COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES

Senate

Official Hansard

No. 8, 2005
THURSDAY, 16 JUNE 2005

FORTY-FIRST PARLIAMENT
FIRST SESSION—THIRD PERIOD

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SITTING DAYS—2005

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

- **CANBERRA** 1440 AM
- **SYDNEY** 630 AM
- **NEWCASTLE** 1458 AM
- **GOSFORD** 98.1 FM
- **BRISBANE** 936 AM
- **GOLD COAST** 95.7 FM
- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 747 AM
- **NORTHERN TASMANIA** 92.5 FM
- **DARWIN** 102.5 FM
FORTY-FIRST PARLIAMENT
FIRST SESSION—THIRD 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, Patricia Margaret Crossin, Alan Baird Ferguson, Stephen Patrick Hutchins, Linda Jean Kirk, Susan Christine Knowles, Philip Ross Lightfoot, John Alexander Lindsay (Sandy) Macdonald, Gavin Mark Marshall, Claire Mary Moore 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 Christopher Vaughan Evans
Deputy Leader of the Opposition in the Senate—Senator Stephen Michael Conroy

Manager of Government Business in the Senate—Senator the Hon. Christopher Martin Ellison

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

Senate Party Leaders and Whips

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
Deputy Leader of the National Party of Australia—Senator John Alexander Lindsay (Sandy) Macdonald

Leader of the Australian Labor Party—Senator Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Stephen Michael Conroy

Leader of the Australian Democrats—Senator Lynette Fay Allison

Liberal Party of Australia Whips—Senators Jeannie Margaret Ferris and Alan Eggleston
National Party of Australia Whip—Senator Julian John James McGauran

Opposition Whips—Senators George Campbell and Geoffrey Frederick Buckland
Australian Democrats Whip—Senator Andrew John Julian Bartlett

Printed by authority of the Senate
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(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 Queensland to fill a casual vacancy vice John Woodley, resigned.
(4) Chosen by the Parliament of South Australia 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 Parliament of Victoria to fill a casual vacancy vice Hon. Richard Kenneth Robert Alston, resigned.
(8) Chosen by the Parliament of New South Wales to fill a casual vacancy vice John Tierney, 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
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<td>Prime Minister</td>
<td>The Hon. John Winston Howard MP</td>
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<tr>
<td>Minister for Transport and Regional Services and Deputy Prime Minister</td>
<td>The Hon. John Duncan Anderson MP</td>
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<tr>
<td>Treasurer</td>
<td>The Hon. Peter Howard Costello MP</td>
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<tr>
<td>Minister for Trade</td>
<td>The Hon. Mark Anthony James Vaile MP</td>
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<tr>
<td>Minister for Defence and Leader of the Government in the Senate</td>
<td>Senator the Hon. Robert Murray Hill</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>The Hon. Alexander John Gosse Downer MP</td>
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<tr>
<td>Minister for Health and Ageing and Leader of the House</td>
<td>The Hon. Anthony John Abbott MP</td>
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<tr>
<td>Attorney-General</td>
<td>The Hon. Philip Maxwell Ruddock MP</td>
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<tr>
<td>Minister for Finance and Administration, Deputy Leader of the Government in the Senate and Vice-President of the Executive Council</td>
<td>Senator the Hon. Nicholas Hugh Minchin</td>
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<tr>
<td>Minister for Agriculture, Fisheries and Forestry</td>
<td>The Hon. Warren Errol Truss MP</td>
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<tr>
<td>Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs</td>
<td>Senator the Hon. Amanda Eloise Vanstone</td>
</tr>
<tr>
<td>Minister for Education, Science and Training</td>
<td>The Hon. Dr Brendan John Nelson MP</td>
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<tr>
<td>Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues</td>
<td>Senator the Hon. Kay Christine Lesley Patterson</td>
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<tr>
<td>Minister for Industry, Tourism and Resources</td>
<td>The Hon. Ian Elgin Macfarlane MP</td>
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<tr>
<td>Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service</td>
<td>The Hon. Kevin James Andrews MP</td>
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<tr>
<td>Minister for Communications, Information Technology and the Arts</td>
<td>Senator the Hon. Helen Lloyd Coonan</td>
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<tr>
<td>Minister for the Environment and Heritage</td>
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(The above ministers constitute the cabinet)
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<tr>
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<td>Senator the Hon. Christopher Martin Ellison</td>
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<td>the Senate</td>
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<tr>
<td>Minister for Fisheries, Forestry and Conservation</td>
<td>Senator the Hon. Ian Douglas Macdonald</td>
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<tr>
<td>Minister for the Arts and Sport</td>
<td>Senator the Hon. Charles Roderick Kemp</td>
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<td>Minister for Human Services</td>
<td>The Hon. Joseph Benedict Hockey MP</td>
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<tr>
<td>Minister for Citizenship and Multicultural Affairs and Deputy</td>
<td>The Hon. Peter John McGauran MP</td>
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<td>Minister for Revenue and Assistant Treasurer</td>
<td>The Hon. Malcolm Thomas Brough MP</td>
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<tr>
<td>Special Minister of State</td>
<td>Senator the Hon. Eric Abetz</td>
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<td>Minister Assisting the Prime Minister</td>
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<td>Minister for Ageing</td>
<td>The Hon. Julie Isabel Bishop MP</td>
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<tr>
<td>Minister for Small Business and Tourism</td>
<td>The Hon. Frances Esther Bailey MP</td>
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<tr>
<td>Minister for Local Government, Territories and Roads</td>
<td>The Hon. James Eric Lloyd MP</td>
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<td>Minister for Veterans’ Affairs and Minister Assisting the Prime</td>
<td>The Hon. De-Anne Margaret Kelly MP</td>
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<td>The Hon. Peter Craig Dutton MP</td>
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<td>Parliamentary Secretary to the Minister for Finance and</td>
<td>The Hon. Dr Sharman Nancy Stone MP</td>
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<td>Parliamentary Secretary to the Minister for Industry, Tourism and</td>
<td>The Hon. Warren George Entsch MP</td>
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<td>Parliamentary Secretary to the Minister for Health and Ageing</td>
<td>The Hon. Christopher Maurice Pyne MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Defence</td>
<td>The Hon. Teresa Gambaro MP</td>
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<tr>
<td>Parliamentary Secretary (Foreign Affairs and Trade)</td>
<td>The Hon. Bruce Fredrick Billson MP</td>
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<td>Parliamentary Secretary to the Prime Minister</td>
<td>The Hon. Gary Roy Nairn MP</td>
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<td>Parliamentary Secretary to the Treasurer</td>
<td>The Hon. Christopher John Pearce MP</td>
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<td>Parliamentary Secretary to the Minister for Transport and Regional</td>
<td>The Hon. John Kenneth Cobb MP</td>
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<td>Parliamentary Secretary to the Minister for the Environment and Heritage</td>
<td>The Hon. Gregory Andrew Hunt MP</td>
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<td>Parliamentary Secretary (Children and Youth Affairs)</td>
<td>The Hon. Sussan Penelope Ley MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Education, Science and</td>
<td>The Hon. Patrick Francis Farmer MP</td>
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SHADOW MINISTRY

Leader of the Opposition
The Hon. Kim Christian Beazley MP

Deputy Leader of the Opposition and Shadow
Minister for Education, Training, Science and
Research
Jennifer Louise Macklin MP

Leader of the Opposition in the Senate and
Shadow Minister for Social Security
Senator Christopher Vaughan Evans

Deputy Leader of the Opposition in the Senate and
Shadow Minister for Communications and In-
formation Technology
Senator Stephen Michael Conroy

Shadow Minister for Health and Manager of Op-
position Business in the House
Julia Eileen Gillard MP

Shadow Treasurer
Wayne Maxwell Swan MP

Shadow Minister for Industry, Infrastructure and
Industrial Relations
Stephen Francis Smith MP

Shadow Minister for Foreign Affairs and Interna-
tional Security
Kevin Michael Rudd MP

Shadow Minister for Defence and Homeland Se-
curity
Robert Bruce McClelland MP

Shadow Minister for Trade
The Hon. Simon Findlay Crean MP

Shadow Minister for Primary Industries, Re-
sources and Tourism
Martin John Ferguson MP

Shadow Minister for Environment and Heritage
and Deputy Manager of Opposition Business in
the House
Anthony Norman Albanese MP

Shadow Minister for Public Administration and
Open Government, Shadow Minister for Indige-
nous Affairs and Reconciliation and Shadow
Minister for the Arts
Senator Kim John Carr

Shadow Minister for Regional Development and
Roads and Shadow Minister for Housing and
Urban Development
Kelvin John Thomson MP

Shadow Minister for Finance and Superannuation
Senator the Hon. Nicholas John Sherry

Shadow Minister for Work, Family and Commu-
nity, Shadow Minister for Youth and Early
Childhood Education and Shadow Minister As-
sisting the Leader on the Status of Women
Tanya Joan Plibersek MP

Shadow Minister for Employment and Workplace
Participation and Shadow Minister for Corporate
Governance and Responsibility
Senator Penelope Ying Yen Wong

(The above are shadow cabinet ministers)
Shadow Minister for Immigration
Laurence Donald Thomas Ferguson MP

Shadow Minister for Agriculture and Fisheries
Gavan Michael O’Connor MP

Shadow Assistant Treasurer, Shadow Minister for Revenue and Shadow Minister for Banking and Financial Services
Joel Andrew Fitzgibbon MP

Shadow Attorney-General
Nicola Louise Roxon MP

Shadow Minister for Regional Services, Local Government and Territories
Senator Kerry Williams Kelso O’Brien

Shadow Minister for Manufacturing and Shadow Minister for Consumer Affairs
Senator Kate Alexandra Lundy

Shadow Minister for Defence Planning, Procurement and Personnel and Shadow Minister Assisting the Shadow Minister for Industrial Relations
The Hon. Archibald Ronald Bevis MP

Shadow Minister for Sport and Recreation
Alan Peter Griffin MP

Shadow Minister for Veterans’ Affairs
Senator Thomas Mark Bishop

Shadow Minister for Small Business
Tony Burke MP

Shadow Minister for Ageing, Disabilities and Carers
Senator Jan Elizabeth McLucas

Shadow Minister for Justice and Customs, Shadow Minister for Citizenship and Multicultural Affairs and Manager of Opposition Business in the Senate
Senator Joseph William Ludwig

Shadow Minister for Pacific Islands
Robert Charles Grant Sercombe MP

Shadow Parliamentary Secretary to the Leader of the Opposition
John Paul Murphy MP

Shadow Parliamentary Secretary for Defence
The Hon. Graham John Edwards MP

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP

Shadow Parliamentary Secretary for Environment and Heritage
Jennie George MP

Shadow Parliamentary Secretary for Infrastructure
Bernard Fernando Ripoll MP

Shadow Parliamentary Secretary for Health
Ann Kathleen Corcoran MP

Shadow Parliamentary Secretary for Regional Development (House)
Catherine Fiona King MP

Shadow Parliamentary Secretary for Regional Development (Senate)
Senator Ursula Mary Stephens

Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs
The Hon. Warren Edward Snowdon MP
THURSDAY, 16 JUNE

Chamber

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The President (Senator the Hon. Paul Calvert) took the chair at 9.30 am and read prayers.

NOTICES

Presentation

Senator Brandis to move on the next day of sitting:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 20 June 2005, from 4 pm, to take evidence for the committee’s inquiry into the Superannuation Bill 2005 and two related bills.

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

That the Senate—

(a) notes that 26 June 2005 marks the 60th anniversary of the signing of the United Nations Charter;

(b) acknowledges the vital role that the United Nations (UN) plays in promoting international peace and security, respect for human rights and economic, social and sustainable development;

(c) recognises the importance of working with the international community through the UN to address the many and varied challenges facing the world today;

(d) acknowledges that urgent reforms are required to ensure continued strength and effectiveness of the UN;

(e) calls on the Government to:
   (i) reaffirm its commitment to the UN,
   (ii) give careful consideration to the recommendations made by the High Level Panel on Threats, Challenges and Change in its report, A more secure world: our shared responsibility, and by the Secretary-General of the UN in his report, In Larger Freedom: towards development, security and human rights for all, and
   (iii) work constructively with other UN Member States to implement reforms which will ensure the continued viability and effectiveness of the UN in promoting development, security and human rights for all; and

(f) acknowledges the important role played by the United Nations Association of Australia in:
   (i) providing information about the UN to the Australian public, and
   (ii) facilitating consultation with young Australians through the United Nations Youth Association and by hosting model UN conferences for young people.

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

That the Senate—

(a) notes that the International Covenant on Civil and Political Rights applies to the treatment of Falun Gong practitioners worldwide;

(b) reaffirms its commitment to freedom of belief within Australia and recognises the freedom of Australians to practise Falun Gong without fear of harassment;

(c) expresses its concern regarding recent allegations that the Chinese Government is closely monitoring the activities of Falun Gong practitioners in Australia; and

(d) calls on the Government to thoroughly investigate those allegations.

Senator Heffernan to move on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold public meetings during the sitting of the Senate on Wednesday, 22 June 2005, to take evidence for the committee’s inquiries under standing order 25(2)(b):

(a) from 3.30 pm to 4.30 pm—administration by the Department of Agriculture, Fisheries and Forestry of the citrus canker outbreak; and
(b) from 4.30 pm to 5 pm—corporate governance issues arising from the committee’s report on Australian Wool Innovation Ltd and other matters.

Senator Ludwig to move on the next day of sitting:

That the Senate—

(a) notes, with sadness, the recent death of Mr Alex Freeleagus, the Honorary Consul General of Greece, who served in that role for 48 years in bettering relations between Australia and Greece, and who also served, with distinction, both the Greek community and the wider Australian community through his work on Expo 88 and the Olympic Games; and

(b) offers its condolences to his many friends and family.

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

That the following bill be introduced: A Bill for an Act to prohibit misleading or deceptive advertising or notification of pregnancy counselling services, and for related purposes. Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005.

Senator Brown to move on the next day of sitting:

That the Senate calls on the Government to bring Australia’s troops home from Iraq.

BUSINESS

Rearrangement

Senator Ellison (Western Australia—Manager of Government Business in the Senate) (9.32 am)—I move:

That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:

No. 9 Crimes Amendment Bill 2005
No. 10 Health Legislation Amendment (Australian Community Pharmacy Authority) Bill 2005
No. 11 Statute Law Revision Bill 2005
No. 12 Payment Systems (Regulation) Amendment Bill 2005
No. 13 Higher Education Legislation Amendment (2005 Measures No. 2) Bill 2005
No. 14 Primary Industries (Excise) Levies Amendment (Rice) Bill 2005
No. 15 Civil Aviation Amendment Bill 2005
Film Licensed Investment Company Bill 2005 and a related bill.

Question agreed to.

NOTICES

Postponement

The following items of business were postponed:

General business notice of motion no. 145 standing in the name of Senator Bartlett for today, proposing the introduction of the National Animal Welfare Bill 2005, postponed till 20 June 2005.

General business notice of motion no. 161 standing in the name of Senator Allison for today, relating to the Nuclear Non-proliferation Treaty Review, postponed till 20 June 2005.
PRIVILEGE

Senator GEORGE CAMPBELL (New South Wales) (9.33 am)—At the request of the Leader of the Opposition in the Senate, Senator Evans, I move:

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

Whether there have been any failures by Senator Lightfoot to comply with the Senate’s resolution of 17 March 1994 relating to registration of interests, and, if so, whether any contempt was committed in that regard.

Question agreed to.

MIGRATION AMENDMENT (ACT OF COMPASSION) BILL 2005
MIGRATION AMENDMENT (MANDATORY DETENTION) BILL 2005

First Reading

Senator NETTLE (New South Wales) (9.34 am)—I, and also on behalf of Senator Brown, move:

That the following bills be introduced: A Bill for an Act to provide for compassion for long-term detainees and others, and for related purposes; and A Bill for an Act to reform the mandatory detention system, and for related purposes.

Question agreed to.

Senator NETTLE (New South Wales) (9.34 am)—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 NETTLE (New South Wales) (9.34 am)—I move:

That this bill 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—

MIGRATION AMENDMENT (ACT OF COMPASSION) BILL 2005

This bill is designed to stop the cruelty that the Howard Government, and the Labor Government before it, created by legislating inflexible and draconian provisions into the Migration Act. The combination of draconian legislation and a harsh attitude, from the government and the Department, has led to inhumane treatment of asylum seekers. This treatment of asylum seekers is something that much of the Australian public, and more than a few courageous Government backbenchers, find repulsive.

The recent revelations about the unlawful detention and mistreatment of Australian permanent resident, Cornelia Rau; and the unlawful deportation of Australian citizen, Vivian Alvarez-Solon, have exposed the kind of mistreatment that asylum seekers in detention receive every day. The never-ending stream of bungles and scandals is indicative of an immigration system and bureaucracy that is out-of-control.

The Secretary of the Department, Mr Bill Farmer made a statement to the recent Senate Estimates committee in which he said:

“...We profoundly regret what has happened in some cases. We are intensely conscious that our day-to-day business affects people, affects their lives and it’s distressing and unacceptable that our actions have in respects fallen so short of what we would want and what we understand the Australian people expect. We are deeply sorry about that.”

Gerard Henderson of the Sydney Institute, usually a strong advocate for the Howard Government, writes that the Department of Immigration is “totally discredited.” He goes on to say that as the department is “completely deauthorised... all its existing decisions should be open to review by an independent source.” He suggests that these cases should be reviewed by someone not in need of “cultural change” that the Minister has admitted her Department needs. This bill provides the legislative framework for such an independent review.
This bill seeks to end the suffering of the innocent people currently detained in the immigration detention system. It seeks to institute independent review, by a current or former judge, of those people currently in detention, and allow the release of people who pose no risk to the community, nor pose a risk of absconding.

According to the latest figures provided by the Department of Immigration (25 February), 338 people have been in immigration detention for longer than one year. The longest serving detainee, Peter Qasim, is in his seventh year of detention.

Unfortunately, Mr Qasim is not an exceptional case. 82 people have been in immigration detention for over four years. 55 have been in detention for over three years but less than four. 61 people have been in detention for between two and three years, and 140 have been behind the razor wire for between one and two years.

Under the provisions of this bill, detainees who have been in immigration detention for over one year will have their case reviewed by a judicial assessor, with the aim of releasing all long-term detainees who do not meet exceptional criteria. That is, they will be released into the community so long as they are not judged to be at high risk of absconding, or of posing significant risk to the safety or welfare of the community.

I believe that virtually all long-term detainees should be released under this clause. Asylum seekers are looking for security, safety and permanent legal status. The last thing they want to do is abscond and be on the run from authorities, as this mirrors the conditions of insecurity from which they have fled. Most asylum seekers will not jeopardise their asylum application by absconding and the department should be able to institute reporting procedures that prevents and discourages absconding.

The second provision of this bill is to release all children and parents from immigration detention.

