for up to six months for farmers in areas identified as experiencing a 1-in-20 year rainfall deficiency during the period March to November 2002. Further, on 6 June 2003 the Government announced that drought-affected farmers in areas for which EC applications have been submitted will continue receiving interim Australian Government support right up until their EC applications are decided or until 30 September 2003, whichever is sooner.

- (8) Special assistance provided to the North West Region of NSW applied to a region that is at least partly within the electorate of Gwydir. In addition, the special assistance provided to the pork industry may have applied to the Gwydir and Wide Bay electorates depending on pork producer locations at the time of the assistance. Parts of the Wide Bay and Gwydir electorates have been covered by the 9 December 2002 package, or the 19 September 2002 prima facie measures.

- (9) No.

- (10) There have been three occasions since 1996 and prior to September 2002 in which EC applications have not been subject to an independent assessment by the RASAC or NRAC. These are:

The 1996 application for the region around the Hume Dam lodged by both the NSW and VIC Governments, which was lodged on the basis of flooding, resulting from discharges from the Dam.

The NSW Government's application on behalf of OJD affected producers in 1998.

The NSW Government's 1998 drought application for an area near Hay which was on behalf of only five landholders.

Since September 2002, when the prima facie EC assistance measures were introduced, a total of seven EC applications have not been assessed by NRAC, having been rejected at the prima facie stage on the advice of the Australian Government Department of Agriculture, Fisheries and Forestry. These seven applications are (also highlighted by an asterisk in the Table contained in the answer to Question 5):

The NSW Government's applications for the Hunter-Maitland, Wonboyn Lake Estuary (Oysters), Northern New England and Armidale Addendum, and the Gloucester RLPB (4 applications).

The Queensland Government's application for the North West Ashy Downs (1 application).

The Victorian Government's EC application for Central Victoria (Addendums of Golden Plains and Ballarat) (1 application).

The SA Government's application for Southern Mallee (No. 2) (1 application).

- (11) There is no specific income threshold for applications for EC assistance. RASAC/NRAC make judgements on applications for EC assistance against all of the relevant criteria:

- a rare and severe (i.e. one in 20 to 25 year) climatic event;
- significant and prolonged downturn in income due the event; and
- the event must not be predictable or part of a process of structural adjustment.

#### **Farm Management Deposit Scheme**

#### **(Question No. 954)**

**Senator O'Brien** asked the Minister representing the Prime Minister, upon notice, on 21 November 2002:

- (1) On what date did the Department of the Prime Minister and Cabinet first become aware that some Farm Management Deposit (FMD) products may not comply with legislation applicable to the Government's FMD scheme.
- (2) (a) What was the source of this information; and (b) in what form was this information conveyed, for example, correspondence, e-mail, telephone conversation or direct conversation.
- (3) What was the nature of the problem specifically identified in this information.
- (4) On what date did the department inform the Prime Minister, or his office, of this problem.
- (5) Did the Prime Minister, or his office, receive advice about this problem from a source other than the Department of the Prime Minister and Cabinet; if so: (a) on what date was this information first received; (b) what was the source of this information; (c) in what form was this information conveyed; and (d) what was the nature of the problem specifically identified in this information.
- (6) (a) On what date, or dates, did the department take action in response to this identified problem; and (b) what action did the department take.
- (7) (a) What departments, agencies, banks or non-bank financial institutions did the department communicate with in relation to this matter; (b) on what date, or dates, did that communication occur; and (c) what form did that communication take.
- (8) (a) What responses, if any, has the department received in respect to those communications; (b) in what form have those responses been received; and (c) what was the content of those responses.
- (9) What action has the department taken in response to communications from departments, agencies, banks or non-bank financial institutions.
- (10) Was the Prime Minister aware when he spoke to the Committee for Economic Development of Australia, on 20 November 2002, about the FMD scheme, of:
  - (a) the report on page 3 of the Australian Financial Review, of 20 November 2002, stating that the Government 'has been forced to seek an Australian Taxation Office ruling over a potential legal flaw in its \$2 billion farm management deposit scheme'; and/or
  - (b) evidence given by the Department of Agriculture, Fisheries and Forestry to the Rural and Regional Affairs and Transport Legislation Committee, on 20 November 2002, that the department had been aware of uncertainty over some FMD products since July 2001.

**Senator Hill**—The Prime Minister has provided the following answer to the honourable senator's question:

- (1) I am advised that the Department of the Prime Minister and Cabinet (PM&C) first became aware of the suggestion that some FMD products may not comply with the relevant tax legislation on 20 November 2002.
- (2) (a) I am advised that PM&C first became aware of the issue through an *Australian Financial Review* article, "Farm Tax Scheme in Deep Water" of 20 November 2002. (b) I understand that the article was conveyed to PM&C through a routine press-clipping service.
- (3) The article suggested that as a result of a ruling the Australian Taxation Office (ATO) was preparing, some farmers could lose tax benefits because products offered by some financial institutions may not have complied with the requirements of the FMD scheme.
- (4) I understand that the Prime Minister's office became aware of the issue on 20 November 2002.
- (5) The Prime Minister has advised me that he is unable to recollect when he first heard about concerns over FMD products or how this was conveyed to him.
- (6) (a) I am advised that PM&C investigated the issue on 20 November 2002. PM&C subsequently forwarded written advice from the ATO to the Prime Minister's office on 20 November 2002 and followed up with a brief for the Prime Minister on 26 November 2002, and another brief for the

Prime Minister and a question time briefing on 2 December 2002. (b) I understand that PM&C endeavoured to clarify the facts surrounding this issue.

- (7) (a) I understand that PM&C contacted Agriculture, Fisheries and Forestry Australia (AFFA) and the Treasury (the department with policy responsibility for the FMD scheme) which subsequently contacted the ATO and AFFA. (b) I also understand that this communication occurred on 20 November 2002 and 2 December 2002. (c) I am advised that officers in PM&C had telephone discussions with officers in Treasury and AFFA.
- (8) (a) I understand that the Treasury forwarded advice on the issue from the ATO to PM&C. (b) I am advised that PM&C initially received preliminary oral responses to its queries which were subsequently confirmed in writing. (c) These responses indicated that an interpretive issue had arisen in relation to the rule that FMDs must not be repaid within twelve months from the date of deposit. There was some question over eligibility for the FMD concession where financial institutions had accepted FMDs for periods of less than twelve months. PM&C was also advised that the ATO had been developing a public ruling to clarify the issue and that the ATO was seeking to ensure that farmers who had invested in good faith in products marketed as FMDs would not lose the FMD tax concession.
- (9) On receipt of this information, I understand that PM&C forwarded the ATO's advice to the Prime Minister's office, and followed up with advice on 2 December 2002.
- (10) The Prime Minister has advised me that he is unable to recollect whether, when he spoke to the Committee for Economic Development on 20 November 2002:
- (a) he was aware of the Australian Financial Review article about a potential flaw in the FMD scheme; and
- (b) he was aware of evidence by the Department of Agriculture, Fisheries and Forestry to the Rural and Regional Affairs and Transport Legislation Committee that the Department had been aware of uncertainty about the FMD scheme.

#### **Trade: Free Trade Agreement**

##### **(Question No. 1208)**

**Senator O'Brien** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 25 February 2003:

What was the date of formation and what is the composition of the following committees involving departmental staff working on the development of a free trade agreement between the United States of America and Australia:

- (a) Deputy Secretary-Level Committee;
- (b) Officials Committee on Agriculture; and
- (c) Industry-Government Committee.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

I am not aware of any formal committees with the titles referred to in the question.

#### **Agriculture: Animal Health**

##### **(Question No. 1346)**

**Senator O'Brien** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 25 March 2003:

With reference to comments by a spokesperson for the Minister, reported in AAP story number 3132, dated 24 March 2003:

- (1) Since January 2000, on how many occasions have rural groups, state agencies and veterinary surgeons been contacted by the Government about animal disease threats to Australia.
- (2) (a) What rural groups were contacted; (b) on how many occasions was each group contacted; (d) what was the nature of the disease threat that required contact with each group, and (e) what action was taken by each state agency and by the Government as a result of the contact.
- (3) (a) What state agencies were contacted; (b) on how many occasions was each state agency contacted; (c) when was each contact made and who made the contact; (d) what was the nature of the disease threat that required contact with each state agency; and (e) what action was taken by each state agency and by the Government as a result of the contact.
- (4) (a) Which veterinary surgeons were contacted; (b) on how many occasions was each veterinary surgeon contacted; (c) when was each contact made and who made the contact; (d) what was the nature of the disease threat that required contact with each veterinary surgeon; and (e) what action was taken by each veterinary surgeon and by the Government as a result of the contact.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

National arrangements involving the Commonwealth, State and Territory governments and livestock industries are in place to ensure all stakeholders are consulted on disease risk prevention, preparedness and response issues. These arrangements constitute core and ongoing business for the Department of Agriculture, Fisheries and Forestry (the Department).

Various areas of the Department, most notably Product Integrity Animal and Plant Health (PIAPH), the Australian Quarantine and Inspection Service (AQIS) and Biosecurity Australia, are in regular contact with a wide range of parties on matters relating to animal health. Domestically, the Department liaises with State and Territory agencies, rural groups and veterinary practitioners and, internationally, with overseas authorities and trading partners and international animal health organisations. The frequency and breadth of this contact makes it impracticable to fully list the interactions between the Department and animal health stakeholders.

Consultative arrangements for the management of animal disease outbreaks have been established since the early 1940s. Pivotal to these arrangements is the peak national technical and scientific advisory group the Consultative Committee on Emergency Animal Diseases (CCEAD). This committee is chaired by the Australian Chief Veterinary Officer, Dr Gardner Murray and comprises all State and Territory Chief Veterinary Officers, a representative of the Australian Animal Health Laboratory, a representative of the Animal Biosecurity and representatives of affected livestock industries.

As of 16 March 2004, CCEAD has met on 63 occasions since January 2000 and has dealt with a wide range of prevention, preparedness and response issues. These include the development of risk containment measures for events such as the Sydney Olympics and the international spread of bovine spongiform encephalopathy, foot and mouth disease, severe acute respiratory syndrome and avian influenza as well as emergency responses, such as the recent porcine myocarditis outbreak and full-scale responses to Newcastle disease and anthrax outbreaks.

In 2002, the Commonwealth, States and Territories and 11 livestock industries signed an agreement that further enhanced Australia's emergency response arrangements. This agreement formalised cost sharing arrangements for disease outbreaks and the emergency response consultative infrastructure. It established a new senior managerial committee, the National Emergency Animal Disease Management Group (NMG), which is designed to make decisions on response strategies, including the commitment of resources. The NMG is chaired by the Secretary of the Department, Mr Michael Taylor and consists of the chief executive officers of all State and Territory agricultural agencies and the peak councils of national livestock industries. As of 16 March 2004, NMG has met on 11 occasions where disease outbreaks invoked the NMG Cost Sharing Agreement as outlined in AUSVET PLAN since its inception. In

addition NMG has come together informally 15 times as a consultative body to discuss animal health issues where a formal decision on cost sharing arrangements for disease eradication was not called for.

The agreement also formalised the involvement of industry technical representatives in CCEAD meetings. These representatives are usually private veterinary practitioners, nominated by industry groups, who have been trained in CCEAD operating arrangements.

Consultation mechanisms are also in place for aquatic animal disease emergencies. As of 16 March 2004, there have been nine CCEAD meetings involving aquatic animal disease issues. Recent discussions have involved infectious hyperdermal and hematopoietic necrosis virus and rickettsia-like organism in salmon.

The Department involves private veterinary practitioners in national policy issues such as the recent review of rural veterinary services. However, State and Territory agricultural agencies have primary responsibility for liaison with veterinary representatives in the prevention of, and response to, animal disease incidents. State and Territory plans include detailed arrangements for the involvement of practitioners in emergency responses and surveillance.

### **Immigration: Hassan Sabbagh**

#### **(Question No. 1829)**

**Senator Brown** asked the Minister for Immigration and Multicultural Affairs and Indigenous Affairs, upon notice, on 1 September 2003:

- (1) Given that the medical records from Australian Correctional Management's staff psychologist Ramesh Nair have documented the deteriorating mental health of Iraqi detainee Hassan Sabbagh, who has been held in detention since 1999: Why has the department failed to act on any of Dr Nair's recommendations.
- (2) Given that over the past three and half years, Hassan Sabbagh has applied four times to the Minister to be released from detention, with no response: How much longer will he have to wait for a response.
- (3) Given that Hassan Sabbagh's original case for protection against repatriation to Iraq has never been heard and yet the department wants to deport him back to Iraq: Is this against the International Refugee Convention.

**Senator Vanstone**—The answer to the honourable senator's question is as follows:

- (1) The Department of Immigration and Multicultural and Indigenous Affairs takes the health of detainees very seriously. The medical condition of all detainees is taken into consideration prior to any decision relating to the most appropriate place of detention. A detainee with a serious medical complaint that cannot be adequately cared for in a detention centre can be moved to an alternative place of detention, where this is appropriate.

Due to privacy concerns I cannot comment on the specifics of individual cases. However, I can advise that detainees in such circumstances receive ongoing care by the Villawood Immigration Detention Centre's mental health team, consisting of a doctor, a nurse, counsellors, a psychiatrist and a psychologist. Additionally, such detainees have full access to major medical services in the Sydney area.

The detention services provider is contracted by the Department to provide all detainees with appropriate levels of care including the provision of medical care in detention facilities. Where the service provider advises that it is unable to appropriately care for a detainee within the detention facility the Department of Immigration and Multicultural and Indigenous Affairs responds accordingly. There were no such requests from the service provider in this case, which until 29 February 2004 was Australasian Correctional Management Pty Ltd, and now is GSL Pty Ltd.

- (2) Where a non-citizen does not hold a valid visa, release into the community is not possible. Mr Sabbagh was granted a permanent visa in March 2004 and is living in the community.
- (3) Individuals are not removed where this would place Australia in breach of any international obligations relating to the return of non-citizens. Mr Sabbagh holds a visa and is not subject to removal action.

**Wide Bay Electorate: Structural Adjustment Package**  
**(Question No. 1872)**

**Senator O'Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 1 October 2003:

With reference to the Structural Adjustment Package for the Wide Bay Burnett Region of Queensland:

- (1) When did the Minister announce the Package.
- (2) What funding was committed to the Package.
- (3) What grant monies have been paid under the Package.
- (4) When were the programme guidelines and application forms made publicly available.
- (5) When did the application period commence.
- (6) When did the application period close.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) The Package was announced on 25 May 2001 by Mr Warren Truss MP.
- (2) \$4 million (GST exclusive).
- (3) As at 17 February 2004, \$ 2,882,796 (GST Exclusive) has been expended.
- (4) Programme guidelines including selection criteria were available from late August 2001.
- (5) 5 September 2001.
- (6) 28 September 2001.

**Fisheries: Heard and McDonald Islands**  
**(Question No. 1976)**

**Senator O'Brien** asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 10 September 2003:

- (1) What companies have been issued with a licence to fish in the Heard and McDonald Islands Fishery.
- (2) In relation to each company: (a) what is its registered address; and (b) when was the licence issued and, if applicable, renewed.
- (3) (a) What total allowable catch, by species, is each licence holder allocated; and (b) in relation to each licence holder, have catch limits been varied; if so, when and what is the nature of the variation.

**Senator Ian Macdonald**—The answer to the honourable senator's question is as follows:

- (1) Austral Fisheries Pty Ltd, Kailis and France Pty Ltd, Petuna Sealord Pty Ltd, Nippon Suisan Kaisha Ltd and Everfresh Pty Ltd.
- (2) (a) The addresses of the companies are respectively:



Austral Fisheries Pty Ltd	Mount Hawthorn, WA
Kailis and France Pty Ltd	Mount Hawthorn, WA
Petuna Sealord Pty Ltd	East Devonport, Tasmania
Nippon Suisan Kaisha Ltd	c/o East Devonport, Tasmania
Everfresh Pty Ltd	Ulladulla, NSW.

(b) Statutory Fishing Rights for this Heard Island and McDonald Islands (HIMI) Fishery were issued during 2002 under the HIMI Fishery Management Plan 2002. These are ongoing fishing rights and not subject to renewal.

- (3) (a) Each Statutory Fishing Right issued in the Fishery entitles the holder of that right to an annual percentage of the total allowable catch for the Fishery for each target species.

Table 1 shows the percentage of Statutory Fishing Rights which were granted to each eligible company and their respective share of the total allowable catch for toothfish and icefish for the current (2003-04) fishing season.

Table 1

Company	Percentage share of total SFRs available	Catch allocations for the 2003/04 Fishing Season	
		Toothfish	Icefish
Austral Fisheries Pty Ltd	45.5%	1307.215 tonnes	132.86 tonnes
Kailis and France Pty Ltd	25.5%	732.615 tonnes	74.46 tonnes
Petuna Sealord Pty Ltd	14.5%	416.58 tonnes	42.34 tonnes
Nippon Suisan Kaisha Ltd	11.36%	326.56 tonnes	33.19 tonnes
Everfresh Pty Ltd	3.13%	90.1 tonnes	9.15 tonnes
TOTAL	100%	2873 tonnes	292 tonnes

(b) A stock assessment for the Fishery is conducted every year to set the catch limits for both target species. Since the commencement of the Fishery, the total allowable catch for toothfish has been around 3000 tonnes (+/- 500 tonnes). The limit for icefish varies considerably depending on environmental factors and has been as low as 800 tonnes and as high as 3000 tonnes.

Table 2 shows the percentage of Statutory Fishing Rights which were granted to each eligible company in the initial allocation (2002-03) for the Fishery and their respective share of the total allowable catch for toothfish and icefish for the season.

Table 2

Company	Percentage share of total SFRs available	Catch allocations for the 2002/03 Fishing Season	
		Toothfish	Icefish
Austral Fisheries Pty Ltd	45.5%	1280.825 tonnes	402.675 tonnes
Kailis and France Pty Ltd	25.5%	717.825 tonnes	225.675 tonnes
Petuna Fisheries Pty Ltd	20%	563 tonnes	177 tonnes
Everfresh Pty Ltd	9%	253.350 tonnes	79.650 tonnes
TOTAL	100%	2815 tonnes	885 tonnes

Any transfers that have occurred between the initial (2002-03) allocations and the current (2003-04) allocations are commercial-in-confidence.

**Fisheries: Illegal Fishing****(Question No. 1983)**

**Senator O'Brien** asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 10 September 2003:

With reference to the answer to question on notice no. 730 (Senate *Hansard*, 10 December 2002, p. 7659):

- (1) Has Australia finalised an agreement with France on combating illegal fishing in Australia's sub-Antarctic exclusive economic zones; if so when was the agreement finalised and what are the details of the agreement; if not: (a) why not; (b) what negotiations have been undertaken since the Minister advised in his answer that a proposed draft text was agreed; (c) were negotiations progressed during the Minister's meeting with the French Minister for Overseas Territories in Paris in June 2003; (d) have negotiations included consideration of joint use of French facilities or French patrols of Australian waters; (e) what future negotiations are planned; and (f) when does the Minister expect the agreement will be finalised and active.
- (2) Has a cooperative arrangement to combat illegal fishing been negotiated with South Africa; if so, when was the arrangement finalised and what are the details of the arrangement; if not: (a) what negotiations have been undertaken since the Minister wrote to his South African counterpart in September 2002 initiating formal discussions; (b) what future negotiations are planned; and (c) when does the Minister expect a cooperative arrangement will be finalised.

**Senator Ian Macdonald**—The answer to the honourable senator's question is as follows:

- (1) Yes. The Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands was signed on 24 November 2003 by the Hon Alexander Downer MP, Minister for Foreign Affairs, and Mr Muselier, French Secretary of State for Foreign Affairs. The Treaty provides for cooperative surveillance and scientific research in the territorial seas and exclusive economic zones of Australian and French territories in the Southern Ocean.
- (2) (a) The text of a treaty with South Africa on cooperative enforcement and surveillance is currently being negotiated. Negotiations regarding a cooperative arrangement have taken place throughout 2003 and the most recent discussions occurred in the margins of CCAMLR's 22nd meeting held in Hobart in October/November 2003. (b) Negotiations with South Africa are continuing to finalise the text of the treaty. (c) It is hoped that this treaty will be finalised in 2004, subject to both parties being satisfied with its terms.

**Minister for Agriculture, Fisheries and Forestry: Overseas Travel****(Question No. 2030)**

**Senator O'Brien** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 15 September 2003

In reference to the visit by the Minister to Latin America in mid-2003:

- (1) When did the Minister: (a) depart Australia; and (b) return to Australia.
- (2) Who travelled with the Minister.
- (3) Who met the cost of the participants' travel and other expenses associated with the trip.
- (4) If costs were met by the department, can an itemised list of costs be provided; if not, why not.
- (5) Can the Minister's detailed itinerary be provided; if not, why not.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

- (1) (a) The Minister departed Australia on 30 June 2003.  
(b) The Minister returned to Australia on 15 July 2003.
- (2) The following people travelled with the Minister:  
Mrs Lyn Truss;  
Mr Paul Holden;  
Mr Mike Taylor and  
Mr Craig Burns.
- (3) The costs of the Minister, Mrs Truss and Mr Holden were met by the Department of Finance and Administration. The costs for Mr Taylor and Mr Burns were met by the Department of Agriculture, Fisheries and Forestry.
- (4) Mr Taylor's travel expenses:

Flights	\$27,262*
Travel Allowance	\$3,180
Accommodation	\$5,075
Other expenses	\$1,134

Mr Burns' travel expenses:

Flights	\$11,487
Travel Allowance	\$963
Accommodation	\$3,709
Other expenses	\$836

\*Mr Taylor joined the travelling party in Santiago, Chile, as he had been accompanying Parliamentary Secretary Troeth on her visit to the United States. Flight costs include those incurred on the US leg of Mr Taylor's travel.

Itinerary:

Monday 30 June – Santiago de Chile

- 1240 Arrival in Santiago de Chile direct from Sydney
- 1600 Chilean Acting Minister for Foreign Affairs, Mr Christian Barros
- 1700 Chilean Minister for the Economy, Mr Jorge Rodriguez
- 1930 Dinner hosted by Chilean Minister for Agriculture, Mr Jaime Campos Quiroga including:  
Carlos Furche, Director, Policy Division, Chilean Agriculture Ministry  
Igor Garafulic, Director International Relations, Chilean Agriculture Ministry  
Carlos Parra, Director General, Agriculture and Livestock Service (SAG)  
Hernán Rojas, Head Animal Health, SAG  
Orlando Morales, Head Plant Health, SAG

Tuesday 1 July – Montevideo

- 1255 Arrival in Montevideo
- 1600 President of the Oriental Republic of Uruguay, Dr Jorge Batlle, and Uruguayan Foreign Minister, Didier Operti
- 1700 Uruguayan Minister for Livestock, Agriculture and Fisheries, Dr Gonzalo Gonzalez and Vice Minister for Agriculture, Martin Aguirrezabala

- 
- 1900 Launch with media of Austrade Promotion: Rugby Business Club Australia  
 2030 Reception hosted by Minister for Livestock, Agriculture and Fisheries, Dr Gonzalo Gonzalez
- Wednesday 2 July – Montevideo, Buenos Aires  
 Montevideo  
 1000 Beef industry representatives and animal genetics importers  
 1100 Uruguayan wool industry representatives
- Buenos Aires  
 1700 Secretary for Agriculture, Livestock, Fisheries and Food, Mr Miguel Campos Under-Secretary of Agricultural Policy and Food, Mr Claudio Sabsay, National Director of Agrifood Markets, Mr Gustavo Idigoras  
 1830 Launch with media of Austrade Promotion: Rugby Business Club Australia  
 2100 Dinner hosted by Secretary for Agriculture, Livestock, Fisheries and Food, Mr Miguel Campos
- Thursday 3 July – Buenos Aires  
 0900 Beef Production Site Visit to Cabaña San Patricio del Este, La Emma  
 1730 Speech to Argentine Rural Society (SRA) on Australia's Approach to Agricultural Policy  
 2030 Dinner with Argentine wine industry representatives
- Friday 4 July – Buenos Aires  
 0930 Argentine beef industry representatives  
 1100 Argentine wool industry representatives  
 1300 Australian investors in Argentine agriculture sector Richard Cross, Director, P&O Cold Storage; William Hayes, President, William Hayes and Sons; Peter Roebig, AJC International; Claudio Ulrich, Manager, Lempriere Fox and Lille SA (tbc); Santiago Arriague, General Manager, LIAG Argentina SA  
 1500 Argentine grain producers  
 1600 Argentine Secretary for Trade and International Economic Negotiations, Ambassador Martin Redrado  
 1730 Argentine Minister for the Economy, Dr Roberto Lavagna
- Saturday 5 July – Buenos Aires  
 Private Arrangements
- Sunday 6 July – Buenos Aires, Sao Paulo, Brasilia  
 AM Travel to Brasilia  
 1245 Site Visit to Fazenda Felicidade Dairy Farm, Goias State, Brazil  
 1300 Mr José Mário Schreiner, Secretary of Agriculture, Livestock and Supply Federal Deputy Exmo Leonardo Vilela  
 1330 Goias State Federation of Agriculture
- Monday 7 July – Brasilia  
 1130 Roberto Rodrigues, Brazilian Minister for Agriculture, Livestock and Supply, and Quarantine Agency Officials  
 1300 Lunch meeting at Australian Ambassador's residence, including Dr Cleyton Campanhola, Director-President, EMBRAPA Ambassador Clodoaldo Huguene, Undersecretary for Integration, Economics and International Trade Ambassador Valdemar Carneiro Leao, Director
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General Economic Department, Ministry of Foreign Affairs Federal Deputy Moachir Micheleto Congressional Advisor Professor Aercio Dos Santos Cunha

1530 Mr Roberto Jaguaribe Gomes de Mattos, Secretary of Industrial Technology

1700 Ambassador Samuel Pinheiro Guimaraes

Acting Minister for Foreign Affairs

Tuesday 8 July – Sao Paulo

0900 Site Visit: Ester Sugar and Ethanol Production Facility, Cosmópolis, including Mr Felício Cintra (Director Superintendent) Mr Edécio Daolio (Industrial Manager)

1000 Media engagement

1430 Site Visit: Citrosuco citrus plant, Matao; tour plant and Citrosuco headquarters Mr Antonio Francisco A. Gomes (Exec Director of Industrial Operations) Mr Sérgio Luis Moretti (Operations Manager)

Wednesday 9 July – Sao Paulo, Mexico City

Day – In Transit

2030 Welcome dinner and briefing hosted by Ambassador and Austrade including: Mr Grame Barty (Austrade Board Member - visiting from Australia) Mr Javier Mata (Managing Director, Fares Trading Americas) Mr Francisco Hinterholzer (President, ACANZMEX - Australia, Canada, New Zealand, Mexico Business Council)

Thursday 10 July – Mexico City, Hidalgo

1000 Mexican Foreign Minister, Dr Luis Ernesto Derbez Bautista

1130 Mr Manuel Ángel Núñez Soto, Governor of Hidalgo and State Secretary for Agriculture

1400 Farm tour hosted by Governor Núñez & press conference.

2000 Dinner hosted by Colegio de Postgraduados and Fares Trading Americas

Friday 11 July – Mexico City

0930 Mexican Health Minister, Dr Julio Jose Frenk Moro

1100 Mexican Agriculture Minister, Javier Usabiaga Arroyo

1230 Media Conference

1315 Launch of TGT Farm Project with Minister Usabiaga

Saturday 12 July - Merida

0830 Site visits including papaya plantation, dairy farm, cattle farm and abattoir accompanied by Governor of Yucatan.

2030 Dinner with Yucatan Governor, Mr Patricio Patrón Laviada

Sunday 13 July

1450 Depart Merida

Monday 14 July

In Transit

Tuesday 15 July

0610 Arrive Sydney

**Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry:  
Overseas Travel  
(Question No. 2032)**

**Senator O'Brien** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 15 September 2003:

In reference to the visit by the Parliamentary Secretary to the United States of America in mid-2003:

- (1) When did the Parliamentary Secretary: (a) depart Australia; and (b) return to Australia.
- (2) Who travelled with the Parliamentary Secretary.
- (3) Who met the cost of the participants' travel and other expenses associated with the trip.
- (4) If costs were met by the department, can an itemised list of costs be provided; if not, why not.
- (5) Can the Parliamentary Secretary's detailed itinerary be provided; if not, why not.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

- (1) (a) The Parliamentary Secretary departed Australia on 21 June 2003.  
(b) The Parliamentary Secretary returned to Australia on 29 June 2003.
- (2) The following people travelled with the Parliamentary Secretary:  
Mr Michael Taylor; Mr Paul Morris and  
Ms Peta Slack-Smith.
- (3) The costs of the Parliamentary Secretary and Ms Slack-Smith were met by the Department of Finance and Administration. The costs for Mr Taylor and Mr Morris were met by the Department of Agriculture, Fisheries and Forestry.
- (4) Mr Taylor's travel expenses:

Flights	\$27,262*
Travel Allowance	\$2,315
Accommodation	\$2,491
Other expenses	\$374

Mr Morris' travel expenses:

Flights	\$13,940
Travel Allowance	\$723
Accommodation	\$1,631
Other expenses	\$1,370

\*Mr Taylor joined Minister Truss' visit to Latin America immediately following the visit. Flight costs include those incurred on the Latin American leg of Mr Taylor's travel.

- (5) During visit to the United States of America the Parliamentary Secretary held a number of meetings outlined below:

Sunday 22 June - Sacramento

1500 Moroccan Minister of Agriculture and Rural Development, Mohand Laenser

Monday 23 June - Sacramento

Ministerial Conference and Expo on Agricultural Science and Technology

0930 Opening Plenary - "How science and technology can drive agricultural productivity and economic growth to alleviate world hunger"

1100 US Secretary of Agriculture, Ann Veneman

1430 Susan Owens, USDA  
1500 Moderated a Conference session on "Increasing International Technology Transfer Flows"  
1700 Botswanan Minister of Agriculture, Johnie Swartz  
1730 Ugandan Minister of Agriculture, Animal Industry and Fisheries Wilderforce, Kisamba-Mugerwa  
1930 New Zealand Associate Minister for Agriculture, Damien O'Connor  
Tuesday 24 June - Sacramento  
Ministerial Conference and Expo on Agricultural Science and Technology  
0800 Lesothoan Minister of Agriculture and Food Security, Daniel Phororo  
0900 Chilean Minister of Agriculture, Jaime Campos Quiroga  
1300 Roundtable with Pacific Island Ministers  
1430 USDA Under Secretary JB Penn  
1530 Monsanto representatives  
1700 Canadian Minister of Agriculture and Agri-Food, Hon Lyle Vanclief  
1830 Reception with USDA Agriculture Secretary Ann Veneman  
Wednesday 25 June 2003 – Washington  
1930 Australian Industry Representatives  
Thursday 26 June 2003 - Washington  
0830 Australian Embassy  
1000 The Hon Jim Mosely, Under Secretary USDA  
1100 Representative Frank Lucas, Member Agricultural Sub-Committee on Conservation, Credit, Rural Development and Research.  
1300 World Bank  
1630 Senator Michael Crapo, US Senate Agriculture Subcommittee on Forestry Conservation and Rural Revitalisation  
1900 Australian Ambassador to United States  
Friday 27 June 2003 - Washington  
0930 Mr Leonard Condon, Altira  
1800 Depart Washington  
Saturday 28 June – In Transit  
Sunday 29 June – Arrive Melbourne 0800

**Health: Research**  
**(Question No. 2117)**

**Senator Allison** asked the Minister for Health and Ageing, upon notice, on 17 September 2003:

- (1) Given the Minister's response to a question without notice by Senator Allison on 11 September 2003, that the Commonwealth Scientific and Industrial Research Organisation (CSIRO) has never found foetal risks from diagnostic ultrasound equipment, can the Minister explain the findings of animal studies carried out at the CSIRO, which clearly show that such risks exist.
- (2) Given the Minister's claims that the CSIRO's National Measurement Laboratory (NML) will continue to maintain a standard for ultrasound equipment power after it becomes part of the



National Measurement Institute in July 2004, can the Minister explain how this is possible when: (a) the work carried out at the NML was on standards for therapeutic ultrasounds, not diagnostic ultrasounds; and (b) the only scientist researching ultrasound standards at the NML, Dr Adrian Richards, has been made redundant.

**Senator Vanstone**—The Minister for Science has provided the following answer to the honourable senator's question:

- (1) Studies on animals at CSIRO did not demonstrate damage to animals from diagnostic ultrasound, they simply identified a possible risk. However, even if there were evidence of damage in animals, it is well recognised that extrapolation of these findings to human patients is very difficult. The work at CSIRO was simply a small contribution to the international community's body of evidence used to set standards for diagnostic ultrasound power levels. (See also answer to Question 2018, Part 3.)
- (2) The standard for ultrasonic power is based on a system used for the fundamental characterisation of ultrasonic instrumentation over a range of power levels and time intervals. The system comprises a number of components, is flexible and can be adapted to both therapeutic and diagnostic applications. Research within CSIRO Telecommunications and Industrial Physics (of which the National Measurement Laboratory is a part) on both therapeutic and diagnostic ultrasound has terminated, but the characterisation system is to be maintained and possibly developed further at some future time as part of a more general 'metrology in medicine' program within the new National Measurement Institute.

#### **Agriculture, Fisheries and Forestry: Committee Vacancies**

##### **(Question No. 2121)**

**Senator O'Brien** asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 18 September 2003:

- (1) When in 2003 did the department seek applications for eight part-time vacancies.
- (2) In what newspapers and other media did the department place advertisements seeking applications.
- (3) How many applications did the department receive from applicants nominating qualifications in respect of the following positions designated in section 64 of the Plant Breeders' Rights Act 1994: (a) representatives of breeders, and likely breeders' of new plant varieties; (b) a representative of users, and likely users, of new plant varieties; (c) a representative of consumers, and likely consumers, of new plant varieties or of the products of new plant varieties; (d) a representative of conservation interests in relation to new plant varieties and the potential impacts of new plant varieties; (e) a representative of indigenous Australian interests in relation to new plant varieties and the source, use and impacts of new plant varieties; and (f) others with appropriate experience or qualifications.
- (4) How many people did the department interview in relation to each designated position.
- (5) Can details be provided of each industry, consumer, conservation, indigenous and/or other organisation consulted prior to the appointment of the current committee members.
- (6) When did the Minister appoint the current members.
- (7) (a) What is the name and business address of each member; (b) what interests do they represent pursuant to section 64 of the Plant Breeders' Rights Act 1994.
- (8) Which organisations provided letters of support for each member.
- (9) Since its appointment, when has the current committee met.
- (10) What are the names and terms of appointment for all members of the committee since its formation in 1994.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

- (1) Applications for eight part-time vacancies were sought from February extending up to the 30 April 2003 deadline.
- (2) Applications were invited in the media through advertisements in the Australian, the Koori Mail ~ The Voice of Indigenous Australia, Australian Horticulture, the Grains Research and Development Corporation's Groundcover and the department's website.
- (3) Twenty-five applications were received.
  - (a) Ten.
  - (b) Four.
  - (c) Two.
  - (d) Two.
  - (e) One.
  - (f) Six.
- (4) None. The department does not normally interview for part-time vacancies on this committee.
- (5) No. The department normally does not and did not consult regarding these part-time vacancies. In addition to placing media advertisements the department notified diverse organizations and individuals (including, for example, the Aboriginal and Torres Strait Islander Commission, Department of the Environment and Heritage, the Australian Conservation Foundation, the Australian Food and Grocery Council, R&D Corporations, the Australian Consumer's Association, the Pharmacy Guild of Australia, Humane Society International) of the opportunity to serve on the committee. Parties notified were encouraged to circulate the vacancies widely. Notification of the vacancies was also placed on the Department's website.
- (6) The Minister appointed the current members on 21 August 2003.
- (7) The names and contact details of members are available on the Department's website.
- (8) Letters of support relate to personal information, which is privileged under the information privacy principles of the Privacy Act 1998.
- (9) The committee met on 17 November 2003.
- (10) The names and terms of appointment for all members of the committee since its formation in 1994 are as follows:

Appointed from 1994-31/12/95: Mr K Boyce, Mr B Cox, Mr A Granger, Mr R Field, Dr B Hare, Mr B Swane.

Appointed from 1/1/96-31/12/97: Dr B Hare, Ms C McCaffery, Ms N Peate, Mr H Roberts, Professor M Sedgley, Dr D Suter.

Appointed from 1/1/98-31/12/99: Dr B Hare, Ms C McCaffery, Mr D Moore, Ms N Peate, Mr H Roberts, Professor M Sedgley.

Appointed from 1/1/2000-30/6/2000: Dr B Hare, Ms C McCaffery, Mr D Moore, Ms N Peate, Mr H Roberts, Professor M Sedgley.

Appointed from 1/7/2000-30/6/2002: Dr P Brennan, Ms C McCaffery, Mr D Moore, Mr P Neilson, Mr H Roberts, Ms A Sharpe.

Appointed from 1/7/02/-30/6/03: Dr P Brennan, Ms C McCaffery, Mr D Moore, Mr P Neilson, Mr H Roberts, Ms A Sharpe.

Appointed from 21/08/03-20/08/06: Dr P Brennan, Dr R Downes, Mr J Arney, Mr K Syrus, Mr B Lloyd, Professor R Leakey, Dr B Robinson, Ms A Sharpe.

**Environment: Natural Heritage Trust and National Action Plan for Salinity and Water Quality**

**(Question No. 2315)**

**Senator Bartlett** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 22 October 2003:

- (1) Will the Minister accredit regional natural resource management (NRM) plans under the Natural Heritage Trust (NHT) or National Action Plan for Salinity and Water Quality (NAP) if they are inconsistent with nationally-agreed NRM strategies, such as the National Water Quality Management Strategy, National Principles for the Provision of Water for Ecosystems and the National Framework for Management and Monitoring of Native Vegetation.
- (2) Are regional NRM plans under the NHT and NAP intended to be vehicles for the implementation of the nationally-agreed NRM strategies; if so, what mechanisms are in place to ensure the nationally-agreed NRM strategies are implemented through the regional NRM plans.
- (3) In determining the allocation of funds under the NHT and NAP, does the Government give priority to the implementation of the nationally-agreed NRM strategies.
- (4) (a) Does the Government monitor the implementation of the nationally-agreed NRM strategies by the states and territories; and (b) has the Government found any instances in which a state or territory has failed to implement a nationally-agreed NRM strategy; if so, can details be provided of these instances and the action that has been taken to address this issue.
- (5) How does the Government intend to improve water quality in, and environmental flows to, coastal Ramsar wetlands through the regional delivery model being employed under the NHT and NAP.
- (6) (a) How does the Government intend to address the matters protected under Part 3, Division 1 of the Environment Protection and Biodiversity Conservation Act 1999 (i.e. the so-called 'matters of national environmental significance') in accrediting regional NRM plans; and (b) will funding of priority projects for the protection and conservation of matters of national environmental significance take precedence over the priorities identified in regional NRM plans.
- (7) What criteria does the Government use to ensure regional NRM plans address the need to protect and conserve matters of national environmental significance.
- (8) Does the presence of matters of national environmental significance in a region influence the funds that are made available to the relevant regional body under the NHT and NAP.
- (9) How much money has been spent under the second phase of the NHT on priority projects outside the accredited NRM planning and investment framework.
- (10) Do all priority projects that have received funding under the second phase of the NHT include relevant resource condition targets; if not, why not.
- (11) For each of the first and second phases of the NHT and the NAP, what percentage of funds spent (to date) were spent on: (a) planning; (b) implementation; (c) monitoring; and (d) reporting.
- (12) In respect of the NAP and the second phase of the NHT, what percentage of funds does the Government expect to spend on: (a) planning; (b) implementation; (c) monitoring; and (d) reporting.
- (13) Does the Government monitor compliance by the states and territories with the terms and conditions in the bilateral agreements that have been entered into as part of the NHT and NAP; if so, how does it carry out this monitoring.

- (14) Has the Government identified any instances of breaches of the conditions of the NHT and NAP bilateral agreements; if so, can details of these breaches and the action taken to address the breaches be provided.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) No
- (2) Regional implementation of nationally agreed Natural Resource Management (NRM) strategies will be through the regional NRM plans and associated sub-regional plans (eg. regional vegetation management plans) and the regional investment strategy. Regional NRM plans must be consistent with and contribute to the implementation of agreed national NRM strategies. The Australian Government, together with the relevant state or territory, works with regional bodies to assist them to prepare regional NRM plans that meet both Australian Government and state/territory requirements, including in relation to agreed national strategies. The accreditation criteria for NRM plans specify that the plans must demonstrate consistency with agreed national strategies. In relation to the National Water Quality Management Strategy, regional NRM plans must comply with the policy objective of the Strategy, which is: 'to achieve sustainable use of the nation's water resources by protecting and enhancing their quality while maintaining economic and social development' [ANZECC and ARMCANZ 1994:6]. Similarly, regional plans are assessed against the goal of National Principles for the Provision of Water for Ecosystems: 'to sustain and where necessary restore ecological processes and biodiversity of water dependent ecosystems' [SLWRMC (SWR) 1997:iii and 6]. In relation to the National Framework for the Management and Monitoring of Australia's Native Vegetation, regional NRM plans must be consistent with the national goal of reversing the decline in the extent and quality of native vegetation.
- (3) In considering an investment plan for a particular region, the Australian Government will make an assessment as to the balance of investments, including the areas for which the Australian Government has responsibility. In making its funding decisions, the Australian Government will have regard to both Australian and State Government priorities as well as regional priorities. Government investment in accredited NRM plans will be consistent with the goals and objectives of the relevant program:
  - investment under the National Action Plan for Salinity and Water Quality will focus on action to prevent, stabilise and reverse trends in salinity and to improve water quality and reliability that affects sustainable production, biodiversity and infrastructure;
  - investment under the Natural Heritage Trust will focus on actions which are consistent with the Trust's objectives relating to biodiversity conservation, sustainable natural resource use, and capacity building and institutional change.
- (4) (a) Yes.  
(b) Some States and Territories are slow in implementing strategies consistent with the national goal of the National Framework for the Management and Monitoring of Australia's Native Vegetation to reverse the decline in the extent and quality of native vegetation by 2001. To accelerate progress, the Australian Government is negotiating reforms with States and Territories to reduce land clearing. The National Action Plan for Salinity and Water Quality has secured commitments from governments to institute controls on land clearing, which at a minimum prohibit land clearing in the priority catchments and regions where it would lead to unacceptable land or water degradation. Through the extension of the Natural Heritage Trust all governments have agreed to implement measures to prevent all clearing of endangered and vulnerable vegetation communities and critical habitat for threatened species, and limit broadscale clearing to those instances where regional biodiversity objectives are not compromised. In each jurisdiction, the Australian Government has negotiated specific actions to implement these commitments.