There are currently 63 children being held in immigration detention. The community outrage at the detention of three year old Naomi Leong, and other children is palpable.

The April 2004 report A Last Resort by the Human Rights and Equal Opportunity Commission recommended that children be released from immigration detention as it contravened Australia’s obligations under the Convention on the Rights of the Child. The Government has ignored the recommendations of this report and continues to violate the rights of children and fuel dissent within the Australian public by continuing to hold children in detention.

The Minister points to residential housing projects as a solution to the problem of children in detention. I have visited the residential housing project in Port Augusta, and it is simply a prison by another name. It is certainly not any kind of solution.

This bill provides a real solution to the problem of children in detention. It sets them free. Under the provisions of this bill most, if not all, children and their parents would be released from immigration detention.

Children and their parents will have their case reviewed by a judicial assessor, with the aim of releasing all long-term detainees who do not meet exceptional criteria—a high risk of absconding, or posing significant risk to the safety or welfare of the community.

I spoke earlier of Peter Qasim who has been held in detention for 2,472 days. He was initially locked up at age 24. He has spent most of his youth in detention, yet has committed nor been charged with any crime. He is being held because he is stateless. Although he is willing to return to India, from where he fled, India does not recognise him as a citizen. No third country is willing to take Mr Qasim. Under the current Migration Act, Mr Qasim could be held in immigration detention for the term of his natural life.

After so many years in detention Mr Qasim was recently moved to a psychiatric hospital for severe depression. Business man Mr Dick Smith said that Mr Qasim’s hospitalisation is “a shocking reflection on what we do to these people that they end up in a psychiatric hospital.”

This bill will free Mr Qasim and other stateless detainees. Under this bill any person, subject to an order for removal but who cannot be removed within three years must be given a visa to remain permanently in Australia unless there are exceptional character or other grounds. If there are such
grounds, the Minister must provide a written notice that sets out the decision and reasoning behind it. Such a decision could be appealed to the Administrative Appeals Tribunal.

Temporary protection visas were the dream of the xenophobic One Nation party and Pauline Hanson. Reacting to the idea of temporary protection in 1998, the former Minister for Immigration, Philip Ruddock, said:

“Can you imagine what temporary entry would mean for them? It would mean that people would never know whether they would be able to remain here. There would be uncertainty, particularly in terms of attention given to learning English, in addressing the torture and trauma so they healed from some of the tremendous physical and psychological wounds they have suffered. So I regard One Nation’s approach as being highly unconscionable in a way that most thinking people would clearly reject.”

Temporary protection visas are granted to people who are found to be genuine refugees in need of Australia’s protection, but arrived here irregularly. They restrict access to basic services and family reunion and last for a set length of time.

Refugees, by definition, have already gone through trauma or difficult circumstances and need safety and certainty to heal. Temporary protection visas deny the certainty necessary to heal. Studies have found that people on temporary protection visas often experience depression, despair and deep uncertainty.

Unfortunately, both major parties currently support temporary protection visas.

This bill would end the suffering and uncertainty of those currently on temporary protection visas by obliging the Minister to grant all those currently on a temporary protection visa a visa permitting them to remain in Australia permanently.

This bill provides both major parties an opportunity to do the right thing and grant all refugees currently languishing on temporary protection visas the certainty they need to heal and become full members of the Australian community.

I commend this bill to the Senate.

MIGRATION AMENDMENT (MANDATORY DETENTION) BILL 2005

This bill abolishes temporary protection visas; ensures the detention of children is a last resort; brings immigration detention under judicial review; and limits the time that most asylum seekers will be detained.

This bill reforms the immigration system to be more compassionate, sensible, humane and inline with international conventions.

Judi Moylan, a Government supporter of this bill and the Act of Compassion Bill, said in a recent interview that the two bills, “go to the heart of the preservation of human life and human dignity, and those matters include putting an end to indefinite detention, putting people in—locking people up for indefinite periods of time without any charges being laid. The other matter, serious matter that these bills address is the release of families with children from detention centres, and also, where we assess people as being genuine asylum seekers, genuine refugees, then they get temporary protection visas. We would like to see those converted to permanent residency, except in exceptional circumstances.”

Many thousands of Australians have been campaigning against the system of mandatory detention for many years. They have heard the horror stories from inside the detention centres. They have visited the people, damaged by long-term detention struggling to keep their mental health and losing all hope. They have been amazed that their government could lock up innocent children indefinitely behind the razor wire. They have been frustrated over the uncertainty and official discrimination temporary protection visa holders suffer. And they have been shocked by the incompetence and bureaucratic overzealousness with which the Department of Immigration, and the private companies that run the detention centres, treat asylum seekers and other people in the system.

The Prime Minister and the Minister for Immigration keep repeating the spurious claim that the policy of mandatory detention has been a success. It has not. They claim it was necessary for “border protection”. The truth is that asylum seekers
do not present any threat to our borders or our society.

Only around 4,000 asylum seekers arrived by boat during the peak of the arrivals. This number is dwarfed by our annual immigration intake, which is set at 120,000 in 2004/05. Most of the asylum seekers who arrived by boat have been found to be genuine refugees. Indeed, most people rescued by the infamous merchant vessel *Tampa* have been found to be genuine refugees and many are now living in the Australian community.

The boat people threat was a manufactured threat designed for the electoral advantage the Liberal Party during the 2001 federal election. In the name of this phantom threat the Government continues to justify the abuse of human rights and dignity that occurs in mandatory detention. The majority of Australians no longer support such harsh measures and the Greens and others believe it is time to end mandatory detention.

The Minister for Immigration, Amanda Vanstone, often makes the argument that it is necessary to keep asylum seekers, including children, in detention to deter people smugglers and stop more boat people coming to Australia.

To punish innocent people, including children, in order to deter others is unconscionable. Any policy that resorts to imprisoning children behind razor wire for years is utterly inhumane. It is a deeply flawed policy—not the success the Howard Government claims.

The scandal of the detention of Cornelia Rau and the deportation of Vivian Alvarez-Solon, has revealed to the Australian people, what psychiatric experts and refugee advocates have known for years. Mandatory detention is not only inhumane, it is damaging people’s health.

Justice Finn, in a recent Federal Court judgement found the Department of Immigration had breached its duty of care in relation to the mental health of detainees, and, in one instance, Justice Finn concluded that the Commonwealth was guilty of “culpable neglect”.

It is the opinion of many psychiatrists, that no matter what level of mental health care is provided in detention, it will not suffice because it is the detention environment itself that is the primary cause of mental illness. The Australian Medical Association recently advised its members that it was ‘unethical’ to work as a psychiatrist to work for, or be employed by a provider of immigration detention.

According to the Constitution, only the courts can order punitive detention. Immigration detention is intended to be for administration purposes only. However, the detention denies people their liberty and closely resembles criminal punishment. Much of Cornelia Rau’s time in detention was spent in a state prison. High Court Justice Michael Kirby, concluded in the *Behrouz* decision, that it would be constitutionally invalid to submit an alien to punishment without a judicial order. Many argue that the conditions of immigration detention amount to punishment.

This bill is a step in the right direction toward abolishing mandatory detention. It offers the substantive policy shift and reform for a more compassionate and humane immigration system.

The bill would ensure that children are kept in detention only as a last resort.

A large part of why the Department of Immigration is being rocked by scandals and is widely seen as being “out-of-control” is the fact that it operates without judicial review of its decision to detain people. While the police are required to get judicial authority to continue to detain a person after a set period of time—often only a few hours—the Department of Immigration does not require any approval from any outside authority.

This bill provides for judicial overview of immigration detention. A detainee may apply to the Federal Court for an order that they be released because there are no reasonable grounds to consider detention as necessary.

This bill also provides a limit to the length of detention, set at 90 days. After that period a detainee must be released unless the Department of Immigration applies for the continuation of detention for exceptional circumstances.
This bill also provides for the Federal Court to impose conditions of release on detainees to ensure that they make themselves available for assessment and removal. A system similar to the bail mechanism in the criminal justice system is a far more compassionate and cost effective way of dealing with asylum seekers than mandatory detention. The risk of asylum seekers absconding is very low. Asylum seekers have a significant amount invested in the determination process and it is in their interest to remain lawful and adhere to any conditions set by the Department of Immigration or Federal Court.

The Australian Greens believe mandatory detention should be ended so we can return to a system of assessing asylum claims while applicants live in the community. These bills do not go that far but they are a big step in the right direction.

Mandatory Detention is an ethical concern. The Australian Greens urge all parliamentarians who are concerned about justice, human rights and ethics to support this bill.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BURMA

Senator STOTT DESPOJA (South Australia) (9.35 am)—by leave—I move the motion as amended:

That the Senate—

(a) notes that:

(i) 19 June 2005 is Daw Aung San Suu Kyi’s 60th birthday and that she will once again spend her birthday under house arrest, and

(ii) at the time of her birthday, Aung San Suu Kyi will have spent approximately 10 of the past 16 years, or a total of 2523 days, in detention;

(b) expresses its deep concern at recent reports that the Burmese military is forcibly displacing civilians in the Shan state by burning down entire villages and executing, torturing and raping civilians;

(c) strongly condemns the Burmese military’s recruitment of up to 70 000 child soldiers, which is more than any other nation in the world; and

(d) calls on the Government to:

(i) repeat its calls for the release of Aung San Suu Kyi, her deputy U Tin Oo, and all remaining political prisoners,

(ii) make representations to members of the United Nations Security Council, calling on the Council to pass a strong resolution addressing the need for urgent democratic reform and greater protection for human rights in Burma, and

(iii) join other nations around the world in making clear that, before assuming any position of regional or international leadership, Burma must first bring about fundamental reform of its political processes, in addition to the immediate and unconditional release of Aung San Suu Kyi.

Question agreed to.

INTELLIGENCE SERVICES
LEGISLATION AMENDMENT BILL 2005

First Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.36 am)—I move:

That the following bill be introduced: A Bill for an Act to amend laws relating to intelligence, and for related purposes.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.36 am)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.36 am)—I move:

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

Question agreed to.

Bill read a first time.
I table the explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

INTELLIGENCE SERVICES LEGISLATION AMENDMENT BILL 2005

The Intelligence Services Legislation Amendment Bill 2005 will assist in strengthening the contribution of sound intelligence to government decision making and operations. Effective intelligence arrangements, underpinned by sound accountability mechanisms, are fundamental to a range of key national priorities including countering terrorism, reducing the threat of weapons of mass destruction proliferation, supporting Defence Force operations, and protecting Australian sovereignty.

This bill will implement the legislative recommendations made by Mr Philip Flood AO in his report last year on the Inquiry into Australian Intelligence Agencies. It will also put in place a range of amendments to intelligence-related legislation which were identified as a result of the Government’s review of the operation of the Intelligence Services Act 2001 (‘the ISA’) since that legislation came into force in October 2001. This review was recommended by the former Inspector-General of Intelligence and Security (IGIS), and was coordinated by the Department of the Prime Minister and Cabinet.

The ISA established legislative bases for the Australian Secret Intelligence Service (ASIS) and the activities of the Defence Signals Directorate (DSD).

The Government announced in July last year that it had accepted all of the recommendations of the Flood Inquiry, with the exception of the proposal to change the name of the Office of National Assessments (ONA). This bill will implement all of the legislative recommendations from that Inquiry:

1. “The mandate of the Parliamentary Joint Committee on ASIO, ASIS and DSD (PJCAAD) should be extended to all of Australia’s intelligence agencies—that is, it should cover also ONA, DIO and DIGO on the same basis as it at present covers ASIO, ASIS and DSD. The parliament may consider renaming the committee as the Parliamentary Joint Committee on Intelligence and Security (PJCIS).”

2. “The functions and ministerial accountabilities of DIGO should be formalised in legislation by amendments to the Intelligence Services Act 2001. Similarly, the Inspector-General of Intelligence and Security Act 1986 should be amended to include scrutiny of DIGO on a basis comparable with that which applies to DSD and ASIS.”

3. “The mandate of the Inspector-General of Intelligence and Security should be extended to allow IGIS to initiate inquiries at his or her own discretion into matters relating to ONA and DIO without ministerial referral, consistent with IGIS jurisdiction in respect of ASIO, ASIS and DSD. The Inspector-General should also conduct a periodic review of ONA’s statutory independence.”

4. “The Office of National Assessments Act 1977 (‘the ONA Act’) should be amended to remove the references to two assessments board—the National Assessments Board and the Economic Assessments Board—to reflect the reality that there is only one National Assessments Board which covers strategic, political and economic issues, but with provision for different composition according to subject matter. This Act should also be amended to strengthen ONA’s community coordination role in section 5(1)(d).”

The provision of a legislative basis for the activities of the Defence Imagery and Geospatial Organisation (DIGO) will be a major outcome of this bill. DIGO is an agency of the Department of Defence, established in November 2000. While DIGO is a relatively new organisation, Australia’s involvement in imagery intelligence and topography is not new. These activities have been an integral part of Australia’s defence for many years. DIGO was created within Defence to better realise increasing synergies in the exploitation of imagery and other data to produce intelligence and geospatial information. Like ASIS and DSD,
DIGO has a foreign intelligence focus, however its role is not limited to that. The bill sets out the five functional categories of DIGO’s work.

Under its first function, DIGO obtains imagery and geospatial data to produce intelligence relating to people or organisations outside Australia.

Under its second function, DIGO obtains imagery and geospatial data to support ADF exercises, training and operations wherever they may occur. This function includes providing data and material in support of ADF decision making for targeting.

Under its third function, DIGO obtains imagery and geospatial data to support Commonwealth and State authorities in their national security role.

Under its fourth function, DIGO communicates the material produced as a result of the exercise of the functions described above, in accordance with the requirements of the Government.

Under its fifth function, DIGO provides non-intelligence products and assistance to Commonwealth and State government agencies, as well as to approved non-government bodies and foreign governments. Non-intelligence products include routine topographic data and products. Assistance in search and rescue and response to natural disasters is specifically included in this function to acknowledge the important non-intelligence work done by DIGO in this area.

The review of the ISA’s operation was prompted by the former IGIS’s advice that this Act’s application had shown some refinement was needed. In addition, increased public interest in the activities of intelligence agencies and the ability of some agencies to impede the privacy of Australians warranted an examination and fine-tuning of accountability mechanisms at a level of detail that was not possible during the time available to the Flood Inquiry. Mr Flood was aware of plans for this subsequent review.

In August 2004, the Honourable David Jull MP, on behalf of the PJCAAD which he chairs, proposed to the Government that it consider a number of changes to that committee. These proposals included an increase in the size of the committee and other adjustments to help the PJCAAD respond to its increasing workload. The Government agreed that these proposals would be considered in the context of the review of the ISA. The Government has agreed in response to the review that the committee’s membership will be increased from seven to nine. A position of Deputy Chair will also be established, and the committee be empowered to establish subcommittees when required. In keeping with current arrangements, the Committee will not have a mandate to review the content or conclusions of assessments or reports made by DIO or ONA, or review the sources of information on which such assessments or reports are based. The Committee will not have a mandate to review the coordination and evaluation activities undertaken by ONA.

Other significant amendments resulting from the ISA review include clarification of the roles and functions, and ministerial authorisation regimes for intelligence collection by ASIS and DSD, that are set out in that Act. Another significant change will be adjustments to the ministerial authorisation regime to allow, where there is a need for emergency collection and the responsible Minister for an agency is not readily contactable or available, a Minister responsible for a different intelligence agency to authorise intelligence collection activities. These other ministers will be the Prime Minister, the Minister for Defence, the Minister for Foreign Affairs and the Attorney-General. A further change will give new authority to ASIS, DIGO and DSD to communicate incidentally obtained intelligence in defined circumstances.

The bill also proposes a common definition of ‘staff member’ for the intelligence collection agencies, that clarifies the status of consultants or contractors, or persons made available to work with an agency by another Commonwealth or State authority.

Other changes include a provision which expressly provides for IGIS to consult with the Commonwealth Ombudsman to avoid a duplication of effort. A similar provision currently exists in the IGIS Act in respect of the Auditor-General.

Another provision will establish a clear right for IGIS, as part of monitoring ASIO’s activities, to access any place being used to detain a person under a warrant issued for the purposes of ques-
tioning in accordance with Division 3 of Part III of the ASIO Act.

Other amendments concern an IGIS inquiry which directly concerns the head of an agency. These changes will allow IGIS the option of advising the Secretary of the Department of Defence, in relation to the Defence intelligence agencies, or the relevant Minister in the case of the other intelligence agencies, of an inquiry and to use these channels to consult on a draft inquiry report.

A further change will enhance accountability arrangements for any use by the Director-General of Security of his power under section 29 of the ASIO Act to authorise intelligence collection for up to 48 hours in advance of ministerial authorisation. This amendment will require IGIS to be advised within three working days of each case where this authority is exercised. A similar change will be made to the similar authorities of the Director-General of Security under the Telecommunications (Interception) Act 1979.

The bill also includes amendments intended to achieve consistent treatment of the intelligence agencies under the Freedom of Information Act.

I commend the bill to honourable senators.

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

COMMITTEES
Rural and Regional Affairs and Transport Legislation Committee
Reference

Senator GEORGE CAMPBELL (New South Wales) (9.37 am)—I move:

That the following matter be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 9 August 2005:

The regulatory framework to be implemented and enforced by the Department of Transport and Regional Services under the Maritime Transport Security Amendment Act 2005, having regard to:

(a) whether the regulatory framework to be implemented adequately protects privacy interests;
(b) the appropriateness of the cost recovery model in respect to such an important area of national security;
(c) the adequacy of law enforcement mechanisms available to enforce the regulatory scheme;
(d) the adequacy of oversight and compliance inspection mechanisms;
(e) the adequacy of existing security checks for foreign seafarers;
(f) the fair operation of security checks with respect to existing employees; and
(g) the adequacy of consultation mechanisms in respect to the regulatory framework.

Question agreed to.

Finance and Public Administration References Committee
Extension of Time

Senator GEORGE CAMPBELL (New South Wales) (9.38 am)—At the request of Senator Forshaw, I move:

That the time for the presentation of the report of the Finance and Public Administration References Committee on government advertising be extended to 10 November 2005.

Question agreed to.

Finance and Public Administration References Committee
Meeting

Senator GEORGE CAMPBELL (New South Wales) (9.38 am)—At the request of Senator Forshaw, I move:

That the Finance and Public Administration References Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 23 June 2005, from 4 pm, to take evidence for the committee’s inquiry into the Regional Partnerships program.

Question agreed to.
ASIO, ASIS and DSD Committee
Reference
Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.38 am)—At the request of Senator Hill, I move:

That the Intelligence Services Legislation Amendment Bill 2005 be referred to the Parliamentary Joint Committee on ASIO, ASIS and DSD for comment and report to the Minister for Defence.

Question agreed to.

National Capital and External Territories Committee
Meeting
Senator FERRIS (South Australia) (9.38 am)—At the request of Senator Lightfoot, I move:

That the Joint Standing Committee on the National Capital and External Territories be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Thursday, 16 June 2005, from 11 am to 1 pm, in relation to its inquiry on the Antarctic territories.

Question agreed to.

Foreign Affairs, Defence and Trade References Committee
Reference
Senator BROWN (Tasmania) (9.39 am)—by leave—I, and also on behalf of Senator Ludwig and Senator Stott Despoja, move the motion as amended:

That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 9 August 2005:

(a) the responses of the Department of Immigration and Multicultural and Indigenous Affairs, the Department of Foreign Affairs and Trade and the Attorney-General’s Department and their respective ministers to Chen Yonglin’s approaches or requests to the Australian Government for asylum and/or a protection visa;

(b) the application of the Migration Act 1958, its regulations and guidelines concerning the maintenance of confidentiality for any consular officials or staff (including Mr Chen Yonglin, and any other former consular officials or staff) who were applicants for territorial asylum and/or protection visa by the Department of Immigration and Multicultural and Indigenous Affairs and the Department of Foreign Affairs and Trade and their respective ministers;

(c) the involvement of the Department of Foreign Affairs and Trade and the Minister in the deportation, search for and discovery of Vivian Solon; and

(d) any related matters.

Question put.

The Senate divided. [9.45 am]
(The President—Senator the Hon. Paul Calvert)

Ayes…………… 35
Noes…………… 29
Majority……… 6

AYES


NOES


AYES

Barnett, G. Brandis, G.H.
Calvert, P.H.
Chapman, H.G.P.
Ferguson, A.B.
Fierravanti-Wells, C.
Heffernan, W.
Kemp, C.R.
Lightfoot, P.R.
McGauran, J.J.J.
Santoro, S.
Tchen, T.
Watson, J.O.W.
Campbell, I.G.
Colbeck, R.
Ellison, C.M.
Fifield, M.P.
Johnston, D.
Knowles, S.C.
Macdonald, I.
Patterson, K.C.
Scullion, N.G.
Troeth, J.M.

PAIRS
Cook, P.F.S.
Evans, C.V.
Mackay, S.M.
Sherry, N.J.
Wong, P.
Minchin, N.H.
Humphries, G.
Payne, M.A.
Vanstone, A.E.
Coonan, H.L.

* denotes teller

Question agreed to.

NOTICES
Withdrawal
Senator Ludwig (Queensland) (9.48 am)—At the request of Senator George Campbell, as a matter of technicality, I am required to withdraw business of the Senate notice of motion No. 6 standing in the name of Senator George Campbell.

AUSTRALIAN LAW REFORM COMMISSION
Senator Ludwig (Queensland) (9.48 am)—I move:
That the Senate—
(a) congratulates the Australian Law Reform Commission on reaching its 30th anniversary;
(b) notes that for the past 30 years the commission has provided invaluable assistance to the Parliament by conducting inquiries on matters of law reform; and
(c) notes that the commission’s establishment was a policy of great foresight by the Whitlam Labor Government.

Question agreed to.

REMUNERATION TRIBUNAL DETERMINATION
Motion for Disapproval
Senator Brown (Tasmania) (9.49 am)—I move:
That Determination 2005/07: Principal Executive Office (PEO) Classification Structure and Terms and Conditions, Table 1, PEO Band A reference salary A, and related details, made pursuant to subsections 5(2A), 7(3D) and 7(4) of the Remuneration Tribunal Act 1973, be disapproved.

Question put.
The Senate divided. [9.54 am]
(The President—Senator the Hon. Paul Calvert)

Ayes............ 6
Noes............ 42
Majority........ 36

AYES
Allison, L.F.
Brown, B.J.
Nettle, K.*

NOES
Bishop, T.M.
Brandis, G.H.
Calvert, P.H.
Carr, K.I.
Colbeck, R.
Conroy, S.M.
Eggleston, A.
Faulkner, J.P.
Ferris, J.M.*
Fifield, M.P.
Hogg, J.J.
Kirk, L.
Lightfoot, P.R.
Lundy, K.A.
Marshall, G.
McGauran, J.J.J.
Moore, C.
Ray, R.F.
Scullion, N.G.
Stephens, U.
Troeth, J.M.

Bartlett, A.J.J.
Greig, B.
Stott Despoja, N.
Bolkus, N.
Buckland, G.
Campbell, G.
Chapman, H.G.P.
Collins, J.M.A.
Ferguson, A.B.
Fierravanti-Wells, C.
Heffernan, W.
Kemp, C.R.
Knowles, S.C.
Ludwig, J.W.
Macdonald, J.A.L.
Mason, B.J.
McLucas, J.E.
Patterson, K.C.
Santoro, S.
Sherry, N.J.
Tchen, T.
Watson, J.O.W.

* denotes teller
Question negatived.

NUCLEAR WASTE STORAGE

Senator Nettle (New South Wales) (9.58 am)—I move:

That the Senate—

(a) notes the opposition to a nuclear waste dump in the Northern Territory by the Greens, Australian Democrats, Australian Labor Party and Country Liberal Party; and

(b) calls on the Government to guarantee that a nuclear waste dump will not be placed in the Northern Territory.

Question agreed to.

Senator Brown—Mr President, can I have it noted that the government voted no to that motion?

The President—It is noted.

NOTICES

Postponement

Senator Bartlett (Queensland) (9.58 am)—by leave—I move:

That business of the Senate notice of motion no. 1 standing in my name for today, proposing the reference of a matter to the Legal and Constitutional References Committee, be postponed till the next day of sitting.

Question agreed to.

WORLD REFUGEE DAY

Senator Nettle (New South Wales) (9.59 am)—I move:

That the Senate—

(a) notes that:

(i) 20 June 2005 is World Refugee Day of which the theme for 2005 is a ‘celebration of courage’—a salute to the courage of the world’s refugees, not just in enduring the persecution, but also in the courage they show in rebuilding their lives and contributing to society in difficult or unfamiliar circumstances,

(ii) Australia has failed many of the courageous asylum seekers who have sought protection here, and

(iii) thousands of Australians will mark World Refugee Day by protesting against mandatory detention and for a compassionate approach to asylum seekers;

(b) condemns the Government’s treatment of asylum seekers in areas including:

(i) the indefinite detention of asylum seekers in conditions so harsh and without hope that it causes mental illness in many long-term detainees,

(ii) the inadequacy of placing certain asylum seekers found to be refugees on ongoing Temporary Protection Visas that deny rights and services associated with permanent protection,

(iii) the continuation of the ‘Pacific Solution’, where asylum seekers have languished on Nauru for almost 4 years, and

(iv) the forced deportation of asylum seekers, often into danger, to the country they have fled; and

(c) calls on the Government to:

(i) end mandatory, non-reviewable detention of asylum seekers in Australia and on Nauru,

(ii) initiate a royal commission into the conditions in immigration detention and the wrongful detention of Australians and lawful visa holders, and

(iii) sack the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) and the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs for the serious and chronic failures of that department.

Question agreed to.

BUSINESS

Rearrangement

Senator Ellison (Western Australia—Manager of Government Business in the
That—

(1) On Thursday, 16 June 2005:
(a) the hours of meeting shall be 9.30 am to 6.30 pm, and 7.30 pm to 11.40 pm;
(b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) not be proceeded with;
(c) the routine of business from not later than 4.30 pm shall be government business only;
(d) divisions may take place after 4.30 pm; and
(e) the question for the adjournment of the Senate shall be proposed at 11 pm.

(2) On Monday, 20 June 2005:
(a) the hours of meeting shall be 12.30 pm to 6.30 pm, and 7.30 pm to 11.40 pm; and
(b) the question for the adjournment of the Senate shall be proposed at 11 pm.

(3) On Tuesday, 21 June 2005:
(a) the hours of meeting shall be 12.30 pm to 11.40 pm;
(b) at approximately 3.30 pm, Senator Cook may make a valedictory statement for not longer than 20 minutes;
(c) the routine of business from 6 pm to 11 pm shall be valedictory statements; and
(d) the question for the adjournment of the Senate shall be proposed at 11 pm.

(4) On Wednesday, 22 June 2005, the routine of business from 9.30 am till not later than 2 pm and from not later than 4 pm till not later than 6.50 pm shall be valedictory statements.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (10.00 am)—by leave—Just by way of explanation, I think it is helpful to put this on the record. This motion has been moved because people are going to engage in valedictory speeches on Wednesday and we do not know how long that will take. The objective is to ensure that we have question time, motions to take note of answers and then time for legislation and government business if needed. We can then allow the program to be moved to accord with that and then go back to a predominantly normal Wednesday, as the case will allow. I think senators need to understand that. Of course, in the last week of sitting, we need to ensure that there is sufficient flexibility in the system to ensure that people can make their contributions, but we must also ensure that the legislative program can be dealt with and we do not allow ourselves to be too fixed.

Question agreed to.

NOTICES

Postponement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.02 am)—I move:

That government business notice of motion no. 4 standing in my name for today, relating to the approval of works proposed in the Parliamentary Zone, be postponed till the next day of sitting.

Question agreed to.

(Quorum formed)

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Report

Senator GEORGE CAMPBELL (New South Wales) (10.05 am)—At the request of Senator Hutchins, I present the report of the Senate Foreign Affairs, Defence and Trade References Committee on the effectiveness of Australia’s military justice system, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.
Senator HUTCHINS (New South Wales) (10.05 am)—I seek leave to move a motion in relation to the report.

Leave granted.

Senator HUTCHINS—I move:

That the Senate take note of the report.

On 30 October 2003 the Senate referred to the Senate Foreign Affairs, Defence and Trade References Committee an inquiry into the effectiveness of the military justice system. Seventy-one public submissions, 63 confidential submissions, 11 public hearings and seven confidential hearings across Australia later, we have reached some stark conclusions about the limits of justice afforded to members of the ADF. We heard from witnesses ranging in rank from cadets and recruits to the CDF and every rank in between. One of those witnesses, General Cosgrove, said:

... the control of the exercise of discipline, through the military justice system, is an essential element of the chain of command ...

The committee agree, but we part ways where General Cosgrove feels he can have ‘every confidence that, on the whole, the military justice system is effective and serves the interests of the nation, the Defence Force and its people’. The committee cannot share this assessment. The sheer volume of the evidence this inquiry has heard leads us in the other direction. Our military justice system is failing the members that it should be protecting. In short, the system is broke and needs fixing. On both sides of politics we have lost faith in the ability of the ADF to appropriately investigate serious incidents, discipline its members through a just process and maintain a necessary level of independence. Over the last few years the ADF has provided Australia with an exceptional service and dedication to duty. Now, in reforming the military justice system, it is time to repay that debt. The service men and women of Australia deserve the military justice system that this report recommends.

One of the greatest disappointments for the committee has been that time and time again, in inquiry after inquiry and report after report, the ADF has remained obstinate in the face of gaping shortcomings in the military justice system. The ADF has simply squibbed the chance for change. We have had nearly a decade of rolling inquiries on the one hand and only inertia from defence on the other. This report draws a line in the sand. Unlike its predecessors, it cannot be discounted as referring to an isolated incident or a series of discrete events. Its evidence is too persuasive and its recommendations are too strong for that. What is more, our soldiers, sailors and airmen deserve better.

The committee has been compelled by the evidence of bereaved families. Defence has been dragging the chain for far too long. There was the 1997 Abadee study into the legal basis of the military justice system. There was the 1998 Ombudsman’s own motion investigation into the ADF’s poor handling of serious incidents. There have been previous joint committee inquiries on brutality in the Parachute Battalion and selected justice procedures. In 2001 there was an inquiry by Burchett QC into military justice. At every stage, defence has blundered, obfuscated, frustrated, blurred and denied its responsibility for the shortcomings that each and every one of these reports has found.

At the same time, the PR effort has been unmatched, with up to 30 uniformed and civilian personnel shadowing the committee’s recent inquiry. I note that they were called the ‘tiger team’. Defence got off to a bad start with the leaking of the now infamous Hogan email. That email instructed members of the tiger team to place ‘internal working documents’ at every page relating to
correspondence with our inquiry. The purpose of this move was to stop any adverse information being subject to freedom of information requests. I could not help but think at the time that defence must have had something to hide. What became immediately obvious was just how serious the last decade of stalling has been. The result has been a mishmash of half-measures and overlapping agencies, all with their own glossy brochures. One could easily lose track of where a particular matter should go or where the next level of appeal is. Even Army News, which, along with the other service papers, has been following the inquiry with some interest, needed to publish a story with the subheading: ‘It might seem complex, but the Military Justice System is relatively straightforward’. I can only presume to know what ‘relatively’ means.

However, all these initiatives remain squarely within the ADF’s chain of command. Time and time again in evidence to the committee, bias and perceptions of bias became the reasons why both the disciplinary and administrative systems were seen to be failing. In many cases levels of appeal are located immediately within a defence member’s chain of command at their base. In addition, the Director of Military Prosecutions has expressed significant concern that his office is underresourced and its independence is not protected by legislation. An audit of the 1st Military Police Battalion found that not only is it underresourced but its staff are often without adequate training or direction regarding their investigation work. Is it any wonder that ADF members feel suspicious at best about statements that the system is working in their best interests?

The committee have made the hard decision to recommend that service discipline investigations, when they relate to criminal matters, should be handled by civilian police, who are for the most part a few kilometres beyond the barracks gates. On operations and for military related offences, the service police will still take charge. But, from the evidence the committee have heard, we cannot trust the service police to investigate what are simple and ordinary criminal matters. In some cases, investigations have lasted for several years, with a poor quality of investigation throughout. Often there is a lack of independence in pursuing matters and even less so in the decision to prosecute.

The most striking example of this is a former SAS soldier who was investigated in secret for nearly two years due to spurious allegations of war crimes. He found out that he was being investigated only on the day that he was charged. He had to endure the rumour mill, the slur and innuendo, whilst performing his already difficult duties. Even the top brass jumped on the bandwagon, rolling out the media releases to demonstrate how they were cracking down on brutality and ill discipline. However, those sound bites cannot describe the woeful inadequacy of the investigation. Poor evidence collection, inept handling of witnesses, inordinate delay and dubious use of forensic evidence culminated in the trial being abandoned and adverse administrative action being taken instead. It is an all too common example of: ‘If the discipline system doesn’t get you, the administrative system will.’ The SAS soldier’s case finished with a public apology by the CDF to the soldier concerned. It is difficult to believe that even after that incident the ADF still feels that the system is sound.

The government has stalled on legislation that will provide independence to the Director of Military Prosecutions, or DMP. Despite promising and promising, no legislation has been forthcoming from the government to give real independence to prosecution decisions. Whilst the workload of that office has increased enormously, its resources and independence have not been guaranteed. The
DMP is still within the chain of command. Problems continue with the administrative investigations and inquiries that defence must undertake into serious incidents, such as boards of inquiry, the redress of grievance and the review of command decisions. Again, we have heard that untrained investigators, poor investigation, delay and a lack of independence and impartiality all contribute to a loss of faith in the system. One witness who had been through the strain of pursuing a complaint understood how a person’s resolve could be worn down by stress and subtle pressure and how he or she would give up as a result of having been delayed to death by the military justice system. Another witness who had experienced obstruction, lack of information and confusion about the procedure surmised:

Imagine an ordinary soldier: most of these kids cannot handle all this kind of stuff ... The diggers are just overwhelmed by this.

Many of those subject to allegations have endured long periods of uncertainty and anxiety. One witness has yet to be formally advised of the outcome of a four-year investigation. In his mind, the delay clearly rests with the Army, which he says:

... has at great time and expense afforded itself every opportunity to bring a case against me. It has had lawyers repeatedly review decisions and has employed a dysfunctional process that contravenes the fundamental human rights of justice delayed is justice denied.

The committee found that missing or misplaced documentation, poor record keeping, the withholding of information, conflicts of interest, lack of support in processing a complaint, and investigating officers who lacked the necessary skills, experience or training to conduct a competent inquiry all contributed to unnecessary delays.

What is even more concerning is that for many serious incidents a decision was made not to hold a board of inquiry. These incidents included: systematic brutality and harassment in at least two training schools; several suicides and breakdown of morale; two cadet incidents involving female minors, including the tragic suicide of Cadet Sergeant Eleanore Tibble; and major drug problems in a unit. All those incidents occurred after a massively publicised ADF-wide stand-down on 5 February 2001 by Admiral Barrie. Despite having been told by the then CDF that the behaviour mentioned above was unacceptable, a few months later, suicides were occurring.

The PRESIDENT—Order! Senator, your time has expired.

Senator HUTCHINS—Mr President, I have 15 minutes.

The PRESIDENT—I am sorry, but the standing orders say 10 minutes. I was not informed that anything else had been agreed to. I can only go on the standing orders.

Senator HUTCHINS—(Extension of time granted) Why were the suicides occurring? Because the brutality and bullying had not stopped. It is clear that there is a wider disciplinary and cultural problem inside defence. Those bad apples are not being weeded out and dealt with. At the same time, ordinary hardworking soldiers and defence personnel are getting caught in a system which does not guarantee basic rights and does not give them an adequate means of redress. It is not a question of more rights or more cracking down: we demand that the ADF simply ensures that the rights of all its members are respected.

The sheer weight of this report, at more than 300 pages, defies any suggestion that these incidents are isolated matters. This reflects a systematic breakdown of both the administrative and discipline arms of the military justice system. The committee’s reforms make the case for independence. They now set the bar for defence to match. The
committee proposes that a statutory independent board called the ADF administrative review board have oversight of all administrative complaint matters. If these matters cannot be resolved internally within defence then the board would have an appropriate team to investigate complaints and a process of redress. If the chair thinks a more formal inquiry is required then they can refer matters on to the Administrative Appeals Tribunal—a body with an impeccable reputation.

Recommendations have also been made to increase independence and fairness in the investigation and prosecution of service offences. By allowing service police to concentrate on their job in the field, not only will the quality of investigations be improved but the MPs can get on with their core business. In the same way, with an independent DMP ADF members will be assured that prosecution decisions will be made in a fairer manner. Moreover, the committee also recommends the establishment of a permanent military court to replace ad hoc and inadequate courts martial and Defence Force Magistrate trials.

The committee have balanced these recommendations in light of the special demands placed on members of the ADF, especially those serving on operations. We remain firm in our conviction that the service men and women who fight for our ideals should not be denied them by virtue of their service. They deserve the rights and respect which the military justice system has denied them for too long.

I would like to thank, in the first instance, Saxon Patience and her successor at the secretariat, Dr Kathleen Dermody, as well as the staff: Ann Flynn, Peta Leemen, Jessica Shaw, Jenene James, Pam Corrigan and Angela Lancsar. Without all their work, this report would not have been possible. The CDF—General Peter Cosgrove—and the three service chiefs all deserve my thanks for participating in what was no doubt a difficult inquiry for them. No-one likes to have their processes put under the glare of the media spotlight. Throughout that time, they kept a constructive approach and no doubt recognised in their own way the very important reforms that needed to take place. I am heartened by their comments. We look towards the committee exercising some degree of oversight of this in the future.