In New South Wales, the Australian and New South Wales Governments recently announced plans to end broad-scale land clearing. The Australian Government is contributing \$45 million through the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust to implement these vegetation management reforms.

80 per cent of land clearing in Australia occurs in Queensland. To address this threat, the Queensland Government has committed to phase-out broad-scale land clearing by December 2006.

As part of the National Competition Policy, the National Competition Council (NCC) assesses the States and Territories progress with implementation of the 1994 COAG Water Reform Framework, including the implementation of the National Water Quality Management Strategy and compliance with the National Principles for the Provision of Water for Ecosystems.

NCC annual assessments are guided by an assessment framework, which varies from year to year focusing on particular commitments made under the Water Reform Framework and outstanding issues from previous assessments. The last full assessment of the water reforms was in 2001 and the next one will be in 2005.

Currently the NCC is reviewing progress against the 2003 assessment framework (details at [www.ncc.gov.au](http://www.ncc.gov.au)). National Competition Policy tranche payments to the States and Territories are dependent on a favourable review by the NCC.

- (5) The regional delivery model requires regional communities to develop regional NRM plans that cover the full range of NRM issues – across terrestrial, freshwater, coastal, estuarine and marine ecosystems where relevant. In relevant regions, water quality in, and environmental flows to, coastal Ramsar wetlands, will be addressed in the regional NRM plan and will be prioritised for funding through the regional investment strategy.
- (6) (a) Matters of national environmental significance (as listed in Part 3, Division 1 of the Environment Protection and Biodiversity Conservation Act 1999) were considered in establishing the goals and objectives of the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust. The Australian Government and the relevant State /Territory governments are responsible for accrediting NRM plans, on the basis of the accreditation criteria agreed by the NRM Ministerial Council. The criteria include issues for which the Australian Government has responsibility such as the matters of national environmental significance. An Australian Government priority when determining its investment in implementing an accredited NRM plan will be to give effect to these Australian Government responsibilities.  
(b) Funding for priority projects may be provided prior to the accreditation of a regional NRM plan, where the agreed framework for an integrated catchment / regional NRM plan exists. In this instance, the Australian Government and the relevant State/ Territory government jointly agree on actions that are a priority from a national or regional perspective.
- (7) Regional NRM plans are assessed against a set of accreditation criteria endorsed by the Natural Resource Management Ministerial Council in May 2002. When these criteria are met the plan will be accredited. In summary, the accreditation criteria require regional bodies to demonstrate that their plans:
  - cover the full range of natural resource management (NRM) issues;
  - are underpinned by scientific analysis of natural resource conditions, problems and priorities;
  - have effective involvement of all key stakeholders in plan development and implementation;
  - focus on addressing the underlying causes rather than symptoms of problems;
  - include strategies to implement agreed NRM policies to protect the natural resource base;
  - demonstrate consistency with other planning processes and legislative requirements applicable to the region;

- set targets at the regional scale, consistent with the National Framework for NRM Standards and Targets;
  - identify strategic, prioritised and achievable actions to address the range of NRM issues and achieve the regional targets: this includes an evaluation of the wider social, economic and environmental impacts of such actions, and of any actions needed to address such impacts; and
  - provide for continuous development, monitoring, review and improvement of the plan.
- (8) In considering an investment plan for a particular region, the Australian Government will make an assessment as to the balance of investments, including the areas for which the Australian Government has responsibility. In making its funding decisions, the Australian Government will have regard for both Australian and State Government priorities as well as regional priorities. Government investment in accredited NRM plans will be consistent with the goals and objectives of the relevant program:
- investment under the National Action Plan for Salinity and Water Quality will focus on action to prevent, stabilise and reverse trends in salinity and to improve water quality and reliability that affects sustainable production, biodiversity and infrastructure;
  - investment under the Natural Heritage Trust will focus on actions which are consistent with the Trust's objectives relating to biodiversity conservation, sustainable natural resource use, and capacity building and institutional change.
- Matters of national environmental significance were considered in establishing the 10 priority areas under the Natural Heritage Trust and the objectives of the National Action Plan for Salinity and Water Quality.
- (9) Approximately \$54 million has been spent to date under the second phase of the Natural Heritage Trust on priority projects.
- (10) Priority projects are undertaken to address natural resource management issues prior to the completion and accreditation of regional plans. Consequently, it is not expected that resource condition targets would have been set before priority projects are funded. However, as resource condition targets will be set during the development of regional plans, it is expected that priority projects would contribute to matters for which a target would be set during the planning process, and therefore in the longer term, will contribute to meeting resource condition targets.
- (11) Projects funded under the National Action Plan for Salinity and Water Quality and the Natural Heritage Trust are intended to achieve outcomes consistent with the goals and objectives of the relevant program. These projects include activities such as planning, implementation, monitoring and reporting. However the expenditure on these activities is not specifically reported across projects at a whole of National Action Plan or Trust level.
- (12) See 11.
- (13) Compliance with the terms and conditions of the Bilateral Agreements is monitored on an annual basis as part of the annual reporting process.
- (14) The Government has not identified any major breaches of the conditions of the Trust and National Action Plan bilateral agreements. However, in some instances timetables for the completion of activities, such as planning processes and development of strategies, have not been met. In all of these cases the Australian Government is working with States and Territories through relevant Joint Steering Committees to address these issues and complete the agreed activities.

**Environment: Natural Heritage Trust****(Question No. 2317)**

**Senator Bartlett** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 22 October 2003:

- (1) With reference to the second phase of the Natural Heritage Trust (NHT): How much money has been spent:
  - (a) on the National Vegetation Initiative;
  - (b) on the Murray- Darling 2001 Program;
  - (c) on the Coast and Clean Seas Initiative;
  - (d) on the National Land and Water Resources Audit;
  - (e) on the National Reserve System;
  - (f) on 'environment protection' (as defined under section 15 of the Natural Heritage Trust of Australia Act 1997 (NHTA Act));
  - (g) on supporting 'sustainable agriculture' (as defined under section 16 of the NHTA Act);
  - (h) on 'natural resource management' (as defined under section 17 of the NHTA Act);
  - (i) on purposes that are incidental or ancillary to any of the purposes outlined in subsections 8(a) to (h) of the NHTA Act;
  - (j) for the purpose of making grants of financial assistance for any of the purposes outlined in subsection 8(a) to (h) of the NHTA Act;
  - (k) for accounting transfer purposes (as defined in section 18 of the NHTA Act).
- (2) How much money in the Natural Heritage Trust of Australia Reserve that represents proceeds of the sale of shares in Telstra has been debited for the purposes of: (a) the National Vegetation Initiative; (b) the Murray-Darling 2001 Program; (c) the National Land and Water Resources Audit; (d) the National Reserve System; (e) the Coasts and Clean Seas Initiative; (f) environmental protection (as defined by section 15 of the NHTA Act); (g) supporting sustainable agriculture (as defined by section 16 of the NHTA Act); (h) natural resources management (as defined by section 17 of the NHTA Act); (i) a purpose incidental or ancillary to any of the purposes outlined in subsections 8(a) to (h) of the NHTA Act; and (j) the making of grants of financial assistance for any of the purposes outlined in subsections 8(a) to (h) of the NHTA Act.
- (3) How do the four programs that are being funded through the second phase of the NHT, (i.e. Landcare, Bushcare, Coastcare and Rivercare) relate to the purposes of the Natural Heritage Trust of Australia Reserve that are set out in section 8 of the NHTA Act.
- (4) How does the Government reconcile the purposes of the Reserve, as defined in section 8 of the NHTA Act, with the three overarching objectives of the NHT that are described in government policy papers (i.e. sustainable use of natural resources, biodiversity conservation and community capacity building and institutional change).
- (5) Do the bilateral agreements that the Commonwealth has signed to date include frameworks for the achievement of outcomes that relate to 'environment protection', 'natural resource management' and 'sustainable agriculture' (as defined in sections 15,16 and 17 of the NHTA Act); if so, can the Minister explain how these outcomes will be achieved and how these outcomes relate to the three policy objectives of the NHT as referred to in question 4.
- (6) With reference to Section 21 of the NHTA Act, which requires the Minister to have regard to the principles of ecologically sustainable development in making a decision to approve a proposal to

spend money in the Reserve: can the Minister describe how these principles were considered in making the decisions to approve the funding for the following:

- (a) the Queensland National Reserve System program projects known as 'The Seven Confidential Land Acquisition Projects in Queensland' in 2001-02;
  - (b) the South-East Queensland Western Catchment project that was announced on 1 October 2003;
  - (c) the Burdekin Dry Tropics project that was announced on 1 October 2003;
  - (d) the \$2.14 million and \$967 000 of Queensland drought recovery measures that were announced on 7 May 2003 and on 28 March 2003 respectively;
  - (e) the South Australia Bushcare project known as 'Improving the Quality of Biodiversity of Protected Areas on Private Land' in 2001-02;
  - (f) the South Australia Bushcare project known as 'Natural Heritage Trust Coordination' in 2001-02;
  - (g) the \$134 149 and \$29 928 of South Australia drought recovery measures that were announced on 7 May 2003 and on 28 March 2003 respectively;
  - (h) the New South Wales project known as 'Integrated Delivery of Environmental Education in the Sydney Basin' that was announced on 16 July 2003; and
  - (i) the \$3.17 million and \$1.56 million of New South Wales drought recovery measures that were announced on 7 May 2003 and on 28 March 2003 respectively.
- (7) How much money has the Commonwealth derived from interests in property acquired using funds from the Reserve.
- (8) How much money has the Commonwealth transferred to the Reserve from the Consolidated Revenue Fund on account of moneys derived from interests in property acquired using funds from the Reserve.
- (9) Who are the current members of the NHT Advisory Committee and what qualifications or experience in natural resource management do they possess.
- (10) Has the NHT Advisory Committee provided advice to the NHT Board on:
- (a) the program structure of the NHT (i.e. natural, regional and envirofund), and relative expenditure of money under this structure.
  - (b) the relative expenditure of monies between the Coastcare, Landcare, Bushcare and Rivercare programs;
  - (c) the relative expenditures between regions and between national component program;
  - (d) accounting for the commitment given by the Howard Government in 2001 to spend \$350 million directly on water quality measures under the second phase of the NHT;
  - (e) the requirements for accreditation of regional plans; and
  - (f) priorities for expenditure to achieve environmental protection, natural resource management and sustainable agriculture outcomes.
- (11) If the NHT Advisory Committee has provided advice on any of the matters outlined in question 10, can a copy of the advice be provided by no later than 2 November 2003.
- (12) Can a copy of the Investment Strategy for the Reserve referred to in section 41 of the NHTA Act be provided by no later than 2 November 2003.
- (13) (a) Which components of the NHT and programs under the national component currently have funding agreements for multiple years, including the 2003-04 and 2004-05 financial years; and (b) has the Natural Heritage Ministerial Board approved estimates for these components and programs,



in accordance with section 41 of the NHTA Act; if so, can a copy of these estimated be provided by no later than 2 November 2003.

- (14) With reference to section 42 of the NHTA Act, what was the indexation for each of the following financial years: (a) 2002-03; and (b) 2003-04.
- (15) Can a copy be provided of the guidelines for the preparation for the financial statements for the Reserve that have been issued by the Minister for Finance and Administration.
- (16) Can a copy be provided of any guidelines that have been prepared for accounting for in-kind contributions to projects funded under the NHT or the National Action Plan for Salinity and Water Quality.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) (a) to (c) Under the second phase of the Natural Heritage Trust (NHT) 2002-03 the previous Trust programs - National Vegetation Initiative, Murray Darling 2001 Program and Coasts and Clean Seas Initiatives no longer exist. However, the outcomes under the programs are now funded through the Bushcare, Rivercare and Coastcare programs. Expenditure under these programs in 2002-03 was Bushcare: \$70.2 million; Rivercare: \$65.5 million; Coastcare: \$38 million;
- (d) National Land and Water Resources Audit \$2.6 million;
- (e) National Reserve System \$6.9 million;
- (f) and (h) Investment under the second phase of the Trust is targeted to the purchase of integrated outcomes. These outcomes include 'environment protection', 'sustainable agriculture' and 'natural resource management' outcomes. It is not possible to separate the majority of individual investments into these discrete categories, as proponents have been encouraged to actively seek multiple outcomes.
- (i) NHT expenses including any incidental or ancillary charges are attributed to a program (Bushcare, Coastcare, Landcare or Rivercare) and in reporting the expense there is no distinction made between an expense for one of the main purposes as prescribed under the Act and a purpose incidental or ancillary to any of the main purposes.
- (j) Expenditure for the purposes of grants under the second phase of the Trust are:
- Bushcare program \$56.8 million was expended
  - Rivercare program \$27.7 million was expended
  - Coastcare program \$14.8 million was expended
  - Landcare program \$31.9 million was expended
- (k) Financial statements for 2002-03 do not report the Trust having spent any money for accounting transfer purposes as defined in section 18 of the Natural Heritage Trust of Australia Act 1997 (the Act).
- (2) There is no requirement under the Act to monitor actual expenses from funds received from the sale of shares in Telstra for the purposes identified. Trust funds comprise sale of Telstra revenue plus interest earned on cash balances and all expenses are debited from these funds.

	1996-97 \$m	1997-98 \$m	1998-99 \$m	1999-00 \$m	2000-01 \$m	2001-02 \$m	2002-03 \$m
(a) National Vegetation Initiative Notes 1 and 3	3.7	22.2	50.2	81.6	81.5	83.8	24.7
(b) Murray-Darling 2001 Program Notes 2 and 3	3.8	27.5	35.0	43.0	44.0	38.0	11.8
(c) National Land and Water Resources Audit Notes 2 and 3	1.3	2.4	11.8	9.8	9.0	7.3	3.2
(d) National Reserve System Notes 2 and 3	0.4	2.9	11.2	11.4	13.7	23.6	13.5
(e) Coasts and Clean Seas Initia- tive Notes 2 and 3	0.0	8.6	20.2	28.1	21.7	24.5	14.1

Source:

Note 1 Figures for NVI and 2002-03 are from the DEH financial system;

Note 2 1996-97 to 2001-02 figures from Trust Annual Report 2001-02;

Note 3 Figures for 2002-03 refer to NHT 1 expenditures carried over into that financial year.

(f) and (h) A number of the programs under the first phase of the Trust had both environmental protection and sustainable agriculture outcomes. It is not possible to sort the majority of individual projects into these discrete categories as many of the programs under the first phase of the Trust delivered on multiple outcomes.

(i) NHT Expenses including any incidental or ancillary charges are attributed to a program and in reporting the expense there is no distinction made between an expense for one of the main purposes as prescribed under the Act and a purpose incidental or ancillary to any of the main purposes.

(j) The table above represents grants of financial assistance for the purposes outlined in subsections 8(a) to (h) of the Act.

- (3) The national outcomes for each program set out in the Framework for the Extension of the Natural Heritage Trust (Attachment 1) indicate the specific activities to be implemented under each program. These outcomes cover the range of activities set out in section 8 of the Act.
- (4) The three objectives of sustainable use of natural resources; biodiversity conservation and community capacity building and institutional change reconcile back to the main objective of the establishment of the Reserve which is to repair and replenish Australia's natural capital infrastructure. Activities contributing to meeting these objectives will meet the purposes listed in section 8 of the Act.
- (5) Yes. This includes a commitment to the objectives and framework for the Trust extension, including the establishment of regional planning frameworks, as well as specific institutional reforms aimed at improving the management of natural resources at the State/Territory level. These institutional reforms include vegetation, land and water management reforms designed to ensure that the institutional framework in place in each State/Territory supports and enhances investment made by the Australian Government through the Trust and the outcomes defined in the Act.
- (6) (a), (e), (f) These projects were all submitted under the first phase of the Natural Heritage Trust using the guidelines for the "One Stop Shop". These guidelines contained criteria that incorporated the principles of Ecologically Sustainable Development. The Technical and State assessment panels made assessments taking into account these principles in the context of the overall outcomes for the Trust, prior to recommendations being made to Ministers.

(b), (c) These two projects are funded under the National Action Plan for Salinity and Water Quality (announced in the joint media release of 1 October 2003) and not the Natural Heritage Trust.

(d), (g) and (i) These projects were submitted under the second phase of the Trust using guidelines for the Australian Government Envirofund – Drought Recovery Round. These guidelines outline that the applications would be assessed against a number of criteria including whether the project will contribute to achieving long-term ecological sustainability. The assessment panels (technical, state and national) made assessments against these criteria, taking natural resource management outcomes into consideration, prior to recommendations being made to Ministers.

(h) Ministers are informed of their obligations with regard to the principles of ESD when approving projects under the Trust, and were so informed in relation to the 'Integrated Delivery of Environmental Education in the Sydney Basin' project.

(7) Financial statements do not report the Commonwealth having received any revenue (moneys) from interests in property.

(8) Financial statements do not report the Commonwealth having received any revenue (moneys) from interests in property.

(9) Natural Heritage Trust Advisory Committee membership is as follows:

Sir James Hardy (Chair)	Former Director, Landcare Australia Limited Chairman, Landcare Australia Foundation Director, BRL Hardy Limited Yachtsman
Professor Peter Cullen	River and/or wetland ecology Former Chief Executive Officer, Cooperative Research Centre for Freshwater Ecology Chair, ACT Environment Advisory Committee Member, ACT Science and Technology Council Chair, National River Health Program Advisory Committee Chair, ACT State Assessment Panel National Heritage Trust Member, Community Advisory Committee, Murray-Darling Ministerial Council Member, Board of Studies in Scientific Communication, ANU, since 1998 Scientific Adviser, Lake Eyre Catchment Management Coordinating Group Landscape and Open Space Advisory Committee, Olympic Coordinating Authority, since 1996 Member, Scientific Advisory Committee, Parks Victoria Member, Commonwealth State of the Environment Advisory Committee Member of IUCN Commission on National Parks and Protected Areas, since 1991 Board Member, Key Centre for Biodiversity & Bioresources, Macquarie Uni, since 1996 Director, Landcare Australia Limited, Gungahlin Development Authority, Water Research Foundation of Australia Ltd
Dr Roy Green	Expertise in science and technology Chair, Land and Water Resources Audit Advisory Council Formerly Intergovernmental Oceanographic Commission (Paris) Past Chief Executive, CSIRO 1995-96

	<p>Past Director, CSIRO Institute of Natural Resources and the Environment</p> <p>Member, Australian Marine Industry and Science Committee</p> <p>Chairman Ecologically Sustainable Development Working Group on Agriculture, Forestry and Fisheries 1990-91</p>
Mr Bruce Lloyd	<p>Land and/or water management</p> <p>Chair of the Australian Landcare Council</p> <p>Irrigation dairy farmer near Shepparton</p> <p>Federal Member for Murray 1971-96</p> <p>House of Representatives Standing Committee on the Environment 1993-96</p> <p>Long association with the farming community and government and a keen interest in land and water management issues in Australia</p>
Ms Diane Tarte	<p>Coastal and/or marine systems</p> <p>Previous Executive Officer, Australian Marine Conservation Society and National Coordinator, Marine and Coastal Community Network.</p> <p>Co-convenor, Australian Committee for IUCN Marine Subcommittee which prepared Towards a Strategy for the Conservation of Australia's Marine Environment (1994) and organised the recent Oceans Policy Workshop. Experience in various cross-sectoral fora including the original National Biodiversity Advisory Committee and the Queensland Environment Protection Council.</p> <p>Over the past 25 years has been involved in a variety of marine and coastal conservation issues, particularly the management and protection of the Great Barrier Reef and Australian tidal wetland areas, the development of government planning and management policies and legislation, and the involvement of the community in the management of marine protected areas, coastal wetland reserves and rehabilitation of riparian zones.</p>
Ms Pamela Green	<p>Local government expertise</p> <p>Small businesswoman</p> <p>Eurobodalla Shire Council Councillor elected 1995, Mayor from September 2002</p> <p>Chair, Batemans Bay Estuary Management Committee and Batemans Bay Coastal Management Committee 1996-2001</p> <p>Member, SE Water Management Committee, since 1998</p> <p>Chair, SE Catchment Management Board, since 2000</p> <p>Member, Sydney Catchment Authority Local Government Reference Panel, since 2000</p> <p>Member, State Assessment Panel for Coastcare and Coast and Clean Seas 1999-2001</p> <p>Chair, State Assessment Panel Envirofund and NHT Interim round 2002-03</p> <p>Chair, National Envirofund Drought Round 2003</p>
Ms Jan Fitzgerald	<p>Sustainable agriculture expertise</p> <p>President, Australian Women in Agriculture, and board member of several industry groups</p> <p>Experience in many aspects of the wool industry, particularly chemical residues, marketing and promotion</p>

#### QUESTIONS ON NOTICE

	<p>Director of a super-fine wool family enterprise in Gore Queensland</p> <p>Director and a founding member of Traprock Wool Inc and member of Inglewood Landcare.</p> <p>Named in 2002 as one of 100 most inspirational agricultural women in Australia.</p>
Professor Jamie Kirkpatrick	<p>Native vegetation sciences expertise</p> <p>Professor of Geography and Environmental Studies at the University of Tasmania, Hobart. He recently became a member of the general division of the Order of Australia for services to environmental conservation, especially in relation to world heritage assessment and forest reservation criteria. He leads a research group active in conservation ecology and has a long record of contribution to government and non-government committees related to nature conservation. He is particularly concerned that nature conservation activities in Australia concentrate on the critical issues, which are largely those to do with the threatened species, communities and landscapes in the most intensively used parts of Australia, such as the wheat-sheep belt. He is particularly concerned about the continuing attrition of the relatively few remnants of grasslands and grassy woodlands in south-eastern Australia. His books include <i>Alpine Tasmania</i> and <i>A Continent Transformed - Human Impact on the Vegetation of Australia</i>. His research has been, and is, directed at providing logical procedures, and a sound scientific base, for the conservation of species, communities and other natural values.</p>
Ms Alison Anderson	<p>Indigenous communities expertise</p> <p>ATSIC Commissioner for Northern Territory Central Zone</p> <p>ATSIC Regional Councillor for nine years</p> <p>Commissioner with the former Aboriginal Development Commission</p> <p>Deputy Chairperson of the Papunya Community Government Council.</p> <p>She lives in Papunya, a Central Australian community 280 kms north-west of Alice Springs, and is a mother of five with three grandchildren.</p> <p>Ms Anderson, who speaks several Central Australian languages (Luritja, Western Arrernte and Pitjantjatjarra), refers to herself as a "community person" having spent most of her political life trying to improve the conditions of bush people.</p>
	<p>The biodiversity position is currently vacant and the process for filling is currently underway.</p>

- (10) (a) Yes.  
 (b) Yes.  
 (c) No advice has been provided on the relative expenditure of monies between regions. Advice has been provided on relative expenditure between national component activities.  
 (d) No.  
 (e) Yes.  
 (f) Yes.
- (11) Advice from the Advisory Committee is to the Natural Heritage Ministerial Board and is not publicly available.
- (12) The Framework for the Trust extension provides the investment strategy for the Trust as set out in s.41 of the Act. A copy is attached (Attachment 1).

- (13) (a) National delivery level. The following table show those projects that have funding agreements for multiple years as of 1 November 2003:

Title	2003/04	2004/05
Overarching - National Coastal and Urban Water Quality Hotspots	\$3.424	\$1.384
Marine Species Recovery Plan	\$0.069	\$0.009
Overarching Project for Albatross & Seabird Initiatives	\$0.020	\$0.006
Threatened Species Network	\$0.817	\$0.817
Biosphere Reserves - Management of Calperum & Taylorville	\$0.500	\$0.500
Biosphere Reserves - Community Based Management for Biodiversity Conservation and Sustainable Natural Resource Management through Establishment of the Barkindji Biosphere Reserve in Mildura (Victoria)	\$0.150	\$0.150
Overarching - Great Barrier Reef Lagoon Water Quality	\$0.172	\$0.073
Sydney Harbour Federation	\$1.000	\$1.000
Implementation of the Future Framework for Facilitators and Coordinators (at the National, State-Based National and Strategic Regional Levels and Including the ILMF and Coastcare)	\$14.300	\$14.300
Total	\$20.452	\$18.239

- (b) Yes, estimates for the four Trust programs follow:

Table 1 Funding Levels for Trust Extension by Program		
\$m	Estimate 2003-04	Estimate 2004-05
Bushcare	85.0	105.4
Coastcare	32.5	40.3
Landcare	65.0	80.6
Rivercare	67.5	83.7
Total	250.0	310.0

Table 2 Funding Allocations by Investment Level				
	National	Regional	Envirofund	Total
	\$m	\$m	\$m	\$m
2003-05	103	127	20	250
2004-05	123	167	20	310

- (14) The Department of Finance and Administration has advised that the indexation amount that applied to the Trust in respect of section 42 of the Act is as follows:

2002-03 – 2.5%

2003-04 – 2.3%

- (15) A copy of the Requirements and Guidance For The Preparation of Financial Statements of Commonwealth Agencies and Authorities for the period ending 30 June 2003, can be obtained from the following Department of Finance and Administration website address:

<http://www.dofa.gov.au/docs/Finance%20Ministers'%20Orders%202002-2003%20%20-%20final%2027.03.03.pdf>

These guidelines are applicable to all Australian Government agencies and are not specific to the Trust.

- (16) There are no specific guidelines for in kind contributions for the National Action Plan on Salinity and Water Quality as States and Territories are required to match the Australian Government

contribution in cash. A copy of the guidelines for matching funding under the Natural Heritage Trust is attached (Attachment 2).

#### **ATTACHMENT 1**

##### **FRAMEWORK FOR THE EXTENSION OF THE NATURAL HERITAGE TRUST**

1. Lessons learnt from the first phase of the Trust and the establishment of the National Action Plan for Salinity and Water Quality (the NAP) have been taken into account in the finalisation of the framework. There will be a fundamental shift in the Trust towards more strategic investment.
2. The model for regional investment under the extension of the Trust will be based on that used for the NAP, including bilateral and regional partnership agreements, investment against accredited regional plans, and the provision of foundation and priority funding.

##### **Trust objectives**

3. The Trust will have three overarching objectives.
  - (i) Biodiversity Conservation - the conservation of Australia's biodiversity through the protection and restoration of terrestrial, freshwater, estuarine and marine ecosystems and habitat for native plants and animals.
  - (ii) Sustainable Use of Natural Resources - the sustainable use and management of Australia's land, water and marine resources to maintain and improve the productivity and profitability of resource based industries.
  - (iii) Community Capacity Building and Institutional Change - support for individuals, landholders, industry and communities with skills, knowledge, information and institutional frameworks to promote biodiversity conservation and sustainable resource use and management.

These overarching objectives have been the basis for defining the four programs and the development of the ten areas of activity.

##### **Trust programs**

4. The Trust will have four programs. These programs establish the resource condition outcomes that will be sought through Trust investment. Detailed descriptions of the programs are at Attachment A.
  - (i) The Landcare Program will invest in activities that will contribute to reversing land degradation and promoting sustainable agriculture.
  - (ii) The Bushcare Program will invest in activities that will contribute to conserving and restoring habitat for our unique native flora and fauna which underpins the health of our landscapes.
  - (iii) The Rivercare Program will invest in activities that will contribute to improved water quality and environmental condition in our river systems and wetlands.
  - (iv) The Coastcare Program will invest in activities that will contribute to protecting our coastal catchments, ecosystems and the marine environment.

##### **Scope of Activity**

5. The following 10 areas of activity define the scope of Trust investment:
  - i. protecting and restoring the habitat of threatened species, threatened ecological communities and migratory birds;
  - ii. reversing the long-term decline in the extent and quality of Australia's native vegetation;
  - iii. protecting and restoring significant freshwater, marine and estuarine ecosystems;
  - iv. preventing or controlling the introduction and spread of feral animals, aquatic pests, weeds and other biological threats to biodiversity;

- v. establishing and effectively managing a comprehensive, adequate and representative system of protected areas;
  - vi. improving the condition of natural resources that underpins the sustainability and productivity of resource based industries;
  - vii. securing access to natural resources for sustainable productive use;
  - viii. encouraging the development of sustainable and profitable management systems for application by land-holders and other natural resource managers and users;
  - ix. providing land-holders, community groups and other natural resource managers with understanding and skills to contribute to biodiversity conservation and sustainable natural resource management; and
  - x. establishing institutional and organisational frameworks that promote conservation and ecologically sustainable use and management of natural resources.
6. Natural resource management priorities will vary between regions and between States/Territories, as will the extent to which the areas of activity identified for Trust investment are addressed in regional plans. It is, therefore, not anticipated that each regional NRM plan will necessarily address all of the ten areas of activity. Similarly, equal emphasis may not be applied to all components of a single area of activity within a regional plan.
  7. Investment under the Trust will be available for salinity and water quality measures across Australia, including in NAP regions. At least \$350 million of the Trust funds will be invested directly on measures to improve water quality.

#### **Levels of investment**

8. Investment under the Trust will occur at three levels: national/state; regional; and local. Transitional arrangements will be necessary to provide support for ongoing work consistent with expected regional priorities, to build on the outcomes of existing Trust investments, and to maintain momentum and continuity within communities.
9. National/State Investments  
Investment at this level will address activities that have a broadscale, rather than a regional or local, outcome. This will include activities at the state-wide level, as well as those that cross over state and regional boundaries. It will also address matters of direct Commonwealth jurisdiction, such as those relating to Commonwealth waters.
10. National/State investments can be grouped together into three sets:
  - Commonwealth activities: giving effect to Federal Government environmental and natural resource responsibilities and priorities, and implemented solely by the Commonwealth or in partnership with other jurisdictions;
  - Joint Commonwealth and State/Territory activities: including cross-jurisdictional activities, identified and agreed jointly by the Commonwealth and the States/Territories; and
  - State-wide and within-State activities: identified and agreed to jointly by the Commonwealth and the States/Territories.
11. Investment priorities are likely to cover National / State activities such as resource assessment, research, industry strategies, innovative approaches to managing NRM issues such as weeds, marine species and protected areas, reserve acquisitions, training and information, and national coordination/facilitation.
12. While at the National / State level the four programs will form four discrete funding sources, complementary outcomes will be pursued. Investment priorities will be funded from one or more of the four programs depending on the nature of the activity in question.



## 13. Regional investments

This will be the principal delivery mechanism for the Trust and will follow, as far as practical, the model developed for the NAP. Under this model, investment is made on the basis of an accredited, integrated NRM plan and investment strategy/proposal developed by the region.

14. Plans which seek accreditation for Trust investment will identify all of the NRM issues in a region (based on the best available scientific and technical information), develop actions to address these issues and then prioritise the most important issues for action. They will also set resource condition and management action targets based on agreed national standards.
15. The requirement that plans be based on rigorous scientific and technical information, and that they set achievable natural resource condition targets, will require the Trust to invest in research. As many plans will be based on existing regional and catchment plans, the nature and subject of the research for which funding may be provided will need to be carefully targeted and determined on a case by case basis.
16. Investment proposals for Trust funding submitted to the Commonwealth and relevant State/Territory after plan accreditation must demonstrate how the actions for which funding is sought meet the areas of activity for investment established for the Trust.
17. In the NAP priority regions the delivery of Trust and NAP funding will be integrated, subject to the requirements necessary to meet separate auditing and evaluation requirements for the two programs.
18. A process is currently under way to review the accreditation criteria developed by the NAP to ensure that plans accredited under the criteria can be used as a basis for investment under a range of programs including the NAP and the Trust.
19. At the regional level the four programs will be integrated and complementary outcomes will be pursued.
20. Regional boundaries will be established using the following principles:
  - i. regions will be based on integrated NRM considerations;
  - ii. regions reflect, where possible, existing regional arrangements; and
  - iii. relevant regions incorporate coasts and adjacent waters.

A consequence is that the NRM regions used for the Trust will not be inconsistent with the NAP arrangements.

21. Where regional arrangements are less well defined, for example in the rangelands, the Commonwealth, rangelands States and the Northern Territory will jointly determine the approach to be taken. Cross border arrangements for any region would need to be developed on a case-by-case basis.

## 22. Rangelands

Trust investment in the rangelands may occur outside a regional framework, but still within the areas of activity identified for Trust investment.

Delivery of the Trust in the rangelands will build on existing national, state and regional strategies and initiatives and follow the principles agreed for accreditation and investment in integrated natural resource management strategies.

Attention will be given to gathering and sharing information to promote cost effectiveness and consistency across jurisdictions. Funding at the regional level will incorporate a flexible approach to accommodate the particular characteristics and needs of the rangelands.

This flexibility will be agreed bilaterally and consider issues such as sparse populations, indigenous communities, organisational structures, priority actions and partnerships.

## 23. Interim Regional Arrangements

A process for managing the transition to regional implementation is a high priority. Arrangements will need to be flexible to provide a level of certainty and predictability for regions, support for ongoing work consistent with expected regional priorities and to build on the outcomes of existing projects.

## 24. Funds will be available for some activities prior to accredited plans being in place.

## 25. There will be investment against two categories of activities in this interim period:

- Foundation funding to support the process of developing or refining a regional integrated NRM strategy, including support for the regional organisation to undertake activities such as evaluating existing plans, information gap filling, plan development and community consultation; and
- Priority funding for regions to continue to address pressing NRM issues through large-scale actions, prior to the accreditation and implementation of a regional NRM plan, as well as technical support and capacity building.

## 26. Continued funding for facilitators and coordinators is needed during the interim period to facilitate community input into the development of regionally strategic NRM plans, assist community groups with Australian Government Envirofund projects and project reporting, assist the community to finalise projects and submit final reports for the first phase of the Trust, provide technical support and community development needs, and support Commonwealth obligations.

## 27. There will only be one interim funding round (2002-03), unless circumstances in some regions justify a second round. Any project extension would be subject to review against progress in completing regional plans and implementing individual projects. Overall investment in interim projects will be small in proportion to investment following the accreditation of regional plans. Interim projects should address the most time critical priority issues in a region, clearly demonstrated through sound scientific and planning processes.

## 28. Approved interim projects will need to demonstrate:

- contribution to the objectives of the Natural Heritage Trust and consistency with the identified priority areas of activity;
- that the range of natural resource management issues were adequately considered in putting together the bids;
- consistency with existing plans;
- consultation with stakeholders and community support;
- a need for early commencement (such as the opportunity to avoid more significant impacts, the window of opportunity is small, or the opportunity to link with other activities);
- support for continuity and momentum in existing community capacity;
- value for money;
- approval for the work from the land manager; and
- receipt of any statutory approvals that may be necessary, and compliance with any relevant legislation.

## 29. The process for managing this funding will involve seeking bids from each region (principally from established regional groups), assessment and prioritisation of bids on a state-wide basis by a panel with a majority community membership and a community chair, and consideration of the recommended bids by the Commonwealth and relevant state and territory as joint investors. Where

regional arrangements are less well established, the Commonwealth and States will discuss arrangements further.

30. Australian Government Envirofund

These grants will provide the opportunity for community groups, in particular those that have had little or no previous engagement with the Trust, to build capacity through:

- gaining experience in addressing NRM issues on a relatively small scale;
- finding out about the range of approaches to addressing these issues;
- building networks with others addressing similar issues; and
- participating in the development and implementation of broader regional approaches to natural resource management.

31. The Australian Government Envirofund will assist groups to undertake:

- small on-ground projects tackling local problems;
- projects in areas where regional plans are not yet well developed; and
- important local projects.

Activities should not be inconsistent with regional plans.

32. A process for managing this grants program will be negotiated with those jurisdictions willing to administer the grants on behalf of the Commonwealth.

33. While at the Australian Government Envirofund level the four programs will form four discrete funding sources, complementary outcomes will be pursued.

34. The Australian Government Envirofund will not be addressed in either State/Commonwealth bilateral agreements or regional agreements.

**Funding**

35. The Trust is only one of a range of potential sources of investment funds for any individual integrated natural resource management plan, and regional communities are expected to seek, as they consider appropriate, investment for different activities and outcomes under their plans from different sources.

36. Up to 3-year funding will be provided for funding based on accredited regional plans subject to annual review against milestones.

37. In principle and subject to negotiations concerning implementation arrangements and the provision of information on the allocation of funds to regional programs:

- i States and Territories will match from their budgets the Commonwealth's investment in delivery of the NHT at the regional level;
- ii Investments at the regional level will be managed under plans jointly accredited by the Commonwealth and the relevant State/Territory;
- iii Matching funding arrangements will not normally apply to projects the States and Territories have already announced they will proceed with. For new and already announced funding by the States and Territories to be eligible as matching funding it must be:
  - a. directly attributed to the region in question;
  - b. directly relevant to activities in the regional investment strategy being funded; and
  - c. for jointly agreed activities in the region in question.

Subject to the above, where a state/territory reduces its allocation to a pre-existing/announced State/Territory activity, the Commonwealth will not make up the shortfall.

- iv. There will be full transparency of the source, quantum and expenditure of all resource contributions under the NHT including for funds that are managed jointly under accredited plans or resources that are matched on an agreed project by project basis; and
  - v. Auditing and reporting arrangements will be agreed between the Commonwealth and each State and Territory to give effect to iii above.
38. Matching investment agreed by the States and Territories may include both cash and appropriately costed and audited in kind contributions (except for purchases of land under the National Reserves System where only cash matching will be accepted).
39. At the regional level Trust investment will be determined on the basis of each region's investment strategy. The Commonwealth and State/Territory will each contribute 50% of the resources to be allocated. The Commonwealth and State can contribute differentially to jointly agreed activities within the investment strategy, provided their total contributions are equal.
40. At the national level, for State-wide and within-State investments within the National/ State investment stream, the Commonwealth and State/Territory will each contribute 50% of the resources required. Contributions for multilateral investments will be as agreed by the parties.

#### **Bilateral and Regional Agreements**

41. The Trust bilateral agreements will be based primarily on the structure used for the NAP bilateral agreements, and will draw on the existing Trust Partnership Agreements and Memoranda of Understanding.
42. The bilateral agreements will establish a framework under which the Parties will work cooperatively for the purposes of section 19 of the Natural Heritage Trust of Australia Act 1997.
43. The bilateral agreements will address institutional change required to underpin Trust delivery. This will include the institutional reforms agreed under the NAP IGA being applied to Trust regions.
44. Where coastal areas are included in NRM regions, the NRM plans to be accredited under the extended Trust are to be developed in cooperation with the land managers/agencies that have statutory coastal management responsibilities within each jurisdiction.
45. All jurisdictions support the engagement of local government in the delivery of the Trust. To implement regional delivery of Trust investment, agreements will be developed with each agreed local government/regional group describing the management and accountability arrangements. The process for developing the agreements within each State and Territory will be determined through the bilateral agreements.

#### **Monitoring and Evaluation**

46. The NRM Ministerial Council is overseeing the development and implementation of a national monitoring and evaluation framework that will cover both the Trust and the NAP and which will enhance the capacity to monitor and measure progress against the objectives of both programs.
47. Monitoring and evaluation is an ongoing activity in NRM. It will be necessary to determine the level of Trust funds required to support monitoring and evaluation at all levels of investment, further to that already provided from other sources.

Attachment A

#### **RIVERCARE**

##### **National Goal**

To improve water quality and environmental condition in our river systems and wetlands.

##### **Priorities**

In seeking to achieve this goal, Rivercare will principally deliver the following Trust priorities:

- to improve the condition of water resources that underpins the sustainability and productivity of industries dependent on water resources;
- to secure access to water resources for productive and recreational purposes;
- to encourage the development of sustainable and profitable management systems for water resources for application by land-holders and other natural resource managers and users;
- to protect and restore significant freshwater ecosystems in rivers and wetlands;
- to prevent or control the introduction and spread of aquatic pests, weeds and other biological threats to biodiversity and productivity; and
- to protect and restore the riverine and wetland habitat of threatened species, threatened ecological communities and migratory birds.

Rivercare will assist in giving effect to the following elements of the Trust priorities:

- to reverse the long-term decline in the extent and quality of Australia's native vegetation in riverine and wetland areas;
- to establish and effectively manage riverine and wetlands elements of a comprehensive, adequate and representative system of protected areas; and

Rivercare, in conjunction with all other Trust programs will contribute to the following Trust priorities:

- to provide land-holders, community groups and other natural resource managers with understanding and skills to contribute to biodiversity conservation and sustainable natural resource management; and
- to establish institutional and organisational frameworks that promote conservation and ecologically sustainable use and management of natural resources.

#### **National Outcomes**

The principal outcomes sought by Rivercare are: improved water quality and reliable allocations for human uses, industry and the environment; and effective management and sustainable use of rivers, streams, wetlands and groundwater, and their associated biodiversity. Specific outcomes will be pursued in the following areas:

- improved water quality in rivers and streams, and in coastal and estuarine environments affected by river systems.
- improved resource security and sharing arrangements between the environment, human uses and industries;
- sustainable and productive land and water management systems, including
  - caps on the extractive use of water from all surface and groundwater systems that are over-allocated or approaching full allocation, and a strategy and timetable for meeting the caps; and
  - removal of impediments to the effective operation of trading markets in, and integrated management of, both surface and groundwater systems;
- improved water use efficiency and re-use;
- improved adoption of clean wastewater and stormwater systems;
- protection, conservation and restoration of wetland systems;
- conservation of the biodiversity of aquatic and riparian systems;
- restoration of important fish migration routes through such activities as removal of barriers and the construction of fish passage devices;

- protection of priority instream, riparian and floodplain habitats, including Ramsar sites, nationally significant wetlands and migratory water bird habitat;
- reduction in inputs of nutrients, sediments and other pollutants into waterways and groundwater;
- reduced impact on water quality and biodiversity from feral animals and weeds;
- prevention or control of the introduction of aquatic pests and weeds and reduction of their ecological and economic impact;
- engagement of the community in monitoring and protecting Australia's waterways, wetlands and groundwater;
- improved awareness, understanding and support among the wider community of the need for sustainable water management and aquatic biodiversity conservation;
- development of data collection, information, research and skills to support decision making; and
- improved and integrated management of aquatic systems, rivers, streams, wetlands and groundwater and their associated environments as a single integrated resource, while not discounting the special requirements of any aspect of that resource.