Finally, the numerous witnesses—the ordinary ADF personnel, family members and high-ranking officers—who made submissions to the committee deserve our thanks. They and their families are on the front lines in an ever uncertain world. I can only offer solemn hope that this bipartisan report offers some comfort to those families who have lost their serving members through suicide or accident and have found the subsequent inquest not deserving of their relation’s memory. It is my sincere hope that such incidents never happen again. It is for all those families that these recommendations must be adopted.

The PRESIDENT—I thought there may have been some informal arrangements made about the time for speeches, but perhaps that is not case.

Senator Chris Evans—Mr President, there were.

The PRESIDENT—According to Senator Bartlett, there were not. As it is not the wish of the Senate that we adhere to the informal arrangements that were made by some senators, we will stick to the standing orders, which is 10 minutes.

Senator SANDY MACDONALD (New South Wales) (10.21 am)—The report of the Senate Foreign Affairs, Defence and Trade References Committee is a comprehensive report which deals with our existing military justice system—both the disciplinary system
and the administrative system. Defence is a large and mostly highly effective organisation employing around 70,000 Australians in uniform and many thousands in support. Wives, husbands and children of serving personnel also play a unique role in support of the ADF. It is an organisation charged with the most fundamental of tasks: the defence of our country. It defends the air-sea gap surrounding the Australian mainland, help secure our regional neighbourhood, stand ready for civilian assistance both at home and abroad, join international efforts to serve world peace and also deal with many other contingencies. It is an organisation spread across our country, with large blocks of real estate and disparate operations.

The men and women who make up the ADF understand their unique role and the special pressures that are placed on them. In the main, they understand the difficulty of an effective disciplinary administrative system for such a large and diverse organisation charged with such an important job. However, many understand the considerable shortcomings as well. The report highlights the shortcomings and ineffectiveness of the present system. It is not that the decision makers in the ADF are unaware of the problems; it is just that, despite considerable effort from them and considerable effort from the parliament over the last 10 years or so, as identified by Senator Hutchins, the weaknesses remain.

It has become increasingly apparent to the committee that the disciplinary system is not striking the right balance between the needs of a functional Defence Force and the service members’ rights. Both suffer accordingly. In the broad, it is simple to understand why. You have an organisation that must be trained and prepared to win wars but, at the same time, must be a sympathetic employer which sometimes has to apply discipline to its work force which may be unacceptable in a workplace elsewhere. The committee believes it is time to consider another approach to military justice. It considers that all criminal activities should be referred to civilian authorities for investigation and prosecution. It also considers that the creation of a well-resourced statutory independent director of military prosecutions is a vital element of an impartial and fair military justice system.

The committee considers that the establishment of an independent permanent military court, staffed by independently appointed judges possessing wide civilian experience, would extend and protect service members’ rights, leading to more impartial and fairer outcomes. The committee also recommends that reform is also needed to give greater independence and impartiality in summary proceedings. Summary proceedings affect the highest proportion of military personnel. The committee heard that the disciplinary process has important consequences for the mental health and wellbeing of service members and their families. The committee was very moved by many of the experiences brought before it by way of submission and in person. The terms of the inquiry and the very nature of some complaints make it impossible for the committee to address the heartache expressed in some of the submissions, but I hope that those families will gain some relief from the extensive nature and subsequent recommendations of the report.

The committee also identified serious problems with the administrative component of the military justice system. The committee has made a number of recommendations in this area. The key one is designed to establish an independent grievance and complaint review body. This initiative is intended to remove from the system the main problems that undermine its integrity and credibility at present. The committee hopes that it will encourage ADF personnel to report wrong-
doing or to make a complaint. It will enable those who feel unable to pursue a matter through the chain of command to seek redress through an independent and impartial body. The independent review body will take on an important oversight role to ensure that investigators are better trained, that inquiries preserve the principles of procedural fairness and that delays can be minimised. It will make the position of those persons caught up in the military justice system more comparable with the rest of the Australian community, and I think we should expect that.

The recommendations of the committee are designed to put the ADF community in reach of a justice system that is vigorous, impartial and directed to fair outcomes and also to ensure that the transparency of the justice system is apparent to all. I would like to acknowledge the considerable effort that the ADF made in cooperating with the committee. They are good people, in the main, and they are determined to improve the system. But problems are sometimes so overwhelming that the participants do not know where to start. That was often the case when problems were identified. It was not because of a lack of goodwill from the ADF; rather, it was an inability to respond because the system itself was in need of a complete overhaul.

This inquiry was a mammoth effort. The staff on the committee should be given an enormous pat on the back for the consistency of their effort and for the report. The inquiry has extended over nearly two years. I would like to personally thank all the members of the secretariat who worked so hard on the report. It was headed by Dr Kathleen Dermody, who has been the secretary since November. I also thank the other members of the secretariat who played an extraordinarily large part in this: Ms Jessica Shaw, who did a great job; Peta Leemen; Pam Corrigan; Jenene James; Angela Lancsar; and also Saxon Patience, who was the acting secretary until November 2004. She, like Dr Dermody, brought an intellectual rigour to this report that was quite extraordinary.

I also thank my fellow senators on the committee—Senator Hutchins, Senator Evans and Senator Johnston. I would particularly like to thank Senator Payne, who cannot be here today because her mother is ill. Senator Payne’s contribution to this report was considerable. She has a special interest in the wellbeing of the people who serve in the ADF; and she brought her very considerable legal knowledge and intellectual horsepower to this report. I do not think the report would have had the same weight of importance if she had not been on the committee. The committee should thank her and other members of the committee for a job well done. I commend the report to the Senate and I look forward to the government’s response.

Senator BARTLETT (Queensland) (10.28 am)—I would also like to speak to the report of the Senate Foreign Affairs, Defence and Trade References Committee on the effectiveness of the military justice system. It is an important report, and for that reason it is pleasing and appropriate that so many people wish to speak to it. I also add my congratulations to the secretariat for the work they did and to the other senators—some of whom have just been mentioned—who put a lot of work into the inquiry. It is an area that is very important and it is one that I followed as closely as possible as well. I was not able to put in as much work as many of the other senators, simply because, as a smaller party, we do not have the resources or people to do so. But I and my staff followed the submissions and the evidence quite closely, and the broader principles involved that are outlined in the final report are ones that I hope people will take seriously.
I also hope the families of those who were affected by many of the tragedies that were examined by the inquiry take some comfort from it, because the group that needs to be most thanked contains some of the so-called ordinary people. It is always misleading to use the phrase ‘ordinary people’, but in this context it means the families, mums, dads, siblings and friends who participated in the inquiry, in some cases on behalf of those who lost their lives through various incidents.

The imagery of one of the public hearings that I did go to was a reminder of just how imposing it can be for a so-called ordinary person to appear before a Senate committee, particularly when you have rows and rows of senators, Hansard and Broadcasting staff, military brass in their uniforms and medals etcetera and everything else there. For a person to come forward in that context, not just to speak and take questions but to talk about incidents that, for some of them, are still immensely painful, takes a special type of courage, and it should be recognised, because they do it on behalf of those who no longer can and for the sake of trying to ensure that others do not have to go through what they have gone through. Their effort must be especially recognised.

It has to be emphasised that this is a strong report. It is a difficult area. The Defence Force is a unique body, unlike any other. In that sense, it is special, but the people who serve in it are also special, and they certainly deserve justice wherever possible. It must be emphasised that the view of the Defence Force that the military justice system is sound was not concurred with by the committee. That is the fundamental issue. There are a lot of good, strong recommendations to address that which I hope the government and the Defence Force take very seriously, because they were put forward in good faith. This inquiry was conducted in a way that did not seek to score political points, point the finger at people or appoint blame by finding one or two scapegoats. It was an inquiry conducted seriously to try and find a better approach to an issue that is never going to be perfect. In that context, I hope the government and the Defence Force take those recommendations seriously.

That is the core of this report. There are many details I will not go into; I will let others do that. However, the single message I want to reinforce on behalf of the Democrats is that the important aspect was the process that was followed by this inquiry. As I mentioned, it was very thorough. That is a sign of how seriously the Senate, the senators and, in the main, the Defence Force took the inquiry. The next stage is that the report’s recommendations and findings be seriously considered, and, unless there are very good reasons to the contrary, that the recommendations be adopted. My interest from here, on behalf of the Democrats, is to follow and monitor that to try and ensure that that happens. I think we as a Senate owe that to all of the people in the Defence Force, but in particular we owe it to the families and the people who have been touched by some of the incidents that were specifically examined by this inquiry.

I will soon stop in the interests of allowing sufficient time for others to speak. However, I might say to others that, if they want to make arrangements to allocate certain amounts of time for people to speak, it would be nice if they actually consulted with all of the parties beforehand—we might then get a little more certainty about what will happen here. Naturally, the smaller parties always have fewer resources and people, and obviously the Democrats will have even fewer people again after July, but that does not mean that we do not take these issues seriously. Certainly, my and the Democrats’ commitment is to continue to monitor this.
Work has been done on this on all sides and, as I said, particular effort has been made by some individuals, families and others who took that confronting and difficult action of appearing before a committee and opening up their personal pain and lives to public scrutiny. That was a necessary but also particularly important action. So I think for their sake—perhaps even more than for anyone else’s—and for the sake of everybody who is part of the military, we owe it to them to continue to monitor this issue. I am sure that all the senators who took part in this inquiry would not have put in the amount of time they did to then just table the report and forget about it. A big part of the task is done, but there is still work to be done, and the Democrats certainly commit to do what we can to monitor that in a cross-party way to ensure that, as much as possible, our military justice system can do what any military justice system must do, which is deliver justice. The people in the Defence Force deserve that as much as everybody else in the community.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—I understand that there is now agreement about speaking times, and I have asked the clerks to set the clock accordingly.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (10.36 am)—Last year the Chief of the Defence Force, General Cosgrove, said:
The military justice system is sound, even if it has sometimes not been applied as well as we would like.

... ... ...
I have every confidence that on the whole the military justice system is effective and serves the interests of the nation and of the Defence Force and its people.

General Cosgrove, you were wrong—dead wrong. The military justice system is a shambolic, dysfunctional mess and it is failing the young men and women who enlist in the ADF to serve their country. This report is a damning indictment of a system that fails to provide 21st century standards of justice for our service personnel. The report comes out of some 20 months of evidence gathering. It details flawed prosecutions and failed investigations into suicides, accidental deaths, major illicit drug use and serious abuses of power in training schools and cadet units.

The unanimous recommendations of this report call for a major overhaul of our system of military justice. This report demands action—not at the edges or periphery but at the centre of the system. It demands that military justice be taken out of the hands of the military and replaced with a transparent, independent system which ensures our service people have the same right to justice as all other Australians—a good justice system that is based on the notions of impartiality, transparency and accountability. We do not seek to interfere in the command system or its capacity to meet its military objectives, but we are certain that it is best that the military justice system be made independent of that process.

If these recommendations are implemented, it will mean that for the first time all criminal investigations will be handed to the civilian police in the first instance and dealt with in the civilian courts, giving our service people access to the same principles of justice that are available to every other Australian. Criminal activity is criminal activity, and if it occurs it should be treated as such. Criminal activity occurring during overseas operations is obviously a different matter, and we recommend that it be investigated by the Australian Federal Police. The recommendations call for an independent director of military prosecutions and the establishment of an independent military court staffed by independently appointed judges.
If the recommendations are implemented, complaints such as mistreatment, abuse and bastardisation will be referred to an independent review board outside of the military chain of command. This will ensure impartiality, transparency and independence. It will also expose such incidents to public scrutiny. This will make sure our service people do not continue to suffer through systemic or arbitrary abuse. Too many times the committee heard evidence which showed that the military fails to address major issues of bastardisation and mistreatment. This will ensure that soldiers will put greater pressure on the chain of command to be accountable for what happens in their units. Parents who see their children join the ADF will have confidence that they will be treated properly. This will also assist us in addressing recruitment pressures that occur.

These are the principal recommendations that the committee have unanimously agreed to. The committee have worked hard to make sure we had a unanimous report, because we want to make sure change occurs. The unanimity of the recommendations underlines the depth of the rot in our system of military justice and the committee’s view of the urgent need for substantial change. If respect for the sacrifice of our servicemen and servicewomen means anything it means that these recommendations will be enacted without revision and without delay.

The establishment of this inquiry followed extensive representations from the families of service personnel. They drove this report. It would not have been possible without their courage and their candour. It was difficult for many of them. The stories of these families are detailed within the report. These are heartbreaking stories of young people victimised by the very people who are charged with their care. There are stories of suicide, attempted suicide, verbal and physical abuse, racial and other discrimination, and they reflect some of the worst aspects of our society. No-one pretends that the ADF can be free of these things, but they can deal with them appropriately and meet modern standards of accountability and justice. The submissions tell of parents sidelined and given false information by the military following the deaths of their children. These are awful stories that really troubled all committee members.

Unfortunately, the committee were not able to investigate the circumstances of the submissions. We were not a court and we could not make findings on each of the deaths or each of the incidents brought before us. It was this that troubled the committee in agreeing to this report and this process, because we knew we could not deliver what a lot of the families wanted from us. But what we hope we have delivered is an answer for them that will make the system better. The submissions show patterns of wholesale abuse and a systemic failure to ensure natural justice for service people. The families who have contributed to this report deserve our respect and we must ensure that their pain is not visited upon the families of Australian service people in the future. We must use their experiences to make the system better and to make it work for future personnel.

The inquiry was initiated in 2003, following 10 years of inquiries of various sorts into the ADF’s justice system—inquiries that recommended changes but that failed to provide the impetus for substantial change. Events surrounding the mistreatment of Private Amos and the death of Private Jeremy Williams brought the issue to a head and were the main impetus for this inquiry. I drafted the terms of reference after finally spending time with Jeremy Williams’s family and examining their case. At the end, I could not do anything but ensure that the Senate got involved in these issues. Because their case...
was so compelling and the failure of the military to respond was so breathtaking I agreed that we would launch the inquiry. I am very grateful for the cross-party support we got for the inquiry and for the conduct during it.

In early 2000, Private Amos was subjected to illegal and intimidating behaviour during initial training at the School of Infantry. His parents alerted authorities to their son’s treatment, but nothing was done. They contacted the minister’s office in the hope that senior officers would fix the problem. But Private Amos remained locked up in the guardhouse, imprisoned without reason or charge, and segregated from other detainees. He was deprived of his liberty without recourse to legal advice and without being charged. No wonder he was discharged from the Army later at his own request. After reading about separate allegations of bastardisation in the 3rd Parachute Battalion, his parents wrote again to the minister requesting an investigation into the events surrounding their son’s treatment at the School of Infantry. Private Amos’s father wanted to ensure that the mistreatment that their son experienced would not be experienced by other recruits in the ADF.

An internal Army investigation was carried out, recommendations were made and Mr Amos was informed that the problem had been fixed. But this was not true. No changes were implemented at the School of Infantry—the report was filed. In 2001 there was an external inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade, which completed its examination of bastardisation in the 3rd Parachute Battalion, and there was the Burchett inquiry into military justice. But in early 2003 fresh allegations were made of abuse, denigration and bullying of young soldiers at the School of Infantry. Despite three separate official investigations and comprehensive recommendations, nothing changed—there was no accountability, no responsibility and no justice. The system just could not bring itself to change. The inertia drowned out the serious calls for fundamental change.

This series of allegations at the School of Infantry indicated a range of areas of concern. Young soldiers were unable to access a sympathetic administrative and reporting system that encouraged exposure and proper conduct. As the committee report states: Young men chose to remain silent about abusive behaviour; seriously concerned parents raised concerns which were not acted upon; and, more importantly, members of the ADF in command positions were either blind to, or ignored warning signs.

In February 2003, Private Jeremy Williams committed suicide at the School of Infantry after a period of extensive bullying and in spite of a phone call by his father, Mr Williams, warning unit staff of the family’s concern for their son. Mr and Mrs Williams were treated very poorly after their son’s death. Like many other families, they experienced anguish, distress, helplessness and agony. The Williams’ determination and courage helped drive the impetus for change. It is now our duty to respect their courage, their pain and their experience, and that of many other families who have suffered in similar ways, and ensure that real changes are made. We cannot allow these circumstances to continue. Those serving and future Australians who volunteer to serve the nation deserve to be reassured that they will be treated better than those who feature in this report.

I thank all the families and concerned Australians who made submissions and I thank the committee secretariat for their great work. It is not normal to single out persons, but I do want to make special mention of former committee secretary, Saxon Patience, and Anne Flynn, who left during the
inquiry. Their dedication and commitment helped make this process work. I also wish to thank Kathleen Dermody and her team who have helped bring it all together. They have all worked particularly hard, and their commitment to the issues is public service at its best. I would also like to make special mention of Mary Wood, a former employee of mine, who, luckily, had her uncle released from Iraqi kidnappers yesterday. She has been under enormous personal stress. Mary drove this inquiry. She was the one who worked with the families. She was the one who finally badgered me into making sure that we had this inquiry. Her work has been extraordinary.

This is a unanimous report across party lines. That is a credit to the senators who are on the committee and it is a credit to their goodwill and determination to help fix the problem. But it also reflects the seriousness of the problem in our military justice system and the urgent need for change. As a parliament, we cannot allow the recommendations of this report to be lost—as the joint standing committee’s recommendations were lost and the Burchett report’s findings were lost. We cannot wait until another young person is dead and until another family suffers the same misery as the Amos and the Williams families.

The ADF is manifestly incapable of performing its military justice role. The conflict between the command structure and the demands of a modern justice system seem unable to be reconciled. We believe very strongly that it is now time to create a new independent system, separate from the ADF’s chain of command, that will ensure that the legal rights of ADF members are protected from now on. The Minister for Defence must use these unanimous recommendations to take action. Time should not be wasted. Urgency is one of the messages in this report. Service men and women are entitled to the standards of justice these recommendations would bring for them.

I will not go through individual cases, because time does not allow it, but the committee are keen for those families to know that their contributions and their experiences are what drove us and drove this report. The report is complex and goes to mechanisms to make the system better, but it is driven by the personal experiences of those who came before the committee. We cannot allow these injustices to continue. The report demands major change now. It demands a new and better system which provides the same rights to our service people as every other Australian enjoys. Joining the ADF does not mean that you have to give up any of your legal rights. It does not mean that you have to give up your right to justice, to fair treatment and to access legal advice and normal procedures. Joining the ADF is a huge commitment, and one should not have to sacrifice one’s legal rights in making that commitment.