## **COASTCARE**

### **National Goal**

To protect our coastal catchments, ecosystems and the marine environment.

### **Priorities**

In seeking to achieve this goal, Coastcare will principally deliver the following Trust priorities:

- to protect and restore significant marine, coastal and estuarine ecosystems,
- to protect and restore the coastal, estuarine and marine habitats of threatened species, threatened ecological communities, and migratory shorebirds and waterbirds;
- to prevent or control the introduction and spread of introduced marine pests, coastal weeds and other biological threats to biodiversity,
- to establish and effectively manage a comprehensive, adequate and representative system of marine protected areas, and
- to improve the condition of coastal, estuarine and marine resources that underpin the sustainability of coastal, estuarine and marine-based resource industries.

Coastcare will assist in giving effect to the following Trust priorities:

- to reverse the long-term decline in the extent and quality of Australia's native coastal and estuarine vegetation;
- to secure access to marine and coastal resources for productive purposes;
- to encourage the development of sustainable and profitable management systems for application by coastal and marine resource managers and users.

Coastcare, in conjunction with all other Trust programs, will contribute to the following Trust priorities:

- to provide land-holders, community groups and other natural resource managers with understanding and skills to contribute to biodiversity conservation and sustainable natural resource management, and
- to support institutional and organisational frameworks that promote conservation ecologically sustainable use and management of natural resources.

**National Outcomes**

The principal outcomes sought by Coastcare are protection of the environmental values of our coasts, estuaries and marine environment, sustainable development of their resources and enhanced amenity of coastal areas. Specific outcomes will be pursued in the following areas:

- an improved national framework for integrated coastal zone management;
- implementation of more coordinated and effective planning regimes for coastal, marine and estuarine areas, including addressing ribbon development in the coastal fringe;
- development and implementation of recovery plans and threat abatement plans for nationally listed coastal, marine and estuarine species and ecological communities;
- identification and conservation of estuarine, coastal and marine biodiversity hotspots;
- development of a national framework to reduce the threats to coastal and marine species;
- inclusion of under represented marine regions in the national representative system of marine protected areas;
- achievement of target reductions in marine, coastal and estuarine pollution from source, particularly in coastal and urban water quality hot spots, including the Great Barrier Reef lagoon;
- development and application of appropriate economic and market-based measures to support the conservation of coastal and marine native biodiversity;
- integration of coastal water quality protection and biodiversity conservation into the core business of regional/catchment organisations;
- improved management of important migratory shorebird sites, including enhanced conservation of habitat for nationally and internationally significant shorebirds;
- prevention or control of the introduction of coastal weeds and introduced marine pests, and reduction of their ecological and economic impact;
- effective control of the loss of native coastal and marine vegetation;
- minimising the impact of land-based sources of pollution and nutrients on coastal, estuarine and marine habitats;
- improved ecologically sustainable use of fisheries resources in estuarine and marine environments;
- effective control of the loss of critical coastal, estuarine and marine fish nursery areas through measures to ensure biodiversity conservation and the productivity of fisheries;
- the commitment, skill and knowledge of coastal and marine managers to manage coastal and marine environments sustainably and make well-informed decisions; and
- understanding and appreciation by coastal communities, including indigenous communities, of the role of coastal and marine native biodiversity in Australia's rural and urban landscapes and an enhanced involvement in coastal and marine management activities;

Coastcare will work with the other Trust programs to achieve improved marine, coastal and estuarine water quality, habitat protection and biodiversity conservation outcomes, and promote the ecologically sustainable use of marine and coastal natural resources.

**LANDCARE****National Goal**

To reverse land degradation and promote sustainable agriculture.

**Priorities**

In seeking to achieve this goal, Landcare will principally deliver the following Trust priorities:

- to improve the condition of land resources that underpins the sustainability and productivity of resource based industries;
- to secure access to land resources for productive purposes;
- to encourage the development of sustainable and profitable land management systems for application by land-holders and other natural resource managers and users; and
- to prevent or control the introduction and spread of feral animals, weeds and other biological threats to productivity.

Landcare will assist in giving effect to the Trust priorities:

- to protect and restore the habitat of threatened species, threatened ecological communities and migratory birds on agricultural land;
- to reverse the long-term decline in the extent and quality of Australia's native vegetation on agricultural land; and
- to protect and restore significant freshwater, marine and estuarine ecosystems by improving the management of land resources.

Landcare, in conjunction with all other Trust programs will contribute to the following Trust priorities:

- to provide land-holders, community groups and other natural resource managers with understanding and skills to contribute to biodiversity conservation and sustainable natural resource management; and
- to establish institutional and organisational frameworks that promote conservation and ecologically sustainable use and management of natural resources.

#### **National Outcomes**

The principal outcome sought by Landcare is increased profitability, competitiveness and sustainability of Australian agricultural industries, enhancement and protection of the natural resource base, and improved land use leading to better soil health, water quality and vegetation condition. Specific outcomes will be pursued in the following areas:

- measures to reduce land degradation, including its impact on water quality;
- improvement in clarity and certainty of property rights to underpin sound management practices;
- the use of land resources within their capabilities;
- development and implementation of best practice systems, including codes of practices and environmental management systems;
- maintenance and improvement of the productivity and efficiency of land resource use;
- equipping individual farmers and communities with the understanding, skills, self-reliance and commitment necessary to maintain economic viability and sustainably manage natural resources
- increased capacity of natural resource managers to make well informed decisions; and
- support for institutional arrangements for regional delivery.

#### **BUSHCARE**

##### **National Goal**

To conserve and restore habitat for Australia's unique native flora and fauna that underpin the health of our landscapes.

##### **Priorities**

In seeking to achieve this goal, Bushcare will principally deliver the following aspects of the Trust priorities:



- to protect and restore terrestrial threatened species habitat and threatened ecological communities, and migratory birds;
- to reverse the decline in the extent and quality of Australia's native vegetation;
- to establish and effectively manage a comprehensive, adequate and representative system of terrestrial protected areas; and
- to prevent or control the introduction and spread of feral animals, terrestrial pests, weeds and other biological threats to biodiversity.

Through the above priorities Bushcare will assist the Landcare program in achieving the Trust priority of improving the condition of natural resources that underpin the sustainability and productivity of resource-based industries.

Bushcare, in conjunction with all other Trust programs will contribute to the following Trust priorities:

- to provide landholders, community groups and other natural resource managers with understanding and skills to contribute to biodiversity conservation and sustainable natural resource management; and
- to support institutional and organisational frameworks that promote conservation and ecologically sustainable use and management of natural resources.

#### **National Outcomes**

The principal outcome sought by Bushcare is a reversal of the trend of depletion of the nation's key terrestrial biodiversity assets. The following specific outcomes will be pursued:

- development and implementation of recovery plans and threat abatement plans for nationally listed terrestrial threatened species and ecological communities;
- identification and conservation of terrestrial biodiversity hotspots;
- implementation of effective measures to control the clearing of native vegetation, specifically including:
  - prevention of clearing of endangered and vulnerable vegetation communities and critical habitat for threatened species;
  - limitation of broadscale clearing to those instances where regional biodiversity objectives are not compromised;
- a substantial increase in the area and quality of the national reserve system;
- enhanced engagement with indigenous communities, leading to an expansion of the Indigenous Protected Area network;
- integration of biodiversity conservation as part of the core business of regional/catchment organisations;
- development and application of appropriate economic and market-based measures to support the conservation of terrestrial native biodiversity;
- improved protection and management of World Heritage properties;
- conservation and enhancement of remnant native vegetation;
- more sustainable management of rangeland ecosystems through measures including identification and protection of areas of high conservation significance, improved fire management and implementation of total grazing management practices to conserve biodiversity;
- increased revegetation, integrating multiple objectives including biodiversity conservation, salinity mitigation, greenhouse gas abatement, improved land stability and enhanced water quality;

- reduction in the impact on terrestrial biodiversity of feral animals and weeds, focussing on weeds of national significance and “sleepers” weeds;
- improved quarantine controls and enhanced risk assessment procedures to eliminate the introduction of new live organisms harmful to native biodiversity;
- the commitment, skill and knowledge of land managers to manage terrestrial native biodiversity sustainably; and
- understanding and appreciation by communities of the role of terrestrial native biodiversity in Australia’s rural and urban landscapes.

## **ATTACHMENT 2**

### **PRINCIPLES AND GUIDELINES, AGREED BY THE NRM MINISTERIAL COUNCIL’S PROGRAMS COMMITTEE, FOR USE BY STEERING COMMITTEES TO GIVE EFFECT TO THE TRUST REQUIREMENT FOR MATCHING FUNDING BY STATES AND TERRITORIES**

#### **Principle**

**A States and Territories will match from their budgets the Commonwealth’s investment in Trust delivery at the regional level.**

#### **Interpretation**

The agreed interpretation of this principle is that the agreed source of funding for matching purposes is any money that flows through state or territory budgets.

Matching contributions can be sourced from Public Trading Enterprises (PTEs). Contributions sourced from PTEs should be in cash rather than in-kind, as PTEs are independent of government and cannot be committed by state government officials to the accountability framework agreed for the reporting and acquittal of in-kind contributions (see Principle C).

Contributions from private sector entities, individuals and local government are ineligible as state and territory matching contributions under this requirement.

That portion of any contribution that has been directly funded by another Commonwealth program is ineligible as a state and territory matching contribution under this requirement. Examples of other Commonwealth programs that could give rise to potential cross subsidisation include, but are not limited to:

Joint Agriculture Fisheries and Forestry Australia and Environment Australia Programs:

National Action Plan for Salinity and Water Quality

Agriculture Fisheries and Forestry Australia programs:

Great Artesian Basin Sustainability Initiative

AAA – FarmBis

Rural Partnership Program

Employment and Workplace Relations Programs

Work for the Dole (including Green Reserve)

Voluntary Work and Community Work

New Enterprise Incentive Scheme

Australians Working Together

Community Development Employment Project

Family and Community Services programs:

Greencorps

Education Science and Training programs:

New Apprenticeships Incentives Program

**Implementation by Steering Committees**

Steering Committees need to satisfy themselves, and document their assessment as they consider appropriate, that matching funding proposals put forward are consistent with this requirement.

Where contributions sourced from Public Trading Enterprises are in-kind and not in cash, the accountability expectations (quarterly reporting and annual auditing) on the PTE should be agreed and documented by the Steering Committee.

**Principle(s)**

**B For new and already announced funding by the States and Territories to be eligible as matching funding it must be:**

- (i) directly attributed to the region in question;
- (ii) directly relevant to activities in the regional investment strategy being funded; and
- (iii) for jointly agreed activities in the region in question.

**Subject to the above, where a state/territory reduces its allocation to a pre-existing/announced State/Territory activity, the Commonwealth will not make up the shortfall.**

**Interpretation**

The agreed interpretation of these principles is as follows:

(a) 'Directly attributed to the region in question'

Matching funding investments are considered to be directly attributed to the region where:

- (i) Funds are directly expensed within the region; or
- (ii) Services or on-ground activities (as in-kind contributions) are delivered directly within the region; or
- (iii) A proportion of a state-wide or multi-region investment is attributed to a region and the process used to determine its attribution is agreed by the Steering Committee.

(b) 'Directly relevant to activities in the regional investment strategy'

Matching funding investments are considered to be directly relevant to activities in the regional investment strategy where:

- (i) There is a clear relationship between the proposed activity and the requirement to establish, and give effect to resource condition and management action targets, where these are based on agreed national standards; and
- (ii) It is considered relevant by the regional body in question.

(c) 'Jointly agreed activities in the region in question'

Matching funding investments are considered to be jointly agreed activities in the region in question where:

- (i) The activities are consistent with the areas of activity for investment identified for the Trust; and
- (ii) The activities are based on a region's NRM Plan and/or investment strategy; and
- (iii) The activities lie within a set of 'jointly agreed activities' for the region in question. Where regional plans have been accredited, every effort should be made to identify jointly agreed activities prior to investment decisions being made by either Party.

**Implementation by Steering Committees**

Steering Committees should satisfy themselves, and document their assessment as they consider appropriate, that matching funding proposals put forward are consistent with the above principles;

The agreed process(es) for the attribution of a proportion of a state (or multi-region) wide investment to an individual region should be appropriately documented;

In agreeing matching funding proposals, the Steering Committee should be satisfied that Commonwealth Trust funding sought by regional bodies through investment strategies is not used to make up the shortfall for activities where a state or territory has reduced its allocation to an activity in the region that it previously announced it would fund.

**Principle(s)**

- C There will be full transparency of the source, quantum and expenditure of all resource contributions under the Trust including for funds that are managed jointly under accredited plans or resources that are matched on an agreed project by project basis.**

**Auditing and reporting arrangements will be agreed between the Commonwealth and each State and Territory to give effect to this requirement.**

**Interpretation**

The requirement for transparency of source, quantum and expenditure of resource contributions under the Trust, for investments that are agreed as matching contributions, can be met by an agreed process for the acquittal of those investments, and for public scrutiny of those acquittals.

Transparency, in the form of public scrutiny, will be provided by regional bodies 'signing off' that the in-kind (and cash) investments agreed by the state have been provided to the region within the agreed timeframe.

The process for the acquittal of resources provided as matching funding contributions (both in-kind and cash) is as follows:

- (i) Acquittal information must be provided at the same level of detail as the information originally provided to support the eligibility of the funding as a matching contribution;
- (ii) States and territories must provide Steering Committees, on at least a six monthly basis, with un-audited statements identifying the agreed matching funding investments that have been delivered to each region; and
- (iii) Regional bodies (through the Chair) must sign off on an annual audited statement that the in-kind or cash resources provided by the State and/or Territory as a matching funding contribution, have been invested in the region.
- (iv) The audit should give an opinion on whether the agreed in-kind contribution has been delivered and that its value has been calculated in accordance with the agreed rules.

**Implementation by Steering Committees**

Steering Committees need to develop a regime for auditing and reporting matching funding contributions that:

- (i) is consistent with the agreed principles; and
- (ii) takes into account the circumstances in the jurisdiction in question, the arrangements for regional bodies within the jurisdiction and their responsibilities for managing funds.

Steering Committees need to agree on the format in which the annual audited statement/ acquittal of matching funding investments will be provided to regional bodies for endorsement at the time that they agree on the matching funding.

**Principle**

**D Matching investment agreed by the States and Territories may include both cash and appropriately costed and audited in-kind contributions (except for purchases of land under the National Reserves System where only cash matching will be accepted).**

**Interpretation**

Australian Accounting Standards require in-kind contributions to be valued at fair value (which is a market concept) but where markets are thin or non-existent the default position is to use avoidable or incremental costs.

In-kind contributions can be valued using either the actual costs for each activity or the use of a salary multiplier as a proxy.

Using a multiplier means that an agreed figure is chosen to multiply direct salaries to estimate costs. While the use of a multiplier simplifies calculations and administrative burdens, the larger the multiplier used, the greater the proportion of in-kind contributions attributed to a region that are not actually applied directly to the region. Depending on how the multiplier is calculated, these can include such things as payroll tax, direct overheads such as corporate marketing, indirect overheads, which are unaffected by the project, and non-billable adjustments such as staff training allowances.

The choice between these methods will depend on the existing accounting systems or current practices in each jurisdiction.

Where a multiplier is used, it must:

- (i) be discussed with all the regional bodies in the state/territory, so that they understand the quantum of in-kind contributions that will be attributed to the region but that will not actually be applied directly to the region;
- (ii) not exceed 2.5 (see Attachment A); and
- (iii) be applied only where the staffing costs in question relate to staff directly employed by state/territory agencies. Its use is not necessarily applicable to costing in-kind contributions arising from contractors employed by agencies that are proposed as matching funding contributions. In the latter instance there is a discrete cost and a multiplier cannot be used.

Where in-kind contributions are capital rich, and this capital is totally consumed in delivering the activity, in-kind costs should be calculated using the agreed multiplier for labour costs, plus agreed total capital costs. Capital costs such as agency infrastructure (buildings, cars etc) are excluded as they are not totally consumed by the delivery of the activity, and a depreciation component should be included in the salary multiplier.

**Implementation by Steering Committees**

Steering Committees need to determine the mechanism to be used to calculate in-kind costs: that is either actual costs for each activity or the use of a salary multiplier as a proxy (subject to the qualification in 5 above).

For either of the chosen mechanisms, the Steering Committee must ensure that they are consistent with a clearly defined and agreed set of contributing costs. These costs will be agreed by all Steering Committees.

**Attachment A****In-kind Salary Multiplier**

Each jurisdiction needs to determine if they are going to use a multiplier or actual costs. If using a multiplier then they need to determine their State multiplier. Such a determination should include discussion with the regions. The components of the multiplier are the base salary of the project worker on a per year basis, operating costs, direct overheads and indirect overheads. To assist States in determine their

multiplier the components and their maximum relative weight is given in the table 1 below. For example the maximum for salary related on-costs is 19%.

#### Using the Multiplier

Once each State has determined its multiplier then the gross salary (salary paid before tax but excluding any on-costs) of those involved in directly delivering project outcomes must be calculated for each project. Salaries of managers etc are excluded unless they also directly delivering the project. The method to determine salary is to first determine the salary of the project officer on a per year basis (eg \$50,000 per year). Then determine the percentage of time each project officer works on the project. For example if a person is working 100% on the project with a yearly salary of \$50,000, then \$50,000 is the figure for salary costs. If a person is working 50% of their time then the salary is \$25,000. For most projects there will be more than one person. It is the total salary cost that is multiplied by the State multiplier. Thus if the total salary costs equal \$200,000 then the project is valued at \$500,000.

#### Assumed Non-Productive Time

Even if a person works full-time on a project it is understood that the person will not actually work everyday they are paid on the project. The assumed non-productive times are annual leave (20 days per year), public holidays (10 days per year), sick leave (average of 6 days per year) and training and administration (average 10 days per person). This means that a person working full time on a project actually works 214 days as the average year has 260 paid days and there are 46 days in total that are non-productive.

#### Capital Rich Projects

Salary multipliers alone are not appropriate for capital rich projects. Capital rich projects would only involve a small number of projects where there is large capital expenditure (eg buying land, buying pumps to move saline water etc). In cases where there is a large capital cost and this capital is totally consumed in delivering the project outputs, then an estimate of full costs would include labour costs by agreed multiplier plus agreed total capital costs. It is noted that capital costs such as agency infrastructure (building, cars etc) are excluded as they are not totally consumed by the project service and a depreciation component is included in the multiplier of salaries.

Table 1: Multiplier for In-Kind

		Components	Example
Salary		1.00	\$50,000
Salary related oncosts	%		
Leave Loading (17.5% for 4 weeks)	1.35		
LSL (Assume 50% eligible, 0.86 of a week per year served)	0.82		
W/Compensation (estimate)	0.50		
Training (2% target)	2.00		
Fringe Benefits Tax	1.20		
Superannuation (maximum)	13.13		
	19.00	0.19	\$9,500
Operating Costs			
Travel (airfares)			
Meals & Travel Accommodation			
Vehicles costs			
Stationery & Consumables			
Direct materials			
IT direct costs (Licences, desktop etc)		0.46	\$23,000

#### QUESTIONS ON NOTICE

Table 1: Multiplier for In-Kind		
	Components	Example
Direct Overheads (Group/ Division)		
Group Supervision/ Management		
Group Administration/ Business Support		
Group Marketing & Promotion		
Accommodation/ utilities		
Depreciation	0.52	\$26,000
Indirect Overheads (Corporate)		
Corporate Finance (GL, AP, AR etc)		
Corporate HR (HR, Payroll OHS&W etc)		
Corporate Admin. (Property, admin, legal etc)		
Corporate Information (IT, knowledge, records)		
Corporate Management (Directorate, CE Office)	0.33	\$16,500
Return on Investment (Profit)	0%	
TOTAL	2.50	\$125,000
Assumed non-productive time		
Annual Leave (20 days of possible 260 working days)	20.00	
Public Holidays (10 days of possible 260)	10.00	
Sick Leave (Average of 6 days in possible 260)	6.00	
Training and administration	10.00	
	46.00	

### Taxation: Avoidance Schemes

#### (Question No. 2338)

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 3 November 2003:

With reference to the implementation of recommendations contained in the report 'The Use of Bankruptcy and Family Law Schemes to Avoid Payment of Tax':

- (1) Given that Recommendation 1 states that 'The Australian Taxation Office (ATO) is currently developing these guidelines together with the Attorney-General's (A-G's) department and expects to have new guidelines in place by 30 June 2003':
  - (a) were these guidelines put in place on 30 June 2003; if not, what was the cause of the delay and when will this happen; if so, can a copy be provided;
  - (b) what training was provided to ATO 'decision makers' in relation to the implementation of these guidelines; and
  - (c) what consultations were held with the Privacy Commissioner to ensure that there were no breaches of the Privacy Act 1988.
- (2) Given that Recommendation 2 states that 'The Treasury, in consultation with the A-G's department are currently weighing up the various considerations involved in providing publicly available information to prescribed industry and professional associations, including the rights of individuals concerning access to their taxation information as recommended in the Taskforce Report. While

legislative change may provide another avenue for such information to be provided, industry and professional associations can also consider the extent to which they may require the provision of such information directly from their members as a condition of membership’:

- (a) what progress has been made to amend subsection 16(4) of the Income Tax Assessment Act 1936 and section 3(c) of the Taxation Administration Act 1953, as recommended by the Taskforce;
  - (b) is legislation still being considered; if so, when can a draft be made available;
  - (c) has the Office of the Privacy Commissioner or any other agency been consulted in relation to any proposed legislative changes; if so, can the following details be provided: (i) who was consulted, (ii) what was the cost, and (iii) who participated in the consultation process; if not, does the Privacy Commissioner expect consultations to occur;
  - (d) have discussions or consultations commenced or been conducted with ‘industry and professional associations’; if so, can details be provided of: (i) which ‘industry and professional associations’ attended discussions, and (ii) what to date has been the result of these discussions; and
  - (e) Has any agency been designated as the lead agency for these discussions; if so: (i) which agency, (ii) has this agency initiated discussions or consultations, (iii) is it required to report on progress made; if so, when can an update of the progress made be provided; if not, why not.
- (3) Given that Recommendation 7 states that: ‘It is recommended that section 106B of the Family Law Act 1975 be widened to allow third parties to apply to the court for an order or injunction preventing the disposition of property pending an application to set aside or overturn a section 79 order’:
  - (a) in respect of the decision in Deputy Commissioner of Taxation and Kliman (2002): has the A-G’s department reached a decision on the need for the above mentioned amendment; if not, when does the A-G’s department expect this; and
  - (b) can the legal advice concerning this decision be made available.
- (4) Given that Recommendation 10 states that: ‘It is recommended that there be a separation declaration for financial agreements generally not only for superannuation agreements, to ensure that financial agreements are not entered into by couples for the purpose of avoiding creditors. An additional requirement might be included in section 90G of the Family Law Act 1975, to ensure that legal advice received in relation to an agreement includes notice that a declaration of separation is required’:
  - (a) has the A-G’s department finalised advice it intends to forward to the Attorney-General in relation to implementing this recommendation; if not, why not, and (i) when will this advice been finalised, and (ii) who within the department has responsibility for the advice.
- (5) Given that Recommendation 12 states that: ‘It is recommended that penalties for key offences in the Taxation Administration Act 1953 be reviewed in accordance with advice to be provided by the Criminal Justice Division of the A-G’s department with a view to enhancing their deterrent effect upon high income professionals avoiding payment of their income liabilities’:
  - (a) what progress has been made in examining the efficacy of the existing penalties in deterring high income professionals, from avoiding payment of their income tax liabilities;
  - (b) what enhanced penalties are being considered;
  - (c) what advice has the Criminal Justice Division of the A-G’s department given in relation to increased penalties; and
  - (d) what ‘other alternative approaches’ are being considered to deter high income professionals from avoiding payment of their income tax liabilities.



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

- (1) The answer to this part of the question is within the policy responsibility of the Treasurer. I understand a response is being provided on behalf of the Treasurer to an identical Question on Notice No 2337, addressed to the Treasurer.
- (2) See my answer to (1) above.
- (3) (a) The Attorney-General's Department has considered various recommendations of the Joint Taskforce to amend the Family Law Act 1975. The Department has provided me with a briefing on the available options.  
(b) It has been the practice of successive governments not to disclose the content of legal advice received.
- (4) See my response to (3) above. The area of the Department with policy responsibility for this issue is the Family Law and Legal Assistance Division.
- (5) (a) Officers of the Australian Taxation Office (ATO), Treasury and the Attorney-General's Department have considered existing penalties and advised that there is not much scope in the context of Commonwealth criminal law policy to increase penalties for strict liability or absolute liability offences. Officers noted that an increase in the penalties would not cause the same proportionate increase in the compliance behaviour of high income individuals, but would have a disproportionate effect on lower income individuals.  
(b) See the answer to (5)(a) and (5)(d).  
(c) The Criminal Justice Division has provided written and oral legal policy advice to the ATO and Treasury. The substance of that advice is reflected in the answers to (5)(a) and (5)(d).  
(d) A number of options are being considered, including supplementing existing strict and absolute liability offences with fault-based offences. The Criminal Justice Division has advised that new fault-based offences covering the same conduct and carrying a higher penalty could be introduced, allowing a person with greater culpability to incur a greater maximum penalty. Another option is revising the ATO Prosecution Policy to make greater use of sentencing options, imprisonment and publicity.

**Council of Australian Governments: National Competition Policy  
(Question No. 2363)**

**Senator Nettle** asked the Minister representing the Prime Minister, upon notice, on 6 November 2003:

With reference to a letter dated 27 October 2003 referred to in the Council of Australian Governments (COAG) Communique, written by the Prime Minister to the members of the COAG in the lead-up to the November 2000 COAG meeting:

- (1) Can the names and positions be provided of the 'senior COAG officials' who drafted the amendments to the National Competition Policy Arrangements passed at the November 2000 COAG meeting.
- (2) Can names and positions be provided of the 'senior COAG officials' who were given the task of consulting with the National Competition Council about its forward work program, activities, assessments, communications, guidance and interpretation and helping to formulate 'appropriate assessment benchmarks'.
- (3) (a) How was this team (or these teams, if there is more than one team) of officials chosen and by whom; and (b) to whom do these officials report.

**Senator Hill**—The Prime Minister has provided the following answer to the honourable senator's question:

- (1) (2) (3) The letter to Premiers which Senator Nettle refers to is dated 27 October 2000 (the letter) and not 27 October 2003.

The letter makes reference to two groups of officials: COAG Senior Officials and an inter-governmental working group of officials.

The standing committee of officials (COAG Senior Officials) supports the Council of Australian Governments (COAG) and comprises the Secretary of the Department of the Prime Minister and Cabinet (who chairs the Committee), the Director-General of the New South Wales Cabinet Office and the heads of Premiers' and Chief Ministers' Departments in the remaining states and territories, or their delegates, and a representative of the Australian Local Government Association.

The Competition Principles Agreement and the Conduct Code Agreement, signed on 11 April 1995, required a review be undertaken of NCP arrangements. The terms of reference agreed by COAG required the review to be conducted by a working group of Australian, state, territory and local government officials, chaired by the Australian Government, and to report to COAG through COAG Senior Officials. The working group comprised mainly senior officials from the Department of the Prime Minister and Cabinet, the Commonwealth Treasury, the New South Wales Cabinet Office, Premiers' and Chief Ministers' Departments and/or State and Territory Treasuries and Finance Departments and the Australian Local Government Association.

COAG Senior Officials reported to COAG at its meeting on 3 November 2000. COAG agreed to several measures to clarify and fine tune the implementation arrangements for NCP including requiring the National Competition Council thereafter to determine its forward work programme in consultation with COAG Senior Officials. This has occurred subsequently at regular intervals when Senior Officials have met.

#### **Legal Aid: Funding**

#### **(Question No. 2426)**

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 28 November 2003:

- (1) Is the department aware of any criticism of the Legal Aid Needs Study conducted by John Walker Consulting Services and Rush Social Research on behalf of the department; if so, can details of the criticism be provided.
- (2) Is the legal aid funding model derived from the Legal Aid Needs Study subject to review; if so: (a) which organisation or individual is conducting the review; and (b) when will it be complete.
- (3) Has any new research into a revised legal aid funding model been commissioned since the John Walker Consulting Services and Rush Social Research study; if so: (a) when was the research commissioned; (b) which organisation or individual is conducting the research; and (c) what is the cost of the research.
- (4) If research into a new legal aid funding model has not been commissioned, why not.

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

- (1) The Department is aware of criticisms of the legal aid funding distribution model which was developed on the basis of the findings of Phases I and II of the Legal Aid Needs Study conducted by John Walker Consulting Services and Rush Social Research. Criticisms include:
  - use of the cost of cases factor in the model
  - use of a factor to adjust for suppression of demand in four States

- use of the divorces involving children factor in the model
  - use of Commonwealth Grants Commission factors
  - whether the model should use actual or projected population figures, and
  - whether some of the population figures used in the model are correct.
- (2) The Department is reviewing the funding distribution model in consultation with National Legal Aid and with the assistance of the Commonwealth Grants Commission. The review process will be completed for the 2004-05 Budget.
- (3) No organisation has been commissioned to conduct new research into a revised legal aid funding model. However, since July 2001, the Commonwealth Grants Commission has assisted the Department with the review of the model. To date, the Department has paid the Commonwealth Grants Commission \$6,600 for its services.
- (4) Research into a new legal aid funding model was not commissioned by the Department as it was decided to refine the current funding model in consultation with National Legal Aid and Commonwealth Grants Commission.

### Environment: Platypuses

#### (Question No. 2439)

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 2 December 2003:

Since 1996, who has received government assistance for projects relating to platypuses and, in each case, (i) how much money was or will be allocated, and (ii) what is the nature of the project.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (i) This table shows a summary of funding for Platypus related projects showing approved funding and number of projects, by state and year\*.

State	1997/1998	1998/1999	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004	Total by state
NSW		2	2		4	5		15
		\$6,861	\$31,490		\$150,750	\$24,280		\$213,381
QLD	1	1	1	1	1	4	1	10
	\$51,380	\$10,000	\$43,860	\$31,290	\$11,300	\$76,116	\$27,255	\$251,201
TAS		1			1	2		4
		\$255,000			\$674,664	\$190,864		\$1,120,528
VIC		2	2	2		2	2	10
		\$101,950	\$101,400	\$95,100		\$9,980	\$16,811	\$325,241
Total No.	1	6	5	3	6	13	3	39
Total Funding	\$51,380	\$373,811	\$176,750	\$126,390	\$836,714	\$301,240	\$44,066	\$1,910,351

\*Some projects may continue over multiple years.

Only projects with approved dollars are shown or counted.

- (ii) Projects funded concerning Platypuses aim to improve water quality, platypus habitat and the river health of the areas in question. The types of activities funded include protecting areas, (through fencing off stock access), removing introduced plants (such as willows), replanting appropriate native plants (taken from local seed stocks) and repairing erosion (building up banks). Detailed information on each approved project is provided in Attachment A.

## Attachment A

State QLD

Proponent Barron River Integrated Catchment Association Inc.

Project Title Project Platypus - Barron River NQ; Education &amp; Riparian Restoration Program

## Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$24,388		\$24,388

**Project Description** The project will promote awareness in schools and the broader community using Platypus character presentations, media promotion, 'Club Platypus' membership, newsletters, T-shirts and tree planting demonstrations. The Barron Catchment Revegetation Plan 1996 identified severely degraded riparian zones throughout the catchment corresponding with the main platypus habitat areas. Landholders will be assisted to restore riparian vegetation on their properties contributing to biodiversity conservation and sustainable resources use in the catchment.

State NSW

Proponent Brunswick Catchment Forest Landcare Group Incorporated

Project Title Native Vegetation Grazing Pressure Protection Project

## Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$13,312		\$13,312

**Project Description** This project will limit stock access to 20ha of native vegetation stands containing threatened and endangered species, and to re-growth areas on steep slopes by fencing off these areas utilising 1.5km of fence line. Regrowth will be significantly accelerated by this action, leading to increased habitat and the limiting of erosion on these steep slopes. Existing vegetation will be protected from stock trampling and foraging. The recognised koala corridor will be strengthened. All 750m of the riparian zone will be fenced thereby limiting stock to off stream watering points and improving platypus and other aquatic species habitat. Environmental weeds such as Camphor Laurel will be controlled by use of herbicides to accelerate native vegetation regrowth and vigour of established vegetation. Limited planting of significant species which have been eliminated from the property but occur within the valley will be undertaken using plant stock or seed of local provenance grown on site. Broadcasting of seed from local provenance stock will also be undertaken.

State NSW

Proponent Craigie Landcare Group Inc.

Project Title Upper Little Plains River Rehabilitation Stage 2

## Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$18,500		\$18,500

**Project Description** This project will continue on from Stage 1: a rehabilitation project that removed willows and blackberries and revegetated along 5km of the Little Plains River. Stage 2 will continue downstream for another 3km to the locality of Craigie, creating an 8km managed corridor, from the NSW/VIC border to the Craigie Bridge with real biodiversity outcomes. Access to control willows and blackberries is much easier at this time. Willows are also very prolific users of water and by controlling them, their impact on water availability for fish and platypus and for stock and domestic use is reduced.

State QLD

Proponent Currumbin Sanctuary

Project Title Platypus Health and Abundance in NSW and Qld

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
	\$51,380	\$10,000	\$43,860					\$105,240

**Project Description** An integrated and multidisciplinary project designed to provide baseline data for the preservation of river systems in South-East Queensland and Northern New South Wales. Platypus will be trapped at selected sites from the Tweed, Currumbin and Tallebudgera Valleys, Coomera and Pimpama Rivers and Nerang Catchment. Their health status will be assessed and some will be radio-collared to determine activity and home range patterns. At each site detailed stream physical data is recorded along with water quality parameters, macrobenthic invertebrate populations, riparian zone flora and other terrestrial and aquatic fauna seen/caught on site. This data will be used as a rational basis for monitoring system change in the face of urban development in the area.

State TAS

Proponent Department of Primary Industries, Water and Environment

Project Title Greening the North West Coast

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
		\$255,000			\$674,664	\$185,336		\$1,115,000

**Project Description** Development and construction of a Wildlife Interpretation Centre as the focus for introduction and explanation of wildlife habitat and characteristics for species of the North West coast. Particular attention will be given the Little Penguin, the Platypus, and fresh water lobsters, all of which have a special presence on the coast. To be sited on coastal land reclaimed after former use as an industrial complex, the Centre will provide a "soft" opportunity to display the regions diverse and unique plants and animals. While the centre is intended to deliver a package experience in its own right, it is also proposed to become a learning and participation resource for the local community. It will be staffed to provide interpretation, and to assist field visits to viewing sites on a self-guide or guided basis. Sites of remnant native vegetation within and adjacent to established urban areas of Burnie will be targeted for rehabilitation and re-vegetation. Training and interpretation for sustained management of rehabilitated areas will be a critical element of the work.

State NSW

Proponent Duckmaloi Rivercare Group

Project Title Restoration of Platypus Habitat in Duckmaloi River Oberon

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
					\$910			\$910

**Project Description** The program aims to improve the water quality in the Duckmaloi River so that the platypus may multiply and continue to keep the river healthy. As this river feeds into the Macquarie River, which waters so much of the central and west of NSW, there is additional reason to work at improving water quality. In order to achieve this the invasive willow and blackberry must be curtailed and native vegetation along the river bank must be encouraged to flourish.

State NSW

Proponent Duckmaloi Rivercare Group

Project Title Restoration of Platypus Habitat in the Duckmaloi River, Oberon.

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$4,180		\$4,180

**Project Description** The project aims to restore the platypus habitat by achieving regeneration of the riparian zone of the Duckmaloi River. The method used will be the removal of willow species and blackberry, and establishment of native flora grown from seeds collected on-site.

State QLD

Proponent Eastern Tinaroo Catchment Landcare Group Inc

Project Title Advancing Lower Peterson Creek Revegetation Project

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
					\$11,300			\$11,300

**Project Description** The project will revegetate about 2 ha of degraded land adjacent to Peterson Creek near Yungaburra, in Eacham shire. This will preserve water quality and increase its viability as a wildlife corridor. The project site is a known platypus habitat. Work will include fencing to exclude stock, clearing of weeds and noxious trees, ground preparation, planting 2000 indigenous trees and maintaining the site until a canopy has been achieved.

State NSW

Proponent Emu Swamp Landcare Group Inc

Project Title Emu Swamp Drainage Watercourse Repair and Revegetation

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
		\$15,500	\$9,687	\$10,178				\$35,365

**Project Description** Improve the quality of the water flowing into Emu Swamp Creek / Macquarie River, preserving the platypus colony.

State VIC

Proponent Friends of Emu Bottom Wetlands Reserve Inc

Project Title Jacksons Creek Revegetation Project Phase 2 - Stage 1

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$4,100		\$4,100

**Project Description** This project aims to consolidate the revegetation works undertaken to date by further extending the areas of revegetation thus improving the wildlife corridors values of this site. Weed removal of environmental weeds such as gorse, phalaris and blackberry will occur to allow for the reestablishment of indigenous riparian vegetation. The reinstatement of indigenous vegetation will improve platypus habitat, enhance the wildlife corridor, create buffers to protect remnant vegetation from further weed invasion and assist to stabilise creek banks.

State VIC

Proponent Friends of Emu Bottom Wetlands Reserve Inc

Project Title Towards Rabbit Free at Jacksons Creek - Stage 2

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$5,880		\$5,880

**Project Description** This project will remove approximately 1ha of rabbit-harboured vegetation, including gorse, boxthorn and blackberry on Jacksons Creek. The cleared area will then be revegetated with 1000 indigenous riparian tubestock of local provenance. Species to be planted include groundcovers, understorey vegetation and overstorey vegetation. This project, along with complementary works, will reinstate important habitat for numerous bird species, bats, swamp wallabies, echidnas and platypus. Riparian vegetation also provides protection for the platypus population and will be better preserved if indigenous species are allowed to thrive by decreasing the threat of rabbit grazing.

State VIC

Proponent Friends of Emu Bottom Wetlands Reserve Inc

Project Title Jacksons Creek Revegetation Project Phase2, Stage2

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
							\$9,511	\$9,511

**Project Description** This project will carry out urgent replanting in large areas left as a result of woody weed removal. It will emphasise stabilisation of creek banks by planting 6,000 grass seedlings and 850 tubestock of saltbushes, understorey species and some overstorey species specifically chosen for their excellent regeneration capacity. This project will continue to fulfil the objectives of the reserve management plan and will improve and preserve the wildlife corridor values of the site. The reinstatement of indigenous vegetation will maintain and improve platypus habitat and protect remnant vegetation from further weed invasion.

State QLD

Proponent Geoffrey and Meg Becker

Project Title Dawson River Riparian Management - Vegetation Protection and Stock Condition Improvement

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$27,273		\$27,273

**Project Description** This project will fence the Dawson River (6km) and the Dawson River anabranch riparian zone (12km) to prevent bank erosion caused by cattle. This will allow protection of an area of approximately 210ha. Off-stream watering points will encourage better ground cover on the river banks, and enhance the natural habitats of platypus and fish species. Current Salvinia problems in this section of the river could be better monitored and controlled through biological and chemical methods, assisting in the slowing down of its downstream movements into the Fitzroy river. Improved ground cover and vegetation will also lead to a reduction in sediment loads and reduced turbidity. Weed control (Rubber vine and Parthenium) will also be improved through increased ground cover and management of stock access to riparian areas.

State NSW

Proponent Glen Innes Natural Resources Advisory Committee - GLENRAC

Project Title Targeted Natural Resource Investment for the GLENRAC Area

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
					\$87,550			\$87,550

**Project Description** This application for a devolved grant aims to bring together a number of projects in the GLENRAC area which further the attainment of GLENRAC's own strategic objectives. These objectives are compatible with the target themes and first order objectives for the three catchments involved ie Border Rivers Catchment Management Board, Upper North Coast Catchment Management Board and the Gwydir Catchment Board. The proposed projects aim to start on-ground works to address erosion control which will reduce sedimentation of major waterways; to increase riparian and corridor vegetation which will also improve biodiversity; to minimise roadside erosion entering waterways where there are known platypus pools; and to release dung beetles for improved soil structure and soil fertility. These projects involve a number of Landcare Groups as well as providing for revegetation works for the whole community. We wish to carry out these projects because they address land degradation and revegetation issues identified by the local community during the early stage of establishing GLENRAC's strategic objectives. We will monitor, evaluate and communicate the outcomes of these projects for the benefit of the whole community.

State QLD

Proponent Gold Coast City Council

Project Title Platypus Health and Abundance in NSW and Qld

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
				\$31,290				\$31,290

**Project Description** An integrated and multidisciplinary project designed to provide baseline data for the preservation of river systems in South-East Queensland and Northern New South Wales. Platypus will be trapped at selected sites from the Tweed, Currumbin and Tallebudgera Valleys, Coomera and Pimpama Rivers and Nerang Catchment. Their health status will be assessed and some will be radio-collared to determine activity and home range patterns. At each site detailed stream physical data is recorded along with water quality parameters, macrobenthic invertebrate populations, riparian zone flora and other terrestrial and aquaic fauna seen/caught on site. This data will be used as a rational basis for monitoring system change in the face of urban development in the area.

State NSW

Proponent GWYMAC Inc

Project Title Biodiversity Conservation and Habitat Restoration for Lake Inverell

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$12,000		\$12,000

**Project Description** The project addresses the need for restoration of biodiversity through the Lake Inverell Reserve. A key focus will be habitat protection for waterbirds, swans and platypus, the establishment of linking corridors and the maintenance of Aboriginal culture. It aims to achieve this by reversing the loss of native vegetation, initially through the eradication of weeds such as prickly and rope



pear, blackberries, willows and Osage Orange (which has recently emerged as a major threat). Corridor planting will then help to link native vegetation and enhance the biodiversity and habitat value of remnants surrounding the Lake reserve area.

State NSW

Proponent GWYMAC Inc

Project Title The Macintyre River Urban Riparian Zone Biodiversity Project

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$12,280		\$12,280

**Project Description** The project will direct the strategic removal of the unwanted exotic woody vegetation such as Willows, Privet, Blackberry and Osage Orange that threaten native vegetation. Erosion control works will be implemented to rectify areas of stream bank erosion. Planting of selected native vegetation will be carried out to stabilise earthwork and enhance the existing native vegetation. Hence, these measures will result in the development of biodiversity along degraded section of the river. A further benefit will be the restoration of habitat for Platypus, which has been endangered by the loss of aquatic life and poor stream health.

State QLD

Proponent John.J.Riso

Project Title Rehabilitation of Five Kilometres of South Liverpool Creek as Vegetation and Wildlife Corridor

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$8,705		\$8,705

**Project Description** The project will rehabilitate degraded riparian areas. It will fence the riparian zone to exclude stock. Uneconomic areas will be replanted with recommended food plant species to enhance the future survival chances of the endangered cassowary. The project will increase the wildlife corridor space for flora and fauna especially the rare and threatened species of frogs, platypus, and spotted quoll.

State NSW

Proponent Lake Inverell Landcare Group (Management Committee)

Project Title Lake Inverell Reserve Bushland Enhancement Project

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
		\$6,861	\$7,550					\$14,411

**Project Description** The main aims are the restoration of biodiversity and halting and if possible reversing native vegetation loss in the Lake Inverell area. Activities will be the revegetation of the riparian zone with selected native species, habitat protection for waterbirds, swans and platypus, track repair and maintenance and upgrading of information boards, brochures and interpretive signs. The outcomes will include soil stabilisation, habitat improvement, regeneration of trees and understorey, revegetation, and eradication of weeds.

State TAS

Proponent Launceston Field Naturalists Incorporated

Project Title Skemps Wetlands at Myrtle Bank Tasmania

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$5,528		\$5,528

**Project Description** Extend and improve a wetland area adjacent to Skemp Creek and create a pond on the creek. These actions will provide an enlarged and improved habitat for the health and growth in numbers of aquatic plants and animals found in small numbers in the area at this time - platypus, frogs, birds, snails, the rare and endangered *Engaeus orramukunna* (commonly known as the Mount Arthur Crayfish), the fresh water crayfish, *Astacopsis* and the undescribed snail *Charopidae* known colloquially as the Skemp Snail - Tasmania's second most endangered snail.

State VIC

Proponent Mount Emu Creek Consortium Inc

Project Title Riparian Vegetation Protection - Mt Emu Creek

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
		\$92,100	\$94,700	\$92,700				\$279,500

**Project Description** This project aims to continue the work commenced under the Hopkins Corridor of Green project to improve the general riparian biodiversity of Mt Emu Creek and now integrate with the Otways to Grampians Bio-Link, to protect remnant River Red Gums along the Creek, to enhance the aquatic habitat for platypus and other water dependent fauna by stock exclusion and restoration of riparian vegetation, to provide habitat links for fauna within the riparian zone of the Creek and tributaries, and to help protect the few remaining Silver Banksias on the basalt plains by using seedlings from seed produced by these remnants.

State QLD

Proponent Noosa & District Landcare Group Inc.

Project Title Project Platypus - Noosa & Mary River Catchments

Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
							\$27,255	\$27,255

**Project Description** This project will link and restore existing platypus habitat in the Noosa and Mary River catchments. Noosa and District Landcare Group will work towards achieving this aim by working with local landholders to safeguard bank stability, improve riparian vegetation, as well as endeavouring to maintain or improve existing water quality in recognised platypus habitat. Habitat recovery will be done through revegetation with indigenous riparian species as well as fencing of existing remnant riparian vegetation.

State NSW

Proponent Playtpus Habitat and Stream-watch Team (PHAST)

Project Title Burringbar Creek Platypus Habitat Stabilisation and Enhancement

## Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
					\$20,900			\$20,900

**Project Description** The aim is to restore a continuous 2ha corridor of lowland rainforest on public land along 750m of the Burringar Creek through extensive planting of species endemic to the area. This will improve the platypus breeding ground located there.

**State** QLD

**Proponent** Rosalie North Landcare Group Inc.

**Project Title** Yarraman Creek Restoration Project

## Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
						\$15,750		\$15,750

**Project Description** The project will restore 1.5 kms of the riparian area of Yarraman Creek adjacent to town, including Yarraman Weir. Local endemic native trees and grasses will be planted to combat erosion and improve water quality. This will improve the native habitat for flora and fauna including platypus.

**State** VIC

**Proponent** Sunbury Conservation Society Incorporated

**Project Title** Jacksons Creek (The Nook) Restoration Project - Stage 1

## Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
							\$7,300	\$7,300

**Project Description** This project will remove environmental weeds such as willows, blackberries and box horn allowing the re-establishment of indigenous riparian vegetation. The reinstatement of 3,700 indigenous cells and tubestock will improve platypus habitat, enhance the wildlife corridor, create buffers to protect remnant vegetation from further weed invasion, improve water quality in the waterway and assist in stabilising creek banks.

**State** VIC

**Proponent** Upper Maribyrnong Catchment Group

**Project Title** Deep Creek Protection & Revegetation

## Approved Funding

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
		\$9,850	\$6,700	\$2,400				\$18,950

**Project Description** The project will fence & revegetate the steep escarpment of Jacksons Creek to link existing vegetation, enhance biodiversity & improve water quality in an area supporting platypus populations. It will result in 131 ha of steep land excluded from grazing.

**State** NSW

**Proponent** Yamble Landcare Group Inc.

**Project Title** Yamble Landcare Group Inc Revegetation Platypus Habitat Rehabilitation

**Approved Funding**

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
								\$23,940

**Project Description** Native vegetation has been removed from large parts of this area and some salinity exists which can find its way into the Cudgegong River where there is a colony of platypuses. The project aims to replant native trees, shrubs and re-establish native perennial grasses on both cleared land leading to the river and on the river bank of the Cudgegong River to stabilise banks and improve platypus habitat. Glossy Black Cockatoo are also known to exist in small numbers and there have been unconfirmed sightings of Regent Honeyeater in the area.

**State** NSW

**Proponent** Yamble Landcare Group Inc.

**Project Title** Yamble Landcare Group Inc. Native Revegetation/Playtpus Habitat Rehabilitation Project and Salinity Arrestment

**Approved Funding**

1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	Total
								\$42,300

**Project Description** Replant native trees, shrubs and re-establish native perennial grasses on the river banks and cleared land leading to the Cudgegong River to stabilise banks and improve platypus habitat.

**Western Australia: Customs Staff and Facilities****(Question No. 2458)**

**Senator Mark Bishop** asked the Minister for Justice and Customs, upon notice, on 9 December 2003:

- (1) How many: (a) full-time staff; (b) part-time staff; and (c) casual staff were employed at Perth International Airport for each month during the past 2 years.
- (2) (a) What is the current average length of a shift; and (b) what is the number of shifts for all employees.
- (3) (a) How long are sniffer dogs on duty each day; and (b) what is the average length of time for which dogs are not available each day.
- (4) What percentage of outgoing and incoming luggage was x-rayed each week during the past 12 months.
- (5) For each day of the week, how many hours are security patrols currently conducted by Australian Customs Service at the Port of Fremantle.
- (6) (a) What is the current daily throughput of the new x-ray facility at the Port of Fremantle; and (b) what is the average number of containers per day transiting the port.
- (7) In the past 3 months: (a) how many new staff have been recruited in Western Australia; (b) how many are in training; and (c) how many positions are available for those in training.

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

- (1) (a) and (b)

Month	Full/time	Part/time
December-01	93	40
January-02	93	57
February-02	93	57

Month	Full/time	Part/time	
March-02	93	64	
April-02	93	64	
May-02	93	61	
June-02	93	56	
July-02	93	60	
August-02	93	57	
September-02	93	46	
October-02	93	38	
November-02	93	37	
December-02	93	39	
January-03	93	38	
February-03	108	38	(fulltime staff includes 15 trainees)
March-03	121	37	(fulltime staff includes 28 trainees)
April-03	107	47	(fulltime staff includes 13 trainees)
May-03	94	59	
June-03	94	55	
July-03	93	58	
August-03	100	58	(fulltime staff includes 15 trainees)
September-03	113	56	(fulltime staff includes 25 trainees)
October-03	103	58	(fulltime staff includes 10 trainees)
November-03	103	58	(fulltime staff includes 10 trainees)

(c) No casual staff were employed.

(2) (a) & (b)

*Full time staff:*

11 hours 20 minutes (includes a range of 12 hour, 10.5 hour and 10 hour shifts with a ½ hour unpaid meal break every 5 hours). The shift cycle is 2 days/2 nights then 4 days off and was endorsed by staff and management.

*Management Initiated Permanent Part time staff:*

Work the same pattern as the full time shift – 2 days/2nights then 4 days off. Shift attendances vary in length (from 5 – 11.5 hours) depending on peak periods. Average shift length is 8 hours.

*Officer Initiated Permanent Part time staff:*

There are various shift patterns, as individual contracts are negotiated between individual officers and Customs management. Over the period an average of 16 officers were engaged as officer initiated permanent part time officers and the average contract equated to 25.72 hrs.

(3) (a) There are 6 Drug Detector Dog Teams (dog and handler) in WA. Two teams undertake a minimum 10 hour shift commencing 0600 seven days a week and one team undertakes a 10 hour shift commencing 1600 four days a week.

Dogs are also requested outside of those hours on Intelligence based taskings. If required, overtime provisions apply in those instances.

(b) Given normal staffing levels, the Drug Detector Dogs are available at any time of the day.

(4) *Outgoing:*

On average, Customs officers x-rayed 3.6% of passengers bags.

*Incoming:*

On average Customs examines the baggage of 5-8% of all arriving international passengers at Perth Airport. Some of the baggage is subject to physical examination only, however the majority is x-rayed.

All remaining passengers are assessed by AQIS and approximately 93% of these passengers have their bags x-rayed and/or physically opened and examined.

## (5) Shift arrangements supplemented by Enforcement Operations staff enable waterfront patrols to be undertaken Monday to Friday generally over an eighteen and three quarter hour period . On Weekends and Public Holidays shift arrangements enable waterfront patrols to be undertaken over a sixteen and three quarter hour period.

Targeted high risk vessels, where normal shift coverage is not in place, are covered using overtime provisions.

## (6) (a) Following the commissioning of the facility in mid November 2003, there was a 12 week "ramping-up" period, whereby an increased number of containers were scheduled to be x-rayed each week. Once fully operational, in March 2004, around 250 containers per week will be x-rayed on an on-going basis. From 24 November 2003 until 19 March 2004, the facility has inspected 2,166 containers with 13.8% (299) of these containers having their contents physically examined.

(b) An average of 1183 containers transit the Port of Fremantle per day. This number is broken down as follows:

481 – export containers

520 – import containers

182 – transhipment containers

## (7) (a) No new staff have been recruited by Customs in WA in the last three months.

(b) There are currently no staff in training positions in Customs in WA. Fifteen Customs Trainees advanced to level 1 on 25 October 2003, and 10 Customs Trainees advanced to level 1 on 29 November 2003.

(c) All 25 staff advancing from Custom Trainee positions to Customs level 1 positions have been placed within the Customs WA staff establishment at Customs Level 1.

**Defence: Nunn Review****(Question No. 2467)**

**Senator Chris Evans** asked the Minister for Defence, upon notice, on 10 December 2003:

- (1) When did the Nunn review on remuneration in Defence provide its findings to the Government.
- (2) When did the Australian Defence Organisation provide to the Government a response to the Nunn review.
- (3) What is the current status of the Nunn review and its recommendations.
- (4) Have the recommendations been formally agreed by the Government.
- (5) Is the Government yet to decide on its response to the Nunn review; if so, when is a decision expected.
- (6) Has the Government decided to set aside, or is it considering setting aside, the Nunn review and its recommendations.

- (7) (a) What is the relationship between the Nunn review and the remuneration reform program; (b) is the reform program examining: (i) issues covered, (ii) recommendations of, and (iii) the implementation of the recommendations of the Nunn review.
- (8) Is it expected that the program will develop a new pay structure for the Australian Defence Force by June 2004.

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

- (1) August 2001.
- (2) May 2002.
- (3) The Government has responded to the Nunn Review.
- (4) The Government accepted certain Nunn Review recommendations.
- (5) See above.
- (6) See above.
- (7) (a) The Remuneration Reform Project is progressing the rationalisation of allowances in the nature of pay, and the introduction of flexible pay structures in the Australian Defence Force. These were the subject of some recommendations in the Nunn Review.  
(b) (i), (ii) and (iii) The Remuneration Reform Project proceeded independently of the Nunn Review, with its scope limited to the reform of pay and allowances in the nature of pay. The Government's decisions in regard to the Nunn Review are consistent with the way the Remuneration Reform Project is progressing.
- (8) It is expected that the industrial process for developing a new pay structure for officers of the Australian Defence Force will commence in June 2004. The actual implementation of the structure will take longer due to the regulatory and legislative changes necessary to give it effect.

#### **Medicare**

#### **(Question No. 2511)**

**Senator Nettle** asked the Minister representing the Minister for Health and Ageing, upon notice, on 19 January 2004:

- (1) How much did the Federal Government spend on the launch by the Prime Minister on 18 November 2003 of the MedicarePlus package.
- (2) What was the cost of the Government's full-page advertisements concerning the MedicarePlus package which were placed in major daily newspapers on 19 November 2003.
- (3) What was the cost of the printed material produced for the launch.
- (4) What other advertising plans does the Government have for the MedicarePlus package.
- (5) What is the Budget for communications activities for MedicarePlus.
- (6) How much money did the Government spend on communications activities for the Fairer Medicare package.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator's question:

- (1) The launch by the Prime Minister on 18 November 2003 in Melbourne to announce the changes to Medicare cost \$16,300 including display material that has been used after the launch.
- (2) Advertising in major daily newspapers on 19 November 2003 informed the public about where to access more information about the initiatives. The cost of this advertising was approximately \$503,000.

- (3) The Department of Health and Ageing developed printed material about MedicarePlus, to inform the community about the various initiatives under the package and the changes each will mean for both practices and patients. The materials were used for the launch itself and for distribution to health organisations and stakeholder groups and in response to inquiries from the public on the day of the launch and immediately afterwards. These materials, including a reference card, question and answer booklet and fact sheets describing each item, were produced at the time of the MedicarePlus announcement at a cost of about \$9,990.
- (4) The Department has placed advertisements in Australian Doctor and Medical Observer to provide doctors with information on claiming the \$5 payment for bulk billing concessional patients and children under 16 years, the new Medicare Benefits Scheme item for practice nurses and the higher rebate for some non-vocationally registered doctors. The cost of advertising on 23 January and 30 January was approximately \$21,300.

Any further advertising will need to be considered by the Minister for Health and Ageing.

- (5) In the 2003 Budget, the Government allocated \$21.1 million to communicating the initiatives under A Fairer Medicare to health professionals and consumers. This amount is unchanged and has been carried forward into MedicarePlus.
- (6) A total of \$780,319 was spent on communication activities related to A Fairer Medicare between its announcement on 28 April 2003 and 18 November 2003.

#### **Education: Rural and Aboriginal and Torres Strait Islander Students**

##### **(Question No. 2522)**

**Senator Allison** asked the Minister representing the Minister for Education, Science and Training, upon notice, on 2 February 2004:

- (1) Given that the numbers of rural and Aboriginal and Torres Strait Islanders students enrolled in most university undergraduate courses in medicine, pharmacy and nursing declined between 2000 and 2001, what strategy is being adopted to improve participation rates of these groups in these courses.
- (2) Given this decline in Indigenous enrolments, on what basis does the Government claim that higher education enrolments are 'trending steadily upwards', as stated on the Liberal Party of Australia's website in issue no. 8 of Behind the Scenes, dated 15 December 2000.

**Senator Vanstone**—The Minister for Education, Science and Training has provided the following answer to the honourable senator's question:

- (1)
  - Data collected by DEST show a steady increase from 2000 to 2001 of Indigenous students enrolled in undergraduate courses in Medical Studies and Nursing. Student numbers in Medical Studies rose from 80 in 2000 to 91 in 2001, and from 243 in 2000 to 260 in 2001 in Nursing. The number of Indigenous students enrolled in Pharmacy remained stable, with four in both 2000 and 2001.
  - The number of rural students enrolled in Medical Studies declined from 977 in 2000 to 948 in 2001. In Nursing, enrolments increased from 6,320 in 2000 to 6,787 in 2001. In Pharmacy, the numbers rose from 423 in 2000 to 529 in 2001.
  - It should be noted that in 2001, the coding system for courses was changed from Fields of Study to Fields of Education. Universities code courses to the most appropriate categories, and while the codes seem to match reasonably well, the change in definition may have resulted in data discontinuity, that is, the student numbers collected in 2000 under the Fields of Study classification are not directly comparable to those collected under the Fields of Education



classification. Hence, any drop in student numbers between 2000 and 2001 may have been as a result of the definition change.

#### Strategies

- Indigenous education is and continues to be an important focus of the Australian Government. There is a strong recognition of the need for rural and Aboriginal and Torres Strait Islander people to undertake health related courses and the need for development of support programs to enable students to receive training and education.
- Between 1996 and 1998, the Australian Government provided funding to establish six Indigenous Higher Education Centres. Three of these (at the University of South Australia, Curtin University of Technology and the University of Newcastle) included a focus on health issues. A fourth centre, established through a consortium of the University of Queensland and Queensland University of Technology, focused specifically on Indigenous community health. A key objective of this Centre was to provide opportunities for Indigenous students from North Queensland and the Torres Strait Islands to undertake health courses in tertiary education. The total sum spent on the six centres was \$11,811,000.
- From 1998 to 2001, funding of \$300,000 from the Higher Education Innovations Programme was provided to the Australian National University for the Masters of Applied Epidemiology (Indigenous Health). In 2001, funding of \$171,153 was also provided to the University of Queensland for the development of a Postgraduate Programme for generic rural health practitioners.
- Since 2001, there has been an agreement with James Cook University Medical School to reserve five places for Indigenous students to undertake medicine.
- From the beginning of April 2004, DEST will continue to fund, at a cost of \$102,300, a nursing initiative initially established through Enterprise and Career Education Foundation. The purpose of the initiative is to address a number of the issues highlighted in the National Review of Nursing Education, including national nursing shortfalls, by developing strategies to attract and retain young people in the profession. The aim of the project is to establish nursing pathways within VET in Schools programmes, particularly for Indigenous students, thus making a valuable contribution to improving health outcomes in Indigenous communities across Australia. The Nursing Initiative is expected to be completed at the end of November 2004.
- Under the new Higher Education reforms, fees for nursing will be exempt from any additional increase in an effort to provide more opportunities for students to take up nursing studies. This will be of particular interest to Aboriginal Health Workers wishing to further their careers and move into nursing.
- Also under the reforms, Commonwealth Learning Scholarships will be available for full-time undergraduate Commonwealth supported students from rural, regional, and Indigenous low socio economic status backgrounds. Indigenous and rural students in health courses will therefore be able to apply for assistance with education (\$2,000 pa) and students from rural and regional areas who have left home to study may be eligible for accommodation assistance (\$4,000 pa).
- Institutions receive funding under the Indigenous Support Funding (ISF) and Higher Education Equity Programmes (HEEP). The ISF and HEEP allocations for 2004 are \$24.879 and \$5.191 million respectively. These programmes assist in implementing strategies aimed at increasing the access, participation and achievement rates of Indigenous students (ISF) and students from rural and isolated areas in higher education (HEEP). Under the higher education

reforms, ISF will be increased by \$10.4 million over three years from 2005, and HEEP will be increased by \$4.5 million per year from 2005.

- My Department is a member of the Aboriginal and Torres Strait Islander Health Workforce Working Group (ATSIHWWG) co-ordinated by the Department of Health and Ageing. The Working Group was established to assist in improving participation rates for Aboriginal and Torres Strait Islander students and advance other Indigenous health workforce objectives.
- In addition, the Department of Health and Ageing has a number of strategies in place, including a HECS reimbursement Scheme, to assist in improving participation rates for Aboriginal and Torres Strait Islander students in medicine, pharmacy and nursing.

(2)

- The Australian Liberal Party's website Behind the Scenes provided a report based on available data as at 15 December 2000.
- Higher education enrolment data for 2000 became available in March 2001 and was, therefore, not available to substantiate a change from the previous steady increase when the report was posted on the Behind the Scenes website.

#### **Health: Australian Medical Workforce Advisory Committee**

#### **(Question No. 2529)**

**Senator Allison** asked the Minister representing the Minister for Health and Ageing, upon notice, on 4 February 2004:

- (1) What information has the Australian Medical Workforce Advisory Committee collected in the past 2 years, in relation to which medical specialties, concerning (a) unfilled positions; (b) elective surgery waiting time/clearance time; (c) consultation waiting time and patient access; (d) excessive hours of work; (e) price of service/level of co-payment; (f) practitioner/population ratio; (g) service substitution; (h) quality of service provision; (i) referring practitioner assessments; and (j) consumer and carer assessments.
- (2) What strategies has the Government adopted to increase the number of pharmacists (and other specialist positions that are experiencing workforce shortages) available to public hospitals.
- (3) How does the Government rate its performance in relation to its workforce strategies since it restricted supply in 1996.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator's question:

- (1) The Australian Medical Workforce Advisory Committee (AMWAC) conducts reviews of specific medical specialty workforces, which are the subject of individual reports that are made public. It also produces an annual report that provides information about the progress of workforce reviews that are currently underway.
  - (a) Information about unfilled positions is collected periodically. Data has not been collected over the last two years, but the AMWAC intends to undertake a survey of public hospitals vacancies this year (2004).
  - (b) The AMWAC does not itself collect information about elective surgery waiting times/clearance times. Rather, it uses the national database maintained by the Australian Institute of Health and Welfare.
  - (c) As part of its individual workforce reviews, the AMWAC usually surveys consultants about consultation waiting times and patient access.

- (d) The AMWAC obtains its information about hours of work from the Australian Institute of Health and Welfare's annual national medical labour force survey.
  - (e) A recent review of the AMWAC recommended that information about the price of service(s)/level(s) of co-payment be considered in future individual workforce reviews. This will be a feature of all future workforce reviews conducted by the AMWAC.
  - (f) The AMWAC obtains its information about practitioner/population ratios from the Australian Institute of Health and Welfare's annual national medical labour force survey.
  - (g) The AMWAC considers the issue of service substitution in most of its individual workforce reviews.
  - (h) The recent review of the AMWAC recommended that information about the quality of service provision be considered in future individual workforce reviews. This will be a feature of all future workforce reviews conducted by the AMWAC.
  - (i) The AMWAC considers referring practitioner assessments in most of its individual workforce reviews.
  - (j) The AMWAC considers consumer and carer assessments in all of its individual workforce reviews.
- (2) The State and Territory Governments are the employers of pharmacists and other allied health specialists working in public hospitals, and are responsible for the regulation of these groups in both the public and private sectors. Therefore they have the major responsibility for ensuring that adequate numbers of these health professionals are recruited and retained over time.

The Australian Government plays an important role in developing the future health workforce through the provision of funding to universities for undergraduate places for study in all courses, including the health disciplines. Under the higher education reforms announced in *Our Universities: Backing Australia's Future*, an additional 9,100 Government supported places will be introduced in 2005, rising to 24,883 places as students continue their courses. The Minister for Education, Science and Training and his Department have consulted with the States and Territories on the criteria to be addressed by the universities in making bids for these places. This has provided an avenue for the States to seek additional places for professions like pharmacy.

Additionally, the Australian Government has developed a range of strategies in response to recommendations concerning shortages in the radiation oncology workforce outlined in *The Report of the Radiation Oncology Inquiry*. These include funding 114 radiation therapy undergraduate places for the 2002 and 2003 intake years, as well as an additional 30 places for the 2004 intake at Newcastle and the Royal Melbourne Institute of Technology universities. This will assist in increasing the number of radiation therapists practising in Australia, including in public hospitals.

The Australian Government also provides funding through a number of scholarship schemes to assist in the recruitment and retention of health professionals in rural and remote areas, including public hospitals. These schemes include:

- The provision of undergraduate pharmacy scholarships for students from rural and remote areas through the Rural and Remote Pharmacy Workforce Development Scheme. Recipients may become community or hospital pharmacists.
  - The provision of scholarships to rural and remote health professionals to undertake continuing professional education through the Australian Government Rural and Remote Health Professionals Scholarship Scheme. Scholarship recipients may be employed in either the private or public sector.
- (3) The Government has a significant record of achievement with respect to the Australian medical workforce.

Since 1996, the Government has introduced a range of initiatives designed to improve access to doctors in rural areas, where medical workforce shortages have been most apparent. The provision of general practice services in rural and remote areas has increased by 15% since 1996. This includes a 7.2% rise in rural workforce activity in the two years to 30 June 2003.

The Government remains concerned about medical workforce shortages. In order to address this issue, the Government made workforce a major focus of its MedicarePlus package. The MedicarePlus package announced in November 2003, committed more than \$1 billion to a range of short and longer term measures to get more doctors working in areas of workforce shortages.

Under the package:

- The number of appropriately qualified overseas trained doctors operating in Australia will be significantly increased through a number of measures including international recruitment strategies, reduced red tape in approval processes and changes to immigration arrangements. As a result of these measures it is expected that an extra 725 doctors will be working in urban, rural and regional districts of workforce shortage by 2007;
- More than 1,600 full time equivalent nurses will be supported through practice grants and the introduction of a new Medicare Benefits Schedule item, freeing up the equivalent of around 160 GPs;
- 280 funded short term placements are being made available each year for junior doctors to work under supervision in general practices in outer metropolitan, rural and regional areas;
- Refresher training courses and other support is being provided for GPs and specialists practising medicine to help them return to the medical workforce;
- Funding support is being provided to GPs in rural and remote areas to develop and maintain their skills, and a Medicare Benefits Schedule loading is being provided for practitioners who provide a high level of procedural services to their community;
- Higher Medicare rebates will be paid to non vocationally registered GPs practising before 1996 if they operate in an area of workforce shortage;
- Additional funding is being offered to doctors who provide care to patients in aged care facilities;
- 234 new medical school places are being made available each year (an increase of 16%) for students who agree to work in areas of workforce shortage for a minimum of 6 years; and
- 150 new GP training places are being offered each year, an increase of one third.

It is expected that these initiatives will increase the number of full time equivalent doctors by more than 1,500 by 2007.

On 10 March 2004, the Government announced further enhancements to the MedicarePlus Package, including the following measures relating to the medical workforce:

- 12 additional new medical school places to James Cook University in Queensland, increasing the number of additional places under MedicarePlus from 234 to 246 per annum; and
- the extension of GP workforce programs and the rural locum scheme to 'areas of consideration' which are rural in character but are in the same Statistical Local Area as a large town.

### **Social Welfare: Disability Support Pension**

#### **(Question No. 2531)**

**Senator Greig** asked the Minister for Family and Community Services, upon notice, on 5 February 2004:

With reference to changes to the income reporting requirements for Disability Support Pension (DSP) recipients that came into effect on 1 September 2003:

- (1) Can the Minister provide further details of the circumstances surrounding the approximately 400 DSP recipients referred to in the 2003-04 Budget estimates supplementary hearings of the Community Affairs Legislation Committee (*Hansard*, 6 November 2003, p. 106) who have had their payments stopped, suspended or interrupted; and details concerning the 49 persons who have had their payments cancelled since the new measures came into effect.
- (2) Is the Minister aware that contrary to advice provided in the supplementary estimates hearings (*Hansard*, 6 November 2003, p. 106), that pension paydays or income reporting days may be changed, these days currently cannot be changed for people whose financial affairs are managed by the Public Trustee.
- (3) (a) How many DSP recipients have their financial affairs managed by the Public Trustee; (b) how many of the 34 000 DSP recipients referred to during the supplementary estimates hearings, who are now required to report their income fortnightly, also have their financial affairs managed by the Public Trustee; and (c) have any of those whose payments have been suspended been in this category.
- (4) Will the Minister investigate alternative strategies, and advise of what steps will be taken to ensure those relying on the Public Trustee are not prevented from simplifying their income reporting requirements.

**Senator Patterson**—The answer to the honourable senator's question is as follows:

- (1) There is nothing further to add to the answer previously provided.
- (2) The Senator is correct in that pension customers who have their payments made direct to Public Trustees or Protective Commission (NSW only) are unable to change their reporting days.
- (3) (a) 12 200; (b) 50; (c) No.
- (4) Alternative strategies will be explored.

#### **Health: Pregnancy**

#### **(Question No. 2549)**

**Senator McLucas** asked the Minister representing the Minister for Health and Ageing, upon notice, on 18 February 2004:

- (1) What are the current average out of pocket costs for the termination of pregnancy; can a holistic response be provided, as well as details, in relation to: (a) anaesthetic; (b) surgery; and (c) ultrasound.
- (2) Can trend information be provided of all out of pocket expenses associated with termination of pregnancy during the latest five-year period for which data is available.
- (3) Have out of pocket costs associated with termination of pregnancy increased throughout the latest five-year period for which data is available and if so, can trend data be provided.
- (4) Can a comparison be provided of out of pocket expenses associated with termination of pregnancy throughout the latest five-year period when compared with other surgical procedures.
- (5) With respect to the Review of MBS items, was termination of pregnancy reviewed; if so, with what effect.
- (6) Is the Department aware of any evidence to suggest that some women may not be in a position to access termination of pregnancy because of cost impediments.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator's question:

- (1) (a), (b) and (c) In 2002-03 (year of service), the average out of pocket cost (without regard to health fund rebates) for Medicare Benefits Schedule (MBS) items which may result in termination of pregnancy was \$41.81. Components of this cost can comprise average out of pocket costs of

\$23.17 for the procedure (Items 16525/35643), \$13.07 for anaesthetic services and \$15.00 for ultrasound. As not all patients have anaesthetic and/or ultrasound services in association with a termination, these costs do not add to provide an average out of pocket cost for a patient episode.

- (2) Details of the average out of pocket costs (nominal and without regard to health fund rebates) associated with termination of pregnancy, in each of the years 1998-99 to 2002-03 (year of service), are as follows:

Year	Items 16525/35643	Anaesthetic	Ultrasound	Per Episode (*)
Average Out of Pocket Cost				
1998-99	\$13.78	\$8.31	\$4.97	\$23.41
1999-00	\$14.12	\$8.25	\$6.77	\$24.43
2000-01	\$17.95	\$11.35	\$10.62	\$32.78
2001-02	\$21.59	\$13.84	\$12.97	\$39.71
2002-03	\$23.17	\$13.07	\$15.00	\$41.81

(\*) Since not all patients had anaesthetic and ultrasound services, this is not the sum of the 3 groupings. See notes below.

- (3) See answer to (2) above.
- (4) Details of the average out of pocket costs (nominal and without regard to health fund rebates) for all operations (Group T8) items in the MBS (including the terminations Item 35643), in each of the years 1998-99 to 2002-03 (year of service), are as follows:

Year	Average Out of Pocket Cost
1998-99	\$53.05
1999-00	\$57.68
2000-01	\$67.28
2001-02	\$77.24
2002-03	\$84.78

- (5) No.

- (6) No.

#### Notes to the Statistics

The definitions of medical services included in the Schedule to the Health Insurance Act, which may result in the termination of pregnancy appear in the Medicare Benefits Schedule as follows:

ITEM 16525 - MANAGEMENT OF SECOND TRIMESTER LABOUR, WITH OR WITHOUT INDUCTION, FOR INTRAUTERINE FOETAL DEATH, GROSS FOETAL ABNORMALITY OR LIFE THREATENING MATERNAL DISEASE, NOT BEING A SERVICE TO WHICH ITEM 35643 APPLIES.

ITEM 35643 - EVACUATION OF THE CONTENTS OF THE GRAVID UTERUS BY CURETTAGE OR SUCTION CURETTAGE NOT BEING A SERVICE TO WHICH ITEM 35639/35640 APPLIES, INCLUDING PROCEDURES TO WHICH ITEM 35626, 35627 OR 35630 APPLIES, WHERE PERFORMED.

For the purpose of answering this question, data on these two items has been provided, even though some claims against Item 16525 may not relate to termination of pregnancy.

The statistics presented above in response to questions (1) to (4) were compiled from a Medicare 10 per cent patient sample file and have been extrapolated to population.

The statistics presented in response to questions (1) to (3) relate to Items 16525 and 35643, and associated anaesthetic and ultrasound services (where rendered), on the same day as a termination procedure. Since not all patients had all of the associated services on the same day as a termination

procedure, the average out of pocket cost for anaesthetic and ultrasound services relate only to those patients with claims for the items in question. The average out of pocket cost for all services, has been computed by dividing the total out of pocket costs for the 3 groups of services by the number of termination procedures. The statistics for each year are in nominal terms.

In the above statistics, average out of pocket costs are the difference between aggregate fees charged and aggregate benefits paid, divided by the number of services. Medicare data captured by the Health Insurance Commission does not incorporate additional payments for medical services by health funds under private health insurance arrangements.

The above statistics relate to services rendered on a 'fee-for-service' basis for which Medicare benefits were paid, for the year of service in question. Excluded are details of services to public patients in hospital, and through other publicly funded programs.

**Mohamed, Mr Omar Abdi**

**(Question No. 2583)**

**Senator Ludwig** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 24 February 2004:

- (1) Does the department have any record of any request from any United States (US) authority asking for any information about a person identified as Omar Abdi Mohamed.
- (2) If there are any records, in what form are they and when do they show that contact was made with the department by US authorities.
- (3) From which US authorities did the department receive requests, if any.
- (4) For each request: (a) what was the nature of the request; and (b) what information about Omar Abdi Mohamed was contained in the request.
- (5) Did the department respond to these requests; if so, in respect of each response: (a) when; (b) what form did the response take; and (c) to which US authority was the response sent.
- (6) What information about this person did any response include.

**Senator Vanstone**—The answer to the honourable senator's question is as follows:

- (1) No.
- (2) to (6) Not relevant.

**Mohamed, Mr Omar Abdi**

**(Question No. 2584)**

**Senator Ludwig** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 24 February 2004:

- (1) Does the department have any record of any request from any United States (US) authority asking for any information about a person identified as Omar Abdi Mohamed.
- (2) If there are no records of any requests, does this mean that there were no requests made by US authorities to the department relating to this person.
- (3) Can the department expressly reject any claim that any US authority contacted them about this person.
- (4) Does the department have records of requests for information from US authorities about any other person; if so: (a) in what form are these records; and (b) when do these records indicate that such requests were made.
- (5) In general terms, what information is included in such requests about the person who is the subject of the request.

- (6) Are there records of the department ever responding to these requests; if so, (a) in what form are these records; and (b) when were these responses issued.
- (7) In general terms, what information was included in these responses.
- (8) How many times in the past 5 years has the department received requests from foreign authorities for information regarding specific persons.

**Senator Vanstone**—The answer to the honourable senator's question is as follows:

- (1) No.
- (2) A request by US authorities could not be ruled out.
- (3) No.
- (4) to (8) The Department has a range of contacts with immigration and related agencies in the US and other countries. There is no ready basis for analysing such requests. There is no standard basis on how such requests are made. As would be expected, any request would generally relate to movements in and out of Australia. Any requests received that may involve security matters are referred to the relevant agencies.

**Mohamed, Mr Omar Abdi**

**(Question No. 2585)**

**Senator Ludwig** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 24 February 2004:

- (1) Which Commonwealth Government agencies contacted the department with requests for information about a person identified as Omar Abdi Mohamed.
- (2) Which Commonwealth Government agencies accessed information held by the department relating to this person.
- (3) (a) When did each of these requests and/or accesses take place; and (b) which agencies were involved.
- (4) How was the request communicated.
- (5) What was the nature of the information about Omar Abdi Mohamed contained in the request.
- (6) What record does the department have of these requests.
- (7) Did the department ever respond to any of these requests; if so: (a) when; and (b) what general information about Omar Abdi Mohamed was contained in the reply.
- (8) Can any Commonwealth government agency make requests of the department, or access information held by the department, without any record being kept.

**Senator Vanstone**—The answer to the honourable senator's question is as follows:

- (1) There is no record of any Commonwealth Government agency having contacted the Department in regard to Mr Omar Abdi Mohamed prior to 29 January 2004. Discussions took place between the Department and the Australian Security Intelligence Organisation (ASIO) following the publication of a newspaper article on Mr Omar Abdi Mohamed.
- (2) and (3) After 29 January 2004, ASIO, the Australian Federal Police, the Australian Customs Service and the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) accessed Mr Mohamed's movement records.
- (4) to (7) Authorised users from these agencies directly access DIMIA's movement records. Each time a record was accessed an audit log entry of the transaction was generated.
- (8) Since March 2000, each time the movement record of a person is accessed in my Department's Movement Reconstruction system an audit is created.



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**Health: Tobacco**  
**(Question No. 2589)**

**Senator Allison** asked the Minister representing the Minister for Health and Ageing, upon notice, on 25 February 2004:

With reference to data collected by Health Canada, which indicates that nicotine levels in tobacco used in cigarettes increased by 53 per cent between 1968 and 1995:

- (1) What data is available concerning nicotine levels in tobacco used in cigarettes in Australia over this and subsequent periods and can a copy of this data be provided.
- (2) If no such data is available: (a) what steps is the Government taking to collect such data; and (b) can it be assumed that the increases in nicotine levels in tobacco used in cigarettes in Australia are comparable to those in Canada; if not, why not.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator's question:

- (1) Between 1977 and 1997, the Federal Health Department periodically published Smoke Yield tables which included nicotine yields for between 29 and 207 cigarette brands. Copies of the smoke yield tables are attached.

In 2001, the three cigarette manufacturers, Philip Morris Limited, British American Tobacco Australia Limited and Imperial Tobacco Australia Limited, provided emissions data for selected Australian cigarette brand variants, representing approximately 65% of Australian market share. The data specify nicotine yields and are posted on the Department's website at [www.health.gov.au/tobacco](http://www.health.gov.au/tobacco).

- (2) (a) and (b) See (1) above.

**Overseas Aid Program**  
**(Question No. 2596)**

**Senator Allison** asked the Minister for representing the Minister for Foreign Affairs, upon notice, on 1 March 2004:

With reference to the Australia's Overseas Aid Program Statistical Summary 2001-2002, in the line items 'Energy generation and supply':

- (1) (a) What are the nuclear power plant projects funded at \$3 016 000 in the 1999-2000 financial year, \$1 993 000 in the 2000-01 financial year, and \$4 million in the 2001-02 financial year; (b) where are these power plants located; (c) which companies were awarded the construction contracts; (d) who maintains and manages the plants; and (e) are there any conditional arrangements for the nuclear power plants to use Australian uranium.
- (2) In the 1999-2000 financial year there was an allocation of \$206 000 for coal-fired power plants: (a) where were these plants located; (b) which companies constructed them; (c) who manages and maintains these plants; and (d) are there any conditional arrangements for the coal-fired power plants to use Australian coal.
- (3) In the 2000-01 financial year there was an allocation of \$25 000 for coal-fired power plants: (a) where were these plants located; (b) which company or companies won the construction contracts; (c) who manages and maintains these plants; and (d) are there any conditional arrangements for the coal-fired power plants to use Australian coal.
- (4) In the 2000-01 financial year there was an allocation of \$311 000 for oil-fired power plants: (a) where were these plants located; (b) which companies constructed them; (c) who manages and maintains these plants.

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- (5) In the 2001-02 financial year there was an allocation of \$2 703 000 for oil-fired power plants: (a) where were these plants located; (b) which companies constructed them; (c) who manages and maintains these plants.
- (6) Given there was no funding for solar, wind, and ocean power projects in the 2001-02 financial year and only \$8 000 for biomass in the 2001-02 financial year: (a) what was the allocation of \$500 000 in line item 'power generation/renewable' for; (b) what were these projects; (c) which companies constructed them; and (d) who manages and maintains them.
- (7) In 1999-2000 financial year there was \$3 636 000 spent on solar energy projects: (a) where were these projects located; (b) which companies constructed them; and (c) who manages and maintains them.
- (8) Given the change in size of allocation for different energy projects as indicated in the statistical summary: what guides Government decisions on which energy projects to fund.
- (9) Are there any environmental or social guidelines for financing energy projects in the aid budget.
- (10) At the 2003 World Summit on Sustainable Development, Pacific Island Countries prepared a Pacific Regional Statement that made clear calls for renewable energy assistance; given the process whereby recipient countries approach the Australian Government for bi-lateral assistance for specific projects, rather than Australia offering to fund projects unsolicited: (a) why is there no allocation for renewable energy projects in the Pacific region within the aid budget; and (b) has Australia any commitment to fulfilling these requests for renewable energy projects and research and development.
- (11) In the 1998-99 financial year there was an allocation of \$785 000 for renewable energy projects (power generation): (a) where were these projects located; (b) which companies constructed them; and (c) who manages and maintains these projects.
- (12) Has there been any evaluation of the renewable energy projects funded by AusAID and are these evaluations available for public viewing.

**Senator Hill**—The Minister for Foreign Affairs has provided the following answer to the honourable senator's question:

- (1) The assistance reported in Australia's Overseas Aid Program Statistical Summary 2001-02 is classified under guidelines provided by the OECD Development Assistance Committee (DAC). The nuclear power plant expenditure in 1999-2000 and 2000-01 was in fact for the 'Korean Peninsular Energy Development Organisation (KEDO)'.

Through KEDO, Australia assisted the DPRK in meeting its short-term energy needs by providing funding for heavy fuel oil, while longer-term nuclear power sources were being developed. Australian assistance to KEDO ceased in September 2002.

The assistance did not include any conditional arrangements for the use of Australian uranium.

- (2) and (3) In 1999-2000 and 2000-01 the Department of Industry, Science and Resources funded two activities under the OECD DAC coal-fired power plant classification:

- 1 A plant improvement study of the Bansham power station in China (\$175,000 in 1999-2000 and \$25,000 in 2000-01).
- 2 \$31, 000 in 1999-2000 for the APEC Market Integration/Industrial Collaboration project in Thailand.