We must act now. The ADF must be called upon to act now. This report is not a criticism of individuals or a criticism of people within the system; it is a criticism of a system that has been reformed in a piecemeal fashion over the years but which, as a whole, does not work. It just does not work. To recommend an extra bit here or a bit there would, in the committee’s view, only add to the confusion, the lack of clarity and the lack of justice delivered by the system as a whole. The committee believes that we need root and branch reform. Piecemeal additions will not solve the problem and are not acceptable. We need to look at the experiences of the Canadian and British systems and say that, fundamentally, the demands of a modern society are such that we expect better of our defence forces in terms of the justice that its people are entitled to and we need a system that is transparent and accountable.
We will maintain the pressure. The report will not be filed away. I will not let the issue go, and I am sure the other senators on the committee will not either. We are going to pursue this because we think this report is a benchmark against which future actions will be held. Every failure in the future will be assessed against any failure to act on these recommendations. We cannot bring back those who have lost their lives, and there have been those who have been treated unfairly or been denied justice, but we can make it better for those who currently serve and those who seek to serve in the future. That is the responsibility of this parliament. It is the responsibility of all of us to make sure that the military justice system is reformed and that our ADF personnel get much better justice.

Senator JOHNSTON (Western Australia) (10.50 am)—In the brief time that I have been a senator, there have been two inquiries which I consider have been somewhat landmark in their impact and in the way that senators have dedicated and committed their valuable time in preparing the reports. The first was the inquiry into the DMO, the Defence Materiel Organisation—an organisation which oversees over $50 billion worth of defence materiel acquisition. The second is the inquiry we are discussing today—the Senate Foreign Affairs, Defence and Trade References Committee inquiry into military justice in Australia. The most crucial and telling aspect of both of those inquiries was that the reports handed down were unanimous. There was no party politics and no point scoring involved in this exercise. This inquiry was undertaken wholeheartedly and earnestly for the benefit of the Australian Defence Force, its men and women and, indeed, the public of Australia.

I commence the 10 minutes that I have by paying tribute to each and every one of the committee members, including the chairman, Senator Hutchins. Special mention must be made of the tireless work, wisdom and assistance of Senator Payne and Senator Chris Evans in this very long, arduous and, at times, tortuous road since October 2003. I also pay great tribute to the secretariat. As a legal practitioner I came into contact with a broad range of events, often life-and-death related events, but the nature of the submissions received by this committee—the trauma, the stress and the graphic details of deaths, injury and abuse—was something that began, after a time, to impact on me. I have severe concerns about the impact that these graphic details of grief, loss and tragedy had on the loyal secretariat as they waded through 71 public submissions and 63 confidential submissions over the course of 18 public hearings. That was an enormous undertaking. I want to congratulate them for the professional and quite outstanding way they have endured the information.

I say to people not familiar with the life-and-death events that occur in defence: when you have 55,000 personnel, every day, week, month or year people will die. The circumstances of those deaths are often graphic, distressing and shocking. So I want to pay special tribute to the secretariat for bringing it all together in the way that they have and keeping it in a digestible form. It has been a Herculean task.

I also want to pay tribute to the Australian Defence Force and their senior officers. This has not been a welcome inquiry for the ADF, for obvious reasons. Having a group of senators putting their heads inside the ADF, seeking critical information as to how they conduct their innermost workings, has been difficult for them. It is the contemporary way, and I must say that in the service chiefs I see the new horizon; I see the new outlook and the new professionalism that goes with conducting Australian Defence Force operations on a day-to-day domestic and international
basis in the glare of the media and international covenants and treaties. I think these men came to this inquiry honourably and transparently. I think they came with a view to acknowledging what had to be done and that it would be done properly. I trust and really believe that they will approach the recommendations in the same spirit.

These military men are war fighters at the ready and have had to address social welfare issues. The Defence Force’s history of that interaction has not been a good one. I want to put on record my support for their seeking the new way and seeking to address the way they do business in military justice. I believe that, if they apply to this area of their operation the same expertise, professionalism, talents and skills that they apply to operational matters, they will be successful and this will be the last review, after the five previous reviews that have been undertaken along these lines.

Lastly, I want to pay great tribute to the families and witnesses who came before the committee. They were often put through a painful reliving and re-enactment of the dreadful day, the dreadful news and all of the grief that accompanied the loss of their loved one, the incurring of an injury or the breach of justice that they experienced. We had 63 confidential submissions and I think we had nine days of in camera hearings. Those statistics alone send a very clear message that all is not well and work must be done.

In thanking those people for their earnestness and for their commitment, I say to them that they have achieved something in our report. We acknowledge that it is still our responsibility to maintain vigilance and make sure that things get better. I assure those people who are listening to me or who will read this that we will maintain that vigilance. I say to the ADF that I know that there is resentment and I know that there is a problem with this report, as reform is always going to be difficult. There are people in this parliament who actually care about them, who take an interest and who want to know about the technical matters associated with capability acquisition, with the day-to-day running of the military and with the way they do their business. With such people in this parliament you are much better off. There are many countries comparable to Australia where the military have no-one to turn to in government: the minister rules and that is it. That is not the case in Australia, and I am proud and pleased to say that.

It is a very difficult balance. We produce men and women who must fight and win but, with the extended peacetime moratorium, joining the Defence Force has been viewed naively as a career. The balance between a peacetime career path and producing men and women who will defend our country and win is very difficult to achieve. I believe that this report goes some way towards laying down the law that will assist in determining that balance.

There are further things that I wish to say, but I must close by saying that my involvement with this inquiry began when the mother of a highly decorated and courageous serviceman came to me and told me her story, which has been repeated within the pages of our report. I absorbed what she said to me, and I went away and made inquiries. What I found so concerned and astounded me that I was bound in good conscience to take action. I found an outrageous level of ineptitude, ignorance, and plain, simple, naked and outrageous injustice, perpetrated against one of our most highly decorated servicemen. I and my parliamentary colleagues on the committee cannot sit, leaning back in our red leather chairs, and allow such a circumstance to continue to be a blot on what is the most proud history of our Defence Force. So I say, in all good conscience,
that this report goes a long way to ensuring that we continue that proud history and that we arrest and deal with these problems that have unfortunately been the exception to what has been a very good rule in military administration. I commend this report to the ADF and trust that they will accept it in the spirit in which it is offered.

Senator HOGG (Queensland) (11.01 am)—As a member of the Senate Foreign Affairs, Defence and Trade References Committee, I rise to speak on this report on military justice which shows how this Senate really and truly operates. It really does reach out to the people of Australia and address the issues that sometimes confront many people who do not know where to turn. As Senator Evans has said, we were never going to be a court of inquiry and we were never going to resolve, in the way that many of the courts of the land would resolve, the issues that were raised, but we were going to look at the policy issues to be addressed in the particular and difficult set of circumstances that was presented to the committee.

It raised very difficult issues and, because of that, I want to thank, firstly, the families and the witnesses who had the courage to come forward and present evidence to the inquiry. Secondly, I want to thank the ADF because there was great support from the ADF in the conduct of the inquiry, and I think that has been made clear here today by those who have participated in this debate. Next, I want to thank the secretariat because they had a very difficult task in assimilating and dealing with all the evidence and putting together the coherent report that is before this place today. They have done a marvellous job and they should be highly commended for that.

Then I want to mention the Hansard and broadcasting staff because they were privy to all of the evidence and, as a result, suffered some of the emotional stress that many of us did in the conduct of this inquiry. They should not be left out. Last, but not least, I want to thank my fellow senators. I am not going to single out any individual senator, but it was one of those inquiries where there was great strength and support among the senators and it was needed, given the nature of the evidence presented to us on many occasions.

The report was unanimous, as has been said, and that should never be lost. Every senator agreed to the outcomes in the report. I hope the report is not going to be left on the shelf to gather dust, as has been said by earlier speakers today. Nor should it be given the polite ‘agree’; that is the other thing. Defence, in responding, should not just say ‘agree, agree, agree’, because it goes beyond agreement. Action is desperately needed here to replace, not just fix, the system that is clearly broken.

In my view there is no fix for the system; it needs replacement. Attempts to repair the system have failed in spite of the best intentions and goodwill on the part of previous senior ADF people. We found that the system was not transparent and did not deliver fairness. The ADF, in spite of several reviews and recommendations flowing from those reviews, has failed to address the systemic problems. They are systemic problems and they will not be addressed by tampering at the edges and trying to patch up a system that is in a complete state of decay. It is clearly time to take military justice out of the hands of the military and let some independent authority oversee its operation.

I never want to revisit an inquiry such as this. I certainly do not want to come back in years and say, ‘We have done this inquiry before.’ I have participated on this issue for the reason that I want to see the injustice, the unfairness, that exists in the system brought
to an end. Whilst it will never end completely, if we can eliminate it to a substantial extent then we have made a major achievement indeed. It shows that just leaving it in the hands of the military to dispense justice is no longer an option that confronts this nation.

The report, which as I said was difficult to put together, is a chronicle of the inability of the ADF to deliver an impartial and fair military justice system. In saying that, it is a fairly thick report, so most people are not going to sit down and wade through the report, chapter by chapter—there will be some—but I encourage people to read the preface to the report. In it—and we all had a strong hand in its penning, but I believe Senator Payne did in particular—one will find the attitudes of the committee. I will quote just a couple of pieces from the preface which go to the disciplinary system, which the committee says is:

... manifestly incapable of adequately performing its investigatory function.

Then, on the administrative system, it says:

This failure to expose such abuse means the system stumbles at its most elementary stage—the reporting of wrongdoing.

Later on, on the administrative system, it says:

Poorly trained and incompetent investigating officers further undermined the effectiveness of administrative investigations. The committee found that missing or misplaced documentation, poor record keeping, the withholding of information, lack of support in processing a complaint, investigating officers who lack the necessary skills, experience or training to conduct a competent inquiry, all contributed to unnecessary delays.

I commend the preface because it will tell people precisely where to go in the report, where to see the faults and failings. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

FILM LICENSED INVESTMENT COMPANY BILL 2005
FILM LICENSED INVESTMENT COMPANY (CONSEQUENTIAL PROVISIONS) BILL 2005
MELBOURNE 2006 COMMONWEALTH GAMES (INDICIA AND IMAGES) PROTECTION BILL 2005

First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.08 am)—I indicate to the Senate that these bills are being introduced together. After the debate on the motion for the second reading has been adjourned, I will move a motion to have one of 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 CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.08 am)—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—

FILM LICENSED INVESTMENT COMPANY BILL 2005

The Government recognises the importance of a viable local film and television industry. The sector’s input both to our economy and cultural life is significant. As a whole, the Australian film and television industry contributes some $2.1 billion annually to GDP and employs more than 25,500
people. The Government wants the sector to produce increasing numbers of films that appeal to local and international audiences.

These are some of the reasons that the Government provides a range of support to this sector, thus ensuring its long-term sustainability. There is no question that, without Government intervention, there would be few local voices on our screens. Equally, the Government is keen to attract additional private sector investment in the film industry. The extension of the FLIC Scheme is one aspect of a package of measures designed to generate greater levels of private finance.

Despite that support, the Government acknowledges that it has become increasingly difficult for our film and television to compete both locally and abroad. While key creative Australians like directors and actors continue to attract international accolades, production levels and the box office performance of local films have fallen.

The Government does not resile from its responsibilities in assisting to arrest this downturn. Australia's practitioners have expressed a determination to work through current challenges and the Government is also prepared to play its role. The extension of the Film Licensed Investment Company Scheme—known as FLIC—demonstrates our commitment in this regard.

The extended FLIC Scheme is part of a broader package of measures announced during last year’s election and was recently confirmed in the 2005-06 Budget. This package is worth $88 million over four years. As a result, total direct funding for film in 2005-06 is at a high of almost $160 million.

The package is a carefully balanced, strategic intervention and takes a ‘whole-of-industry’ approach. It is comprehensive and acknowledges that there is no single quick fix that can address current challenges. It will strengthen our film and television sector through a combination of increases in direct support to our film agencies and by making the film sector more attractive to private investors.

In the future, the Australian film industry—and, indeed, film and television sectors of a similar size around the world—must attract greater levels of private sector support. Private investment is an important complement to direct funding by Government. In Australia, film and television financing is usually a complex combination of investment from the marketplace, Government funding and private investors. Reduction in funding from one of these sources can make or break individual projects, and in the longer term, impact on the industry's viability.

Support from individuals and corporate entities needs to grow as part of that fragile funding pool. The extended FLIC Scheme seeks to encourage that growth and bring the private sector investor back to film and television.


The extended FLIC Scheme is a key element in the Government’s film package which aims to restore investor confidence in the local film and television sector.

The focus of the Scheme is on encouraging investment in the production of Australian films. Production is the most costly aspect of filmmaking. Without adequate funding and appropriate investment levels to improve the quality aspects of production, the chances of success for a film or television program are significantly diminished.

To inject funds at the production or “front end” of the filmmaking process, the extended scheme will allow investors a 100 per cent up-front deduction on the purchase of FLIC shares in the year of investment. These funds will immediately flow to the FLIC, subject to certain licence conditions being met. The FLIC must be an Australian-owned and controlled company raising funds primarily from Australian investors in qualifying Australian films.

The extended scheme will allow a single FLIC licensee to raise up to $20 million over a two-year period at a total cost to revenue of $8 million in 2006-07 and 2007-08. Issuing of a single licence will minimise the duplication of administrative costs that may result from the issuing of multiple licences.

Funds raised by the FLIC will be invested in a range of film and television productions, thus spreading investor risk—and opportunity for
commercial returns—across a production slate. Investment in marketing and distribution activities will be permitted under the extended scheme, up to a maximum of half of the amount which the FLIC invests in production. This will again ensure that the majority of FLIC investment is directed towards production, while allowing the company an appropriate opportunity to increase investor return through additional investment in marketing and distribution.

Co-investment from other market players will also be permitted under the extended scheme in order to maximise the value of productions. The intention is that FLIC monies will act as a trigger for larger commercial organisations, including broadcasters, distributors and other production houses, to invest in Australian productions. This will result in films with bigger budgets and quality, high-end production values. This in turn leads to greater opportunities for commercial success and improved returns to FLIC investors.

The extension of the FLIC scheme has been welcomed by the sector as a timely intervention in a difficult market where investor confidence in Australian films is low. It will seek to revitalise private support and, combined with other recently announced taxation measures, restore investor confidence in our industry.

FILM LICENSED INVESTMENT COMPANY (CONSEQUENTIAL PROVISIONS) BILL 2005
The Film Licensed Investment Company (Consequential Provisions) Bill 2005 is a companion to the Film Licensed Investment Company Bill 2005.

The bill authorises an upfront taxation deduction for shares in the Film Licensed Investment Company (FLIC) purchased during the 2005-06 and 2006-07 income years by subscribing investors. The investor is not entitled to the deduction until the shares have been fully paid and issued to the shareholder. This arrangement mirrors the deduction available under the pilot scheme.

The upfront nature of the concession is consistent with taxation incentives for investment in individual qualifying Australian films under the Income Tax Assessment Act 1936. The FLIC Scheme combines the attractiveness of an upfront concession with the added incentive of spreading investor risk across a range of film and television productions.

Full details of the measures in the bills are contained in the explanatory memoranda to the bills.

MELBOURNE 2006 COMMONWEALTH GAMES (INDICIA AND IMAGES) PROTECTION BILL 2005
The purpose of the bill is to protect the Melbourne 2006 Commonwealth (M2006) Games sponsorship and licensing revenue from being undermined by unauthorised use of the Games indicia and images by corporate competitors of the official Games sponsors. The Government adopted a similar approach when it legislated to protect Sydney Games indicia and images through the Sydney 2000 Games (Indicia and Images) Protection Act 1996, as amended (the Sydney Games Act).

The hosting of the 2006 Commonwealth Games provides an unique opportunity to showcase to the world this country’s skills, talents, environment and achievements. Preparations for the Games have proceeded under the guidance of the Melbourne 2006 Commonwealth Games Corporation (M2006 Corporation), and the Victorian Office of Commonwealth Games Coordination (O CGC) and with a high level of cooperation between the Victorian and Australian Governments.

In 2001, the Victorian Government enacted the Commonwealth Games Arrangements Act 2001 (the Victorian Act), to facilitate preparations for the Games, including providing protection for M2006 Games indicia and images. The Victorian Act only applies within the State of Victoria and allows Victoria Police to seize goods and advertising material marked with M2006 Games indicia and images from within a Commonwealth Games venue, or a designated access area and only during the period 1 January to 31 March 2006.

The M2006 Bill is consistent with the approach the Australian Government took in protecting Sydney 2000 Games indicia through the Sydney Games Act. The bill has been designed to com-
plement the indicia protection provisions of the Victorian Act. While the Victorian Act gives powers to Victorian Police to seize goods, this bill allows the Australian Customs Service to perform functions similar to those it undertook at the time of the Sydney 2000 Games by seizing goods marked with unauthorised indicia and images at Australia’s borders.

The task of organising the M2006 Games is large, complex, and expensive. The Victorian Government has allocated considerable sums of money in the lead up to the Games for the refurbishment of facilities and construction of infrastructure, organisation, and marketing.

The Australian Government is contributing $102.9 million in direct financial assistance and a further $177.9 million through the provision of support services. The Victorian Government has indicated the Games’ budget is $1.1 billion dollars and has committed almost $700 million to finance the M2006 Games.

Beyond the Government contributions, the primary sources of revenue for the M2006 Games will be television rights, ticket sales, sponsorship and the licensing of the right to use the Games’ indicia and images. Licensing and sponsorships are expected to contribute around $130 million to the Games’ revenue budget.

The Government recognises that the preservation of sponsorship revenue is essential to achieving a good budget outcome for the M2006 Games. The ability of the M2006 Corporation to attract sponsors will depend to a large extent on the degree of exclusivity afforded to the licensed indicia and images. Official sponsors recognise the commercial value of associating themselves with events of the magnitude of the Commonwealth Games and are willing to pay considerable sums of money to use the words and symbols associated with the Commonwealth Games.

“Ambush marketing”, however, has the capacity to seriously erode the official sponsorship revenue if not stopped or minimised. Ambush marketing is the unauthorised association of businesses with the marketing of an event without paying for marketing rights. Typically it is the competitors of official sponsors of major sporting events that engage in these activities. Ambush marketing can not only dissuade official sponsors from continuing their association with the Games but it has the potential to substantially reduce the amount sponsors are prepared to pay for the rights.

Therefore, the preservation of sponsorship revenue is not only critical to the protection of official sponsorship but indeed fundamental to achieving a sound financial outcome for the Games and ensuring the least call on the public purse.

The bill will protect the use of a range of words and expressions associated with the M2006 Games such as “Melbourne 2006 Commonwealth Games”, “M2006 Games”, and “Friendly Games” from ambush marketing and unlicensed commercial use in the lead-up to and during the M2006 Games.

In addition to protecting particular words, numbers and expressions, the bill also provides protection to certain images that in the circumstances of their presentation suggest, or are likely to suggest, a connection with the M2006 Games. These images may be either visual or aural representations. The manner in which M2006 indicia and images will be defined and protected by the M2006 Bill is consistent with the approach used to proscribe words, expressions and images under the Sydney Games Act.

The rights in the above protected indicia and images rest with the M2006 Corporation. It has the power to use and to authorise others to use M2006 indicia and images for commercial purposes.

To constitute use for commercial purposes, the M2006 Games indicia or images must be applied to a person’s goods or services for advertising or promotional purposes, or for enhancing the demand for the goods or services, and in a manner which would suggest that the person is or has been a sponsor of, or is or has been providing other support for, the M2006 Games.

In order to enable the public to be aware of the identity of those authorised to use M2006 indicia and images, a Register has been established under the Victorian Act upon which the M2006 Corporation is responsible for keeping account of authorised users and entering the details onto the Register. An entry in the Register will include the name of any person authorised by the M2006 Corporation; the date of authorisation; the dura-
tion of authorisation; whether the authorisation applies generally or in specified circumstances; and whether the authorisation authorises the use of all M2006 indicia and images or specified kinds of such indicia and images. A person whose name appears on the Register constitutes an authorised user of M2006 indicia and images.

While it is important to protect M2006 Games sponsors from ambush marketing, the rights of the community to freedom of expression must also be respected, particularly in relation to words that have passed into common usage. It must therefore be emphasised that restrictions on the usage of the M2006 indicia and images will apply only to unlicensed commercial use of the protected indicia and images. This is consistent with the approach adopted to protect Sydney 2000 Games indicia and images.

Moreover, it is made clear in the bill that the legislation is not intended to affect the working of many aspects of everyday business. It is recognised that some individuals and corporations, such as the Australian Commonwealth Games Association (ACGA) and the Commonwealth Games Federation (CGF), already use the indicia prescribed in the legislation in conjunction with their goods and services. The bill fully protects the rights of the ACGA and the CGF to use M2006 indicia to carry out its business functions.

Just as the Sydney 2000 Games Act permitted the use of Sydney 2000 Games indicia or images solely for the purposes of providing information, or for the purposes of criticism or review, so does this bill in relation to M2006 indicia and images. The bill therefore permits the provision of information for the purposes of reporting news and presentation of current affairs, the factual description of goods or services provided by a business (such as stating that accommodation is available at a hotel that is located near a Commonwealth Games site), or factual statements by an athlete to promote their own achievements. Examples of criticism and review permitted by this bill include reports which are likely to appear in newspapers, magazines or similar periodicals, in radio and television broadcasts, or in cinematographic films.

The Government also recognises that the reasonable needs of sporting bodies in relation to fund-raising for and promotion of their preparation of athletes and teams for the M2006 Games should be allowed to continue. Those reasonable needs could involve use of the M2006 Games indicia or images for the purposes of providing factual information. The bill is not intended to affect this type of use.

Similar to provisions contained in the Sydney 2000 Games Act, this bill also provides various remedies to the M2006 Corporation and authorised users to enforce their rights in relation to the M2006 indicia and images. This means the M2006 Corporation or an authorised user may bring an action against an unauthorised user. The remedies available under the bill include injunctions, damages and corrective advertising. The courts also have the discretion to provide remedies under any law (either State, Territory or Commonwealth) and most notably, the Trade Practices Act 1974 in relation to engaging in conduct that is misleading or deceptive.

The bill also includes appropriate measures to limit the possibility of the importation of goods which seek to ambush the Games marketing. The Australian Customs Service will be able to carry out the measures of this legislation relating to the monitoring of imported goods at Australia’s borders.

The bill will have a limited period of application and will cease to have effect from 1 July 2006. The protection provided by this bill will complement the indicia and images protection provided under the Victorian Commonwealth Games Arrangements Act. It will also enhance the protective measures already in place under Australia’s current intellectual property laws to ensure to the extent possible, that a good budget outcome is achieved for the Melbourne 2006 Commonwealth Games.

Debate (on motion by Senator Ian Campbell) adjourned.

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

Ordered that the Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Bill 2005 be listed on the Notice Paper as a separate order of the day.
SKILLING AUSTRALIA’S WORKFORCE BILL 2005
SKILLING AUSTRALIA’S WORKFORCE (REPEAL AND TRANSITIONAL PROVISIONS) BILL 2005

First Reading
Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.09 am)—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 CAMPBELL (Western Australia—Minister for the Environment and Heritage) (11.09 am)—I table a revised explanatory memorandum relating to the Skilling Australia’s Workforce Bill 2005 and move:
That these bills be now read a second time.
I seek leave to have the second reading speeches incorporated in Hansard.
Leave granted.
The speeches read as follows—
SKILLING AUSTRALIA’S WORKFORCE BILL 2005

The Skilling Australia’s Workforce Bill 2005 and the associated Skilling Australia’s Workforce (Repeal and Transitional Provisions) Bill 2005 are the most significant pieces of legislation for vocational and technical education in more than a decade. These Bills will establish the new National Training System and put in place the arrangements to ensure a high quality, flexible and responsive system, which will provide the nation-building skilled people required by industry and business in the short term and beyond.

These Bills are necessary, for despite the best effort of industry and the Australian Government over the past nine years, too many key issues are still not being addressed by States and Territories. For example it is probably easier for doctors and lawyers to work across state borders than for a hairdresser, a plumber or a carpenter. It seems each State government still does not trust the competency and quality of training in other state systems. This jurisdictional dysfunction must end. Without the States and Territories working with the Commonwealth on the portability of qualifications, on issues of licensing, industrial relations impediments and training flexibility we will never have the national vocational and technical education system people want and demand, and Australia needs.

From talking with so many people in the public and private training sector, I am confident there are many people within the system who agree these changes must be made. I have no doubt of the capacity of people within this sector to rise to the challenge and deliver on the improvements to the system we are sponsoring. It seems there is a systemic failure somewhere between the classroom level of the education and training sector and the national policy level of the Australian Government. So despite the fact many training and education professionals understand and share our ambitions, it is the union-sponsored failure of policies of the state and territory governments standing in the way of progress. This must end or all Australians will pay a high price.

The Skilling Australia’s Workforce Bill sets out the objectives for the new national training system and describes the commitment by the Australian Government and the State and Territory governments to support the new arrangements.

The bill will appropriate $4.4 billion as the Australian Government’s contribution to the States and Territories for vocational education and training for the period July 2005 to December 2008. This includes an additional $175 million funding compared to 2004 and represents an average real annual increase of 3.2% on that year.

The Australian Government has called on the States and Territories to match this additional $175 million in order to ensure that they also invest funds to purchase ownership of the out-
comes which reflect national consistency. States and Territories must deliver high quality and responsive training in all jurisdictions and across all industry sectors.

A key feature of the Skilling Australia’s Workforce Bill will be the strengthening of the Australian Government’s leadership role in vocational and technical education, by tying funding more strongly to a range of conditions and targets for national training outcomes.

Through this legislation, the Australian Government will drive genuine reform by requiring States and Territories to increase the flexibility and responsiveness of training delivery, so that the training system can respond to the specific challenges that face training and business in the 21st century.

There will be a number of statutory conditions in the legislation that States must meet in order to receive their share of the Australian Government funding. These include:

- maximising choice for employers and new apprentices, to enable them to select the most suitable training provider for their needs;
- implementing workplace reform in state-owned TAFE, including through more flexible employment arrangements such as AWAs and performance pay, so that it is more responsive to local employer and industry needs;
- removing impediments in State awards and legislation so that training qualifications are automatically based on competence, rather than on length of time;
- increasing the utilisation of fully publicly funded training infrastructure, by providing third party access to that infrastructure on a commercial basis; and
- ensuring that payments received under the Act are not used for providing vocational education and training to overseas students nor for private recreational pursuits or hobbies.

The Commonwealth-State Agreement for Skilling Australia’s Workforce—a multilateral agreement with the States and Territories—will maintain focus on national cooperation and collaboration. It is the Government’s intention to build the new system around the principles of a national approach, better quality training and outcomes for clients through more flexible and accelerated pathways and industry leadership through greater engagement with industry and business.

This Government’s strong commitment to vocational and technical education is illustrated by the significant funding of $4.4 billion provided through this bill and a further $1.4 billion over 4 years, announced last year for an integrated and comprehensive suite of policies to reinforce nation building skills needs. This lifts the Australian Government contribution to vocational and technical education to a record $10.1 billion over the next 4 years. These initiatives represent one of the most significant boosts to vocational and technical education ever undertaken by any Australian government.

I am also pleased to announce that, as part of the Howard Government’s Welfare to Work package, the budget contains an additional $42.8 million to fund a further 12,800 vocational and technical education places for parents and older workers, who are receiving welfare support, to help them participate in the workforce over the years 2006 to 2009.

The associated Repeal and Transitional Provisions Bill will repeal the Australian National Training Authority Act 1992 and the Vocational Education and Training Funding Act 1992 and provides for the transitional arrangements for the transfer of functions and responsibilities from the Australian National Training Authority to the Department of Education, Science and Training.

Twelve years ago, before the establishment of ANTA, Australia had eight separate training systems operating quite independently of each other, with the content and delivery of training largely determined by training providers.

Today, the foundations of a truly national industry-led system are in place but the failure of states and territories to implement fully the spirit and detail of the necessary changes have cost us dearly.

In addition, the challenges facing Australia today are quite different from those in 1992 when ANTA was established. At that time, Australia
faced unemployment of 10%. The Australian Government’s sound economic management over the past nine years and the resulting unemployment figure of 5.1%—the lowest since 1976—have resulted in an increased demand by industry for skilled workers. Today, Australian businesses estimate that the most significant challenge to ongoing economic growth is the need for more skilled workers to meet demand.

Despite this it is important to note there is limited evidence of economy-wide skills shortages, however, there are indications some parts of the labour market are moving towards full capacity. The immediate impact of skills shortages could be upward pressure on labour costs.

Over the long term the cumulative effect of this would be felt by us all. The Government is mindful of this and is continuing the work of the past nine years to maximise the skills base over the medium to long term through an effective and streamlined national training system alongside responses through our most targeted and effective skilled migration programme.

In many industries, such as construction, mining and manufacturing, shortages tend to be cyclical. Accordingly, a more responsive and flexible training system is key to meeting both current and future skills needs. In the longer term, raising the skill level of the Australian workforce will help address the challenge of an ageing population by improving workplace participation and productivity.

We cannot do this without State and Territory governments which have responsibility for quality standards and day-to-day delivery. We must however, as a national government ensure the delivery and quality meets our needs as a nation. No state is showing signs of providing the way forward, it is up to the Australian Government to sponsor the way ahead.

While there has been significant reform in the vocational and technical education sector, a commitment from the States and Territories to further reform to ensure the national training system can meet skills needs is vital. The Australian Government recently added more than $1 billion in vocational and technical education election commitments. Detailed discussions are continuing with the States and Territories on the new national training arrangements based on this bill and the Commonwealth financial commitment of $4.4 billion. Multilateral and bilateral agreements are proposed which will provide national strength and direction to the system and allow for flexible responses within jurisdictions to the national agenda.

But the demand for more skilled workers is only one of the challenges facing the new national training system. The great leaps in technology and innovation, mean that we need to provide people with different and increasingly sophisticated skills. Changing demographics put pressure on the training system to deliver new forms of training to suit the learning needs of mature aged workers, as well as providing flexible training options for part-time or distance learners, and those in non-standard employment.

These are some of the challenges which our training system must address in the 21st century, if it is to continue to deliver the skilled workforce that we need.

Employers want skilled people available and trained locally or innovatively and meeting their needs. We need a system which is agile, responsive and accountable to the clients.

The new national training system will provide more appropriate governance, accountability and operational arrangements, which will focus on current and future skills needs and will reinvigorate the leadership role of business and industry.

Why is it after 104 years of federation that doctors, accountants and lawyers are more easily able to transport their skills across state boundaries but those in the trades are not? How is it that in the year 2005 a hairdresser moving from Victoria to New South Wales is unable to continue working in their trade because their qualifications are not recognised across state borders? This is a farcical situation that unions have hog-tied us to and as a nation, they cost us dearly.

If we are to ensure Australia’s continued economic growth and our ability to compete effectively on the global stage, it is essential that industry and business needs drive our training policies, priorities, delivery and accountability. The training system must be responsive to industry
and flexible enough to respond rapidly to new technologies and changing work practices. But it is not only industry that will benefit from the new training system. 70% of young Australians do not go directly from school to university, and these young people, as well as mature age workers re-training or upgrading their skills, and those who are disengaged from—or returning to—the workforce, will benefit from increasingly flexible and accelerated training pathways.

The Australian Government will work with the States and with industry to raise awareness that vocational qualifications can lead to challenging, diverse and often very lucrative careers in trade employment and small business opportunities. The training system must also offer more flexible options for students and employers. The current arrangement where many New Apprenticeships still take up to four years to complete, rather than having access to accelerated or more relevant, competency-based pathways, cannot continue. Rigid time-based approaches must be removed as they cannot meet the needs of employers or individuals in a rapidly changing global economy. We need timely rather than time-based training outcomes.

The Australian Government will take an increased leadership role in the new system to ensure that there is a consistent and national approach to the quality of training delivery and outcomes. We need to be able to place workers where there are jobs, with skills that are recognised by all employers, regardless of whether they are in Alice Springs, Adelaide, Armidale or Alice Springs.

The new system will also be a streamlined simpler system: access to training will be easier for both students and employers. More information on the performance of training providers will be made publicly available, so people can make informed choices about which provider best meets their skills needs.

Under a functioning new national training system the Australian Government will continue to work collaboratively with the States and Territories and with industry to give more Australians the opportunity to achieve their potential through quality training, and to deliver better outcomes for Australian industry and business.

The Australian Government has set a new and challenging agenda for vocational and technical education. An agenda that addresses the current concerns of industry, business and training clients. The Skilling Australia’s Workforce Bill represents a significant investment in Australia’s economic future and an indication of this Government’s continuing commitment to vocational and technical education.

SKILLING AUSTRALIA’S WORKFORCE (REPEAL AND TRANSITIONAL PROVISIONS) BILL 2005

The Skilling Australia’s Workforce (Repeal and Transitional) Bill will repeal the Australian National Training Authority Act 1992 and the Vocational Education and Training Funding Act 1992 and provide for the transitional arrangements for the transfer of functions and responsibilities from the Australian National Training Authority (ANTA) to the Department of Education, Science and Training.

In October last year, the Prime Minister announced that from July 2005 the responsibilities of ANTA will be taken into the Department of Education, Science and Training. ANTA was established in 1992 to coordinate the levels of government in establishing a truly national vocational and technical education system.

I would like to acknowledge the work of the ANTA Board, advisory bodies to the Board, and ANTA staff, and recognise their great achievements.

These achievements include:

- the establishment of National Training Packages covering most industries and more than 80% of the workforce;
- the offering of recognised qualifications by more than 4,000 registered training organisations;
- the implementation of New Apprenticeships and the Australian Quality Training Framework;
- facilitation of Recognition of Prior Learning; and
- the expansion of VET in Schools.
Twelve years ago, before the establishment of ANT A, Australia had eight separate training systems operating quite independently of each other, with the content and delivery of training largely determined by training providers. Today, the foundations of a truly national industry-led system are in place and this progress can be seen as a measure of the success of the ANT A arrangements.

The Authority should be proud of its achievements, and I would like to thank everyone involved.

The abolition of ANT A and the transfer of its functions to the Department, reflects the Australian Government’s commitment to a more integrated and proactive approach to the education and training needs of young people.

New challenges now confront Australia’s economy and its education and training system, and more appropriate governance, accountability and operational arrangements are required. We also need to keep training focused on current and future skill needs and reinvigorate the leadership role of business and industry.

Our vocational and technical education system has made an enormous contribution to Australia’s economic success. But our strong economic growth, over the past decade, has led to greater skill demands in occupations ranging from plumbing and electrical, to hairdressing and commercial cookery.

At the same time, we must continually enhance Australia’s skills base to meet the changing needs of industry—advances in technology and innovation demand new and increasingly sophisticated skills. In addition, changing demographics, including Australia’s ageing population, hold particular challenges for the training system, which must find ways to provide more flexible training to suit a range of learning needs. Training providers must continue to innovate and adopt new technologies and practices to respond to the needs of existing and new learners.

By resuming the functions of ANT A, the Australian Government will have the opportunity to build a more flexible and responsive national system which can respond quickly to the skills needs of Australian businesses, industries, communities and individuals.

After 12 years of work, that has resulted in the foundations for a nationally consistent vocational and technical education system, this bill will ensure a smooth transition of arrangements that builds on the work of ANT A and the collaboration of the Australian Government, State and Territory governments, industry, and training providers.

This bill will ensure a smooth transition to the new national training arrangements and confirms this Government’s continuing commitment to vocational and technical education.

Debate (on motion by Senator Ian Campbell) adjourned.

TAX LAWS AMENDMENT (PERSONAL INCOME TAX REDUCTION) BILL 2005

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Tax Laws Amendment (Personal Income Tax Reduction) Bill 2005, informing the Senate that the House has disagreed to the amendments made by the Senate, and requesting the reconsideration of those amendments.

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

PUBLIC SERVICE AMENDMENT REGULATIONS 2004

Motion for Disallowance

Senator CARR (Victoria) (11.11 am)—I move:

That the Public Service Amendment Regulations 2004 (No. 2), as contained in Statutory Rules 2004 No. 396 and made under the Public Service Act 1999, be disallowed.

These regulations are part 2.1 of the Public Service Regulations and they replace a much shorter regulation covering the disclosure of information by public servants. They were tabled in the parliament on 8 February this year. We focus on these issues today because
I am particularly concerned that there is a growing pattern operating within this government, a pattern of administration which seeks to have this government run away from accountability and indulge in more complex cover-ups in ever increasing attempts to dodge the blame for its own actions. This is a government that is not above perverting the democratic processes. It has increasingly faced the charge of the growing politicisation of the Public Service to secure its long-term political ends. In recent times it has demonstrated traits where we see increasing authoritarianism, vindictiveness, intolerance of criticism and an attempt to avoid scrutiny. It is doing these things right under our noses. It is doing these things to advance these particular objectives in many ways—this regulation is but one of them.

It is to be added to a list of measures which include the ever increasing use of the Federal Police—the so-called leak squad of the Federal Police—to hunt down those public servants that it regards as disloyal and responsible for the unauthorised disclosures which have proved to be embarrassing to the government. But, of course, it does not apply the same logic and rationale to actions taken within cabinet ministers’ offices, whereby on a regular basis we see cabinet-in-confidence material appearing on the front pages of newspapers in this country. It does not take the same action when cabinet ministers are actually tape-recorded briefing journalists on the actions of cabinet to pursue political objectives when it suits their purposes and when they themselves are making what is termed unauthorised disclosures. Action is taken in the form of the government increasingly trying to avoid answering parliamentary questions and increasingly seeking to avoid the consequences of its own actions by avoiding scrutiny through the Senate estimates committee process. It has reached the point now where we are seeing open specula-

tion that this government, when it takes control of this chamber over the next little while, will seek to abolish an entire round of Senate estimates proceedings, amalgamate Senate committees and seek to avoid having reference committee inquiries which it finds politically embarrassing.