Australian assistance was not for construction, management or maintenance of coal-fired power plants.

The assistance did not include the supply of Australian coal.

- (4) and (5) Expenditure for oil-fired power plant projects in 2000-01 was \$2,073,000.

In 2000-01 and 2001-02 Australia funded two activities under the OECD DAC oil fired power plant classification. The projects were:

- 1 Solomon Islands Electricity Authority (SIEA) Generator Repairs Project (\$635,414 in 2001-02). The plant is located in Honiara. Wartsila Australia Pty Ltd were contracted for repairs to the existing plant. The Solomon Island Government manages the plant.
  - 2 Ha'apai Electrification Project in Tonga (\$311,158 and \$1,438,061 in 2000-01 and 2001-02 respectively). The Ha'apai group of islands is about an hour north by air of Tongatapu, the main island of Tonga. Australia assistance was for the construction of power stations on each of the next four largest islands in the group, 'Uiha, Nomuka, Kauvai-Ha'ano, and Ha'ano. The project was implemented by AC Consulting Group of New Zealand. Ongoing management and maintenance is the responsibility of the Electrical Co-operative Society (ECO) established on each island for that purpose.
- (6) The \$500,000 expenditure in 2001-02 was part of a three-year commitment to advance social and economic development in the Pacific through the use of sustainable renewable energy technologies. The activity promoted the use of sustainable renewable energy technologies in the Pacific, in particular solar photovoltaic technology. Demonstration sites were set up in Tonga, Vanuatu and Marshall Islands.

The Secretariat of the Pacific Community (SPC) was responsible for managing the contracting for construction, management and maintenance of the projects.

- (7) In the 1999-2000 financial year total funding of \$3,636,000 was allocated to seven solar energy projects under the OECD DAC solar energy classification. The projects are as follows:

- 1 Municipal Solar Infrastructure Project in the Philippines (\$208,918)

This project provided a range of photovoltaic packages, as well as social preparation and training. A technical assistance package was provided to the counterpart implementing agency, the Department of Interior and Local Government for the first 24 months of the project. The project was completed on 30 November 2000

Sinclair, Knight Merz Australia Pty Ltd was contracted for the construction of the photovoltaic packages.

- 2 Renewable Energy Eastern Islands Project in Indonesia (\$2,520,000)

The objective of the project was to provide 14 villages in Central Sulawesi, South-East Sulawesi, and Maluku in Indonesia with electric power supplies from localised renewable hybrid power stations.

Advanced Energy Systems was responsible for supplying the renewable hybrid energy systems. The project was completed on 30 June 2001.

The systems are owned and maintained by village cooperatives.

- 3 Ha'apai Electrification Project in Tonga (\$263,265)

The same activity reported in the answer to Question 5. In the initial stages of the project a study conducted to advise on the most appropriate energy source to use in Tonga. The study concluded that diesel in comparison to solar energy would be the most cost-effective source of energy to use as a result the activity was reclassified to the OECD DAC oil fired power plant classification in 1999-2000.

The Western Australian Government provided \$643,948 for 4 projects under the OECD DAC solar energy classification

- 4 Neda Village Electrification Project in India (\$4,014)
- 5 Solar Thermal Power Generation Project in Iran (\$192)

6 Vietnam DISR Showcase Project (\$2,742)

7 WA Government Promotion of the Application of Solar Energy in East Asia (\$637,000).

The Western Australian Government was responsible for managing the contracting for construction, management and maintenance of the projects.

- (8) Australia's overseas assistance is programmed in light of the needs and circumstances of our individual partner countries, as well as our capacity to assist.

In 2003-04 Australia will continue to provide support for renewable energy and improved water, waste and natural resource management. Australia's regional and multilateral support will include biodiversity conservation, climate change mitigation and adaptation, and phasing out of ozone depleting substances.

- (9) There are two frameworks for which Australian aid projects are managed and maintained. These are:

1 AusGUIDE

2 Environmental Management Guide (EMS)

AusGUIDE is the basic reference for achieving high quality project preparation and implementation. AusGUIDE is available through AusAID's website - [www.ausaid.gov.au](http://www.ausaid.gov.au)

The Environmental Management Guide for Australia's Aid Program 2003 provides an overview of AusAID's Environmental Management System (EMS) and a framework for assessment of AusAID activities and the procedures for managing potential environmental impacts. The Guide is available through AusAID's website.

- (10) Aid budget allocations are made on a country basis. Assistance is then programmed in light of the needs and circumstances of our individual partner countries, as well as our capacity to assist.

Australia continues to be a major donor to the South Pacific Applied Geoscience Commission (SOPAC) who has a particular focus on sustainable energy.

SOPAC works to strengthen national capacity in the energy sector and to support the Pacific priorities that were identified in the lead up to the World Summit on Sustainable Development held in 2002. These priorities include promoting the use of renewable energy through market interventions, mainstreaming the use of alternative sources of energy and encouraging energy efficiency to improve sustainability.

SOPAC has also been a driving force behind the development of the Pacific Energy Policy and Plan. This document, amongst other things, aims to increase the proportion of the region's energy provided by renewable energy through coordinating energy programs in the region and offering guidelines for domestic implementation.

In addition to providing funding for SOPAC's work, the Australian Government aid program, through the Secretariat of the Pacific Community (SPC), has funded a project focused directly on small-scale renewable energy technologies. The project promoted the use of sustainable renewable energy technologies in the Pacific, in particular solar photovoltaic technology. Demonstration sites were set up in Tonga, Vanuatu and Marshall Islands.

Australia has also provided funding for micro-hydroelectricity generating activities in the Solomon Islands.

- (11) In 1998-99 the allocation of \$785,000 funded three projects under the OECD DAC power generation/renewable classification. These projects were:

1 Renewable energy program project in the Pacific Islands (\$7,669)

The same project reported in the answer to Question 6.

2 Bulelвата Community Development project in the Solomon Islands (\$20,254)

The project was located in Solomon Islands and was carried out by an Australian NGO-Appropriate Technology for Community and Environment.

- 3 WA Government Promotion of the Application of Renewable/Solar Energy in East Asia (\$637,000). The Western Australian Government was responsible for managing the contracting for construction, management and maintenance of this project.
- (12) Most large AusAID activities are subject to feasibility and/or design studies, appraisals and reviews and project completion reports. Only a carefully selected sample of AusAID activities is subject to formal ex post evaluations. As yet, no renewable energy projects have been selected for ex post evaluation.

**Defence: Lancelin Training Area**

**(Question No. 2597)**

**Senator Nettle** asked the Minister for Defence, upon notice, on 1 March 2004:

Following the department's decision not to proceed with the extension of the Lancelin defence training area:

- (1) At what stage is the department in the process of identifying an alternative site for a new defence training area in Western Australia.
- (2) If the department has identified any possible sites, where are they.
- (3) When will the department decide on a new training site for Western Australia.

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

- (1) The consultant's report into the first stage of the search for an alternative training area in Western Australia was presented to Defence in December 2003. This report was submitted to the Government and approval was sought to undertake further investigations on some areas identified within the report as being preferred, potentially suitable sites. This will include the identification of issues affecting the site, financial implications, prospects for acquisition, environmental assessment requirements, indigenous land interest considerations and extensive community consultation. This approval was recently granted. Steps to undertake these further investigations have been made.
- (2) Three areas have been identified in the report as containing preferred, potentially suitable sites. These are located within the shire of Mt Marshall (adjacent to Lake Moore); spanning the shires of Yilgarn and Menzies; and spanning the shires of Yilgarn and Kondinin.
- (3) The decision regarding a new training area site will be made following the further investigations described in (1) above.

**Defence: Royal Australian Navy**

**(Question No. 2598)**

**Senator Nettle** asked the Minister for Defence, upon notice, on 1 March 2004:

With reference to the department's statement that South East Fibre Exports (SEFE) will provide, at no cost, monitoring of Defence security cameras at the Navy wharf and amenities building in Bega, New South Wales, during periods when the wharf is accessible to the public:

- (1) Why is a private company using Navy security equipment.
- (2) What services is the Navy providing to SEFE in exchange for services to the Navy.
- (3) From what date did SEFE commence providing this service to the Navy.
- (4) (a) Is there documentation in relation to this arrangement; and (b) how did it originate.
- (5) Is it common practice to have staff of a private company monitoring Navy security cameras.
- (6) Are there, or have there been, any other instances of such arrangements elsewhere.

- (7) When SEFE monitors events on Navy cameras that require a response from security personnel, who makes the decision about whether security personnel need to attend the site and who would employ the security personnel who would attend the site.
- (8) Are there Navy personnel monitoring the Navy wharf and amenities building at present; if not, does the Navy expect that personnel will be stationed at this location in the future.

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

- (1) South East Fibre Exports (SEFE) is not using Navy security equipment. It will only monitor the cameras on the Navy's behalf.
- (2) None.
- (3) SEFE has not commenced monitoring services on the Navy wharf, as the arrangements are yet to be formalised.
- (4) In early 2003, discussions on the management of security of the property line between Defence and SEFE were conducted. During these discussions, SEFE offered to monitor the security on the wharf. The offer entailed Defence installing equipment free of charge, with SEFE assuming monitoring duties. An agreement to formalise the proposed monitoring activities is yet to be finalised and endorsed by Defence. The involvement of SEFE security staff would be limited to monitoring and reporting only.
- (5) Security of most Defence establishments is outsourced to private security companies.
- (6) The arrangements are specific to this site, which involves public access to a remotely located operational facility.
- (7) Security staff from SEFE will contact the NSW Water Police or the Twofold Bay Harbour Master should they require assistance.
- (8) Navy personnel do not monitor the wharf when it is not in use. When in use, the wharf is closed to the public and there is no need for monitoring during these times. The Navy has no plans to station personnel permanently at the site.

#### **Environment: Alternative Fuels Conversion Program**

##### **(Question No. 2601)**

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 1 March 2004:

“With reference to the Alternative Fuels Conversion Program:

Does the Government still plan to spend \$75 million on the program, as agreed with the Australian Democrats in 1999:

- (a) if so: (i) over how many years, including previous financial years, does the Government plan to spend the \$75 million, (ii) what is the actual value in 2004 dollars of the \$75 million if expenditure is spread out over the number of years answered in (a)(i) and (iii) can forward estimates be provided for all future program years; and
- (b) if not: (i) what is the planned total expenditure in relation to the program, (ii) over how many years, including previous financial years, does the Government plan to spend the amount answered in (b)(i), and (iii) can forward estimates be provided for all future program years.”

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (a) No.

(b) (i) \$71.4m - \$3.6m was redirected to the Photovoltaic Rebate Program in 2003-04; (ii) actual expenditure and forward estimates for the program extend over nine years from 1999-2000 to 2007-08. (iii) see Table, below.

Table: Alternative Fuels Conversion Program

Actual				Budget	Forward Estimates				Total
1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	\$m
\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	
1.341	10.627	6.532	5.950	4.000	9.763	14.500	16.138	2.550	71.400

### Environment: Alternative Fuels Conversion Program

#### (Question No. 2602)

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 1 March 2004:

“With reference to the Alternative Fuels Conversion Program:

- (1) As of 30 June 2003: (a) how many: (i) compressed natural gas (CNG) vehicles and (ii) liquid natural gas (LNG) vehicles, had been purchased with funding assistance from the program; and (b) can details be provided of the funding provided for each purchase, with separate details for heavy commercial vehicles and buses.
- (2) (a) How many vehicles are expected to be purchased with funding assistance from the program by 30 June 2004; and (b) can separate details be provided in relation to the purchase of CNG and LNG vehicles.
- (3) As of 30 June 2003: (a) how many vehicles had been converted to: (i) CNG, and (ii) LNG, with funding assistance from the program; and (b) can details be provided of the funding provided for each conversion, with separate details for heavy commercial vehicles and buses.
- (4) (a) How many vehicles are expected to be converted to: (a) CNG, and (b) LNG by 30 June 2004; and (b) can this figure be broken down by vehicle type, for example, passenger car, bus.
- (5) (a) How many new vehicles were sold annually in Australia over the period July 2000 to June 2003; and (b) can this figure be broken down by vehicle type e.g. passenger car, bus.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

- (1) (a) (i) 549
  - (a) (ii) Nil. The AFCP appropriation legislation does not allow expenditure on LNG-powered vehicles.
  - (b) See Tables 1(a) and 1(b), below.

Table 1(a)

New Buses Operating on CNG to 30 June 2003

Company	Number of vehicles	Grant
Brisbane City Council	120 (some delivered post-30 June 2003)	\$3 121 157
Dept of Transport WA	23	\$567 906
State Transit Authority of NSW	300	\$5 113 725
Transport SA	103	\$1 750 691

Table 1(b)

New Trucks Operating on CNG to 30 June 2003

Company	Number of vehicles	Grant
Toll Finemore	2	\$41 450
Sands Fridge Lines	1	\$34 430

(2) (a) A total of 697 vehicles have been funded to 12 March 2004. Applications for further funding in 2004 are still being received and considered.

(b) See Tables 2(a) and 2(b), below, for figures for new CNG vehicles to 12 March 2004. In addition, there were 3 new LPG vehicles funded by the Program.

Table 2(a)

New Buses Operating on CNG to 12 March 2004

Company	Number of vehicles	Grant
Brisbane City Council	220 (some delivered post-30 June 2004)	\$5 896 157
Dept of Transport WA	23	\$567 906
State Transit Authority of NSW	300	\$5 113 725
Transport SA	103	\$1 750 691
ACTION	42 (some delivered post-30 June 2004)	\$1 232 948

Table 2(b)

New Trucks Operating on CNG to 12 March 2004

Company	Number of vehicles	Grant
Toll Finemore	2	\$41 450
Sands Fridge Lines	1	\$34 430
Boral Transport	2	\$49 000
SITA	1	\$33 751

(3) (a) (i) 52, including engine conversions and upgrades.

(a) (ii) Nil.

(b) See Tables 3(a) and 3(b), below.

Table 3 (a)

CNG Bus Engine Upgrades to 30 June 2003

Company	Number of vehicles	Grant
Dept of Transport WA	25	\$400 000*
Transport SA	5	\$100 000

\* One output of a research and development project by Advanced Engine Components which received funding of \$2 545 000

Table 3 (b)

CNG Truck Engine Conversions to 30 June 2003

Company	Number of vehicles	Grant
City of Unley	1	\$12 650
Citywide Service Solutions	4	\$133 896
Collex Pty Ltd	6	\$197 819
Freestone Transport	1	\$34 514
JJ Richards & Sons	10	\$139 150



- (4) (a) (a) 52, including engine conversions and upgrades, to 12 March 2004. Applications for further funding in 2004 are still being received and considered.
- (a) (b) Nil.
- (b) See Tables 3(a) and 3(b), above.
- (5) The following information is from Australian Bureau of Statistics Catalogue 9314.0 - Sales of New Motor Vehicles, Australia

Year	Passenger vehicles (No.)	Other vehicles (No.)	Total vehicles (No.)
Year to June 2001	531 000	245 000	775 000
Year to June 2002	537 610	266 961	804 571
Year to June 2003	560 203	300 343	860 546

### Environment: Alternative Fuels Conversion Program

#### (Question No. 2603)

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 1 March 2004:

“With reference to the Alternative Fuels Conversion Program:

- (1) In an attachment to the Prime Minister’s letter to Senator Meg Lees, entitled ‘Changes to the goods and services tax (GST)’, dated 31 May 1999, it was stated that the program would ‘support the conversion of half the urban bus fleet to gas by 2015’: will this target be met; if not, what percentage of the urban bus fleet is expected to be converted to gas by 2015 as a result of the program.
- (2) How many buses are currently registered in Australia.”

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

- (1) To date on 12 March 2004, 718 CNG-powered buses (including 688 new buses and 30 upgraded buses) and 11 LPG-powered buses have been funded by the Alternative Fuels Conversion Program, covering all major public transport authorities in Australia. This has increased the number of new CNG-powered buses by about 170% (to 1088) from the 400 that were operating in 2000. This significant investment in CNG-powered buses over the last four years has meant that, in many cases, future infrastructure costs will be reduced or eliminated. At the same time, the potential for savings in operational costs has been proven and consumer expectations for CNG buses have been raised. For these reasons, public transports authorities are expected to continue to purchase an increasing proportion of CNG-powered buses.
- (2) According to transport authority reports, currently there are approximately 6 500 buses operated by public transport organizations in urban areas around Australia.

### Environment: Alternative Fuels Conversion Program

#### (Question No. 2604)

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 1 March 2004:

“With reference to the Alternative Fuels Conversion Program:

- (1) As of 30 June 2003, how much of the expenditure on the program has been on administration.
- (2) As of 30 June 2003, how much of the expenditure on the program has been spent on: (a) the purchase of new vehicles; (b) the conversion of existing vehicles; and (c) the development and testing of engine technologies.

- (3) (a) When were the program guidelines changed so as to allow for manufacturers developing and testing engine technologies that can demonstrate greenhouse gas benefits and maintain air quality emissions performance; and (b) why were these changes to the program guidelines made.
- (4) Can details be provide of the funding provided to date for to (sic) manufacturers to develop and test engine technologies under the program, including details of the manufacturer and a description of the work to be undertaken as a result of the grant.
- (5) Is operating a vehicle (rather than simply having the capacity to operate a vehicle) on compressed natural gas (CNG) or liquid natural gas (LNG) a condition of funding for new vehicle purchase under the program; if not, why not.
- (6) What monitoring mechanisms, if any, are in place to ensure that those who receive funding for new vehicle purchases under the program actually run their cars on CNG or LNG, as opposed to petrol.”

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

- (1) \$1 141 000 to 30 June 2003.
- (2) (a) Grants for new engines (which may include engines placed in new or existing vehicles): \$10 642 200.
- (b) Grants for converted or upgraded engines: \$959 126, plus \$2 855 000 for research projects that included converted or upgraded engines as part of the output.
- (c) \$3 384 427.
- (3) (a) New guidelines came into operation on 1 November 2003. Grants for developing and testing technologies could be paid under the previous guidelines, however, advice from stakeholders was that this was not made sufficiently clear.
- (b) The guidelines were changed following the recommendations of an independent review of the program and based on stakeholder consultation.
- (4) See Table 1, below.

Table 1

Company	Grant	Work
Advanced Engine Components	\$2 545 000	Develop and test upgrade of natural gas bus engine (included 25 upgraded engines)
Ecotrans	\$310 000	Develop and test LPG bus engine conversion (included 2 converted engines)
Norgas	\$50 000	Develop and test dual fuel natural gas/diesel truck engine conversion
Was Diesel Now Gas	\$20 000	Test LPG truck engine conversion
Was Diesel Now Gas	\$34 710	Develop and test LPG bus engine conversion

- (5) No. This is not considered necessary because grant recipients are required to spend their own funds on the purchases or conversions, and thus will be motivated to use the alternative fuel if they are to achieve cost savings and recover their investments.
- (6) The Alternative Fuels Conversion Program funds purchase or conversion of trucks or buses to run on CNG or LPG. It does not fund purchases or conversions of cars. As noted in the answer to Question 5 above, monitoring is not considered necessary to ensure that trucks and buses are run on the new fuels.

**Environment: Alternative Fuels Conversion Program****(Question No. 2605)**

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 1 March 2004:

“With reference to the Alternative Fuels Conversion Program:

- (1) (a) How much has been spent on the Compressed Natural Gas (CNG) Infrastructure Program; and (b) how much funding has been provided to energy suppliers through the program.
- (2) How many refuelling stations have been established as a result of the CNG Infrastructure Program; (b) for each refuelling station established, what is the name of the energy supplier and in which state or territory is the station located; and (c) how much CNG has been sold through each refuelling station since they were established.
- (3) With reference to the announcement in January 2001, the then Minister for the Environment and Heritage, Senator Hill, that ‘Commonwealth grants of almost \$4.7million have been offered to national energy suppliers, Origin Energy and Agility Management to establish the fuelling facilities’ at 16 sites, which would take to 19 the number of sites established around the country: For each of the 19 sites can details be provided of: (a) the amount of the grant offered; (b) whether it has been spent; (c) whether the site is operational and if not, when the site is likely to become operational; (d) if the site will not become operational, whether the Commonwealth will take steps to recover monies that the Commonwealth has expended for the development of that site; and (e) how much fuel has been sold since it was established.
- (4) For each financial year between June 1990 and July 2003, how much CNG was sold, by: (a) volume; and (b) value.
- (5) For each financial year between June 1990 and July 2003, how much LNG was sold, by: (a) volume; and (b) value.
- (6) Is the CNG Infrastructure Program still expected to result in emissions abatement of 0.5 million tonnes of carbon dioxide.
- (7) Given that Australia’s Third National Communication to the United Nations states that ‘the number of publicly accessible CNG refuelling sites is expected to increase to over 30 within the next 18 months’: has this increase occurred; if not, how many publicly accessible CNG refuelling sites are now operational.”

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

- (1) (a) Total expenditure to 12 March 2004 is \$1 208 261.  
(b) Grants to energy suppliers have totalled \$478 249.
- (2) (a) Three.  
(b) Agility Management – two in New South Wales, TXU Pty Ltd – one in Victoria.  
(c) This information is commercial-in-confidence.
- (3) (a) (b) and (c) See Table 1, below.

Table 1

Company	Site	Grant	Paid	In operation
Agility Management	Arndell Park NSW	\$268 171	Yes	Yes
Agility Management	Granville NSW	\$118 009	Yes	Yes
TXU Pty Ltd	North Melbourne Vic	\$100 000	Yes	Yes
Agility Management	Holbrook NSW	\$733 000	No	No – proponent withdrew

Company	Site	Grant	Paid	In operation
Agility Management	Eagle Hawk Hill ACT	\$644 000	No	No – proponent withdrew
Origin Energy Pty Ltd	North Laverton Vic	\$190 018	No	No – proponent withdrew
Origin Energy Pty Ltd	Wingfield SA	\$230 806	No	No – proponent withdrew
Origin Energy Pty Ltd	Wetherill Park NSW	\$384 798	No	No – proponent withdrew
Origin Energy Pty Ltd	Nth Laverton Vic	\$160 229	No	No – proponent withdrew
Origin Energy Pty Ltd	Clayton Vic	\$155 860	No	No – proponent withdrew
Origin Energy Pty Ltd	North Geelong Vic	\$160 566	No	No – proponent withdrew
Origin Energy Pty Ltd	Tullamarine Vic	\$154 031	No	No – proponent withdrew
Origin Energy Pty Ltd	East Preston Vic	\$155 683	No	No – proponent withdrew
Origin Energy Pty Ltd	Mt Gambier SA	\$392 088	No	No – proponent withdrew
Origin Energy Pty Ltd	Rocklea Qld	\$286 226	No	No – proponent withdrew
Origin Energy Pty Ltd	Wodonga Vic	\$156 949	No	No – proponent withdrew
Origin Energy Pty Ltd	Hamilton Qld	\$295 398	No	No – proponent withdrew
Origin Energy Pty Ltd	Seaford SA	\$221 975	No	No – proponent withdrew
Origin Energy Pty Ltd	Wyong NSW	\$397 897	No	No – proponent withdrew

(d) No grant funds were paid towards any site that is not operational.

(e) This information is commercial-in-confidence.

- (4) (a) and (b) This information is not available.
- (5) (a) and (b) This information is not available.
- (6) There has been no forecast of expected emissions abatement arising from the CNG Infrastructure Program. The 0.5 Mt figure included in the 2002 Australian Greenhouse Office Greenhouse Gas Emissions Projections referred to the Alternative Fuels Conversion Program and not the CNG Infrastructure Program.
- (7) No. We understand there are ten publicly accessible CNG refuelling sites in operation.

### **Health: Nutritional Supplements**

#### **(Question No. 2607)**

**Senator Allison** asked the Minister representing the Minister for Health and Ageing, upon notice, on 2 March 2004:

- (1) What nutritional supplements for use by health professionals have been denied listing by the Therapeutic Goods Administration over the past 10 years and for what reasons.
- (2) Which of these products is currently available in New Zealand and the United States of America.
- (3) What is the appeal process when a nutritional supplement is denied listing.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator's question:

- (1) and (3) In Australia, nutritional supplements are classified and regulated as 'complementary medicines'. Most complementary medicines are considered to be lower risk medicines and are Listed in the Australian Register of Therapeutic Goods (ARTG).

Listed medicines may only contain ingredients approved by the Therapeutic Goods Administration (TGA) as being suitable for use in low risk medicines. New ingredients for use in Listed medicines are evaluated by the TGA in response to an application from a sponsor. Based on the data supplied by the sponsor and other data, a comprehensive evaluation report is prepared by the staff of the Office of Complementary Medicines. The evaluation report is also put forward for consideration by the Complementary Medicines Evaluation Committee (CMEC), an independent, expert committee.

The key factors considered when evaluating a new complementary medicine substance are quality and safety. Adequate quality control ensures that products contain the correct amounts of specified ingredients and do not contain unsafe amounts of ingredients or contaminants. The safety evaluation determines whether the substance is of sufficiently low risk so as to allow its inclusion in lower risk complementary medicines.

Since its establishment in 1998, the CMEC has recommended to the TGA that, based on the data available at the time of review, eleven substances are not suitable for use in Listed medicines. These substances are as follows:

- Arginine;
- Conjugated linoleic acid 75%;
- Conjugated linoleic acid 60%;
- Chemically treated petroleum ether extract of conifer needles;
- Tryptophan;
- Calcium glucarate;
- Potassium chloride;
- Red yeast rice;
- Isobutylene-isoprene copolymer (butyl rubber);
- Commiphora mukul oleo-gum resin ethyl acetate extract; and
- Active hexose correlated compound.

All therapeutic goods must be included in the ARTG prior to entering the marketplace. The TGA does not evaluate Listed complementary medicines prior to inclusion in the ARTG. Rather, they are automatically included in the ARTG following on-line application to the TGA by the sponsor and self-certification that the product is eligible for Listing, provided the required fees have been paid. If an application to List a product does not conform with particular requirements it will not be accepted by the on-line Electronic Listing Facility. Following Listing, a statistically significant proportion of these medicines undergo post-market review on a random or targeted basis, to ensure they conform with the legislative requirements for Listed medicines. Regulatory action may be taken against products that do not conform, such as cancelling or proposing to cancel a product from the ARTG.

Decisions by the TGA in relation to certifications made for Listed medicines are reviewable under Section 60 of the Therapeutic Goods Act 1989.

- (2) This information is unavailable, as neither New Zealand nor the United States maintains a national register of such products. In addition, the name of a product available in Australia may not be the name used for the same product in other countries.

#### **Shipping: Customs Staff and Facilities**

##### **(Question No. 2634)**

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

- (1) How many container examination facilities are now operational around Australia.
- (2) (a) How many full-time Australian Customs Service (ACS) personnel are employed at these facilities; and (b) at what Australian Public Service (APS) levels are these personnel employed.
- (3) (a) How many part-time ACS personnel are employed at these facilities; and (b) at what APS levels are these personnel employed.

- (4) Is it still intended that industry will bear the costs associated with the logistics operations for the facilities.
- (5) What percentage of the cost is currently borne by industry.
- (6) (a) How many full-time ACS personnel are employed in the Profiling and Alerts Section of the ACS and at what APS levels are these personnel employed; and (b) is this expected to change in the near future.
- (7) (a) How many part-time ACS personnel are employed in the Profiling and Alerts Section of the ACS and at what APS levels are these personnel employed; and (b) is this expected to change in the near future.

**Senator Ellison**—The answer to the honourable senator's questions is as follows:

- (1) There are four container examination facilities now operational - in Melbourne, Sydney, Brisbane and Fremantle.
- (2) (a) There are 121 full-time Customs personnel employed at the facilities. (b) Four (4) personnel are employed at APS level EL1 (Customs level 4), eight (8) at APS level 6 (Customs level 3), 26 at APS levels 4-5 (Customs level 2) and 83 at APS level 3 (Customs level 1).
- (3) (a) There are six (6) part-time Customs personnel employed at the facilities. (b) These personnel are employed at APS level 3 (Customs level 1).
- (4) Costs associated with the logistics operations of the facilities continue to be partially covered by industry with the Government meeting the remaining logistics costs.
- (5) In 2004/05, the first full year of operations, it is anticipated that industry will meet approximately three-quarters of the logistics costs of running the container examination facilities.
- (6) (a) There are 125 full-time personnel employed in Customs Profiling and Alerts groups nationally. Three (3) personnel are employed at APS Level EL2 (Customs Level 5), six (6) at APS level EL1 (Customs level 4), 32 at APS level 6 (Customs level 3), 80 at APS levels 4-5 (Customs level 2), and four (4) at APS level 3 (Customs level 1). (b) These are expected to remain at substantially the same level.
- (7) (a) There are eight (8) part-time personnel employed in Customs Profiling and Alerts groups nationally. One (1) member of personnel is employed at APS level 6 (Customs level 3), six (6) personnel at APS levels 4-5 (Customs level 2), and one (1) at APS level 3 (Customs level 1). (b) See 6(b).

**Shipping: Integrated Cargo System**  
**(Question No. 2635)**

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

- (1) What is the status of Release 2 of the Integrated Cargo System.
- (2) Has this release been delivered according to schedule.
- (3) To date, how much has the system cost.
- (4) Has any analysis of its effectiveness so far taken place; if so, what were the results.
- (5) What is the status of Release 3 of the Integrated Cargo System.
- (6) Has the date of Release 3 been delayed further since its last postponement and what is the current expected date.
- (7) To date, what has been the cost of delivery of the system.
- (8) What is the expected annual cost of using the system when it is finally fully operational.

- (9) To date, what has been the response from industry to the releases that have taken place.
- (10) What is the expected response from industry once the system is fully operational.

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

- (1) Release 2 of the Integrated Cargo System (ICS) (i.e. exports functionality) has been in industry test from 18 August 2003 to early December and from 21 January 2004 onwards. Eighty industry clients are currently registered to test Release 2 messages. Of those 80 clients, 20 are currently sending regular electronic data interchange (EDI) messages through the test environment. The system is stabilising and it is anticipated a date for implementation will be agreed with software developers in the near future.
- (2) In terms of application development, delivery of exports functionality was scheduled for 1 April 2003 and it was delivered on 29 May 2003. It was first promoted to industry test on 18 August 2003 and a supplementary delivery was loaded in the test environment on 21 January 2004. Delays in actual cutover to the new exports system have been experienced due to the complexity of integration with the Customs gateway – the Customs Connect facility. Initial cutover was planned for 1 December 2003 but the system was not robust and reliable enough to achieve this date. Customs has been working with industry to agree on system stability. The new approach requires criteria to be met in order to provide the necessary point for commencement of the three month industry testing and deployment period.
- (3) The development of the Integrated Cargo System was contracted to a consortium led by Computer Associates in February 2002. At the end of February 2004, payments of approximately \$40 million have been made to Computer Associates for the development against contract payments of approximately \$48 million.
- (4) Full analysis of the effectiveness of the Integrated Cargo System cannot be made until it is in production. The systems features will provide:
  - Communication options. Industry clients will have choice as to how they report to Customs including the ability to report directly over the Internet.
  - Enhanced security for all electronic transactions with Customs.
  - New functionality that will greatly improve the ability of both Customs and industry to track and monitor cargo movements while at the same time facilitating early status and early clearance for reported cargo.
  - Sophisticated profiling and targeting features that will improve Customs ability to protect Australia's borders whilst providing for rapid clearance of low risk cargo.
  - Improved control over all goods intended for export.
  - Improved peripheral services that will reduce or simplify current industry practices. Examples include the introduction of:
    - new payment options including autopay and BPay.
    - a diagnostic facility that is available to industry with greatly enhanced status checking features.
    - a new reference library that provides mandatory reportable information that was previously not freely available to industry.
- (5) Release 3 of the Integrated Cargo System has two stages. The first covers import cargo reporting. It was scheduled for completion in October 2003 and was loaded into industry test in January 2004. The second stage is large and involves import declarations. This stage of the application is built and is in testing phase. Final delivery of this application is anticipated on 29 April 2004. Once fully

integrated with the Customs Connect Facility, it will be made available to industry for testing. This is anticipated for early June.

- (6) See answer to question 5.
- (7) The total cost of the Cargo Management Reengineering project, to the end of the current financial year will be approximately \$146 million. Of this, \$48 million will be paid to the Computer Associates Consortium for the build of the Integrated Cargo System, and \$47 million to IBM, Securennet, Novell and EDS for the Customs Connect Facility. The remaining \$51 million relates to the cost of supporting the transition to the new systems for industry and Customs staff, business reengineering within Customs and the development of the International Trade Modernisation Legislation.
- (8) Unlike the current connection arrangements to Customs existing cargo systems, under the Integrated Cargo System, the trading community will have a choice about how they will communicate to Customs – either interactively using an Internet dial-up, by sending EDI messages over the Internet or via a bureau service or for high volume users by a direct line to Customs. Each method will attract different annual fees depending on the volume of messages sent and the methods used to send them. The cost to an industry user to use the Integrated Cargo System via the Customs Interactive facility over the Internet will be limited to the cost of a digital certificate (approximately \$180 for 2 years) plus any costs imposed by the chosen Internet Service Provider (ISP). The annual cost to an industry user who elects to use a commercially available EDI package is the annual cost of maintaining any EDI software, plus the cost of digital certificates (from \$180 depending on the size of the business and the number of certificates required) plus any costs imposed by the chosen ISP or bureau service. The annual cost for those high volume users with a direct line to Customs will be approximately \$10,000 plus the cost of required digital certificates.
- (9) The first release to become publicly available to industry was Release 2. The latest version of Release 2 exports functionality was made available to Industry for testing on 21 January 2004. The earlier version, released in August 2003, did not meet industry's requirements for a robust system due primarily to performance issues experienced in integrating the Integrated Cargo System with the Customs Connect Facility. The latest release is stabilising and it is anticipated a date for implementation will be agreed with software developers in the near future. With improvements in system performance in industry test, response from industry is more positive. Industry is reacting positively to the functionality that will be available when Release 2 is fully implemented. It is expected that reporting of exports will be easier and faster for exporters. The exporting community welcomes the availability of the system over the Internet and the new 'easy to use' windows type application.
- (10) When the ICS is fully implemented both Customs and industry will benefit from the electronic capability the system will bring about. Full electronic message capability will enable the full spectrum of cargo processes to be completed with relative ease, including electronic lodgment, status checking, transshipment and underbond reporting. The ICS will significantly enhance the ability of both Customs and industry in tracking cargo movements more efficiently. The new ICS will make it easier for exporters and importers to declare their goods to Customs. Availability of the ICS over the Internet will provide many in industry with the directly ability to report their goods to Customs electronically for the first time, reducing the need for a service provider and reducing the costs of doing business. The system will also greatly improve the accuracy of data reported to Customs. Combined with sophisticated validation and profiling engines that exist within the ICS, this will also enhance Customs ability to undertake its border protection role and will improve Australia's standing and reputation in the international trading environment.



**Australian Customs Service: Patrol Boat  
(Question No. 2638)**

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

- (1) Has any estimate been made of the annual cost of leasing the ice-strengthened patrol boat for which the request for tender was issued last week, for duties in the Southern Ocean.
- (2) Will the vessel be added to those under the direction of the National Marine Unit.
- (3) Are there any plans to acquire more vessels of this type.
- (4) How many crew is the vessel expected to require.
- (5) Will these crew be drawn from existing Australian Customs Service (ACS) personnel.
- (6) Will the entire crew, or just the boarding party component, be made up of ACS personnel.
- (7) Will these crew require additional training for working in arctic conditions.
- (8) Has any estimate been made of how much this training might cost; if so, what is the estimated cost.

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

- (1) The tender has called for proposals from industry for the provision of an appropriate vessel, crew, and a 'steaming party'. In addition, Customs is seeking management infrastructure to support the on-going operations of the vessel, crew and steaming party. Costs will not be known until the tender proposals have been evaluated and a preferred service provider identified.
- (2) Yes.
- (3) There are no plans to acquire additional vessels of this type.
- (4) Approximately 20 contract crew, provided by the successful tenderer, will be required. In addition, a separate steaming crew of nine personnel will be required, (to sail any apprehended vessel to Australia), as well as a Customs Boarding Party of a minimum of 25 officers, and two officers from the Australian Fisheries Management Authority.
- (5) No. The crew of 20 will be provided by the successful tenderer. The Customs Boarding Party will be drawn from successful applicants in the current recruitment process. These personnel will be offered positions as Non-Ongoing Australian Public Service (APS) employees under section 22 (2) (b) of the Public Service Act 1999.
- (6) The boarding party will consist entirely of Customs officers.
- (7) Yes. A comprehensive training package has been developed to specifically cater for operations in the Southern Ocean which all officers selected for such patrols must successfully complete. The training includes Marine Induction Training, Southern Ocean Training program, Occupational Health and Safety at Sea, Senior First Aid, Use of Force Training and Weapons Handling.
- (8) Training for Southern Oceans operations is estimated at approximately \$55,000 per officer.

**Shipping: Wharf Surveillance  
(Question No. 2639)**

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

- (1) How many Australian ports are covered by the Australian Customs Service (ACS) CCTV network.
- (2) What percentage of the international ports in Australia does this represent.
- (3) From where is this CCTV system monitored.
- (4) Does monitoring take place 24 hours a day, 7 days a week.

- (5) (a) How many ACS personnel are involved in this monitoring; and (b) at what Australian Public Service levels are they employed.

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

- (1) The Australian Customs national CCTV network consists of 221 cameras in 88 wharf areas. These wharf areas are in 56 separate port locations within 31 proclaimed port areas.
- (2) There are currently 63 proclaimed port areas. The CCTV national coverage is in 31 proclaimed port areas. In the 2002/03 financial year, this provided coverage of 94% of first port arrival vessels.
- (3) The CCTV cameras are monitored, and can also be manoeuvred from three locations; the local Customs House (23 locations), the capital city of the State/Territory in which the District Office is located and the National Monitoring Centre (NMC) in Melbourne.
- (4) The NMC operates 24 hours a day, seven days per week and undertakes out-of-hours operational taskings provided by regional staff. The movement detection feature on the cameras can also be configured to dial up the NMC automatically, allowing staff there to remotely control the cameras to follow the wharf activity.

The local Customs Houses around Australia monitor CCTV cameras in their local area wharves outside normal work hours when required, either in person or using a motion detection alarm system. Information about wharf-related activity can also be recorded utilising the automated movement detection feature.

- (5) (a) The NMC is staffed by 12 officers who work a roster which ensures two staff in attendance for 24 hours/day, every day of the year. These officers can monitor all cameras in the CCTV network.

Staffing numbers and roles vary considerably between the 23 regional Customs Houses, so it is not possible to give a precise number of officers monitoring cameras at any one point in time. However, as an indication, in late 2003 Customs completed an in-house CCTV user-training program for 144 regional staff. (b) The officers employed at the NMC are Customs Officers Level 2 (APS level 4-5).

Regional staff trained in CCTV are predominantly Customs Level 1 (APS level 3) and level 2 (APS level 4-5) officers. Some Customs Level 3 officers (APS level 6) at the larger regional locations have also been trained.

**Australian Customs Service: Personnel**  
**(Question No. 2640)**

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

- (a) How many Australian Customs Service (ACS) personnel are employed in the National Marine Unit Investigations and Enforcement Operations Branch of the ACS, in Canberra; and
- (b) at what Australian Public Service levels are these personnel employed.

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

- (a) The National Marine Unit (NMU), a part of Customs Enforcement Branch, is responsible for all aspects of operating the sea-going fleet of eight Bay class Australian Customs Vessels.  
The NMU currently has 222 personnel.
- (b) These personnel are employed at the following Customs Officer Levels and equivalent Australian Public Service levels.

Central Office	Sea Going Crew	APS Levels
2 x Level 5	N/A	EL2
4 x Level 4	N/A	EL1
10 x Level 3	46 x Level 3	6
7 x Level 2	44 x Level 2	4/5
10 x Level 1	99 x Level 1	3
Totals: 33	189	

### Australian Customs Service: National Surveillance Centre

#### (Question No. 2641)

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 3 March 2004:

- (1) How many personnel are employed in the National Surveillance Centre in Canberra.
- (2) (a) Are all these personnel employed by the Australian Customs Service; and (b) at what Australian Public Service levels are they employed.
- (3) Is the centre fully operational 24 hours a day.
- (4) Is the centre responsible for surveillance operations in the Western Australian time zone.
- (5) Is the centre fully operational during daylight hours in the Western Australian time zone.
- (6) Is the centre fully operational on weekends; if so, during what hours.

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

- (1) When fully staffed, 16 Operation staff, and 11 Intelligence Analysts work within the National Surveillance Centre. These personnel are supported by a planning and resource cell accounting for a further six officers.
- (2) (a) No.  
(b) Customs Officer Levels 1 to 5 (APS 1-3 to EL 2) are represented.
- (3) Yes.
- (4) Yes.
- (5) Yes.
- (6) Yes (24 hours per day; seven days a week).

### Australian Federal Police: Training

#### (Question No. 2644)

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 2 March 2004:

- (1) Do the crew on the Australian Federal Police (AFP) launches receive training specifically for boarding vessels with the consent of the masters of those vessels.
- (2) Is this training conducted by the AFP.
- (3) Was the training package for this role designed by the AFP; if not, who designed the training package.
- (4) Do the crew on the AFP launches receive training specifically for boarding vessels without the consent of the masters of those vessels.
- (5) Is this training conducted by the AFP.

- (6) Was the training package for this role designed by the AFP; if not, who designed the training package.

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

- (1) No. The AFP has water police launches, based in Canberra on Lake Burley Griffin. AFP crew of those vessels do not receive formal training for boarding of vessels. There are no AFP police launches outside of the ACT used for the boarding of vessels. However, officers of the Specialist Response Security Team (SRS), based in the ACT and deployed nationally as required, are trained in boarding, with or without the consent of the master of the vessel.
- (2) Training of SRS staff in Close Quarter Tactics is conducted by the AFP SRS training team. Specific vessel boarding training is delivered by the New South Wales Police.
- (3) The training package for Close Quarter Tactics has been developed nationally and recognised across policing jurisdictions. The vessel boarding training has been developed by the New South Wales Police in consultation with other jurisdictions.
- (4) See the answer to (1) above.
- (5) See the answer to (2) above.
- (6) See the answer to (3) above.

#### **National Security**

##### **(Question No. 2646)**

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 2 March 2004:

- (1) What changes have taken place in the Australian Security Intelligence Organisation (ASIO) as a result of the Government's 'National e-security agenda'.
- (2) (a) How many full-time staff does ASIO employ to investigate and/or analyse threats to national e-security; and (b) at what Australian Public Service levels are they employed.

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

- (1) ASIO has established a section within its Protective Security Branch to assess threats to National Information Infrastructure and Critical Infrastructure.
- (2) (a) Eight full time staff were employed as a result of the E-Security National Agenda. Following the 11 September 2001 and Bali attacks the immediate priority for most of these staff has been assessing threats to the broader critical infrastructure.  
(b) Executive Level 2, Executive Level 1, and APS Level 6.

#### **Australian Quarantine and Inspection Service: Personnel**

##### **(Question No. 2651)**

**Senator Ludwig** asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 2 March 2004:

- (1) (a) How many full-time Australian Quarantine and Inspection Service (AQIS) personnel are involved in AQIS' contribution to the 'Australia's Southern Ocean – Surveillance and Enforcement' program; and (b) at what Australian Public Service (APS) levels are these people employed.
- (2) (a) How many part-time AQIS personnel are involved in the program; and (b) at what APS levels are these people employed.

**Senator Ian Macdonald**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator's question:

- (1) (a) (b) Nil.
- (2) (a) (b) Nil.

**Immigration and Multicultural and Indigenous Affairs: Counter-Terrorism Assistance  
(Question No. 2653)**

**Senator Ludwig** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 2 March 2004:

With reference to page 25 of the department's 2003 portfolio additional estimates statements:

- (1) What function does the department have in relation to counter-terrorism assistance for the Philippines.
- (2) Has any funding been allocated for this function.
- (3) Has any expenditure occurred in relation to this function.
- (4) Has there been any review of the effectiveness of any expenditure.
- (5) Are there any plans for more funds to be allocated for this measure in the future.
- (6) Is the department involved in any similar programs in other countries.
- (7) Are there any plans for the department to become involved in any similar programs in other countries.
- (8) (a) How many full-time departmental personnel are employed in the Border Control and Compliance Division; and (b) at what Australian Public Service (APS) levels are these personnel employed.
- (9) (a) How many part-time staff are employed in the Border Control and Compliance Division; and (b) at what APS level are they employed.
- (10) Does this Division supervise the Movement Alert List; if not, which division of the department has responsibility for this list.
- (11) (a) How many full-time staff does this division employ; and (b) at what APS levels.
- (12) (a) How many part-time staff does this division employ; and (b) at what APS levels.
- (13) Are departmental personnel normally involved in maritime border protection operations; if so, how.
- (14) (a) How many departmental personnel would normally be involved; and (b) at what APS levels would they be employed.
- (15) Is there a dedicated taskforce or group within the department that deals with this role; if so: (a) how many departmental personnel are involved; (b) at what APS levels are they employed; and (c) are there any plans to increase or decrease these levels in the near future.

**Senator Vanstone**—The answer to the honourable senator's question is as follows:

- (1) The Department undertakes a range of capacity building activities in key source and transit countries to strengthen border control and to combat people smuggling, illegal migration and related transnational crime, including terrorism. In January 2004, the Department provided two fully equipped document examination laboratories to the Philippines Bureau of Immigration.
- (2) Capacity building activities in a number of countries are funded by an allocation of \$5.5 million for 2003-04.
- (3) As at 28 February 2004, the Department had spent \$231,100 on capacity building activities in the Philippines.

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- (4) Not at this stage. However, there are reporting requirements and procedures in place for monitoring and reviewing effectiveness of expenditure at six monthly intervals, with the first assessment of this project scheduled for May 2004.
- (5) This is pending government consideration.
- (6) Yes. The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) has been involved in similar programs in Indonesia, Cambodia and Laos where document fraud laboratories have been provided to counterpart governments' immigration services. In delivering capacity building activities in key source and transit countries to strengthen border control, to combat people smuggling, illegal migration and related transnational crime, DIMIA's future capacity building program includes providing document fraud laboratories to priority countries.
- (7) This is pending government consideration.
- (8) (a) and (b) As of 11 March 2004, there were 293 full-time personnel employed in the Border Control and Compliance Division at the following levels:
- 1x Senior Executive Service Level 2
  - 4x Senior Executive Service Level 1
  - 17x Executive Level 2
  - 60x Executive Level 1
  - 2x Senior Legal Officers
  - 85x Australian Public Service Level 6
  - 2x Legal Officers
  - 57x Australian Public Service Level 5
  - 28x Australian Public Service Level 4
  - 23x Australian Public Service Level 3
  - 11x Australian Public Service Level 2
  - 3x Australian Public Service Level 1
- (9) (a) and (b) As of 11 March 2004, there were 13 part-time staff employed in the Border Control and Compliance Division at the following levels:
- 2x Executive Level 1
  - 7x Australian Public Service Level 6
  - 2x Australian Public Service Level 5
  - 1x Australian Public Service Level 4
  - 1x Australian Public Service Level 3
- (10) to (12) Border Control and Compliance is the division responsible.
- (13) The Australian Customs Service (ACS) manages people movement across Australia's sea border on behalf of DIMIA. It operates an extensive network of staff around the country who conduct immigration checks on incoming crew of foreign vessels.
- DIMIA has dedicated 'regional seaport officers' in Sydney, Melbourne, Hobart, Adelaide, Perth, Darwin, and Brisbane. These and other qualified officers may attend and assist ACS officers in the boarding of specific ships of interest to confirm the status of crew and examine the identity documents held by crew and passengers.
- DIMIA also responds to referrals of persons of interest, as identified by Customs, at Australia's seaports.
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- (14) As ACS manages Australia's maritime border on behalf of DIMIA, the number of officers involved with maritime border protection operations varies depending on the size, type and location of the operation and the level of involvement agreed to by other border protection agencies.
- (a) When assisting ACS, one or more DIMIA officers may attend a vessel.
  - (b) Their APS levels would range between APS 5 to 6.
- (15) There is a 'Seaports Policy' Section in Central Office which is the coordinating point for policy development, training and reporting.
- (a) As of 11 March 2004, there were six personnel in this section.
  - (b) Personnel in the 'Seaports Policy Section' are employed at the following levels:
    - 1 x Executive Level 2
    - 1 x Executive Level 1
    - 3 x Australian Public Service Level 6
    - 1 x Australian Public Service Level 5
- As of 11 March 2004, the APS levels of DIMIA's regional seaport officers were as follows:
- |           |                                       |
|-----------|---------------------------------------|
| Sydney    | 1 x Australian Public Service Level 5 |
| Melbourne | 1 x Australian Public Service Level 6 |
| Hobart    | 1 x Australian Public Service Level 5 |
| Adelaide  | 1 x Australian Public Service Level 6 |
| Perth     | 1 x Australian Public Service Level 6 |
| Darwin    | 1 x Australian Public Service Level 5 |
| Brisbane  | 1 x Australian Public Service Level 6 |
- (c) No.

### **Auslan: Funding**

#### **(Question No. 2658)**

**Senator Stott Despoja** asked the Minister for Family and Community Services, upon notice, on 3 March 2004:

- (1) Can the Minister confirm the status of the scoping study into the interpreting needs of the deaf, which was commissioned to 'examine the supply, demand and funding of Auslan interpreter services throughout Australia', and was originally due to be completed on 24 October 2004.
- (2) Given that the department provides 'a fee-free interpreting service to certain English speaking individuals and groups in the community who provide settlement related services to permanent visa holders (that is, permanent residents) and Australian citizens who do not speak English' and that any doctor that meets the criteria listed on the department's website can use the service, but deaf Australians are not able to access Government funded interpreters for medical appointments in a private practice: When will deaf Australians be extended the same rights as those from non-English speaking backgrounds in relation to Government-funded interpreting services.

**Senator Patterson**—The answer to the honourable senator's question is as follows:

- (1) The national study of supply and demand for Auslan interpreting services was finalised in January 2004.
- (2) Interpreting services for people from non-English speaking backgrounds are provided by the Department of Immigration, Multicultural and Indigenous Affairs through the Translating and Interpreting Service, not the Department of Family and Community Services.

The Government has received the report on the study of supply and demand for Auslan interpreting services, and is currently considering its findings.

**Immigration: Sabean Mandaean**  
**(Question No. 2661)**

**Senator Brown** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 3 March 2004:

- (1) For each of the past 5 years, how many people of the Mandaean religion have been held in detention centres as asylum seekers.
- (2) In which of these centres has yaloofi meat preparation been available to the Mandaeans; if none, why not.
- (3) If the reason for yaloofi meat not being available relates to health standards: (a) what is the relevant health standard; and (b) what potential health problems are associated with the provision of yaloofi meat.

**Senator Vanstone**—The answer to the honourable senator's question is as follows:

- (1) The table below shows the number of persons recorded in departmental systems as Sabean Mandaeans who had applied for a Protection Visa (PV), who were taken into immigration detention (detained in centres, Residential Housing Projects and alternative places of detention) in each of the last five years.

Sabean Mandaean Protection Visa applicants taken into detention 1999-00, 2000-01, 2001-02, 2002-03, 2003-04 (as at 29/2/2004)

1999-00	2000-01	2001-02	2002-03	2003-04 (as at 29/2/2004)	Total
213	158	92	1	0	464

- (2) The possibility of accessing Yaloofi meat for Sabean Mandaean detainees was investigated. The Sabean Mandaean Association indicated the following in relation to provision of Yaloofi meat:
  - There are no commercial suppliers of Yaloofi meat in Australia and there is only one accredited Yaloofi slaughterer, who is based in Sydney.
  - Yaloofi meat should be consumed on the day of slaughter.
  - Following slaughter the meat must be ritually immersed, then placed in a container with a lid. If the container is not new it must first have been burnt to remove any residual oil or grease.
  - Following placement in the container the meat is to be wrapped in a white cloth which has been ritually immersed, then carried to the kitchen for cooking, if the wet cloth is contaminated in any way during transport to the kitchen the meat must not be consumed.
  - Before unwrapping and preparing the Yaloofi meat the cook(s) must first wash their hands and forearms in water which has been brought by a Mandaean from a free-flowing fresh-water river in a container that has been ritually immersed.
  - Yaloofi meat must never come into contact with utensils or vessels which have been used for meat which is not Yaloofi.
  - Before utensils or vessels are used for the consumption of Yaloofi meat they must be ritually immersed and the kitchen must be cleaned of any foodstuffs which are not Yaloofi.
  - The preparation and cooking of Yaloofi meat must only be undertaken by Mandaeans.
  - Due to the impracticality of meeting the above requirements, Yaloofi meat has not been able to be made available to Sabean Mandaean detainees in any Immigration Detention Facilities.



- (3) While there may be issues concerning health standards, the reasons for Yaloofi meat not being available primarily relate to the impracticality of meeting the requirements outlined in (2) above.

**Environment: Climate Change**

**(Question No. 2664)**

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 3 March 2004:

- (1) Is the Minister aware: (a) of an article by Britain's most senior government scientist, Sir David King, published in the journal *Science* of 10 January 2004, in which he stated that 'in my view, climate change is the most severe problem that we are facing today – more serious even than the threat of terrorism'; (b) that as the world's only remaining superpower, the United States of America (US) is accustomed to leading internationally co-ordinated action, but at present the US Government is failing to take up the challenge of global warming'; and (c) that Dr King, in his article, also pointed out that the US is currently responsible for 20 per cent of global greenhouse emissions.
- (2) Will the Minister back the call of Dr King for the Bush Administration to take urgent action to significantly reduce US emissions of greenhouse gases.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) The Australian Government recognizes the significance of the challenge posed by climate change. The Government is also aware that the best international scientific advice indicates that far greater reductions in greenhouse gas emissions are needed by the end of the century than those that would be delivered by the Kyoto Protocol. In order to address climate change effectively, a truly global response is required that includes clear pathways for action by all major emitters.
- (2) Australia is working with the US, as with many other countries, to address climate change through multilateral, regional and bilateral mechanisms. Constructive engagement by Australia with major emitters can make an important contribution to securing an effective global response to this important issue.

**Defence: Bradshaw Field Training Area**

**(Question No. 2673)**

**Senator Chris Evans** asked the Minister for Defence, upon notice, on 5 March 2004:

In relation to the Timber Creek – Bradshaw Field Training Area Infrastructure project:

- (1) How many Indigenous people or corporations employing indigenous people were employed in contracts awarded under stage 1 of the project.
- (2) Have those Indigenous people who unsuccessfully tendered for stage 1 of the process been told to seek sub-contracting opportunities from the successful tenderers.
- (3) (a) Can a list be provided of individuals or companies that have been contracted to undertake work on the project and the amount they are being paid; and (b) how many Indigenous people are employed by these companies.
- (4) Have tenderers been published for stage 2 of the project.
- (5) Can a copy be provided of the tender for stage 2; if not, will the planned work be tendered as a package, or divided into sub-projects.
- (6) Is there any requirement for individuals or companies tendering for stage 2 to specify: (a) how many Indigenous Australians they employ; and (b) that they will sub-contract to Indigenous building companies.

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- (7) Has the department examined whether Indigenous employment outcomes would be improved by seeking separate tenders for the different parts of stage 2 of the project; if not, will the department undertake to do so.
- (8) (a) Has the Bradshaw Partnering Indigenous Land Use Agreement been registered and ratified; if not, why not; (b) what are the issues of contention between the department and the relevant Indigenous people; (c) when was the agreement originally scheduled for registration; and (d) when is the agreement expected to be registered and ratified.
- (9) Why is the revised budget estimate for the 2003-04 financial year \$11 million less than the original budget estimate.
- (10) Have contracts been awarded for the majority of the work, including road and airfield construction.
- (11) Can a list be provided of the commencement date for each work stage of the project.
- (12) When is the entire project expected to be finished.

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

- (1) The initial infrastructure development of Bradshaw Field Training Area has three elements, namely:
- the construction of a bridge and access road over the Victoria River to the west of Timber Creek (completed in October 2002);
  - the construction of approximately 200 kilometres (km) of internal roads and associated civil works (civil works); and
  - the construction of a Range Control facility, Caretaker facilities, Scale A Camps, and a Training Force Maintenance Area (vertical works).

Defence has not adopted any terminology grouping these elements into stages but for the purpose of answering Senator Evans' question it is assumed Stage 1 refers to the construction of the bridge and Stage 2 refers to the civil works and vertical works components.

With the exception of the construction of the bridge over the Victoria River, no other construction contracts have been awarded for the development of the initial infrastructure on Bradshaw Field Training Area.

In relation to the construction of the bridge and access road to Bradshaw Field Training Area, the contractor actively endeavoured to provide employment and business benefits to traditional owners and local Aboriginal businesses. Employee positions were made available but the positions were not filled. Considerable use was made of a local Aboriginal-owned business in providing accommodation and catering throughout the construction period and a subcontract for weed control was awarded to a local indigenous firm.

- (2) Defence is not aware of any indigenous business having submitted a Registration of Interest or Tender for the construction of the Victoria River Bridge at Bradshaw Field Training Area.
- (3) (a) The following major contracts have been let for work on the Bradshaw Project:
- Project Management – Connell Wagner Pty Ltd - \$1.208 million (m);
  - Design of Building Works – Spowers Architects (Darwin) - \$0.82m;
  - Project Management of the Victoria River Bridge construction – Department of Transport and Works, Northern Territory - \$0.73m; and
  - Construction of Victoria River Bridge – Steelcon Constructions (Northern Territory) Pty Ltd - \$8.332m.
- (b) Defence has no visibility as to the number of Indigenous people who are employed by these companies.
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- (4) Defence is currently undertaking tender negotiations with a preferred tenderer for the civil works component. However, this contract will not be awarded until such time as the Bradshaw Partnering Indigenous Land Use Agreement is registered by the National Native Title Tribunal.
- (5) Due to ongoing negotiations with a preferred tenderer for the civil works component, the tender documents remain Commercial-In-Confidence.
- Tender documents for the vertical works have not yet been prepared. It is proposed that the vertical works will be tendered as two separate packages with approximate values of \$5m and \$11m each.
- (6) Under the arrangements agreed with traditional owners in relation to the Bradshaw Partnering Indigenous Land Use Agreement, the Commonwealth has agreed to maximise the involvement of, and employment, training and business opportunities for, traditional owners and Aboriginal businesses. For the purposes of the Bradshaw Partnering Indigenous Land Use Agreement, an Aboriginal business is one that has significant traditional owner involvement.
- (a) Tenderers are required to provide details of their proposal in relation to traditional owner employment, training and business opportunities.
- (b) Tenderers are not required specifically to subcontract to indigenous companies. However, participation of traditional owners and Aboriginal businesses is a highly weighted evaluation criterion for tenders.
- (7) No. Commonwealth Government Procurement Guidelines require Defence to procure the works utilising best practice methodologies. The composition of civil works and vertical works packages has been determined with regard to industry capability, time requirements and value for money considerations. Indigenous outcomes are encouraged through tender requirements that ensure participation of traditional owners and Aboriginal businesses is a highly weighted evaluation criterion.
- (8) (a) The Bradshaw Partnering Indigenous Land Use Agreement has not been registered on the Register of Indigenous Land Use Agreements under the Native Title Act 1993.
- (b) There are no 'issues of contention' between the department and the relevant Indigenous people. The Agreement was signed by the parties (the Commonwealth, the Northern Land Council and the Traditional Owners) in mid-July 2003. Under the Native Title Act 1993, before an area indigenous land use agreement can be registered on the Register of Indigenous Land Use Agreements, the Native Title Registrar must give notice of the agreement (including public notice) and give any person claiming to hold native title in relation to any of the land or waters in the area covered by the agreement three months to object to the registration of the agreement. The notification period for the Bradshaw Partnering Indigenous Land Use Agreement closed on 10 December 2003. Prior to the closing date, the Registrar received an objection. The question raised in that objection goes to whether the making of the agreement was authorised by all those persons who hold or may hold native title in the area covered by the Agreement as required under the Native Title Act. The Northern Land Council, which certified that the making of the agreement was authorised, is in the process of providing the Registrar with additional information as to why it formed this view.
- (c) The statutory notification period closed on 10 December 2003. Had there been no objections to the registration, it would have been expected that the agreement would have been registered soon thereafter.
- (d) As noted above, the decision about whether to register the agreement is currently with the Native Title Registrar. It would be inappropriate to comment about expected timing.
- (9) The budget for 2003-04 has been revised due to the delay in registering the Bradshaw Partnering Indigenous Land Use Agreement.
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- (10) As noted above, due to the delay in registering the Bradshaw Partnering Land Use Agreement, no contracts have been awarded for any construction works on Bradshaw with the exception of the construction of the bridge across the Victoria River and approximately 3km of road up the escarpment.
- (11) Construction of the initial infrastructure development of Bradshaw Field Training Area will commence shortly after the registration of the Bradshaw Partnering Indigenous Land Use Agreement and the grant of a Defence Purpose Lease.
- The first contract to be awarded will be the civil construction contract for approximately 200km of roads within Bradshaw to allow access to the Angalarri Valley to the east of the training area for military training.
- Following sufficient progress on access road work construction in 2004, it is anticipated that the following two contracts will be awarded for the vertical works in either late 2004 or early 2005:
- the construction of the Range Control facility and caretaker residences; and
  - the construction of Scale A Camps, and the Training Force Maintenance Area.
- (12) The initial infrastructure development is currently programmed for completion by the end of 2005.

**Employment: Work for the Dole**

**(Question No. 2674)**

**Senator Webber** asked the Minister representing the Minister for Employment Services, upon notice, on 8 March 2004:

- (1) What Work for the Dole projects have been conducted in the Yanchep/Two Rocks area of Western Australia.
- (2) Were any projects conducted in areas contaminated by unexploded ordnance.
- (3) Do Work for the Dole participants have the right to refuse to participate where health and safety concerns exist.
- (4) Were participants notified that the area was contaminated by unexploded ordnance.

**Senator Abetz**—The Minister for Employment Services has provided the following answer to the honourable senator's question:

- (1) There have been 21 Work for the Dole activities operating in the Yanchep or Two Rocks area since the Commonwealth contracted Community Work Coordinators to manage the programme in 2000. Examples of activities located in these areas are: development of the Blessing of the Fleet event, creation of a foreshore easement, park rejuvenation, national park flora and fauna conservation, and administration tasks. Prior to that there was one activity in 1999 involving construction of pathways and edges in parks and gardens.
- (2) These activities were not located in contaminated areas. The two sites which were located in what is understood to be the danger zone were inspected and the areas were found to be safe and free from remnant ordnance.
- (3) It is a contractual obligation that risk assessments are undertaken on each site on which participants undertake Work for the Dole work experience. Any risks identified are rectified or steps taken to manage such risks. No participant is placed in an activity in which there is any danger of exposure to risk.
- (4) As activities were not conducted in contaminated areas, there was no need to inform participants of any restrictions to these areas.

**Defence: Yanchep/Two Rocks Firing Range**  
**(Question No. 2675)**

**Senator Webber** asked the Minister for Defence, upon notice, on 8 March 2004:

- (1) What is the status of unexploded ordnance in the Yanchep/Two Rocks area of Western Australia.
- (2) What action has the Commonwealth taken to ensure that there is no contamination by unexploded ordnance in the St. Andrew's development area.
- (3) Does the Commonwealth have any responsibility in the event of unexploded ordnance detonating during any development activity at St. Andrews.
- (4) Is the Minister aware that the Fire and Emergency Services Authority of Western Australia will not allow ground personnel to fight bushfires in the area due to unexploded ordnance contamination.

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

- (1) The former Yanchep/Two Rocks firing range is located between the Moore River and Yanchep and extends up to 15km inland. The area was used during World War II and up to 1974 by all three Services and allied Air Forces during World War II. Eleven separate ranges were located within the area, comprising air gunnery, aerial bombing, naval gunfire impact areas and artillery ranges.  
Historical, unexploded ordnance recoveries from the area are reported to have included 250 pound high explosive aerial bombs, 25 pounder high explosive artillery and 6 inch high explosive naval projectiles. While current recoveries of potentially hazardous items indicate that contamination levels are not significant, discoveries are likely to continue with further development of bushland areas.
- (2) Defence is aware of a number of unexploded ordnance assessment surveys within the former range area. In 1993–1994, Commonwealth-funded assessment searches were conducted by the Western Australia Fire and Emergency Services Unexploded Ordnance Service over a proposed development area of between 30 and 40 hectares to the south of Yanchep township. While no hazardous items were recovered, evidence of ordnance impact was detected. The St Andrews development is located within an impact area. The requirements of the Western Australian Government and the recommendations of Defence are that no change in land use should occur until a detailed assessment of the area proposed for development has been undertaken and, where found to be required, remediated. While no such action can provide a 100 per cent guarantee that all hazardous items have been found and removed, the required measures reflect world's best practice to minimise human exposure to unexploded ordnance hazards.
- (3) No. However, given that the appropriate site assessment and, where required, remedial measures are undertaken prior to commencement of development and that appropriate action is taken on discovery of such an item, the indemnity provisions contained within the Commonwealth Policy on the Management of Land affected by Unexploded Ordnance may apply.
- (4) Yes, because the action taken by the Authority was in response to advice from Defence.

**Military Detention: Australian Citizens**  
**(Question No. 2676)**

**Senator Brown** asked the Minister representing the Attorney-General, upon notice, on 8 March 2004:

With reference to the prospective trial of Mr David Hicks, an Australian citizen, before a United States of America (US) Military Commission:

- (1) Is Australia a party to the International Covenant on Civil and Political Rights.
- (2) Is the US a party to the same International Covenant.

- (3) Does this International Covenant provide that in the determination of a criminal charge against a person, 'everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'.
- (4) Will the proposed military commission to try Mr Hicks, established under and governed by the procedures of the Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism, signed by President George W Bush on 13 November 2001, constitute an 'independent and impartial tribunal' as required by the International Covenant.

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

- (1) Yes.
- (2) Yes.
- (3) Yes.
- (4) This calls for a legal opinion which is precluded by the Senate Standing Orders. In any event, this is a matter for the Government of the United States of America.

#### **Military Detention: Australian Citizens**

##### **(Question No. 2677)**

**Senator Brown** asked the Minister representing the Attorney-General, upon notice, on 8 March 2004:

With reference to the prospective trial of Mr David Hicks, an Australian citizen, before a United States of America (US) Military Commission:

- (1) Is it correct that under the Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism, signed by President George W Bush on 13 November 2001, statements obtained by torture (defined for the purpose of this question as meaning coercion, physical or psychological, inflicted or threatened, in order to procure a statement by a person) would not be inadmissible as evidence against Mr Hicks on that ground.
- (2) Is it correct that under the terms of the Order, evidence will be admissible 'if it has probative value to a reasonable person', and that evidence obtained by torture may have probative value as specified in the Order.

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

- (1) President Bush's military order of 13 November 2001 provides that evidence is admissible if it would "in the opinion of the presiding officer of the military commission (or instead, if any other member of the commission so requests at the time the presiding officer renders that opinion, the opinion of the commission rendered at that time by a majority of the commission), have probative value to a reasonable person". The military order does not expressly refer to torture, however defined, or information obtained by torture.

Whether evidence obtained under torture would have probative value to a reasonable person is a matter which, if it arose during a military commission proceeding, could be raised by defence counsel. In addition, Military Commission Instruction no. 9 makes it clear that the admissibility of evidence is an issue which the panel responsible for reviewing military commission trials may consider. Section 4C(2)(b)(3) of that instruction specifically states that the panel may review material errors of law, which include "insufficiency of evidence as a matter of law".

- (2) I refer Senator Brown to the answer to number 1 above.

**Military Detention: Australian Citizens**  
**(Question No. 2678)**

**Senator Brown** asked the Minister representing the Attorney-General, upon notice, on 8 March 2004:

With reference to the prospective trial of Mr David Hicks, an Australian citizen, before a United States of America (US) Military Commission:

- (1) Is Australia a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which entered into force on 26 June 1987.
- (2) Is the US a party to the same Convention.
- (3) Does Article 15 of that Convention provide that 'each state shall ensure that any statement which is established to have been made as a result of torture, shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made'.
- (4) Do the rules concerning the admissibility of evidence, as set out in the Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism, signed by President George W Bush on 13 November 2001, conform with Article 15 of the Convention.

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

- (1) Yes.
- (2) Yes.
- (3) Article 15 of the Convention states that: 'Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made'.
- (4) This calls for a legal opinion which is precluded by the Senate Standing Orders. In any event, this is a matter for the Government of the United States of America.

**Military Detention: Australian Citizens**  
**(Question No. 2679)**

**Senator Brown** asked the Minister representing the Attorney-General, upon notice, on 8 March 2004:

With reference to the prospective trial of Mr David Hicks, an Australian citizen, before a United States of America (US) Military Commission:

- (1) Has the Australian Government made any representations to the US Administration concerning the adequacy of the rules governing the admissibility of evidence in any trial of Mr Hicks; if so, what were these representations.
- (2) Has the US Administration, in response to representations by the Australian Government or otherwise, made any statements to the Australian Government about the rules of evidence governing the trial of Mr Hicks, either: (a) generally; (b) in regard to the admissibility of statements procured by coercion; and/or (c) in regard to the entitlement of Mr Hicks to challenge the admissibility of statements on that ground; if so, what was the substance of the statements.

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

- (1) The Government made several representations to the United States about the military commission process, including representations about the admissibility of evidence. The Government informed

the United States that it would like the procedures to reflect, as far as possible, the procedures utilised by the United States criminal courts.

- (2) No. President Bush's military order of 13 November 2001 provides that evidence is admissible if it would "in the opinion of the presiding officer of the military commission (or instead, if any other member of the commission so requests at the time the presiding officer renders that opinion, the opinion of the commission rendered at that time by a majority of the commission), have probative value to a reasonable person".

Whether evidence obtained under coercion would have probative value to a reasonable person is a matter which, if it arose during a military commission proceeding, could be raised by defence counsel. In addition, Military Commission Instruction no. 9 makes it clear that the admissibility of evidence is an issue which the panel responsible for reviewing military commission trials may consider. Section 4C(2)(b)(3) of that instruction specifically states that the panel may review material errors of law, which include "insufficiency of evidence as a matter of law".

**Defence: Beecroft Weapons Range**

**(Question No. 2684)**

**Senator Chris Evans** asked the Minister for Defence, upon notice, on 9 March 2004:

With reference to the Beecroft Weapons Range:

- (1) (a) Is it proposed that a visitor information centre be constructed at the range; and (b) what will the construction of the proposed centre involve, for example, construction of roads, car park, fire management zones, amenities block, shop, office etc.
- (2) Where exactly is it proposed that the centre be built.
- (3) How much will it cost to construct the centre.
- (4) Is the department aware of the environmental sensitivity of the proposed site for the centre.
- (5) How much land will have to be cleared to enable construction of the proposed centre.
- (6) Have any environmental studies been conducted on the proposed site; if so, (a) what were the findings of these studies; and (b) can a copy of these studies be provided.
- (7) (a) Were other sites considered for the proposed centre; if so, why were they rejected; and (b) why was the western side of the Lighthouse Road near the existing ranger station chosen as the preferred site.
- (8) Was cleared land on the eastern side of the road opposite the current ranger station considered as a site for the proposed centre; if not, why not; if so, why was this site rejected, given that the land is already cleared.
- (9) How much has been spent on the project to date, including all environmental fees, legal fees, property management fees, etc.

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

- (1) (a) Yes. However, other strategies are also being considered for the delivery of safety, environmental and visitor management information. (b) The proposal currently being considered by Defence will require minimal changes to the existing facilities.
- (2) The proposal currently being considered by Defence will involve minimal changes to the existing facilities located on the western side of Lighthouse Road.
- (3) No cost has been determined for the proposal currently being considered by Defence.
- (4) Yes.
- (5) The proposal currently being considered by Defence involves no significant land clearing.



- (6) The proposal currently under consideration by Defence does not involve significant changes to existing infrastructure or land clearing. Environmental studies have been conducted in the vicinity of the ranger station and are summarised on the Department of Environment and Heritage's website in the Beecroft Weapons Range Proposed Civil Works referral form under the Environment Protection and Biodiversity Conservation Act 1999. This latter proposal is no longer under active consideration by the Department of Environment and Heritage.
- (7) No. The proposal currently under consideration by Defence involves minimal changes to existing facilities.
- (8) No. The proposal currently under consideration by Defence involves minimal changes to existing facilities.
- (9) The proposal currently under consideration by Defence has only recently evolved and has not been costed. Approximately \$163,500 was spent on studies and documentation supporting the proposal referred to the Department of Environment and Heritage for more extensive changes to the existing facilities. This excludes amounts spent on other public access initiatives, such as unexploded ordnance clearance and the Beecroft Weapons Range Plan of Management.

**Environment: Kakadu National Park**

**(Question No. 2687)**

**Senator Crossin** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 11 March 2004:

With reference to the \$1 million compensation package for tourism operations in Kakadu National Park:

- (1) (a) Will the money be paid to Northern Territory tour operators; and (b) will this money be drawn from an existing appropriation: if so, from where in the budget has the money been derived; if not, will the money be an additional appropriation.
- (2) Will the money from the compensation package, announced as a result of the closure of Twin Falls to swimming in Kakadu National Park, be paid to Parks Australia for dispersal, or paid directly to Northern Territory tour operators.
- (3) If the money is to be paid to Parks Australia, how will it be spent.
- (4) If tour operators are to receive the money directly: (a) on what basis will it be allocated; and (b) will it be in the form of a grant.
- (5) How did the Minister arrive at the amount of \$1 million as compensation for tourism operators: (a) was this based on the number of operators in the Territory who advertised Twin Falls as a destination within their tours; or (b) did Tourism Top End determine this to be an adequate amount to compensate tour operators.
- (6) When will the money be available and to whom.
- (7) If the money is to be spent on infrastructure, does the Federal Government regard this as indirectly compensating Northern Territory tour operators, as stated by Senator Scullion on radio.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) (a) No. The Director of National Parks announced the \$1 million assistance package will provide new visitor access arrangements at Twin Falls gorge in Kakadu National Park in his media statement of 3 March 2004 (attached). (b) the money will be drawn from the Director of National Parks existing budget.
- (2) Refer to answer to (1) (a).

- (3) The money will be spent on infrastructure including: developing a passenger loading area; new boats for a boat shuttle service to transport visitors up Twin Falls gorge; a boardwalk through one rocky section of Twin Falls gorge. The cost of developing a new information package (including on-site signage) is also included as are the operational costs of establishing and running the boat service in its first year of operation. The cost of developing a safe walking track to the escarpment above Twin Falls will also come from this package.
- (4) (a) and (b) refer to answer to 1(a).
- (5) (a) and (b) refer to answer to 1(a).
- (6) Refer to answer to 1(b) and 3.
- (7) The money will be spent on infrastructure and operational costs for the new access arrangements to Twin Falls (refer to answer to (3)). There will be no charge for the boat service in the first year. The new access arrangements will assist the tourism industry by providing greater certainty for access to the Twin Falls area.

### **Health and Ageing: Disaster Medicine Unit**

#### **(Question No. 2690)**

**Senator Ludwig** asked the Minister representing the Minister for Health and Ageing, upon notice, on 11 March 2004:

- (1) (a) How many personnel are employed within the Disaster Medicine Unit of the department; and (b) at what Australian Public Service levels are they employed.
- (2) Does the unit lease its own premises, independent from the department; if so, what is the annual cost of this lease.
- (3) Is the unit responsible for the provision of antidotes, medicines, etc.: (a) in the event of a national disaster; and (b) if an incident is not officially declared a national disaster.
- (4) (a) Upon whose request would these antidotes, medicines, etc. be made available to states or territories; and (b) on whose authorisation would such a request be granted.
- (5) Would these antidotes, medicines, etc. be supplied directly to the state or territory law enforcement authorities, health department or some other agency; if so, to whom.
- (6) What other responsibilities would the unit have in the event of a disaster.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator's question:

- (1) (a) and (b) The Disaster Medicine Unit has been replaced by the Biosecurity Section which has an establishment of 10 officers. The Section is headed by a Director (Executive Officer Level 2) and has other officers at various levels. Both the Chief Medical Officer and the relevant Deputy Secretary take a direct role in its operation.
- (2) No. The Biosecurity Section is part of the Department of Health and Ageing.
- (3) (a) and (b) The Biosecurity Section is responsible (inter alia) for the acquisition, maintenance and distribution of the National Medicines Stockpile. An official declaration of a national disaster is not required for the stockpile to be released.
- (4) (a) and (b) The stockpile is under the control of the Australian Government Chief Medical Officer and may be released at the request of the Chief Health Officer of a State or Territory.
- (5) Any components of the National Medicines Stockpile that are released to a State or Territory will be delivered to the relevant health authority.
- (6) The previous role of the Disaster Medicine Unit has been assumed by the Biosecurity Section which has the following responsibilities:

- Purchasing and maintaining a stockpile of vaccines and medicines to be used in an emergency.
- Coordinating the Department's activities in responding to emergencies including natural disasters, and bioterrorism threats. The Section works closely with external agencies to ensure that resources are marshalled effectively and efficiently to meet contingencies as they arise.
- Ensuring that the management of the human health aspects of quarantine are dealt with appropriately by respective agencies.
- Providing the secretariat for the cross jurisdiction Australian Health Disaster Management Policy Committee, which plans for inter-governmental health responses to natural disaster and emergencies, including bioterrorism events.

### Australian Government Analytical Laboratories

#### (Question No. 2691)

**Senator Ludwig** asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 11 March 2004:

- (1) (a) How many personnel are employed within the Australian Government Analytical Laboratories.  
(b) What APS levels are they employed.
- (2) Do these laboratories have a function in the analysis of materials from major emergencies, such as terrorists incident, involving radiological materials.
- (3) Would this be the same for an incident involving (a) biological materials; (b) chemical materials; and (c) conventional explosive materials.
- (4) Is there a special unit or division within AGAL tasked with this responsibility; if so, at what level are the staff employed.

**Senator Minchin**—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator's question:

- (1) (a) 238 Australian Public Service Staff as at 14 March 2004. 65 Contractors as at 14 March 2004  
(b) APS Staff

Level	No.	Level	No.
APS 2	2	ITO2 (APS6)	1
APS 3	6	PO1 (APS5)	26
APS 4	4	PO2 (APS6)	46
APS 5	5	SOITB (EL2)	1
APS 6	6	SOITC (EL1)	1
EL 1	8	SPOA (EL2)	3
EL 2	9	SPOB (EL2)	9
GSO2 (APS1)	1	SPOC (EL1)	30
GSO3 (APS1)	1	TO1 (APS2)	33
GSO4 (APS1)	2	TO2 (APS4)	26
ITO1 (APS4)	2	TO3 (APS5)	14
		TO4 (APS6)	2

- (2) No.
- (3) (a) Yes. No involvement. (b) No. AGAL is listed under 'Chemical' in the Crisis Advisory Panel of Experts listing managed by Emergency Management Australia. (c) Yes. No involvement.
- (4) No.

**Australian Radiation Protection and Nuclear Safety Agency  
(Question No. 2692)**

**Senator Ludwig** asked the Minister representing the Minister for Health and Ageing, upon notice, on 11 March 2004:

- (1) (a) How many personnel are employed within the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA); and (b) at what Australian Public Service (APS) levels are they employed.
- (2) Would ARPANSA be responsible for and/or capable of responding to an accident or other incident involving radiological material: (a) at an Australian nuclear facility; and (b) outside an Australian nuclear facility.
- (3) Does ARPANSA have a specific unit or division tasked with these emergency response capabilities; if so: (a) how many personnel are employed within this unit or division; and (b) at what APS levels are they employed.
- (4) Does ARPANSA lease its own premises; if so, what is the annual cost of this lease.

**Senator Ian Campbell**—The Minister for Health and Ageing has provided the following answer to the honourable senator's question:

- (1) (a) and (b) As at 23 March 2004, 127 staff are engaged to assist the CEO in performing his functions under the Australian Radiation Protection and Nuclear Safety Act 1998 (the Act). Below is a breakdown of staff by Australian Public Service level:

APS2	9
APS3	20
APS4	4
APS5	10
APS6	38
EXC1	26
EXC2	16
SES and eq.	4

- (2) (a) & (b) In the event of an accident or incident involving radioactive material on Australian Government premises, including a nuclear installation, it is the responsibility of the Agency/occupier to manage and control the emergency response to the accident or incident. In the event of an accident or incident involving radioactive material occurring or extending beyond Australian Government premises, it is the responsibility of the State or Territory Government to manage and control the emergency response to the accident or incident or that part of the accident or incident occurring beyond the premises.

Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) has principally two roles in any response to an accident or incident: as a regulatory body if the accident or incident occurs on Australian Government premises and as a provider of expert radiation health advice. In the event of an accident or incident on Australian Government premises, ARPANSA will provide expert advice to the occupier consistent with any request. In the event of an accident or incident occurring or extending beyond such premises, ARPANSA will provide expert advice to the State or Territory Government in accordance with the relevant emergency management plan.

To support its emergency response capability, ARPANSA maintains specialist expertise for measuring radioactivity in people and in the environment, using both laboratory and field based systems. This capability allows ARPANSA to assess the potential hazard to the public and the

environment and to provide advice on the crisis and consequence management of a radiation emergency, and on appropriate protective and remediation measures.

- (3) (a) & (b) ARPANSA maintains a 24 hour duty officer and has established an emergency response centre capable of being staffed in the event of an incident or accident. These emergency response functions are undertaken by the Agency's Environmental and Radiation Health Branch. ARPANSA would be able to task between 30 and 35 staff to respond to an accident or incident including a number of specialised teams capable of responding to both on-site and off-site radiation emergencies.
- (4) The Commonwealth of Australia, through the CEO of ARPANSA, has entered into a lease for premises located at 38-40 Urunga Parade, Miranda, New South Wales for the period March 2004 to February 2008. The annual rent on these premises is \$285,000.00 per annum. ARPANSA also occupies premises owned by the Commonwealth of Australia at 619 Lower Plenty Road, Yallambie, Victoria.

#### **Aviation: Security**

#### **(Question No. 2694)**

**Senator Ludwig** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 11 March 2004:

- (1) (a) How many full-time personnel are employed within the Office of Transport Security of the department; and (b) at what Australian Public Service (APS) levels are they employed.
- (2) (a) How many part-time personnel are employed within the same office; and (b) at what APS levels are they employed.
- (3) Which of the aviation security measures announced in December 2003 have been implemented.
- (4) (a) Has monitoring and auditing of the new measures increased; and (b) how much will this cost.
- (5) How much will the aviation security measures cost.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) (a) (b) As of 15 March 2004, the Office of Transport Security (OTS) employed the following number of full-time personnel: SES Band 2: 1, SES Band 1: 3, EL2: 15, EL1: 22, APS6: 25, APS5: 13, APS4: 5, APS3: 2, APS2: 1.
- (2) (a) (b) As of 15 March 2004, OTS employed the following number of part-time personnel: EL1: 1, APS6: 2.
- (3) The proposed changes will require consultation between industry participants and the Department of Transport and Regional Services (DOTARS). Given the number and complexity of the changes involved, it is important that the timeframe for this process is adequate to enable industry participants to meet the new requirements. DOTARS has completed a series of consultation meetings with state and territory governments to discuss the enhanced aviation package, the criteria for the grants program, the requirements of the new regime and the proposal for workshops. Through these consultations, a list of airports that will be included in the new regime has been established. DOTARS is currently working with relevant industry associations to ensure that all affected operators are aware of the timeframes and requirements as they become more certain.

Measures requiring a legislative basis will be implemented under the Aviation Transport Security Act 2004. It is anticipated that this Act will commence mid-2004.

- (4) (a) Audit and compliance will not commence until the new measures have been implemented. (b) DOTARS has been allocated an additional \$51.3 million over the next 5 years for increased compliance, enforcement and liaison capacity to support the new measures.