It is in that context that a series of measures are now being taken within the Public Service to try to intimidate public servants and prevent them from undertaking their responsibilities in a way which I think is detrimental to the effectiveness of open government in this country. According to the explanatory statement, the old regulations had not moved in accordance with community expectations—which of course is a polite way for this government to say that it has now got the capacity to do these things and intends to act in accordance with that capacity—and that these new regulations seek to rectify what it regards as a movement towards these new community expectations.

What we see here is an old set of regulations which were effectively rejected by the Federal Court and were found to contravene the implied right of freedom of political communication that is, of course, inherent in our Constitution. Our Constitution is a very limited document. It is flawed in many ways. It has very few rights associated with it in relation to the capacity of citizens, whatever their employment, to exercise fundamental democratic principles. It states the freedom, for instance, that you do not have to declare your religion—that is one of the very few stated rights. It also has a provision whereby governments cannot seize property without proper and fair compensation. In fact, there are greater rights for property owners and holders in the Australian Constitution than there are political rights of citizens to exercise democratic principles.
There are a whole series of people that are fundamentally disadvantaged by our constitutional framework, because it is essentially a legislative framework and not based on those fundamental principles that we would expect in an advanced democratic society. But there are implied freedoms within the Constitution, and various legislative bodies in this country have come to acknowledge that proposition. In the case of Bennett v President, Human Rights and Equal Opportunity Commission of December 2003, Peter Bennett was a public servant with the Australian Customs Service. He was also President of the Customs Officers Association. As such, he spoke to the media on a number of occasions, voicing complaints about the conditions of members working within the Customs Service. He was warned by the head of Customs but continued to speak out in defence of his members. He was eventually penalised with a salary reduction and a transfer against his wishes. Mr Bennett took the case to the Federal Court and won on the grounds that the regulations under which he had been disciplined ‘contravened the implied constitutional freedom of political communication’.

At stake here is how much a government employee should be able to say publicly. The Labor Party wants to emphasise that there is a critical balance that needs to be appropriately struck between the constitutional freedoms of political communication and the reasonable expectation that some matters are not for the public ear and that the government should be allowed to function efficiently. In his ruling on the Bennett case, Federal Court Justice Finn laid out the delicate nature of that balance and the importance of negotiating it, rather than ignoring it or trying to bulldoze measures through that seek to overcome it. Justice Finn said:

Official secrecy has a necessary and proper province in our system of government. A surfeit of secrecy does not ... even the most scrupulous public servant would find it—

that is, the regulations—

imposes ‘an almost impossible demand’ in domestic, social and work-related settings.

To quote Justice Finn further:

The dimensions of the control it imposes impedes quite unreasonably the possible flow of information to the community—information which, without possibly prejudicing the interests of the Commonwealth, could only serve to enlarge the public’s knowledge and understanding of the operation, practices and policies of executive government.

Justice Finn said that the regulations contravened the implied constitutional freedom of political communication. In a number of cases in the 1990s the High Court declared that it was an inherent requirement of a system of representative democracy established by the Australian Constitution that people are able to communicate about political and other matters that could influence their choice of government. The old regulation, Justice Finn said, was ‘draconian’ in its prohibition of the release of any information to any person without the agency head’s say so.

Of course, the government then responded by imposing a new set of regulations, which, of course, are the regulations I wish to disallow today. The government put in place these new regulations, which they said were in response to the court’s decision, but, upon closer examination, they reveal in fact that the government have not addressed the fundamental issues raised by the courts in this matter. Under the heading ‘Duty not to disclose information’, in the key section, point (3), reads:

An APS employee must not disclose information which the APS employee obtains or generates in connection with the APS employee’s employment if it is reasonably foreseeable that the disclosure could be—

and I emphasise the words ‘could be’—
prejudicial to the effective working of government, including the formulation or implementation of policies or programs.

This paragraph raises very significant questions, which I think we are entitled to have some answers to. Because the answers have not been forthcoming, we are also entitled to say that this regulation should be disallowed. We are entitled to ask: what exactly is ‘in connection with’ one’s employment? What does that mean in legal terms? What does it mean in practical terms about the capacity of public servants to actually speak out on any issues? On the same basis, ‘could be prejudicial’ is once again an extremely broad definition of an action and one which I say is aimed at intimidating public servants into not speaking out on any matter, because any action ‘could be prejudicial’ if the political masters of the Public Service deem it to be so. So we have a situation where the new regulations throw a blanket of secrecy over public servants, blocking them from saying anything that the government would regard as politically damaging. That is what they mean by ‘could be prejudicial’.

It also means that there are serious problems with measures in the regulations where there is an implied constitutional freedom which ought to protect citizens, whether or not they are employed by the Public Service. Preserving the efficient workings of government is a primary element of the regulations, and it needs to be defended. But it cannot be defended at the cost of all other measures, where the balance in those circumstances is not being met. It is not reasonable for persons to argue that governments should be able to say to anybody who works for the Australian government that any matters that affect them are not to be discussed in public. There are issues that should be kept secret, and I am not going to argue for a moment for the alternative case—that there should be no restrictions on what should be maintained within the avenues of government. Clearly, there are issues with regard to national security, business confidentiality and probity in the management of contracts. There are a whole series of actions where public servants are restricted in what they can say but there should not be a catch-all mechanism being applied, as there is under these regulations.

Where a union official is doing his or her job, they ought be able to speak out about what is going on within the Public Service. In the defence of their members’ employment conditions they ought to be entitled to speak to the public about what is going on within the Public Service. That should not inhibit the official operations of government. In fact, it may well be argued that, by improving the conditions of employment for public servants, you would improve the efficiency of the Public Service itself. There is no provision within these regulations for exemptions. There are no specific provisions with regard to whistleblowers. Where there is illegal or corrupt behaviour, there is no provision under these regulations that suggests that people are entitled to defend the fundamental principles of the probity of government operations. There is a moral obligation on public servants where there is malfeasance, corruption or criminal behaviour to go through the proper processes. There should be a provision for protection within the Commonwealth regulations to allow people to do those things.

These new regulations are expressed almost entirely in the negative. As Mr Justice Finn made clear with regard to the previous set of regulations that these new regulations seek to replace, they do not adequately describe the situation where the release of information should be specifically allowed. That is why I talk about the importance of getting the balance right. These regulations fail that fundamental test.
In recent times we have seen the positions taken in other jurisdictions. For example, in South Australia, Public Service legislation explicitly recognises that there is a duty to disclose as well as to keep secrets. In South Australia it is recognised that there are different categories of information rather than the maintenance of a blanket set of formulations. The South Australian legislation explicitly protects privacy, the confidentiality of information, trade secrets and intellectual property. It also protects the rights of workers in the Public Service to comment on industrial matters. It also protects, under the whistleblower provisions, the rights of people who are concerned about corruption and other issues.

It seems to me that there are other models for the government to follow. It does not have to be the way that the government is proposing at the moment. The government has failed to take up its responsibilities to protect the Australian Public Service from growing politicisation. It has failed to take up its responsibilities to ensure that public servants' rights are protected so that they can undertake their work in a proper, balanced way. It has failed to deal with the adequate balance between the implied freedoms of political communication and the efficient workings of government. The government has failed to take up its responsibility to protect public servants' rights with regard to their citizenship responsibilities. It has failed to take up its responsibilities with regard to making sure that the actions of the Commonwealth itself remain legal.

These regulations fail these fundamental tests. It is not good enough for the government to simply say, 'We now have the numbers come the end of this month, and we’ll do what we like.’ It is not good enough for the government in its arrogant and complacent manner to simply say, 'It’s inappropriate for anyone else to comment upon our capacity to undertake our job while in government.' It is totally inappropriate for the government to seek to gag public servants who are undertaking their legitimate citizenship rights to ensure that people are functioning properly within government and within society at large.

There is a veil of secrecy descending upon this government’s operation. It is seeking to hide from the public what is going on. It has increasingly sought to find circumstances whereby the culture within Public Service operations should not be put up to public scrutiny or question. It has now taken action where we have seen close to 120 separate references to the Federal Police on what it calls unauthorised disclosures. Through the leak squad some 32,000 staff hours have been spent trying to track down people who, the government says, have broken their obligations in terms of revealing information. It has cost nearly $200,000. The number of people prosecuted can be counted on one hand; there are only a couple.

It is a device that is being used increasingly to try to intimidate people. Just this week DIMIA officials have gone on Lateline, pointing out that the immigration department’s investigation of possibly 200 cases has shown gross abuses of citizenship rights in this country by the Public Service itself. The government have attempted to gag those public servants in the way the inquiries are established. It would seem to me that they are designed to prevent people from coming forward on a matter to protect their basic rights.

There has been increasing use by senior public servants at Senate estimates of devices to avoid public scrutiny and refuse to answer fundamental questions about what is going on. As far as I am concerned, there are some fundamentals in regard to open government. They have to be matched against
responsibilities to ensure that the Commonwealth acts properly, legally and morally. There are responsibilities in regard to ensuring that the government’s efficiency of operation is protected and that information that should remain secret is kept secret. I have listed a whole series of criteria where that should be the case.

Equally, we cannot have a situation in this country where fundamental standards of decent Public Service values are undermined by a government seeking to impose a veil of secrecy over its operation. We stand against what has increasingly become an act of national vandalism in the undermining of one of the world’s great public services. Australia, as AF Davies once said, is a great triumph of bureaucracy. He said that in a very positive way. We have great talent for it. This country has a well-deserved reputation internationally for very fine public administration. I see those values now under challenge. I see fundamental questions arising about the politicisation of the Public Service. I can see again and again examples of where the government, able to control both houses of parliament, is ignoring its obligations. (Time expired)

Senator MURRAY (Western Australia) (11:31 am)—I rise to speak for the Democrats on the Labor disallowance motion with respect to Public Service Amendment Regulations 2004 (No. 2), Statutory Rules 2004 No. 396. The background to this is a decision in December 2003 of Justice Finn in Bennett v President, Human Rights and Equal Opportunity Commission [2003] FCA 1433. That decision cast doubt on the validity of regulation 2.1 of the Public Service Regulations 1999, which this new regulation replaces. That regulation provides:

... an APS employee must not, except in the course of his or her duties as an APS employee or with the Agency Head’s express authority, give or disclose, directly or indirectly, to any person any information about public business or anything of which the employee has official knowledge.

The court was asked to examine the validity of subregulation 7(13) of the former Public Service regulations as a result of an APS agency finding that an employee had breached an obligation under that regulation. Justice Finn found that the regulation was invalid and that it did infringe the applicant’s implied freedom of political communication.

The explanatory memorandum to these regulations explains the purpose of the regulation, which is to balance the public interest in having access to information held by government, public interest in limiting disclosure to ensure the effective and proper conduct of government and the constitutional rights of freedom of expression of individual public servants according to Justice Finn’s findings. That sounds fine on the surface, but if you add it to a series of other events, attitudes, policies and the culture that is being established in the Public Service, you have to be very wary of some of the matters which underpin this approach. On our reading, the new regulation seems to be based on paragraph 80 of Justice Finn’s judgment, where he was referring to the second limb of the Lange test on the implied freedom of political communication. Justice Finn said at paragraph 80:

The difficulty in giving an affirmative answer to the second Lange question inheres in the ‘catch-all’ character of the regulation. One can identify readily enough some number of public interests or ‘legitimate ends’, both particular and general, which could be said to be comprehended by Reg 7(13) and which are compatible with the maintenance of the system of representative and responsible government. These range, for example, from national security and cabinet secrecy through privacy protection, to the maintenance of an impartial and effective public service in which the public can have confidence. But given the very generality of the regulation such legitimate end as may be served by it must itself be of an appropria-
ately general character. For this reason the Commonwealth in its submissions relied upon the end of ‘furthering the proper and efficient operation of the Government’. Subsumed within this was maintaining an orderly, efficient and disciplined public service. I emphasise the need for an end of a general character for this reason. Ends of a more particular character, for example, privacy protection or preserving Cabinet secrecy could reasonably be secured by greatly less burdensome and more precise and particular restrictions.

At paragraph 81 he said:

The short question raised by the second test is whether Reg 7(13) is reasonably and appropriately adapted to furthering the general end relied upon ‘without unnecessarily or unreasonably impairing the freedom of communication about government and political matters protected by the Constitution’: Lange, at 568. In my view, it manifestly is not.

Then, at paragraph 97, he said:

For reasons that I have in some measure foreshadowed, I am not satisfied that the regulation is reasonably appropriate or adapted to serving even the end of furthering the efficient operation of Government, let alone in a way that does not unnecessarily or unreasonably impair the implied freedom.

Our impression is that the drafters of the new regulation have seized on such remarks by Justice Finn, perhaps without realising that it is not enough for the form of words to be carefully matched to furthering the end of efficient government. They must also not unnecessarily or unreasonably impair the implied freedom.

In our view, there are grounds to challenge this new regulation on the basis that, like the old regulation, it is essentially a catch-all provision. In regulation 2.1(3), disclosure of more or less anything might be prejudicial to the effective working of government. In a narrow sense, if government does not have to publicly justify its decisions, plainly its workings would be more efficient. So this prohibition could in theory catch all information, preventing any release. Similarly, in regulation 2.1(4), again it is hard to say what the limits would be on information communicated in confidence within the government. This information is not limited, for example, to material that comes within national security classifications. The new regulation specifically states that the prohibition does not just apply to information the release of which would found an action for breach of confidence.

The new regulation is expressed entirely in the negative. As Senator Carr pointed out, this is counterproductive, since Justice Finn gave specific examples of legislation that describe situations where the release of information was specifically allowed, dealing with the issue that way. There is no provision for those with an official capacity within the public sector, again as Senator Carr pointed out, such as union officials and those who wear more than one hat, apart from being Public Service employees, to lawfully transmit information. There is no specific provision for whistleblowers. Senator Carr referred to the South Australian precedent, which deliberately quarantines that area of activity. I point out that section 16 of the Public Service Act is a singularly limited and poor protection for whistleblowers. It is amongst the worst in the country in comparison to those protections available in other states and territories. Clause 2.1(5)(c) in the regulation does refer to ‘otherwise authorised by law’, which would include the whistleblower provisions of the Public Service Act, but the protection these provisions provide is very limited.

I want to reiterate and again put on record our position on the issue of whistleblower protection. We as a party and I as an individual have staunchly advocated for better whistleblower protection over the last decade in both the private and public sectors. To the coalition’s credit, it has initiated the first pri-
private sector whistleblower protection ever put into law in this country, in the Corporations Law and, at my urging and with its agreement, in the Workplace Relations Act. In both those cases you might argue for stronger protection, but at last there is some protection within private sector law.

In the public sector a whistleblowers protection scheme is an important and necessary part of maintaining a good administrative framework which serves the public interest by eliminating fraud, impropriety and waste. I have introduced the Public Interest Disclosure (Protection of Whistleblowers) Bill 2002 [2004], which continues to languish on the Notice Paper and is yet to be debated. Apart from section 16 of the Public Service Act, there is insufficient provision in the general legislation governing Commonwealth employees. My bill aims to address that matter. The objective in my bill is to provide a comprehensive Commonwealth public sector whistleblowing scheme. I was motivated to do that by then Senator Newman’s seminal report in 1994-95 on the need for comprehensive whistleblower protection. My bill intends to enable a person to report improper conduct in the knowledge that the allegation will be duly investigated and that he or she will not suffer from reprisals on account of disclosing such information. It is entirely a different approach from that taken by the regulation. My bill also supports public disclosures, including the disclosure makers, and offers protection to those who have the courage to speak out against impropriety. Finally, the bill outlines appropriate remedies to ensure that the interests of all parties are adequately met.

Whistleblowers play an important role in ensuring the accountability of government. They are individuals who, by reason of their employment, come across information that reveals corruption, dishonesty or improper conduct at any level of government. When people bring this information to the attention of appropriate authorities they must be protected from retribution. It is not always comfortable for any of us when that happens, but it is a necessary check within our system. Whistleblowing is frequently the only way that impropriety can be exposed, but it often comes—perhaps it always comes—at a significant personal and career cost to the whistleblower. A justified fear of reprisal can stop potential whistleblowers coming forward. That was the very thrust of Senator Carr’s remarks. What is happening is that the various impositions of administrative practice, supported by proposed regulations such as this, act as a dampener at best and as a barrier at worst to proper disclosure of matters which should be disclosed in the public interest. As a result, corruption or improper conduct can continue unchecked.

A current example of this, which brought some Department of Immigration and Multi-cultural and Indigenous Affairs issues to a boil on Monday, was when the ABC’s *Late-line* program included an interview with an anonymous immigration department official who blew the lid on serious errors committed by the department. The difficulty with that situation is that the whole thing has to be conducted in secret because there is not a proper mechanism, a proper forum, for that person to come forward. So you have a situation where, on a television current affairs program, somebody whose voice, features and character are disguised makes allegations which cannot be tested and properly examined by an appropriate authority and without fear of reprisal. That state of affairs is clearly not in the public interest. While the exposure of improper conduct can be embarrassing for governments and even for parliaments, this does not justify allowing such conduct to continue by refusing to protect those who would expose it. I have pushed and pushed at this government to strengthen...
the whistleblower provisions in the Public Service Act.

Experience both in Australia and overseas has shown that whistleblowers and their families are often harassed and suffer emotionally and financially as a consequence of the whistleblower having exposed unacceptable conduct within the organisation. As far back as 1994 the quite well known academics in this area, De Maria and Jan, examined the experiences of 102 whistleblowers in Queensland. Reprisals were noted in 71 per cent of the sample and included sacking, psychiatric referral, demotion, being charged and being sued. We argue that it is essential to provide a secure environment in which whistleblowers feel confident in expressing their concerns. If the statute is properly constructed, you then can prevent the frivolous, the vexatious and the persons with an obsessive idea from pursuing claims and approaches which are not valid, because they are properly dealt with. You can ensure that those who have a valid position that needs to be explored and exposed are protected and encouraged in the system.

I reminded the Senate that in America they actually have legislation which rewards whistleblowers. They get paid a bounty. The last time I looked, the Americans had paid out claims amounting to billions of US dollars—and I do not say that lightly—over the life of that legislation as a reward to public servants who have exposed corruption. Current mechanisms for whistleblower protection for the Commonwealth sector only apply to people covered by the act. That leaves a void. It is inadequate. While members of the public may pass on concerns about an aspect of the administration of a government agency to the office of the Ombudsman, there are limitations on the ability of the Ombudsman to offer specific protections to whistleblowers.

Consideration should also be given to the fact that the public sector has changed markedly in the past 20 years, notably with outsourcing and privatisation. That means that there are fewer protections and fewer safeguards because there is a greater distance between the parliament’s decision to pass laws and appropriations to support programs and the delivery of services—and more hands in the till in between. There is general agreement that current public disclosure legislation is inadequate, but there is not any sign that the government accepts that position. We think it is an area of the utmost importance that requires fundamental change.