- (5) The Government has allocated an additional \$93 million for expansion of the aviation security regime, including \$14 million towards a grants program to assist airports to implement the new security measures, and \$3.2 million in assistance for the installation of hardened cockpit doors on aircraft with 30 seats or more.

**Shipping: Security**

**(Question No. 2695)**

**Senator Ludwig** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 11 March 2004:

- (1) (a) How will the Government meet the new International Maritime Organisation standards for security at seaports; and (b) what will this cost.
- (2) Have any measures already been implemented; if so, what has been the cost to date.
- (3) What is the predicted future cost of such measures.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) (a) The Government is implementing the International Maritime Organisation's International Ship and Port Facility Security (ISPS) Code through the Maritime Transport Security Act 2003. (b) The Department of Transport and Regional Services was allocated \$15.6 million for the two years 2003-04 and 2004-05 for the development and implementation of a preventive security regime for maritime transport. In early 2003 DOTARS estimated that the first year cost of the preventive security regime to operators of ports, port facilities and ships will be up to \$313 million, with the ongoing cost in subsequent years estimated at up to \$96 million pa.
- (2) Yes. The cost to date of the implementation of measures, which is to be borne by industry, is not known.
- (3) The estimate is up to \$96 million per annum.

**Immigration and Multicultural and Indigenous Affairs: Guidelines on Gender Issues for Decision Makers**

**(Question No. 2703)**

**Senator Kirk** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 16 March 2004:

With reference to the departmental document 'Guidelines on gender issues for decision makers' (1996):

- (1) Why was it decided to update the guidelines in 2001.
- (2) Can a copy or draft version of the 2001 update be provided.
- (3) Why was this updated version never released.
- (4) Why are the guidelines currently under review.
- (5) (a) What guidelines are currently used by staff; and (b) when did they come into use.
- (6) Can a copy of the current guidelines be provided.
- (7) Can a copy of the latest draft of the guidelines be provided.
- (8) When will a final version of the latest draft be released.
- (9) When will staff start to use the updated guidelines.

**Senator Vanstone**—The answer to the honourable senator's question is as follows:

- (1) Guidelines were put in place in 1996. As with all departmental guidelines they are routinely reviewed and updated. This process of review was commenced in 2001. The process of revision

has included a wide consultation process, including input from the UNHCR, the Office of the Status of Women, overseas posts and decision-makers. Comments are currently under consideration.

- (2) The revised draft guidelines are nearing completion. See answer to parts (7) and (8).
- (3) See answer to part (1).
- (4) Review of the guidelines has been ongoing in order to reflect legislation changes and evolving departmental procedures.
- (5) (a) Guidelines released in July 1996 have remained in use.  
(b) The guidelines were printed and distributed within the Department and to other interested agencies, such as UNHCR, in June 1996.
- (6) A copy of the 1996 edition is provided below.
- (7) The updated guidelines will be publicly available once finalised.
- (8) The latest draft is undergoing final clearance and it is expected to be finalised and released within the next few months.
- (9) The revised guidelines will be included in the Department's official policy documents and will be available to departmental staff, external agencies and individuals on request.

Department of Immigration and Multicultural Affairs

#### REFUGEE AND HUMANITARIAN VISA APPLICANTS

#### GUIDELINES ON GENDER ISSUES FOR DECISION MAKERS

July 1996

#### INTRODUCTION

0.1 These guidelines have been developed to help officers in assessing gender-based claims by applicants for protection visas in Australia or entry to Australia under the offshore Humanitarian Programme. The purpose of these guidelines is to ensure that applications are dealt with effectively and sensitively.

0.2 In recognising that women may experience persecution and discrimination differently from men, the guidelines provide advice on how decision makers can best approach claims of gender-based persecution. It should be noted that claims of gender-based persecution can be made by both men and women. However, the feminine pronoun is used in relation to the applicant throughout the guidelines in recognition of the fact that most gender-based claims are made by female applicants.

0.3 The guidelines provide practical guidance on procedural issues which can influence women applicants and which may affect their ability to present their claims, for example, in relation to receiving applications, managing interviews and ensuring confidentiality of information. They also offer assistance with the interpretation of the regulatory requirements of the various protection, refugee and humanitarian visa classes as they relate to claims put forward by applicants with gender-based claims, with the aim of ensuring that the assessment process is sensitive to gender issues.

0.4 The information provided in this guide should be read in the context of the Department's broader guidelines on refugee and humanitarian decision-making:

. for applications in Australia for protection visa: Onshore Refugee Procedures Manual, relevant chapters of the Procedures Advice Manual (PAM III), including the Refugee Law Guidelines;

. for applications under the offshore Humanitarian Programme: relevant chapters of the Procedures Advice Manual (PAM III), including the Generic Guidelines B2: Offshore Humanitarian Visas.

0.5 This document aims to give decision makers an additional level of understanding of the particular needs of women within existing policy frameworks for refugee and humanitarian applications; as such, it does not replace other relevant policy advice, but is intended to complement it.

0.6 These guidelines are designed to apply to officers in Australia and at overseas posts. Accordingly, they acknowledge that often different operational decision making environments exist. The advice contained in these guidelines should be adopted as far as practicable.

## 1 BACKGROUND

The international protection framework

1.1 The international community's response to refugees is based on the 1951 Convention and 1967 Protocol relating to the Status of Refugees (Refugee Convention) and the principle of non-refoulement. The United Nations High Commissioner for Refugees (UNHCR) is the international body that is responsible for providing international protection to refugees and promoting lasting solutions to their plight.

1.2 There are a number of international instruments in which obligations to protect the human rights of women, including refugee women, may be found. They include:

- . Universal Declaration of Human Rights (UDHR)
- . International Covenant on Civil and Political Rights (ICCPR)
- . International Covenant on Economic, Social and Cultural Rights (ICESCR)
- . Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- . Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- . Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- . Convention on the Rights of the Child (CROC)
- . Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- . Convention on the Nationality of Married Women
- . 1949 Geneva Conventions on the Laws of War and the two Additional Protocols of 1977
- . Declaration on the Protection of Women and Children in Emergency and Armed Conflict
- . Declaration on the Elimination of Violence Against Women

1.3 The international community has devoted a considerable amount of effort and resources to refugees and displaced people. As a result there now exists a complex, if at times fragile, network of institutions, laws and agreements specifically designed to meet the needs of people who have been forced to leave their homeland. Refugee protection has thus taken a number of forms:

- . admission to safety in the country of asylum and observance of the fundamental principle of non-refoulement;
- . temporary protection until a lasting solution may be found - this may be (in order of preference) voluntary repatriation, local integration or resettlement in a third country; and
- . the development of new strategies on prevention which are designed to address the causes as well as the consequences of forced displacement.

There is also an awareness in the international community that lasting solutions to the problem of human displacement will only be found if a concerted effort is made to protect human rights.

1.4 Recently there has been an increasing awareness and focus on the particular vulnerability of refugee and displaced women.



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Recognising the needs of refugee and displaced women

1.5 Women compose the majority of people in vulnerable situations because they have been displaced or are refugees. UNHCR indicate that of an estimated 27 million refugees and displaced people in the world, the vast majority are women and children. Women are often particularly vulnerable - after fleeing persecution and violence they may face new threats of violence and abuse in their country of asylum. In addition, due to social and cultural mores they may not necessarily have the same remedies for state protection as men, or the same opportunities for flight.

1.6 The issue of gender persecution and problems facing women asylum seekers have received attention from the Executive Committee of the United Nations High Commissioner for Refugees' Programme (EXCOM), UNHCR and some governments. UNHCR adopted Guidelines on the Protection of Refugee Women in 1991. A number of EXCOM Conclusions have been adopted recommending the development of appropriate guidelines, culminating in 1995 with EXCOM's recommendation that:

"In accordance with the principle that women's rights are human rights, these guidelines should recognise as refugees women whose claim to refugee status is based upon well-founded fear of persecution for reasons enumerated in the 1951 Convention and 1967 Protocol, including persecution through sexual violence or other gender-related persecution".

1.7 International concerns regarding the plight of refugee women have not been confined to the mechanisms surrounding refugee protection. The 1995 World Conference of Women in Beijing drew attention to the violation of women's human rights experienced by refugee women and recommended the development of gender guidelines. The development of this document should be seen in this international context.

Australia's response

1.8 Australia accords a high priority to the promotion and protection of human rights in the international sphere. Australia also has a long-standing commitment to assist international efforts to prevent and alleviate humanitarian crises through diplomatic initiatives, participation in peace-keeping forces, aid, resettlement of refugees and other humanitarian cases through the offshore Humanitarian Programme and the granting of permanent residence to individuals who have been found in need of protection in Australia in accordance with our international obligations under the Refugee Convention.

1.9 Persons requiring resettlement from overseas may apply under the offshore Humanitarian Programme, which is subdivided into the Refugee component, the Special Humanitarian Programme and the Special Assistance Category. Australia has historically recognised some special needs of women via the Woman at Risk visa subclass of the Refugee component, which is specifically targeted at woman refugees or women registered as "of concern" to the UNHCR who are in danger of victimisation, harassment or serious abuse because of their sex. In addition, overseas staff of the Department who will be assessing applications under the offshore Humanitarian Programme receive cross-cultural and gender sensitivity training prior to taking up their positions overseas. In terms of the processing of applications by women for protection visas in Australia, officers have also received training in cultural and gender sensitisation.

1.10 Whilst women represent the majority of refugees worldwide, they represent a smaller proportion of the refugees who are resettled in Australia under the offshore Humanitarian Programme or granted protection visas in Australia. This may be a result of many factors, including women's inability or lack of resources to travel unaccompanied or the tendency of applications to be made by the male head of the household. Nonetheless, women's vulnerability remains.

1.11 Guidelines for officers which specifically address women's needs are important if women's claims of persecution, including gender-based persecution, are to be properly heard and assessed. When applying for humanitarian visas, women may face particular problems, such as difficulties in making their case to decision makers, especially when they have had experiences which are difficult and painful

to describe. There may also be social and cultural barriers to lodging applications and/or pursuing claims related to their own experiences. For example: in families where the male head of household seeks asylum, claims relating to female members of the family unit may not be mentioned, may be ignored or may not be given any weight by either the male head of household, or the decision maker, or the female applicant herself.

1.12 Barriers to accessing the refugee and humanitarian visa system and the failure to fully explore women's claims can be compounded by difficulties in gaining recognition of the particular forms of persecution or discrimination manifested against women.

1.13 Guidelines for decision makers which focus on these gender-related issues assist in promoting a consistent, sensitive approach to women's claims. They are also consistent with international practice and meet the Government's objectives to provide equitable and accessible services.

1.14 The following chapters focus on two main areas where women may face difficulty in gaining recognition of their claims for protection:

- . procedural issues; and
- . the assessment of claims.

Focusing attention on gender-related persecution/discrimination will ensure that officers are conscious of forms of harm that may be inflicted on a woman uniquely or more commonly than on a man.

1.15 It should be noted that these guidelines do not advocate gender as an additional ground in the Refugee Convention definition. However, it should be accepted that gender can influence or dictate the type of persecution or harm suffered and the reasons for this treatment. Even where gender is not the central issue, giving conscious consideration to gender-related aspects of a case will assist officers to understand the totality of the environment from which an applicant claims a fear of persecution or abuse of their human rights.

## 2 PROCEDURES

2.1 The following procedures are primarily focused on women applicants for protection visas in Australia and women applicants applying under the offshore Humanitarian Programme. They may also be applied to male applicants who make claims of gender-based persecution. While procedures differ between Australia and overseas posts, reflecting the different criteria for each visa class and decision making environments, there are common elements that can be applied by officers required to examine and process visa applications, regardless of the particular visa class applied for.

2.2 The procedures outlined below should, nonetheless, be read in conjunction with the other instructions relating to specific visa classes. For example, applications for entry into Australia under the offshore Humanitarian Programme should be considered with regard to the Generic Guidelines B2: Offshore Humanitarian Visas and guidelines on specific visa classes and subclasses; applications lodged in Australia for protection visas should be considered with regard to the Onshore Refugee Procedures Manual and the Refugee Law Guidelines.

Preparing the case

Researching claims

2.3 Adequate research of the claims made in the application and an understanding of the situation in the country of origin of the applicant is important for the full exploration of a person's claims. Where gender related claims are raised, or suspected, an understanding of the role, status and treatment of women in the country of origin is particularly important. Adequate preparation allows a relationship of confidence and trust with the applicant to be developed and allows an interviewer to ask the right questions and deal with any problems that arise during an interview.

#### Sources of information

2.4 There are a variety of sources of information available, depending on the location of the decision maker. Officers in Australia have access to the online information databases of the Country Information Service Section of the Department (CISNET). Officers at overseas posts have access to a variety of local sources, including Department of Foreign Affairs and Trade officers, UNHCR and access to CISNET on CD-ROM.

2.5 The types of information which may be relevant in assessing gender-related claims are often similar to that relevant for other types of claims. However, research should also focus on the following areas:

- . legal, economic and civil status of women in the country of origin
- . the incidence of violence against women in the country of origin, including both sexual and domestic, and the adequacy of state protection afforded to women
- . cultural and social mores of the country with respect to such issues as the role and status of women, the family, nature of family relationships, attitudes towards same-sex relationships, attitudes to 'foreign' influences, etc
- . respect for and adherence to fundamental human rights
- . the differential application of human rights for women
- . issues directly related to claims raised in the application

2.6 It should be noted that violence against women, particularly sexual or domestic violence, tends to be largely under-reported or ignored in many countries.

The absence of information on the above topics for any particular country should not necessarily be taken as an indicator that abuses of women's human rights do not occur.

2.7 Identifying these issues will enable an officer to become aware of the cultural sensitivities and differences in a particular country before considering the applicant's claims.

#### Using the information

2.8 When assessing a woman's claims of well-founded fear of persecution (for the protection visa class and refugee visa subclasses), the evidence must show that what the woman applicant genuinely fears is persecution for a Convention reason as distinguished from random violence or criminal activity perpetrated against her as an individual. The general human rights record of the country of origin, and the experiences of other women in a similar situation, may indicate the existence of systematic persecution for a Convention reason.

. A more detailed examination of assessing claims and facts against the refugee definition can be found in Part 4 'The Assessment of the Claims', the Onshore Refugee Procedures Manual, Refugee Law Guidelines and in PAM3 Generic Guidelines B2 - Offshore Humanitarian Visas.

. Only the refugee subclasses of the offshore Humanitarian Programme (subclasses 200, 201, 203 and 204) require applicants to demonstrate that they are subject to persecution (ie for a Convention reason). The other visa classes and subclasses of the offshore Humanitarian Programme refer to criteria where applicants are subject to 'substantial discrimination' or who are in vulnerable situations. Policy advice for interpreting these criteria may be found in PAM3 Generic Guidelines B2 - Offshore Humanitarian Visas and the PAM3 guidelines on specific visa classes.

#### Interviews

2.9 The objective of an interview is to obtain further information from the applicant on her claims and to clarify any details that are uncertain or ambiguous in the application. Interviewing officers should seek to clarify all matters material to the final outcome of the application.

2.10 It is important to identify the person included in an application who has the strongest claims. An application written by, or an interview with, a male head of household may place little or no emphasis on a female family unit member's experience of persecution or discrimination, even though her experiences may carry the most weight. A woman who is included in the application as a member of a family unit should be given the opportunity of a separate interview so that she is able, with appropriate assurances of confidentiality, to outline her experiences.

#### Interview Process

2.11 Interviewing a woman who has/or may come forward with gender-related claims must be done in a sensitive and sympathetic way, with respect for confidentiality.

2.12 Many women face particular difficulties when discussing gender-related claims which may include rape, or other forms of sexual violence, domestic violence and discrimination. In particular, women may experience difficulty in recounting sexual torture or rape in front of family members. Some women, because of the shame they may feel over what has happened to them, may understandably be reluctant to identify the true extent of persecution they have suffered because of their continuing fear and distrust of people in authority. They may also be afraid to reveal their experiences because they are so traumatised by them or because they fear reprisals from their family and/or community. Female applicants who are survivors of torture and trauma, in particular, require a supportive environment where they can be reassured of the confidentiality of the gender-sensitive claims they are making.

2.13 Officers should be aware that female victims of violence, discrimination and abuse often do not volunteer information about their experiences and may be reluctant to do so in the presence of family members. In particular, during interviews where an interpreter is used, a woman applicant may be reluctant to divulge information for fear that the interpreter may be an informer for the authorities in the country of origin or that they will divulge their story to others in the community. The applicant should be assured of the confidential nature of the interview process.

In the vast majority of cases women who have experienced torture and/or trauma have suffered these abuses at the hands of men. Coupled with a fear and distrust of authorities, this fact is likely to seriously inhibit the capacity of a female applicant to divulge details of her experiences to a male interviewer.

2.14 It will be a matter of the officer having prior appreciation of women's issues in the country of origin, skilful and sensitive interviewing and an understanding of the psychological effects of torture and trauma that will assist these issues to come forward.

#### Physical environment

2.15 In order to facilitate discussion of gender-related claims it is important that the interview room and surrounding environment be conducive to open discussion. The interview room should be arranged in such a way as to encourage discussion of the claims, promote confidentiality and to lessen any possibility of perceived power imbalances.

#### Use of interpreter

2.16 Before scheduling the interview, ensure that appropriate arrangements have been made for interpreters who are sensitive to any special requirements of the applicant regarding language, dialect or ethno-cultural sensitivities. If an applicant has made claims of a sensitive or traumatic nature every effort should be made to ensure an interpreter and interviewing officer of the same sex.

2.17 Where an officer suspects, as a result of researching the country information relating to the case, that gender-related claims may be raised or discussed, every effort should be made to engage an interpreter of the same sex, with regard to any cultural or religious sensitivities, wherever possible.

2.18 During the interview, both the interviewer and interpreter should be aware of the possible difficulties in interpreting particular words, such as 'rape' or 'assault', which may have different meanings or connotations in the applicant's language.

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#### Establishing rapport

2.19 Establishing good rapport with an applicant is very important and begins with the first contact. At the interview, the interviewer should take the time to introduce him/herself and the interpreter, explain clearly what his/her role is and the exact purpose of the interview. The applicant should be assured that her claims will be treated in an absolutely confidential manner.

2.20 Officers should behave in a culturally and gender sensitive manner throughout the interview. It is essential that the interviewer remain neutral, compassionate and objective during the interview.

2.21 However, it should be remembered that no matter how supportive the interviewing officer and the environment may be, the interview process (because of the imbalance of power between participants) will impact on how women may respond.

#### Culturally sensitive communication

2.22 Officers are required to deal with a wide range of people and as such they should have a well developed understanding of cultural differences, especially in relation to the way they communicate with others.

2.23 Body language can be interpreted in many different ways. It is therefore important that officers ensure they avoid gestures which may be perceived as intimidating or culturally insensitive or inappropriate. Whilst it is important that officers maintain control of the interview, it is also important to ensure that body language does not inhibit the discussion by making the applicant feel uncomfortable.

2.24 Similarly, an approach which is too relaxed may create the impression that the officer is not listening. The officer should allow the applicant to present her claims with minimal interruption.

Active listening skills play an important part in the flow of the interview and can assist an applicant who may be finding it difficult to recall painful or sensitive events associated with her claims.

2.25 Being aware of cultural sensitivities during the interview may provide the applicant with reassurance. As with most interviews this can most appropriately be demonstrated by attentive listening, including the following:

- . reflective listening (ie. paraphrasing what has been said by the applicant)
- . not talking at the same time as the applicant
- . not making judgemental comments
- . maintaining composure if the applicant gets angry or upset
- . nodding affirmatively when appropriate
- . ensuring minimum interruptions and/or distractions
- . ensuring the interpreting is an accurate reflection of the applicant's testimony (eg relative length of translation, reaction from the applicant)

2.26 If an officer feels that a female applicant has further claims of a sensitive nature that have not been discussed during any stage of the interviewing process, the applicant should be encouraged to provide any supplementary information that she feels may support her claims. Alternatively, if an applicant has difficulty in speaking about her persecution, she may be more comfortable putting her claims in writing.

#### Assessing and handling information

##### Credibility/Demeanour

2.27 In many societies the stigma attached to victims of sexual assault are such that women cannot bring themselves to discuss such events. In addition, the effects of abuse and trauma may make it difficult for a woman to accurately recall the details and dates of the events when they finally recount their experiences. It may be that a woman is either unable to discuss a particular experience or may not see

its relevance to her claims. It is also unlikely that a woman whose written claims are part of an application supplied by other members of her family unit or who is interviewed in the presence of other family members will discuss the circumstances surrounding a sexual assault.

The fact that a woman failed to raise a gender-related claim of persecution on several occasions should not necessarily cast doubt on her credibility if it is raised at a later date and should not be responded to as if it does. The pertinent issue, of course, is whether or not the claimed event occurred and, in the protection visa class and refugee visa subclasses, whether it was for a Convention reason.

2.28 If such claims are revealed separately from the rest of the family, officers must treat the information provided with great care. This is particularly necessary if the woman has indicated that other members of the family are unaware of her experiences. In some cultures rape and other forms of sexual assault are seen as the women's failing to preserve her virginity or marital dignity - disclosure of this information to family members may have adverse consequences to the applicant.

2.29 Similarly, the level of emotional distress exhibited by a female applicant during the recounting of her experiences should not automatically add more credibility to her claims than that of another who may be very calm and quiet when describing a similar event. A lack of emotion displayed at interview does not necessarily mean that the applicant is not distressed or deeply affected by what has happened. Cultural differences and trauma can often play an important role in determining demeanour.

2.30 In some circumstances, it may be reasonable to seek, and accept, objective psychological evidence. It is unnecessary to establish the precise details of the sexual assault as opposed to the fact of its occurrence and the motivation of the perpetrator. In some circumstances it should be noted that a woman may not be aware of the reasons for her abuse.

#### Confidentiality

2.31 Any applicant who has provided gender-related claims should be reassured that the details will not be provided, in any form, to another member of their family unit. All information both written and audio taped should be marked "Not for release to anyone except with the agreement of the applicant".

2.32 All confidential information provided by female applicants, particularly that of a gender-sensitive nature, is protected under the Freedom of Information Act. The only circumstances in which another member of a family unit can obtain access to the gender-related claims (or indeed any claims) made by a female member of their family is with the written consent of the female applicant concerned.

2.33 If a visa is refused, some applicants who have provided gender-sensitive claims may wish to personally collect their notification letter and copy of the decision record, or nominate a separate address for the letter to be sent. These issues should be discussed with the applicant at the interview stage.

### 3 THE ASSESSMENT OF CLAIMS

3.1 The following section provides guidance for officers assessing applications for protection visas and applications for entry to Australia, under the offshore Humanitarian Programme, as a refugee (ie under visa class 866 and subclasses 200, 201, 203 and 204). These types of applications centre on the definition of 'refugee' in the 1951 Convention and 1967 Protocol relating to the Status of Refugees (Refugee Convention).

. Women outside Australia who are refugees or who are registered as being of concern to UNHCR may also be eligible for entry to Australia under the Woman at Risk (WR) 204 visa subclass of the offshore Humanitarian Programme. This visa reflects Australia's response to the circumstances of certain women outside their home country who are in danger of victimisation, harassment or serious abuse because of their gender. Further policy advice in deciding applications of this visa subclass can be found in PAM3 Schedule 2 - Permanent Visa (Migrant) Woman At Risk - Visa 204.

. Under the offshore Humanitarian Programme, applicants who meet the Refugee Convention definition of a refugee must also satisfy the other criteria of the visa subclass before they may be granted a visa.

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## QUESTIONS ON NOTICE

. Officers should also refer to other sources of guidance for processing these applications, including: Onshore Refugee Procedures Manual; Refugee Law Guidelines; PAM Generic Guidelines B2: Offshore Humanitarian Visas.

3.2 The non-refugee components of the offshore Humanitarian Programme (the Special Humanitarian and Special Assistance Categories) are designed for people who do not meet refugee criteria but who, nonetheless:

. are subject to substantial discrimination amounting to serious human rights violations and for whom resettlement in Australia is the appropriate solution; or

. are suffering some form of disadvantage or hardship meriting a humanitarian response and who have close links to Australia.

Although discrimination, disadvantage and hardship constitute lesser tests than persecution, assessment of applications for these visas will also involve an examination of the human rights environment in an applicant's country of origin. Officers should be aware that women may experience not only persecution but also discrimination, disadvantage or hardship in a manner qualitatively different from men as a result of their gender.

The Refugee Convention is intended to provide protection to persons who have a well founded fear of being persecuted on specified grounds. Recognising that treatment or discrimination amounts to persecution is the first step. An officer must also be satisfied that this fear of persecution is 'well-founded' and that is 'for reasons of' a Convention ground.

Persecution and gender-related persecution

3.3 The types of persecution inflicted on individuals may differ because of their gender. It is important to bear in mind that gender-based persecution is only one of many types of persecution a woman may encounter.

. Accordingly, officers must carefully consider all general claims of persecution before turning to consider gender-related claims, otherwise there is the possibility that a woman's claims of persecution unrelated to gender will be ignored.

- this will also avoid unnecessary retraumatisation of applicants over their experiences related to sexual violence.

3.4 The process of identifying every abuse of human rights against internationally agreed standards of human rights (the human rights protected in the International Bill of Human Rights which includes the UDHR, ICCPR and ICESCR - see 2.2 above) should allow a decision-maker to properly consider all serious forms of harm a person may face, including those harms that are gender-based.

. the further step of focussing on gender-based persecution will ensure that officers are conscious of forms of harm that may be inflicted on a woman uniquely or more commonly than on a man.

. this emphasis on gender-related persecution, combined with the appropriate techniques and awareness, may assist a decision-maker to elicit such claims which would otherwise have remained untouched.

Increased emphasis on the role of gender in persecution is not intended to alter the ordinary meaning of persecution. Rather it is intended to ensure that all of the applicant's claims of persecution are fully considered.

3.5 Australian case law has referred to internationally agreed standards of human rights in recognizing persecution. Whilst there are areas of uncertainty, it can generally be stated that the more fundamental the right threatened, the more likely that the breach of that right amounts to persecution.

Persecution by torture or cruel, inhuman or degrading punishment or treatment

3.6 Rape and other forms of sexual assault are acts which inflict severe pain and suffering (both mental and physical) and which have been used by many persecutors. Such treatment clearly comes

within the bounds of torture as defined by the Convention Against Torture (CAT). Furthermore, sexual violence amounts to a violation of the prohibition against cruel, inhuman or degrading treatment, the right to security of person and in some instances the right to life, as contained in a variety of international instruments. There are many other types of treatment that are specific to women, such as female genital mutilation and forced abortion, that also constitute cruel, inhuman or degrading treatment.

3.7 Rape is often used to punish a woman for her actions or to encourage her to put pressure on others whose activities meet with State disapproval. Systematic rape has also been used as part of “ethnic cleansing”.

3.8 It should also be remembered that in many nations victims of sexual assault become outcasts or are considered to have committed a criminal offence. This fact can be part of the persecutor's motivation in choosing this form of persecution.

Restrictions imposed by legal, social or religious mores

3.9 The status of women in some societies may be restricted and dictated by legal, social or religious mores. The restrictions will vary from mere inconvenience to oppression. In addition a broad range of penalties may be imposed for disobeying restrictions placed on women. Officers should carefully assess the available country of origin information on those issues.

Possible persecution by violation of thought, conscience and religion

3.10 Gender-based persecution is sometimes more subtle than other forms. It can take the form of restrictions on the way a woman behaves or it can involve forcing her to act in a certain way. It may affect a woman's ability to participate in the public life of a society.

Some examples of gender-based treatment against women which may constitute persecution in particular circumstances are:

- . societal oppression of women - in some communities the status and behaviour of women has been dictated by a State sanctioned religious hierarchy.
- . denial of participation by women in the political, civil or economic life.
- . forced marriage - many societies practice arranged marriage and this in itself may not be a persecutory practice. However, the consequences of defying the wishes of one's family when viewed against the background of the State's failure to protect a person should be carefully considered.
- . infanticide, forced abortion, female genital mutilation, which has serious impact on a woman's physical and mental health.

Agents of persecution

3.11 A Convention refugee is someone who is at risk because their country of nationality has failed to protect them from persecution. A failure to protect can occur in several ways. It may be that the authorities are themselves the perpetrators of the persecution. However, it may be that the persecutor is another party from whom the authorities do not protect the person either because they are unwilling or unable to do so. Claims of gender-based persecution often involve persecution committed by non-state agents.

In assessing gender-based persecution it is important to research the accepted norms of the relevant societies to determine how they operate both through legislation and in terms of actual practice in order to determine the degree of protection available to women.

3.12 In some societies, particular types of violence against women may be officially condemned or even illegal but in fact be so endemic that local authorities turn a blind eye to its occurrence. Sometimes these forms of abuse are systemic or culturally acceptable so that local authorities may actively participate or be complicit in the harms suffered.

3.13 It is important to remember that the international protection of the Refugee Convention is only available to those who are not able to gain protection from their national authorities. Where a non-state



agent of persecution is involved there is a need to establish that the state is “unwilling or unable” to protect the applicant. Clearly, this is established if the authorities were aware of a person’s need for protection (either because of her approach or by some other means) and none was forthcoming.

3.14 It should also be noted that it is not always reasonable or possible for a woman to alert the authorities to her need for protection. State protection should be effective - with provision of mechanisms for dealing with complaints and also assurance that such avenues for redress are realistic and accessible to a woman of her culture and position.

. Officers should investigate why a woman did not seek the protection of the state, as her inability to even request protection may in itself be indicative of a failure of state protection.

#### Cumulative grounds

3.15 An applicant may put forward accounts of different types of harm, none of which, taken individually, will amount to persecution. In these cases it is necessary to consider the cumulative effect of the individual instances of harm.

3.16 This principle is not gender specific. However, the forms of harm directed against women may be more various and more subtle. This may reflect the fact that the woman may not be the primary focus of the persecutory behaviour, which may be directed primarily at male family members.

#### Well-founded fear

##### Past persecution and the “changed circumstances” test

3.17 There are two ways that a well-founded fear of persecution can be established:

- . there is a “real chance” of future persecution; or
- . a person has been persecuted in the past and the “changed circumstances” test (set down by the High Court in Chan) has not been satisfied.

3.18 There is a significant difference between the two. A person who has suffered persecution in the past does not have to prove that there is a “real chance” of future persecution. Rather, a continuing well-founded fear of persecution should be accepted unless the officer can establish that there has been a substantial and material change in circumstances in the country of origin.

3.19 The application of the “changed circumstances” test must be carefully applied in cases of gender-related persecution. The subjective state of mind of the applicant has obvious implications for gender-related persecution, especially in cases of sexual assault, where the effects on the victim are long lasting. In addition, an overall understanding of the role and perception of women in the applicant’s society will demonstrate the extent of the persecution a woman would face if she were to return.

3.20 Officers must also carefully consider what circumstances, if any, would satisfy the “changed circumstances” test in cases of gender-related persecution. Many cases of gender-based persecution occur at the hands of non-state agents of persecution whose actions are ignored or condoned by the authorities. Even where changes in the national legislation or other state of affairs have occurred, such agents of persecution are seldom brought to justice and there is no accountability by the state for the acts of persecution inflicted on the applicant.

#### Relocation

3.21 An important consideration in gender-related persecution, as with other persecution, is whether the persecution occurs nation-wide or whether it is regionalised. It may be for example that a person is able to access protection in urbanised parts of the country where there is a real chance of persecution in the rural areas. If so, officers should consider whether the applicant could reasonably be expected to relocate within her own country.

In considering the issue of relocation the relevant issue is whether the applicant could safely live in another part of the country. Officers must carefully consider gender-related issues when applying this test. Financial, logistical, social, cultural and other barriers to reaching internal safety may significantly

affect persons of one gender over another. In addition, gender-based persecution may be systemic and no protection may be available from the authorities in any part of the country.

#### Convention grounds

3.22 There are five Convention grounds: race, religion, nationality, membership of a particular social group and political opinion. In addition to actual membership of a Convention ground, a well-founded fear of persecution may be for reasons of an imputed Convention ground. A woman's claims for refugee status may rest on one or more grounds of the Convention even where the persecution is gender-based.

3.23 Where the persecution of women is concerned, it should be recognised that an imputed Convention ground is an important aspect to consider. Women in many societies are forced into a subordinate role in many areas of life. Therefore, the opportunities to assume a publicly recognisable profile do not occur frequently and women are often aligned with the views of their male relatives.

3.24 The added difficulty is that, in many societies women have little or no information on the activities of their male relatives and may find it difficult to explain the reasons for their persecution. They may not realise that the authorities, for example, impute a political opinion to them because of their association (by marriage, family links etc) with others who have attracted the authorities' attention.

#### Political opinion

3.25 In some societies, overt demonstration of political opinion by women may not be possible as women are not allowed to formally participate in political life. However, there may be country information about the existence of covert political organisations involving women or about the suspicions of authorities that such organisations exist. Furthermore, the fact that a woman may challenge particular social conventions about the manner in which women should behave may be considered political by the authorities and may attract persecutory treatment on this basis.

In some societies an organisation of women who are not seeking a public or political profile but who may, for example, possess a feminist ideology, may be viewed as espousing a political opinion hostile to the current administration and persecuted for that reason.

3.26 In many cases there is a societal assumption that women defer to men on all significant issues and that their political views are aligned with those of the dominant members of their family (usually husbands, fathers or brothers). They may thus experience persecution for this reason, ie imputed political opinion.

3.27 There are also cases where persecutors are aware that a woman possesses no political opinion but persecute her as a means of demoralising the rest of her family or community who do hold a political opinion hostile to the current administration.

3.28 The difficulty in assessing claims of imputed political opinion, of course, is that the woman may not be aware of the reasons why she has been persecuted. Officers faced with unexplained instances of persecution should look to whether the explanation may be traced to her family's political opinion or another Convention ground.

#### Race

3.29 Race is a Convention ground based on readily identifiable characteristics. In general racism knows no gender, however persecution may be expressed in different ways against men and women. For example the persecutor may choose to destroy the ethnic identity and/or prosperity of a racial group by killing, maiming or incarcerating the men whilst the women may be viewed as capable of propagating the ethnic identity and persecuted in a different way, such as through sexual violence.

#### Religion

3.30 In certain societies, the role ascribed to women may be attributable to the requirements of the state or official religion. The failure of women to conform to this role or model of behaviour may then

be perceived by the authorities or other agents of persecution as the failure to practise or to hold certain religious beliefs and as such an attempt to corrupt the society or even as a threat to the religion's continued power. This may be the case even though the woman actually holds the official religious faith but it is not outwardly evidenced by her behaviour.

#### Nationality

3.31 Gender-based persecution for reasons of nationality may have its genesis in laws which deprive a woman of her citizenship in certain situations (eg marriage to a foreign national). Alternatively, a woman who has married a foreign national may not be able to live with him in her country of nationality. Rather than the loss of citizenship itself, officers should enquire into what harm results from this loss. For example, whether it leads to loss of right of residence or loss of other privileges or benefits.

#### Membership of a Particular Social Group

3.32 The Australian Federal Court has laid down some essential principles in the interpretation of the particular social group ground. Those principles are summarised as follows:

- . the claimed particular social group must be cognisable
- a group is cognisable if there is a common unifying element binding the members of the group because of shared common social characteristics and/or shared interest or experience in common (Morato's case);
- cognisability does not require a voluntary association amongst the members of the group (Morato's case);
- a group is not cognisable where the sole criterion defining the group is a common act although it is possible that, over a period of time, individuals who engage in similar actions may form a particular social group (Morato's case);
- the group is not defined solely by the persecution feared (A&B's case).
- . the nexus between the particular social group and the fear of persecution must be established. That is, there is a well-founded fear of persecution "for reasons of" membership of that group (Ram's case); and
- . the individual is (or is perceived to be) a member of that group, ie there is a common unifying element binding members together (Ram's case).

3.33 While 'gender' of itself is not a Convention ground, it may be a significant factor in recognising a particular social group or an identifying characteristic of such a group. Officers should bear in mind that there is no Australian jurisprudence on the issue of 'women' as a 'particular social group'. The Refugee Review Tribunal has found that whilst being a broad category, women nonetheless have both immutable characteristics and shared common social characteristics which may make them cognisable as a group and which may attract persecution. In addition, gender may be combined with certain other characteristics which could define a particular social group in situations where there is evidence that this group suffers or fears to suffer severe discrimination or harsh and inhuman treatment that is distinguished from the situation of others of the same gender. The important principle to consider is whether the persecution suffered or feared is for reasons of membership of a particular social group.

Officers should consider this Convention ground on a case by case basis which takes account of the totality of an applicant's claims and the situation in the applicant's country of origin.

#### **Environment: Greenham Bicentennial Cattle Drive**

##### **(Question No. 2707)**

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 18 March 2004:

With reference to the Minister's rejection of the application by the Tasmanian Aboriginal Land Council for protection under section 9 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 of an area in Tasmania to be traversed by the Greenham Bicentennial Cattle Drive:

- (1) (a) What was the Minister's reason for rejecting the application; and (b) can a copy of any information used to support that decision be provided.
- (2) What was the exact route assessed by the Minister.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) (a) My reason for deciding not to make the declaration sought by the Tasmanian Aboriginal Land Council under section 9 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 was that I was not satisfied that the area specified in the application was a significant Aboriginal area within the meaning of the Act.  
(b) If Senator Brown wishes, I will seek permission of the authors to provide him with relevant documents. These documents include the Tasmanian Aboriginal Land Council's application for the declaration under section 9, the letter and the attachments to that letter from the then Acting Premier of Tasmania, the Hon Paul Lennon MLA, in response to the application and the response to the application from the organisers of the cattle drive.
- (2) The route I assessed, as required by the Act, was that specified by the applicants, the Tasmanian Aboriginal Land Council Aboriginal Corporation, as "the approximate route of the cattle drive, from Redpa in the north, through the Arthur Pieman Conservation Area to Granville Harbour in the south" and shown drawn on a map provided with their application.

**Aviation: Tasmania**

**(Question No. 2708)**

**Senator O'Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 19 March 2004:

With reference to action the Government has taken in relation to the Qantas subsidiary company Jetstar, and its impact on Tasmania:

- (1) Since 1 October 2003:
  - (a) what meetings have occurred and what correspondence has there been between the Minister and representatives of Qantas and Jetstar regarding how the proposed services will affect the Tasmanian business community, including in relation to: (i) connecting flights, (ii) the timing of Jetstar services, and (iii) the cancellation of the early morning Qantas flight to Melbourne from Launceston and the evening return flight to Launceston;
  - (b) (i) who initiated the meetings, (ii) when were these held, and (iii) who attended;
  - (c) (i) who initiated the correspondence, (ii) when was it dated, and (iii) which parties corresponded;
  - (d) what were the outcomes of the meetings and correspondence; and
  - (e) can copies be provided of the records of the meetings and the correspondence between the Minister and Qantas and Jetstar representatives; if not, why not.
- (2) Since 1 October 2003:
  - (a) what meetings have occurred and what correspondence has there been between the Minister and Tasmanian Liberal senators regarding Jetstar;
  - (b) (i) who initiated the meetings, (ii) when were these held, and (iii) who attended;

- (c) (i) who initiated the correspondence, (ii) when was it dated, and (iii) which parties corresponded;
- (d) what were the outcomes of the meetings and correspondence; and
- (e) can copies be provided of the records of the meetings and the correspondence between the Minister and Tasmanian Liberal senators; if not, why not.
- (3) Since 1 October 2003:
- (a) what meetings have occurred and what correspondence has there been between the Minister and Qantas and Jetstar staff regarding potential difficulties faced by disabled or elderly passengers flying between Tasmania and the mainland who have to re-check their luggage for connecting flights;
- (b) (i) who initiated the meetings, (ii) when were these held, and (iii) who attended;
- (c) (i) who initiated the correspondence, (ii) when was it dated, and (iii) which parties corresponded;
- (d) what were the outcomes of the meetings and correspondence; and
- (e) can copies be provided of the records of the meetings and the correspondence between the Minister and Qantas and Jetstar staff; if not, why not.
- (4) (a) Which Qantas routes, if any, are currently subsidised by the Commonwealth; and (b) for each financial year since 2001-02 and for the 2003-04 financial year to date, what are the subsidy expenditure details for each route.
- (5) Will Jetstar also receive Commonwealth subsidies on some routes; if so, for the remainder of the 2003-04 financial and for the next two financial years, what are the projected subsidies for each Jetstar route.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

With reference to action the Government has taken in relation to the Qantas subsidiary company Jetstar, and its impact on Tasmania:

- (1) (2) and (3) Since 1 October 2003 meetings, discussion and correspondence were initiated by my office at my request in relation to Jetstar and Qantas services to and from Tasmania. As a result changes were made to the operations which benefit Tasmanians, and visitors alike.
- (4) (a) No Qantas routes are currently subsidised by the Commonwealth. (b) Subsidies were only provided to Qantas or their subsidiaries in the 2001-02 financial year under the Rapid Route Recovery Scheme Programme. The subsidy expenditure details for each route are shown in the table below.

Air Connex – Sundry 1:	\$91, 895 from 14.09.01 – 30.09.01
Airlink – Sydney to Griffith:	\$55, 501 from 01.10.01 – 10.02.02
Airlink – Perth to Newman:	\$124, 205 from 14.09.01 – 31.10.01
Airlink – Brisbane to Mt Isa:	\$766, 489 from 14.09.01 – 31.12.01
Airlink – Sundry 2:	\$302, 379 from 14.09.01 – 30.09.01

- Sundry 1 routes include Sydney/Orange/Griffith/Merimbula/Lismore/Parkes/ Broken Hill/Moruya.
- Sundry 2 routes include Perth/Geraldton/Albany/Mt Keith/ Leinster/Esperance/Carnarvon/Shark Bay/Exmouth/ Leonora/Laverton/Meekatharra/Wiluna.
- (5) No.

**Workplace Relations: Australian Workplace Agreements  
(Question No. 2713)**

**Senator Jacinta Collins** asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 23 March 2004:

For each month in 2003 and in 2004 to date, how many Australian workplace agreements were approved in each state and territory.

**Senator Abetz**—The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

Monthly AWA approval numbers in each state and territory since January 2003 to date are as follows:

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Jan 03	608	1607	232	1042	636	193	936	3055
Feb 03	581	1586	147	732	823	391	787	3196
Mar 03	460	2173	270	1092	1309	191	1280	4048
Apr 03	485	1983	134	1300	710	178	1193	3679
May 03	288	1747	122	1007	706	277	1057	3904
Jun 03	479	1674	132	894	794	367	1225	3523
Jul 03	475	2103	170	1318	1013	413	1612	3479
Aug 03	457	1956	152	1109	1191	254	1292	3976
Sep 03	718	3212	244	1709	1037	535	2328	4149
Oct 03	667	2951	182	1793	1079	499	1887	4064
Nov 03	448	2541	188	1847	992	641	2288	3330
Dec 03	488	2209	103	1566	994	973	2065	3137
Jan 04	391	1939	100	1260	862	543	1735	3604
Feb 04	267	1989	186	1266	1268	400	1373	3681
Mar 04	391	2043	316	2050	1235	638	1774	4543

**Immigration: Baxter Detention Centre  
(Question No. 2715)**

**Senator Allison** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 22 March 2004:

- (1) Why has Ms Leila Khalipour, who is currently held in the Baxter Detention Centre with her husband and 8-month old daughter, been denied permission to attend a playgroup with her child.
- (2) Is the Government aware that there are no age-appropriate playmates and no appropriate stimulation provided for this infant at the Baxter Detention Centre.

**Senator Vanstone**—The answer to the honourable senator's question is as follows:

- (1) Due to privacy considerations it is not appropriate to comment on specific cases. However, I can confirm that all children of a pre-school age in the Baxter Immigration Detention Facility and Port Augusta Residential Housing Project regularly attend appropriate external child learning groups, accompanied by one or both of their parents.
- (2) Children of a pre-school age in all detention facilities and residential housing projects are provided with a range of toys, educational and leisure equipment commensurate with their age. Some examples of items used at both the Baxter facility and the residential housing project include:
  - a plastic play-gym complex which includes a slide suitable for pre-schoolers and other climbing equipment suitable for pre-schoolers up to primary school age;

- the library established in the education/recreation buildings, which holds a range of books for varying age groups;
- a range of toys for pre-school children to play with, including plastic tricycles, building blocks, dolls, stuffed toys etc; and
- a small wading pool, always supervised when in use.

**Environment: Moreton Bay**

**(Question No. 2719)**

**Senator Lees** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 22 March 2004:

- (1) Is the Minister concerned that the proposed sand mine will be situated in a wetlands area, close to Pumicestone Passage, which is at the northern end of Moreton Bay, and in an area which, in recent reports on the health of Moreton Bay, has been shown to be significantly polluted.
- (2) Does the Minister agree that the proposed sand mine is likely to cause large, long-term, irreversible changes in the hydrology of the site.
- (3) How does the Minister intend to fulfil his ministerial responsibility for this ecologically-sensitive site.
- (4) Is the Minister aware that the proposed sand mine is likely to cause oxidation of the substantial amounts of pyrite forming potential acid sulfate soils on the site, mobilising heavy metals including aluminium, manganese, copper, iron and arsenic, these elements then forming a contaminant plume from the sand mine that may affect the adjacent Ramsar wetland.
- (5) Is the Minister aware that the geo-technical instability of the proposed flood spillway, which is constructed of dredge pond fines across the site following sand extraction, and the pond bund walls built upon that spillway, may lead to failure during tidal surge and/or flood events.
- (6) Is the Minister aware that any collapse of the pond bund walls would allow large amounts of fine clay sediment and other contaminants to be deposited into the Ramsar wetland, exacerbating waterway turbidity and reducing seagrass bed areas.
- (7) Given the Minister's special responsibility for Ramsar sites, is the Minister concerned that the effects described in parts (4), (5) and (6) will affect an important Ramsar wetland.
- (8) How will the Minister fulfil his responsibility as the Minister responsible for Ramsar sites with respect to the possible destruction of important natural features of this site.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) The proposed sand mine was determined to be a controlled action under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) because of the potential significant impacts of the proposal on the ecological character of the Moreton Bay Ramsar wetland and listed migratory species in the area.
- (2) The proposal is currently being examined under the assessment and approval provisions of the EPBC Act.
- (3) I will fulfil my Ministerial responsibility in accordance with the provisions of the EPBC Act.
- (4) I am aware that some stakeholders have raised these issues and that the Department has sought independent scientific advice.
- (5) See answer to (2).
- (6) See answer to (2).

- (7) The potential impacts are being examined under the EPBC Act because of potentially significant impacts on the Moreton Bay Ramsar wetland and listed migratory species.
- (8) See (3) above.

**Environment: Moreton Bay**

**(Question No. 2720)**

**Senator Lees** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 22 March 2004:

- (1) Is the Minister aware of recent outbreaks of highly toxic *Lyngbya majuscula* (Oscillatoria) on Pumicestone Passage seagrass beds.
- (2) Is the Minister aware that the Caboolture Shire Council has erected “no swimming” signs on local beaches, and removed to the Shire’s secure dump site approximately 2,300 tons of *Lyngbya* washed up on beaches in the Ramsar wetland, at a cost of \$300,000, because of the risk to the health of humans and other species.
- (3) Is the Minister aware that bio-available metals, linked with catchment chelating runoff, provide essential elements to promote and sustain outbreaks of *Lyngbya majuscula*, and that the mining process has the potential to produce these metals, thus altering the nature of waterway chemistry and further contaminating the Ramsar wetlands.
- (4) Is the Minister aware that the extractive site is located in one of the most productive wader bird and dugong feeding banks within this Ramsar wetland.
- (5) Given the Minister’s special responsibility under the Ramsar Convention, what will the Minister do to ensure that there is no further pressure added by the proposed sand mine to the already dangerous level of *Lyngbya* growth.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator’s question:

- (1) Yes.
- (2) Yes.
- (3) I am aware that some stakeholders have raised these issues, and that my Department has sought independent scientific advice. The proposed sand mine was determined to be a controlled action under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) because of the potential significant impacts of the proposal on the ecological character of the Moreton Bay Ramsar wetland and listed migratory species in the area. The proposal is currently being examined under the assessment and approval provisions of the EPBC Act.
- (4) The extractive site is not located in the Ramsar wetland but is adjacent to it.
- (5) I will fulfil my Ministerial responsibility in accordance with the provisions of the EPBC Act.

**Foreign Affairs: Cui Ying Zhang**

**(Question No. 2723)**

**Senator Brown** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 23 March 2004:

With reference to Australian citizen Cui Ying Zhang, who was imprisoned in the People’s Republic of China:

- (1) Was Cui Ying Zhang at all times accorded her rights to consular access and assistance and other rights; if not, how were these rights denied and why.



- (2) (a) What action was taken by the Australian Government to remedy any shortcoming in China's actions; and (b) is any further action to be taken; if so, what.

**Senator Hill**—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator's question:

- (1) China was slow in providing notification of Ms Zhang's arrest and in allowing consular access.
- (2) Representations were made by the Australian Consul-General in Guangzhou and Ambassador in Beijing. Australian consular officials in China made repeated representations throughout Ms Zhang's detention in an attempt to ensure Ms Zhang was afforded her rights under the Vienna Convention on Consular Relations. I (Mr Downer) also raised my concerns about Ms Zhang's detention with the Chinese Ambassador in Canberra. In 2000 the Government concluded with China a bilateral Consular Agreement which specifies timeframes for notification of arrests and provision of consular access and provides for annual consultations on consular matters. This establishes an important framework for pursuing our consular interests, including in respect of problems in the treatment of individual cases.

**Defence: Abrams Tanks**

**(Question No. 2724)**

**Senator Brown** asked the Minister for Defence, upon notice, on 24 March 2004:

- (1) Are any of the Abrams tanks, the purchase of which was announced by the Minister, of the type which incorporates depleted uranium shielding.
- (2) Have any of these tanks been used previously in combat situations, particularly in the first Gulf War; if so, how many.
- (3) Have any of these tanks been 'rehabilitated' after being struck and contaminated by friendly fire.
- (4) Have any United States of America soldiers been killed or injured in any of these tanks.

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

- (1) I refer the senator to the *Hansard* of the Senate Foreign Affairs, Defence and Trade Legislation Committee of Wednesday 5 November 2003 (page 68) where it was stated that the Government would not be procuring a tank with depleted uranium armour. In addition, I refer to my media release of 10 March 2004 where I reiterated that the new tanks would not be equipped with depleted uranium armour.
- (2) and (3) The acquisition team will have the opportunity to review the United States' records of service of the specific hulls offered for Australian service. The review and selection of hulls has not yet been conducted.
- (4) Only those vehicles which have already been accepted for the Abrams Integrated Management overhaul program will be offered for Australian service. The current operational history of the Abrams indicates that, in the few instances where crewmen have been killed by kinetic penetration or blast, the vehicle has been damaged beyond effective repair and would, therefore, not be considered for the overhaul program. In addition, any vehicle that has been damaged by fire, to the point where crewmen have been injured, is unlikely to be acceptable to the overhaul program.

**Employment: Community Development Employment Project Participants**

**(Question No. 2733)**

**Senator O'Brien** asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 25 March 2004:

For each of the financial years 2000-01, 2001-02 and 2002-03 and for 2003-04 to date, by state/territory, how many Community Development Employment Project participants have been placed in full-time employment by Indigenous Employment Centres.

**Senator Abetz**—The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

The following table shows the number of Community Development Employment Project participants placed into full-time employment by Indigenous Employment Centres, for each of the financial years, 2001-02, 2002-03 and 2003-04 to date, by state/territory.

	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
2001/2002 <sup>1</sup>	0	0	0	0	6	0	0	0	6
2002/2003 <sup>2</sup>	36	25	16	56	48	5	11	72	269
2003/2004 <sup>3</sup>	23	59	26	84	55	16	13	113	389
Total	59	84	42	140	109	21	24	185	664

<sup>1</sup>. The first IECs started operating in April and May 2002 and 5 were in operation by end of 2001/02.

<sup>2</sup>. There were 12 IECs in operation by the end of 2002/03, with the additional 7 IECs commencing operations at various times throughout the financial year.

<sup>3</sup>. An additional 21 IECs commenced operating in 2003/04 and have commenced at various times throughout the financial year. Data is as at 26 March 2004.

### Counter-Terrorism Committee

#### (Question No. 2735)

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 24 March 2004:

- (1) Who are the members of the Commonwealth Counter-Terrorism Committee.
- (2) (a) What are the rules and procedures that govern the determination by the committee of the national counter-terrorism alert level; (b) what is the source of these rules; and (c) what is their legal status.
- (3) Are determinations of the committee relating to the national counter-terrorism alert levels taken by consensus and, if consensus cannot be achieved, are votes taken.
- (4) (a) How often does the committee meet; and (b) when are meetings planned for 2004.
- (5) Who is responsible for reviewing the national counter-terrorism alert level in the period between meetings of the committee.
- (6) Do any ministers or ministerial staff participate in meetings or determinations of the committee; if so, who and what is the nature of their participation.
- (7) Do any ministers or ministerial staff participate in the determination of the national counter-terrorism alert level; if so, who and what is the nature of their participation.

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

- (1) The Australian Government Counter-Terrorism Committee (AGCTC), formerly known as the Commonwealth Counter-Terrorism Committee (CCTC), consists of the following members: Protective Security Coordination Centre (Chair); Australian Security Intelligence Organisation; Australian Federal Police (including Australian Protective Service); Department of the Prime Minister and Cabinet; Office of National Assessments; Department of Immigration, Multicultural and Indigenous Affairs; Department of Defence (including ADF Headquarters; Defence Signals Directorate; Defence Intelligence Organisation and Defence Security Authority); Emergency

Management Australia; Department of Transport and Regional Services; Department of Foreign Affairs and Trade; Department of Health and Ageing; Department of Finance and Administration and Parliament House Security.

- (2) (a) The AGCTC is governed by its terms of reference, the National Counter-Terrorism Plan, the National Counter-Terrorism Handbook and the AGCTC Guidelines for the Coordination of the Australian Government Counter-Terrorism Arrangements. (b) Prior to the formation of the AGCTC (and CCTC), this body was known as the Special Interdepartmental Committee on the Protection Against Violence (SIDC-PAV) and as such was governed by its terms of reference and the SIDC-PAV Handbook. (c) The Intergovernmental Agreement on Australia's National Counter-Terrorism Arrangements, which was signed on 22 October 2002.
- (3) Yes.
- (4) The AGCTC meets on the last Wednesday of each month. The AGCTC is scheduled to meet on 31 March, 28 April, 26 May, 30 June, 28 July, 25 August, 29 September, 27 October, 24 November and 15 December 2004 (\*December meeting held earlier due to Christmas/New Year holidays.)
- (5) The AGCTC has the sole responsibility for determining the level of national counter-terrorism alert based on ASIO assessments of the threat environment. An extraordinary meeting of the full AGCTC may be called to respond to a security incident/situation at any time, where the AGCTC will review the level of national counter-terrorism alert.
- (6) No.
- (7) No. However, if an Extraordinary AGCTC is convened in response to a terrorist incident/situation and relevant intelligence and agency reports indicate that the level of counter-terrorism alert should be raised to High or Extreme, the Prime Minister, the Attorney-General and the Minister for Defence would be consulted on both the approval and activation of appropriate response measures

#### **Australian Customs Service: Bay Class Vessels**

##### **(Question No. 2740)**

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 25 March 2004,

With reference to the answer to part (1) of question on notice no 2642:

1. Who makes the final decision concerning whether a vessel of interest to the Australian Customs Service (ACS) is classified as 'compliant', 'uncooperative' or 'hostile'.
2. If a hostile vessel is a vessel whose crew is acting in a hostile manner, what behaviour, actions or activities are characterized as hostile.
3. Can examples be provided of behaviour that has been judged to be hostile for the purpose of the determining the status of a vessel of interest to the ACS.
4. If a hostile boarding is characterized as a boarding where the use of force may be expected, what actions, behaviour or activity may constitute the use of force.
5. Is the suspected presence of weapons of any description necessary for a decision that the use of force may be expected.
6. Can examples be provided of indicators, activity, behaviour or action that has led the ACS to decide that the use of force may be expected in the boarding of a vessel.
7. It is necessary for lethal force to be expected for a vessel to be declared hostile or is an expectation of the use of force sufficient.
8. For each of the reporting years since 1996:

- (a) how many unco-operative vessels have been boarded by sea going crew members on the National Maritime Unit of the ACS: and
- (b) how many vessels have been declared as hostile by the ACS and, in each case: (i) when was the vessel declared hostile,
  - (ii) where was the vessel, and
  - (iii) what was the nature of the suspected unlawful activity.

9. What protocol is followed by the ACS if a vessel of interest is declared a hostile vessel.

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

1. Customs defines boarding operations as either 'compliant' 'uncooperative' or 'hostile'. Each term is defined as follows:
  - Compliant. Where a target vessel's crew, or others onboard, are expected to be helpful and obedient. The crew of the vessel are expected to cooperate with requests to heave to, or slow, to receive a boarding party and allow the boarding party to question and search as required. There is little or no expectation to use force to secure control of a vessel during a boarding.
  - Unco-operative. Where a target vessel's crew, or others onboard, might be expected to display passive resistance, recalcitrant or belligerent behaviour, act in an obstructive manner or conduct sabotage of their vessel or equipment. There is a low expectation to use force to secure control of a vessel during a boarding and no expectation to use deadly force.
  - Hostile. Those that surpass unco-operative and where a target vessel's crew or others onboard are acting in an overtly hostile manner. This overt display could include the brandishing of weapons or other items that present a serious level of threat of injury to the boarding party. There is a medium expectation to use force to secure control of a vessel during a boarding, with a low expectation to use deadly force.

The Commanding Officer (CO) onboard a Bay class Australian Customs Vessel (ACV) of the National Marine Unit (NMU) at the scene, ultimately makes the decision regarding the classification of a vessel of interest. The COs decision would be based on any or all of the following;

- behaviour and actions displayed by individuals onboard the vessel of interest,
  - information received from the ACV boarding party;
  - any prior intelligence about the vessel of interest.
2. Behaviour, actions or activities characterised as hostile may include but are not limited to the brandishing or use of weapons or other items that present a serious level of threat of injury to members of a Customs boarding party or any other person.
  3. A vessel of interest has never been classified as hostile by a Customs Bay class ACV.
  4. For a Customs NMU seagoing officer the following behaviour or activity constitutes use of force:
    - use of a firearm;
    - use of a baton against another person;
    - use of a chemical agent against another person;
    - use of any compliance or restraint hold, strike, kick, or other operational safety application against another person;
    - use of handcuffs or similar restraint against another person;
    - forced entry to a vessel or other secured area to search, seize or arrest; or
    - use of a firearm, chemical agent or baton on any animal.

5. No.
6. Examples of behaviour, actions or activities that might lead a Bay class ACV Commanding Officer to determine that the use of force may be expected in the boarding of vessels include;
  - Refusal to heave to or maintain a favourable course and speed, (passive)
  - Conducting evasive manoeuvring, (obstructive)
  - Refusal to start engines(s), (passive)
  - Feigning lack of English, (passive)
  - Refusal to answer questions, (passive)
  - Jumping overboard, (obstructive)
  - Ditching or concealing evidence, (obstructive)
  - Providing false information, (obstructive)
  - Faking lost crew/hiding crew, (obstructive/belligerent)
  - Feigning anger when given instructions, (recalcitrant)
  - Sabotaging engine(s), (sabotage)
  - Attempts to scuttle vessel, (sabotage)
  - Violent or aggressive demeanour of crew
  - Oral indication by crew (threats or warnings).
7. See definition of Hostile boarding at paragraph 1.
8. Since 1996, the NMU has been involved in four instances of un-cooperative boardings. No vessels have been declared as hostile by the NMU.
9. If a vessel of interest is declared as hostile by an ACV Commanding Officer, the vessel would be immediately reported to the relevant mainland authorities. The ACV would monitor its movements until directed otherwise or until the arrival of appropriate armed support (Federal or State Police Special Operations/Tactical Response Teams or specialised Australian Defence Force personnel) or until such time as the vessel arrives in an Australian port. Sea-going crewmembers of the NMU are not trained in or equipped for hostile boarding operations. However the Customs Marine Superintendent or a Customs Operational/Chief/Commander (after consultation with the Marine Superintendent) may, approve ACV participation in a hostile boarding. Under these circumstances, seagoing crewmembers of the NMU are only authorised to provide support to specialised teams/individuals - usually in the form of delivering them to a target vessel via ship's tender.

**Trade: Free Trade Agreement**

**(Question No. 2748)**

**Senator Ridgeway** asked the Minister representing the Minister for Trade, upon notice, on 25 March 2004:

With reference to the decision to select the Centre for International Economics to carry out economic modelling and analytical work to assess the impact of the free trade agreement made between the governments of Australia and the United States of America in February 2004:

- (1) Was this decision made as a result of a public tender process; if so: (a) what were the terms of the tender; (b) when did the tender process begin; (c) how and where was the tender advertised; and (d) who submitted applications.
- (2) On what basis was the Centre for International Economics selected.

**Senator Hill**—The following answer has been provided by the Minister for Trade to the honourable senator's question:

- (1) The process followed was a Restricted Tender, rather than a Public Tender. The terms of the Invitation to Tender were wide-ranging and included the implications of the Australia-United States Free Trade Agreement (AUSFTA) for output and economic welfare over time; the impact on employment, the States and Territories of Australia and the environment; and rules of origin, government procurement and intellectual property issues. Consultants were invited to tender on 25 February 2004 and the Department's decision was announced on 9 March 2004.
- (2) The decision to select the Centre for International Economics was made by the Department following the unanimous recommendation by a Departmental Tender Board. The decision reflects the proven high quality of the work carried out by the Centre, its expertise in economic modelling and the highly competitive pricing of its tender.

**Environment: Burnett River Dam**

**(Question No. 2749)**

**Senator Bartlett** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 25 March 2004:

- (1) Has the Commonwealth investigated the potential impact on the Coxen's Fig Parrot of the construction and operation of the Burnett River dam; if so, can the details of the investigations be provided.
- (2) What action is the Minister taking in relation to the recent sighting of Coxen's Fig Parrots in the area that will be affected by the dam.
- (3) Has the Commonwealth investigated the potential impact on the endangered palm, *Cycas megacarpa*, of the construction and operation of the dam; if so, can details of the investigations be provided.
- (4) What action is the Minister taking in relation to the recent discovery of the endangered palm in the area that will be affected by the dam.
- (5) Has Burnett Water approached the Minister or the department about the legality of translocating the *Cycas megacarpa* palms without referring details of the proposal to the Minister under the Environment Protection and Biodiversity Conservation Act 1999; if so, can details of the inquiry and the Minister's response be provided.
- (6) Will the Minister vary the conditions attached to the approval, or suspend or revoke the approval granted in relation to the dam if it is found that its construction or operation will have a significant adverse impact on the Coxen's Fig Parrot or the *Cycas megacarpa* palm.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) The potential impact of the construction and operation of the Burnett River Dam on the Coxen's Fig Parrot was investigated in the accredited Queensland Burnett River Dam Environmental Impact Statement (2001) documentation, available at [www.burnettwater.com.au/news/documentarchive/](http://www.burnettwater.com.au/news/documentarchive/).
- (2) The Department of the Environment and Heritage is liaising with Burnett Water Pty Ltd on the implementation of surveys to verify the sighting of the species.
- (3) The potential impact of the construction and operation of the Burnett River Dam on *Cycas megacarpa* was first investigated in the assessment documentation mentioned at (1). The former Minister for the Environment and Heritage subsequently requested Burnett Water Pty Ltd to conduct further surveys for various listed threatened species. The surveys were conducted but *Cycas megacarpa* was not found.

- (4) The Department is liaising with Burnett Water Pty Ltd and the Queensland Government on the proposal to translocate the *Cycas megacarpa*.
- (5) Burnett Water Pty Ltd has kept the Department informed on the proposed process of translocation.
- (6) The conditions of the approval to construct and operate the Burnett River Dam may be varied if warranted.

**Environment: Moreton Bay**

**(Question No. 2752)**

**Senator Cherry** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 26 March 2004:

With reference to the proposed CSR/Readymix Ltd. Donnybrook sand mine (EPBC No: 2001/329):

- (1) Is the Minister concerned that the proposed sand mine will be situated in a wetlands area, close to Pumicestone Passage, which is at the northern end of Moreton Bay, and in an area which, in recent reports on the health of Moreton Bay, has been shown to be significantly polluted.
- (2) Does the Minister agree that the proposed sand mine is likely to cause large, long-term, irreversible changes in the hydrology of the site.
- (3) How does the Minister intend to fulfil his ministerial responsibility for this ecologically-sensitive site.
- (4) How will the Minister prevent the destruction of this natural hydrological system, which consists of a shallow (2 to 3 metre) unconfined aquifer and semi-confined aquifers at depth flowing across the land, causing changes in the natural regime of fresh, brackish and saline waters.
- (5) Is the Minister aware that mining sand from this site may cause de-stratification of the natural water column where acidity, salinity and iron increase in concentration with depth, causing otherwise natural elements of the deeper water column to contaminate the shallower water column, these elements then forming a contaminant plume from the sand mine into a Ramsar wetland.
- (6) Is the Minister aware that the mining operation will lower the water table surrounding the sand mine.
- (7) Given the Minister's special responsibility for Ramsar sites, is the Minister concerned that the destruction described in part (4) and the other effects described in parts (5) and (6), will affect an important Ramsar wetland.
- (8) How will the Minister fulfil his responsibility as the Minister responsible for Ramsar sites with respect to the possible destruction of important natural features of this site.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) The proposed sand mine was determined to be a controlled action under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) because of the potential significant impacts of the proposal on the ecological character of the Moreton Bay Ramsar wetland and listed migratory species in the area.
- (2) The potential impacts of the proposal on the site are currently being examined under the EPBC Act.
- (3) I will fulfil my ministerial responsibility in accordance with the provisions of the EPBC Act.
- (4) See (1), (2) and (3) above.
- (5) I am aware that some stakeholders have raised these issues, and that my Department sought independent scientific advice.
- (6) See (2) above.



(7) See (2) above.

(8) See (3) above.

### **Australian Customs Service: Law Enforcement**

#### **(Question No. 2755)**

**Senator Ludwig** asked the Minister for Justice and Customs, upon notice, on 26 March 2004:

What powers does the Australian Customs Service have to enforce Commonwealth law within: (a) the 3 nautical miles of ocean immediately adjacent to Australian coastline; (b) Australia's territorial sea; (c) the 'contiguous zone' of Australia's exclusive economic zone; and (d) Australia's exclusive economic zone.

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

The powers Customs has to enforce Commonwealth laws in each of the maritime zones varies. The powers available to Customs also operate broadly, in respect of Australian vessels on the one hand and foreign vessels on the other. The powers available to Customs in each of the areas set out in the honourable senator's question depends on whether a vessel is Australian or foreign. I will first answer this question in relation to foreign vessels.

#### **Foreign vessels**

- (a) The 3 nautical miles adjacent to the Australian coastline constitutes Australia's internal waters. These waters fall within the 12 nautical mile territorial sea claimed by Australia by Proclamation in the Gazette

No. S 297, 1990, under section 7 of the Seas and Submerged Lands Act 1973. Therefore, Customs enforces the same laws and exercises the same powers in Australia's internal waters as it does in the territorial sea.

- (b) In the territorial sea Customs has responsibilities for enforcing the following laws: the Customs Act 1901 (Customs Act), the Fisheries Management Act 1991, the Migration Act 1958, the Quarantine Act 1908 and the Torres Strait Fisheries Act 1984. Customs investigates targeted vessels in the territorial sea in relation to infringements or suspected infringements of these Acts.

In enforcing these laws Customs exercises a variety of powers which are principally contained in the Customs Act. These powers include provisions for Customs to request to board vessels, chase vessels in certain circumstances, question the master and any people on board, search the vessel and any goods and persons on board, seize goods, detain the vessel and people on board and remove them to the Australian mainland or another place, and if necessary, destroy the vessel.

- (c) The EEZ does not have a contiguous zone.
- (d) In the EEZ, Customs exercises the powers described in (b) where there is a suspicion that that the vessel is, will be or has been involved in a contravention, or attempted contravention, in the EEZ against the Fisheries Management Act 1991 or for a foreign vessel approached in the Torres Strait Protected Zone, the Torres Strait Fisheries Act 1984.

#### **Australian vessels**

The jurisdiction with respect to Australian ships is based on international law under which States can exercise jurisdiction over their own vessels provided those vessels are not located in the territorial sea of another State.

Customs enforces Australian laws in relation to Australian vessels and can exercise powers including to request to board vessels, chase vessels in certain circumstances, question the master and any people on board, search the vessel and any goods and persons on board, seize goods, detain the vessel and people on board and remove them to the Australian mainland or another place, and if necessary, destroy the



vessel. Australian vessels are under Australian jurisdiction at all times other than when they are located in the territorial sea of another country.

**Environment: Renewable Energy**

**(Question No. 2766)**

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 29 March 2004:

With reference to the Minister's media release of 17 March 2004: Can details be provided of the projects and initiatives making up the \$300 million which Government has committed to renewable energy initiatives.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

The commitment of over \$300 million for renewable initiatives arises from the Prime Minister's Safe-guarding the Future statement of 20 November 1997 and Measures for a Better Environment statement of 28 May 1999. The specific programs which make up this commitment are as follows:

- The Renewable Energy Showcase Program (\$10M)
- The Renewable Energy Commercialisation Program (\$50M)
- The Renewable Remote Power Generation Program (\$180M)
- The Renewable Energy Equity Fund (\$21M)
- The Photovoltaic Rebate Program (\$40M)

**Environment and Heritage: Legal Services**

**(Question No. 2786)**

**Senator Ludwig** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 30 March 2004:

- (1) In the past 12 months has the department or its agencies used, retained or paid for legal or other services from Phillips Fox Lawyers or any of their subsidiaries; if so: (a) can details of each instance be provided; and (b) as a general overview, what was the nature of the work undertaken.
- (2) Has the Minister attended any forums presented by Phillips Fox; if so, can details be provided.
- (3) Has the department sponsored any Phillips Fox forums or presentations in the past 12 months; if so, can details of the forums or presentations be provided.

**Senator Ian Macdonald**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) Neither the department nor portfolio agencies have used, retained or paid for legal or other services from Phillips Fox in the past 12 months.
- (2) The Minister has not attended any Phillips Fox forums in the last 12 months.
- (3) The department has not sponsored any Phillips Fox forums or presentations in the past 12 months.

**Immigration and Multicultural and Indigenous Affairs: Legal Services**

**(Question No. 2790)**

**Senator Ludwig** asked the Minister for Immigration and Multicultural and Indigenous Affairs, upon notice, on 30 March 2004:

- (1) In the past 12 months has the department or its agencies used, retained or paid for legal or other services from Phillips Fox Lawyers or any of their subsidiaries; if so: (a) can details of each instance be provided; and (b) as a general overview, what was the nature of the work undertaken.
- (2) Has the Minister attended any forums presented by Phillips Fox; if so, can details be provided.
- (3) Has the department sponsored any Phillip Fox forums or presentations in the past 12 months; if so, can details of the forums or presentations be provided.

**Senator Vanstone**—The answer to the honourable senator's question is as follows:

- (1) Yes.

(a) Legal Services were provided by Phillips Fox Lawyers on the following occasions:

1 April 2003	2 April 2003	15 April 2003
15 April 2003	16 April 2003	1 May 2003
2 May 2003	9 May 2003	16 May 2003
4 June 2003	24 June 2003	15 July 2003
14 August 2003	15 August 2003	26 August 2003
26 August 2003	28 August 2003	28 August 2003
29 August 2003	9 September 2003	9 September 2003
9 September 2003	23 September 2003	3 November 2003
7 November 2003	21 November 2003	26 November 2003
4 December 2003	9 December 2003	16 January 2004
20 February 2004	27 February 2004	11 March 2004
30 March 2004		

(b) The nature of the work undertaken by Phillips Fox Lawyers was the provision of legal advice.

- (2) No.
- (3) No, the department has not sponsored any Phillip Fox forums or presentations in the past 12 months.

#### **Attorney-General's: Legal Services**

##### **(Question No. 2800)**

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 31 March 2004:

With reference to the answer to question no. 13 (output 1.2) taken on notice during the 2003-04 Budget estimates supplementary hearings of the Legal and Constitutional Legislation Committee:

- (1) Can an update be provided on the audit of the management of legal services in the Australian Public Service.
- (2) What was the outcome of the audit.
- (3) What methodology was used in the audit.
- (4) What data collection techniques were used in the audit.
- (5) When did the Auditor-General begin the audit.
- (6) How many Australian National Audit Office personnel participated in the audit.

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

- (1) The Australian National Audit Office (ANAO) advises that it commenced a preliminary study for an audit of legal services in the Australian Public Service (APS) on 24 February 2004. The purpose

of the preliminary study is to determine whether a full audit should proceed, and to assist in defining the scope and objectives for the full audit.

The ANAO advises that it plans to complete the preliminary study by late April 2004. At the completion of the preliminary study, the Auditor-General will make a decision about whether to proceed with a full audit. Should the full audit proceed, it is likely to commence within weeks of the conclusion of the preliminary study. Depending on the scope and objectives of the full audit, should it proceed, a report is likely to be produced in early 2005.

- (2) The ANAO advises that it has not yet completed its preliminary study.
- (3) The ANAO advises that the methodology to be used in any full audit that may be undertaken will be decided on following the completion of the preliminary study.

That ANAO advises that, for the purposes of the preliminary study, the ANAO is examining the Office of Legal Services in the Attorney-General's Department, and its role in the administration and coordination of legal services across the APS. The ANAO has also selected a sample of four agencies for examination in the course of the preliminary study, seeking examples of internal and external models of service provision within small and large agencies. The agencies selected were the Department of Education, Science and Training, the Department of Family and Community Services, the Australian Competition and Consumer Commission and Comsuper.

The ANAO advises that it has also considered previous reviews of the APS' legal services, including the Report of a Review of the Impact of the Judiciary Amendment Act 1999 on the Capacity of Government Departments and Agencies to Obtain Legal Services and on the Office of Legal Services Coordination. Also, a range of stakeholders such as legal services suppliers and peak legal bodies has been consulted.

- (4) The ANAO advises that the data collection techniques to be used in any full audit that may be undertaken will be decided on following the completion of the preliminary study.

That ANAO advises that, for the purposes of the preliminary study, the ANAO interviewed officers from the sample agencies, conducted a review of files within the agencies, examined management information systems within the agencies, and wrote to and met with stakeholders in the APS' legal services market.

- (5) The ANAO advises that the preliminary study commenced on 24 February 2004.
- (6) The ANAO advises that four ANAO staff participated in the preliminary study. It is unknown at this time how many staff might participate in any full audit that may be undertaken.

#### **Attorney-General's: Legal Services**

#### **(Question No. 2801)**

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 31 March 2004:

With reference to the answer to question no. 14 (output 1.2) taken on notice during the 2003-04 Budget estimates supplementary hearings of the Legal and Constitutional Legislation Committee:

- (1) Can a copy be provided of the provisions in the Australian Government Legal Services Directions that relate to briefings, with which individual agencies must comply.
- (2) (a) When will the discussion paper on the review of the Legal Services Directions be completed; (b) when available, can a copy of the discussion paper be provided; and (c) who is conducting the review.
- (3) Has the Standing Committee of Attorneys-General developed the model policy for the equitable briefing of female barristers: (a) if so, can a copy of the policy be provided; (b) if not: (i) why not, (ii) when will the policy be developed, and (iii) when available, can a copy be provided.

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

- (1) A copy of the Legal Services Directions provisions relating to briefing (paragraph 6 and Appendix D) is Attachment A.
- (2) (a) The Review of the Legal Services Directions Issues Paper (Issues Paper) was released on 5 March 2004. (b) The paper is available on the Department's website at:  
<http://www.ag.gov.au/www/agdHome.NSF/Web+Pages/3A4C7565369D7007CA256E4D00122A70?OpenDocument>.  
(c) The Review is being conducted by the Attorney-General's Department.
- (3) The Standing Committee of Attorneys-General (SCAG) has not developed a model policy for the equitable briefing of female barristers. At its last meeting on 18-19 March 2004, SCAG was waiting for the Law Council of Australia to adopt a national policy (at the preceding SCAG meeting, Ministers had requested the Law Council of Australia to develop a model briefing policy). The Law Council's policy will be considered at a future SCAG meeting, and is available at [www.lawcouncil.asn.au/policy/2393225385](http://www.lawcouncil.asn.au/policy/2393225385).

#### **Attachment A**

##### **Extract from Legal Services Directions**

##### **6. Engagement of counsel**

6.1 Counsel are to be engaged by or on behalf of an FMA agency in accordance with the Directions on Engagement of Counsel, at Appendix D.

6.2 Briefs to counsel in matters covered by the model litigant policy are to enclose a copy of the Directions on the Commonwealth's Obligation to Act as a Model Litigant, at Appendix B and instruct counsel to comply with the policy.

#### **Appendix D**

##### **DIRECTIONS ON ENGAGEMENT OF COUNSEL**

1. The Commonwealth policy in relation to engaging counsel is to seek to rely on its position as a major purchaser of legal services in agreeing on the level of fees payable to counsel engaged on behalf of the Commonwealth or its agencies.

2. Commonwealth agencies and legal service providers are encouraged to brief a broad range of counsel and, in particular, women. While the selection of counsel needs to take into account the interests of the Commonwealth in securing suitable and expert counsel in a particular case, this should not occur in a manner which results in a narrow pool of counsel who regularly undertake Commonwealth work.

##### **Application**

3. The policy applies to the engagement of counsel by agencies themselves, by the Australian Government Solicitor (AGS), or by private lawyers who are acting for the Commonwealth or its agencies. The policy applies to lawyers who, although not from the bar, are briefed as counsel in lieu of a private barrister to conduct or advise on litigation for the Commonwealth or its agencies.

4. The policy applies to briefs to advise and briefs to appear before courts, tribunals and inquiries. It also applies to the use of counsel to represent the Commonwealth and its agencies in arbitration and other alternative dispute resolution processes. Briefs should ordinarily be marked with an hourly rate up to a maximum daily rate inclusive of conferences, consultations, preparation and other necessary work. A fee on brief (inclusive of preparation time) is to be marked if it is considered more economical than agreeing to pay a fee based on the appropriate hourly or daily rate for the counsel.

##### **Fees payable to counsel**

5. Senior counsel are not to be paid a daily rate above \$2400 (inclusive of GST) without the approval of the Attorney-General or the Attorney-General's delegate. Junior counsel are not to be paid a daily rate

above \$1600 (inclusive of GST) without such approval. Any out of chamber fee is to be treated as part of the daily rate for the purpose of considering the appropriateness of that rate. Where an out of chamber fee is agreed or approved, it is to be marked separately on the brief.

6. Hourly rates greater than one-sixth of the daily rate are not to be agreed with counsel unless approved by the Attorney-General or the Attorney-General's delegate.

7. A cancellation fee is to be agreed with counsel only in exceptional circumstances (eg to cover the possibility of a matter being resolved shortly before a lengthy trial). Any such fee is to be agreed at the time counsel is engaged for a trial. A cancellation fee greater than 2 days of counsel's normal Commonwealth rate is to be approved by the Attorney-General or the Attorney-General's delegate before it is agreed with counsel.

8. Payment of retainers (concerning counsel's availability for future matters), both new and renewed, is not ordinarily to be agreed with counsel and, if considered to be justified, the terms of the agreement are first to be approved by the Attorney-General or the Attorney-General's delegate.

#### **Approval**

9. Unless agreed otherwise by the Attorney-General, requests for approval to pay counsel amounts higher than the rates referred to in paragraphs 5 and 6, and approvals required by paragraphs 7 and 8 for cancellation fees and retainers, are to be made to the Office of Legal Services Coordination (OLSC). Proposals to pay senior counsel in excess of \$3800 per day (inclusive of GST) will be referred by OLSC to the Attorney-General for consideration.

10. Approval is to be sought as far as possible in advance of the scheduled date for the delivery of a brief to counsel. In considering a request to pay counsel above the specified rate, the following factors will be taken into account:

- (a) the special expertise or skill of the counsel who is proposed to be briefed,
- (b) the availability of counsel generally to appear in the matter,
- (c) the probable total cost of counsel's fees in the matter,
- (d) the specific request of an agency that a particular person be briefed and the reasons for that preference,
- (e) the importance of the matter, including any special sensitivity, and
- (f) the normal market daily fee at which the relevant counsel is briefed.

11. If approval for a daily fee in excess of \$2400 or \$1600 (as applicable) has been given, subsequent approval for using the same barrister at the approved rate is not required unless, at the time the approval is given, the fee is designated as a 'one-off' rate.

#### **Other matters**

12. The fees referred to in paragraph 5 are not to be regarded as the standard or starting point for fee negotiations. In many cases, particularly in relation to junior counsel, the normal market rates of counsel may be less, or even considerably less, than the 'no-approval' threshold fees. In cases where the ordinary market rate of counsel is lower than the no-approval fee, counsel should be engaged at, or below, their normal rate.

13. Counsel are not to be paid more than reasonable costs of accommodation and travel, taking into account levels applicable to Senior Executive Service officers in the Australian Public Service. Accommodation and class of travel is not to be approved so as to increase the approved Commonwealth daily rate.

#### **Administration of the policy**

14. OLSC will normally consult AGS, in light of its experience with the conduct of Commonwealth litigation and with the engagement of counsel generally, in considering whether a fee in excess of the

'no-approval' limits should be approved and in making recommendations to the Attorney-General in respect of a request to approve a fee in excess of \$3800.

15. Subject to the availability of counsel at the approved rates, the choice of counsel is a matter for individual agencies, taking into account any advice from AGS or private lawyers. However, agencies and their instructing solicitors are invited to inform OLSC, either in general terms or in relation to a specific matter, if they consider that the approved level of fees is inhibiting their engagement of counsel.

16. To facilitate administration, agencies are to provide OLSC, upon request, with information or access to information about the engagement of all or certain counsel.

NOTE: Expenditure of public moneys in a manner inconsistent with this policy by an agency covered by the Financial Management and Accountability Act may constitute a breach of the Regulations under that Act. The Regulations require that a person to whom they apply must not approve a proposal to spend public money unless satisfied, after making such enquiries as are reasonable, that the proposed expenditure is in accordance with the policies of the Commonwealth. (The Regulations also require approval of a proposal to spend money before an FMA agency enters into a contract, agreement or arrangement involving the expenditure of public money.)

### **United Nations Security Council**

#### **(Question No. 2804)**

**Senator Allison** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 1 April:

- (1) Is the Government aware of the great concerns that exist concerning the content of the draft resolution on non-proliferation presented by the United States of America (US) to the United Nations Security Council.
- (2) Does the Government support the resolution; if so, why; if not, why not.
- (3) Does the Government share the concerns of the non-permanent members of the Security Council and the concerns of the experts in international law and others concerning the content of the resolution.
- (4) (a) How does this resolution assist in the realisation of international law in this area; and (b) does the Minister agree that the resolution as drafted has the potential to undermine other international law; if not, why not.
- (5) Will the Government at the UN urge members of the Security Council, including the US, to ensure decision-making and commitments in the framework of the Treaty on the Non-Proliferation of Nuclear Weapons are also emphasised; if not, why not.
- (6) Will the Minister urge the members of the Security Council, including the US, to meet the concerns mentioned above.

**Senator Hill**—The following answer has been provided by the Minister for Foreign Affairs to the honourable senator's question:

- (1) No. The Government does not consider views expressed on the draft resolution, which is supported by all five Permanent Members of the UN Security Council, to amount to "great concerns".
- (2) Yes. The resolution will strengthen markedly efforts to combat WMD proliferation including the risk of non-state actors acquiring WMD.
- (3) No.
- (4) (a) UN Security Council resolutions, when adopted, are binding on all Member States. (b) The resolution as currently drafted will extend international law in the area of WMD non-proliferation.

No. The resolution does not attempt to rewrite or replace existing treaties or conventions. Rather it seeks to support them.

- (5) No. The resolution makes explicit that it shall not be taken as conflicting with rights and obligations of parties to the Nuclear Non-Proliferation Treaty.
- (6) No.