The way in which Senator Carr expressed the argument was exactly right. What he did not do was reject the idea that regulations of this sort are necessary. What he did not do was reject the idea that it was essential to ensure that in certain respects the quiet and secure pursuit of government activities without public disclosure may in fact be necessary for good administration. He did not reject the idea that there must be discipline, appropriate attention to confidentiality and proper responses by public officials in their duties to the minister and to the government. What he does reject, and what we reject, is the ability of regulations to be used to close down the proper expression of legitimate disquiet about actions of the government which may lead to harm, either in the public interest at large or in the private interest of particular employees such as workers or public servants.

Senator Carr’s admonition to the government is to have a look at other models within the Australian governmental community and to think again about being more specific and thus allaying the concerns that both the Labor Party and the Democrats have expressed today. It is not our belief that there should not be regulations. Our concern is that this regulation goes a step too far, is too broad.
and could be dangerous in the hands of somebody who wishes to close down the proper disclosure of corruption, waste, impropriety or bad government when it needs to be disclosed. Accordingly, we have made the decision to support the disallowance.

Senator ABETZ (Tasmania—Special Minister of State) (11.48 am)—The background to the Public Service Amendment Regulations 2004 (No. 2) is that in December 2003 the validity of the Public Service regulation 2.1 was cast into doubt by the decision in Bennett v President, Human Rights and Equal Opportunity Commission, which is commonly referred to as the Bennett case. As a result, the government brought in the new regulations which, by what appears to be a majority, the Senate is seeking to disallow today.

It is essential in a healthy democracy that members of the public have the opportunity to contribute to decision making and that there is public scrutiny of government. Public access to government information helps make this possible, but there are some circumstances where there is an overriding public interest in maintaining the confidentiality of government information. The regulation that the opposition is seeking to disallow reflects this balance. It replaces a catch-all prohibition—which in effect prohibited a Public Service employee from disclosing any information about public business or anything of which the employee had official knowledge except in the course of the employee’s duties—with a limited prohibition that focuses on the consequences of disclosure. It ensures that the law governing disclosure of information by public servants is compatible with the expectations of the Australian public and the legitimate interests of the government in protecting certain information.

In developing the regulation, the government decided against defining in detail by reference to subject matter the types of information that should be protected. Rather, new regulation 2.1 focuses on the consequences of disclosure, which it defines in terms of the possible prejudice the disclosure might cause. This is consistent with the principles based approach of the Public Service Act 1999 and the Commonwealth Protective Security Manual of 2000. It is also consistent with the approach recommended in 1999 by Professor Finn, as he then was—it was Justice Finn, the former Professor Finn, who decided the Bennett case—in a study on official information. That is the approach that we have sought to take.

Prescribing particular types of information that should not be disclosed could result in unintended restrictions. It could be the case that not all information in a particular category need necessarily be prohibited from disclosure. The government is not seeking by this regulation to regulate public comment, leaving that to be considered and managed as previously in accordance with Australian Public Service values and its code of conduct.

Even if you were to accept everything that has been put to the Senate by Senators Carr and Murray—and I especially address this comment to Senator Murray, who has prided himself in, and we have accepted it from time to time, his Realpolitik approach to life and to the choices that have to be made in this chamber—there is a question that has to be asked. If the Senate disallows this regulation, public servants will continue to be faced with a regulation that existed before the creation of this one—the very one that Justice Finn criticised. Do Senator Carr and Senator Murray genuinely believe that that is in the best interests of the Australian Public Service, the public servants and the values that have been expressed in this debate?
I suggest and recommend that, on more serious reflection, they would come to the conclusion that, whilst they might not particularly like this set of regulations, it is better than the set which existed before these ones were introduced. But, by their actions today, if they continue through with their intentions, those parties in the Senate who are going to disallow this regulation will put public servants back into the situation that Justice Finn criticised in the Bennett case. If they think that that is a clever form of public administration then I would have to respectfully say to them that I differ in my approach and that the government does as well. By disallowing this regulation, they will be going back to the confusion of that which existed before and that which was criticised by Justice Finn.

In relation to arguments about restriction on public comment by public servants, let me make the following points. The new regulation is not an attempt to clamp down on public servants speaking out about issues, and it will not prevent them from disclosing information about malpractice or corrupt administration in the Public Service. The regulation is about the disclosure of inappropriate information. It is all about getting the balance right. In fact, the government is not seeking to regulate public comment, leaving it to be considered and managed, as previously, in accordance with the Public Service values and code of conduct. The Public Service Commissioner’s guidelines on public comment in the Australian Public Service values and code of conduct in practice: guide to official conduct for APS employees and agency heads, states:

... generally, APS employees ... may make public comment in a private capacity, so long as they make it clear they are expressing their own views. The guide also notes a range of circumstances in which it is not appropriate to make public comment, including where it would compromise an APS employee’s capacity to fulfil his or her duties in an unbiased manner. In addition, in making public comment, APS employees must not of course disclose information unlawfully—for example, by failing to comply with regulation 2.1.

Whistleblowers in the Australian Public Service already have a legitimate avenue for reporting actions that they believe to be in breach of the Public Service code of conduct. These regulations do not change the existing regime. The Public Service Act allows public servants to report maladministration and breaches of the law to the agency head or indeed to the Public Service Commissioner. Going to the press is not provided for, and I think most reasonable people would accept that that is not a fair and appropriate avenue for a grievance to be aired.

In response to Senator Murray, I indicate that the regulations relate to operations of government, not to political interests of the government. In relation to the DIMIA matter, it would be interesting to know the name of the employee who was referred to in Lateline and whether or not that employee had in fact gone through the normal appropriate mechanisms of disclosing and expressing his or her concerns either to the head of the agency or indeed to the Public Service Commissioner prior to embarking upon the course of divulging things in the media.

I am not sure what the situation was, but I would not want people who may read this debate in Hansard thinking that there was no avenue open to that person to make a complaint if he or she thought there was a legitimate complaint to make. There are genuine, quite wide mechanisms within the Public Service administration to allow employees with concerns to make their complaints and concerns known through the appropriate hierarchy. I do not think anybody would assert, for example, that the Australian Public Ser-
vice Commissioner and officers would not take any such complaints seriously and deal with them appropriately. Indeed, during Senate estimates hearings I think there were virtually no questions, if any, to the Public Service Commissioner and I think in general terms that—

Senator Carr—That’s not right. There were questions to the Public Service Commissioner.

Senator ABETZ—Yes, but not as to how the duties were undertaken. I think it is an office that has been held by people in whom the Australian public can have confidence—and public servants can have confidence as well—to make whatever complaints they deem appropriate. I want to put on the record that there are appropriate mechanisms for concerns and complaints to be aired. It is inappropriate to refer to these regulations without referring to the whistleblowing opportunities and the chain that is put down in the Public Service values and code that allows for these sorts of complaints to be made.

I simply remind the Senate that, if they vote down these regulations, we will be back to the bad old days of the regulations which have been criticised by Justice Finn and which we have sought to overcome. If that is the outcome that the Senate wants, so be it. Undoubtedly, the numbers are against us on this, but I do not think senators will be doing justice to the vast majority of public servants who are Australians who are devoting their working life to the betterment of this country, the vast majority of whom do the right thing and are helping to advance the Australian nation. But, from time to time, you do have situations where regulations are required to cover certain conduct, and these regulations that are about to be disallowed by the opposition and minor parties in the Senate provide a balance that overcomes the concerns of Justice Finn’s comments in the Bennett case. I commend these regulations to the Senate, albeit I note that the vast majority of senators have already made up their minds.

Senator CARR (Victoria) (12.00 pm)—I would first like to thank the Democrats for their support for this measure, and I understand that the Greens are also supporting this measure. The question at the centre of this discussion today is whether the government’s new regulations, which are being promulgated to replace an old set of regulations, are adequate. That is the key issue. I believe it is appropriate for the Senate to say that they are not. In that context, Minister Abetz says that the government will go back to the old regulations. I find that an extraordinary proposition. We have an extraordinary proposition where the Federal Court determined that the old regulations were inadequate, were invalid in part and were certainly legally questionable in regard to the provisions of sections of those regulations, and where the government acknowledges that point by proposing a new set of regulations.

What we are saying—and what I propose—to the government is that, if it is the case that the Senate regards these measures as inadequate, the obligation is on the government to come back with another set of regulations to actually fix the problem that the Federal Court identified and to draw upon the experiences of other jurisdictions which the Federal Court pointed to which might be appropriate to deal with the basic issues in question. There is the case in South Australia, there is the situation in the United Kingdom and there is a long history to call upon in regard to the obligations of public servants in the provision of information.

We are not arguing against the fact—and no-one should challenge the proposition—that there is a need for balance on these is-
sues. There are clearly measures necessary to protect national security and cabinet secrecy; there are fundamental questions in regard to personal privacy; there are basic issues in regard to the probity of contracts and contract negotiations; and there is a need to ensure that there is an impartial and effective Public Service. These are all values that I think everyone in this chamber would publicly subscribe to. However, it is not appropriate to actually prevent the other responsibilities the Public Service have in terms of the provision of information, especially where they have obligations which go beyond their immediate, direct line responsibilities to ministers. In respect of Mr Bennett’s situation, as a union official he has obligations to argue in defence of the members of his union. Those obligations go to the question of the working conditions of public servants. He is entitled to speak out on those questions. In fact, I say he has an obligation to speak out on those issues.

The minister says that we should not forget the whistleblower protections within the current administrative framework. I think there is a truckload of material evidence to suggest that the whistleblower provisions are not in themselves adequate for people to be able to fulfil their obligations, and the response that the government now proposes to the Senate is in fact not to respond adequately to the Federal Court but to propose yet another catch-all provision—the very point at the centre of the judgment of Mr Justice Finn. It is not appropriate to involve unnecessary and burdensome provisions to sustain those fundamental values of the Public Service that we all uphold. However, it is equally concerning that this government is now taking a series of measures to reduce the level of public scrutiny and accountability. In the context where the government is taking control of this chamber as well as the House of Representatives, it is an obligation on this Senate at this time to fulfil its obligations to address these matters while it still can.

I am very concerned about the politicisation of the Public Service. I am very concerned about attempts to use the Federal Police to silence criticism and people who are raising legitimate issues within the Public Service. I am very concerned about the inconsistency of the approach that the government is taking in regard to unauthorised disclosures. For instance, when the National Indigenous Times, which is a small newspaper that deals with Indigenous affairs issues, published documents, it got raided by the Federal Police and the editor’s private residence was turned over. However, when the same documents were published by major dailies across this country, those newspapers were not treated in the same way. That suggests to me that there is a level of partiality in the way in which the government is seeking to maintain its secrets—secrets that it finds awkward at this time. So I trust that the Senate is able to find merit in this disallowance motion, and I commend it to the Senate.

Question agreed to.

**COMMITTEES**

**Rural and Regional Affairs and Transport References Committee**

**Report**

Senator FERRIS (South Australia) (12.10 pm)—At the request of the Chair of the Senate Rural and Regional Affairs and Transport References Committee, Senator Ridgeway, I present the committee’s report entitled *Iraqi wheat debt—repayments for wheat growers*, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.
Senator FERRIS—I seek leave to move a motion in relation to the report.

Leave granted.

Senator FERRIS—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

Background
The committee’s reference stemmed from a debt incurred by the Iraqi government when the then Australian Wheat Board sold wheat on credit terms to Iraq. Following the conflict arising out of Iraq’s invasion of Kuwait in 1990 and the imposition of UN economic sanctions on the Iraq regime, the Iraqi government defaulted on payments owing to its creditors. The overwhelming majority of their debt to Australia relates to sales from AWB to Iraq between 1987 and 1990.

For wheat growers that contributed to each of the three affected seasons’ pools, the debt owed to them averages out to around $2.68 per tonne of wheat they contributed.

AWB’s sales to Iraq during the late 1980’s were insured by the government insurer the Export Finance and Insurance Commission on their National Insurance Account. This guaranteed that affected growers were insured for 80 per cent of the value of credit sales to Iraq that were defaulted on. Between February 1991 and December 1992 the Export Finance and Insurance Commission paid growers 381 million US dollars. The uninsured portion that growers lost on Iraq’s payment default was 98 million US dollars.

On top of this insurance payout, growers received an ex-gratia payment of $31 million from the Commonwealth government. This covered financial losses suffered by AWB when UN economic sanctions forced them to divert cargo and sell to lower paying markets.

Last November, Australia and fellow Paris Club creditor nations agreed to forgive 80 per cent of Iraq’s outstanding debt. Under this arrangement, the remaining debt will be repaid over a scheduled period. Accordingly, AWB is scheduled to receive $42 million in 34 instalments from Iraq, stretching from 2001 to 2028, a sum that will be handed on to affected wheat growers.

Conduct of inquiry
Some farmer’s organisations, mostly in Western Australia, argued that wheat growers should be compensated for the uninsured portion of Iraq’s debt. To hear these concerns, the Committee travelled to Perth in February to gather evidence from Western Australian growers’ representatives. The Western Australian Farmers’ Federation, the Pastoralists and Graziers’ Association of Western Australia and the Wheat Growers’ Association of Australia all appeared before the Committee.

Although agreeing that the government had discharged its legal responsibilities, the Western Australian Farmers’ Federation and the Wheat Growers’ Association of Australia sought compensation on the moral ground that government decision making had caused Iraq to default on their payments.

The Committee did not ultimately accept this view. Australia did not have a choice in adhering to the UN’s imposition of economic sanctions, being required to do so in accordance with international law. Growers were insured against the risks associated with selling into markets such as Iraq. The Committee is also of the belief that participating in the Paris Club debt rescheduling agreement was the only way to ensure that some repayments from Iraq are forthcoming, and the government did not short change growers by participating in this forum.

Recommendations
However, the Committee does realise that 2028 is a long time for growers to wait for the repayments they are scheduled to receive under the Paris Club agreement. As such, this report recommends that the Export Finance and Insurance Corporation and AWB Ltd agree to a distribution of Paris Club scheduled repayments that enables growers, through AWB Ltd, to receive the first 20 per cent of repayments from Iraq, beginning in 2011.

The Committee realises that identifying affected growers may be a difficult and expensive task. As such, the Committee also recommends that AWB Ltd immediately commences the process of iden-
tifying and locating every grower entitled to receive payments made by Iraq under the Paris Club agreement. Further, prior to the commencement of Iraq’s scheduled debt repayments in 2011, AWB Ltd undertakes to establish a payment mechanism whereby those receiving Iraqi payments are responsible for meeting the costs of their distribution.

Finally, the Committee notes its concerns with the way in which growers’ organisations communicated with their constituents over this issue. The Committee expresses the view in this report that AWB Ltd and the Grains Council of Australia’s poor communication with their growers caused a degree of misinformation and confusion to surround this issue. We hope that growers are more accurately informed in the future.

Senator BROWN (Tasmania) (12.11 pm)—The Iraqi wheat debt—repayments for wheat growers report looks at the repayment of the Iraqi wheat debt to Australian growers which emerged in the 1980s. There was a substantial default by the Iraqi authorities. The government made good some 80 per cent of that shortcoming to wheat growers, but 20 per cent was outstanding. This has led to a great deal of angst amongst growers, particularly in Western Australia and particularly in view of the severe drought of recent years, which has seen many growers forced off the land and many others in very difficult financial circumstances. Of course, with those difficult financial circumstances for growers there is a flow-on effect to rural towns—shops, schools and businesses in general. The matter led to a great response from growers, particularly those from Western Australia, who presented themselves to the minister and the government on a number of occasions to appeal to have the debt owing paid to growers.

The committee has moved some way in recommending that the government meet that request. Under the Paris agreement and arrangements made by government it is anticipated that Iraq will have the money to repay the debt by the year 2028—22 years from now. In the conclusions and recommendations of this committee, it is pointed out that by that time the majority of growers will have died and all of them will have ceased farming. The recommendations of the committee, if I may summarise them, are that the payments from the Paris Club arrangement be made to growers first up—that is, after the year 2011, when those payments should be flowing back from Iraq. The problem I have with that is that, in the next five or six years, the logic from the committee’s own finding is that a number of growers will have left the land—indeed, some of them will have died—not seeing that recompense. So, in a dissenting report to the committee’s report, I have recommended that, firstly:

The government should within 12 months undertake to repay growers the outstanding Iraq wheat debt and to cover the cost of this redistribution.

And, secondly:

That the Export Finance and Insurance Corporation and AWB Ltd ensure that the first 20 per cent of Paris Club scheduled payments, beginning in 2011, are returned to the government.

And, thirdly:

That, to assist the government, the AWB Ltd immediately commence the process of identifying and locating every grower entitled to receive payments made by Iraq under the Paris Club agreement.

Surely that is a simple and better outcome. It means that the government pays the growers now for a debt that is already more than a decade—approaching two decades—outstanding and the government recoups the money from the Paris Club agreement after 2011, instead of making the growers wait until then.

I have no doubt that some growers will be forced off the land between now and then and others will die. It is just a simple matter of justice that these growers be compensated, not least at a time when the wheat growing
industry is having a hard time of it. Thank God for the rains we have seen in recent times, but that does not alter the argument that growers should at this time be recompenseed. It is not a big amount of money for the government but it is a huge amount of money for growers and small rural communities across this country—not just in Western Australia.

How this process came about is laid out in the committee’s report. But, when you get down to it, the growers in Western Australia became activists and, through their organisations—two, in particular—they decided not to give up on this one. They have fought for the principle that they were not guilty for international events occurring in Iraq and they should have been compensated. The committee has inherently agreed with the principle that they should get their money back but says, ‘Wait until the year 2011 when the Paris Club money starts flowing.’ What I am submitting here is: no, let the government get that Paris Club money in 2011 and compensate the growers now. That would be a reasonable, sensible and proper outcome to a saga that has gone on for far too long.

Question agreed to.

**AUSLINK (NATIONAL LAND TRANSPORT) BILL 2004**

**AUSLINK (NATIONAL LAND TRANSPORT—CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2004**

Second Reading

Debate resumed from 15 June, on motion by Senator Ellison:

That these bills be now read a second time.

**Senator FERRIS** (South Australia) (12.17 pm)—On behalf of Senator Harradine, and with the concurrence of the opposition, I seek leave to incorporate Senator Harradine’s contribution on this AusLink legislation.

Leave granted.

**Senator HARRADINE** (Tasmania) (12.17 pm)—The incorporated speech read as follows—

I rise to speak about the AusLink (National Land Transport) Bill 2004 which has particular implications for Tasmanians.

We are told that AusLink will provide a long term strategic view for planning Australia’s roads and railways, to provide what the bills Digest says will be a safe, integrated and high-performing national network.

So let’s look at the situation of Tasmania. Tasmanians are at a significant disadvantage in relation to the rest of the country because the state is not physically linked to other states by the Federally-funded national highway system or by a rail system. The existence of the Bass Strait means that we suffer a disadvantage of isolation rather than a disadvantage of distance.

This means that while other states and territories are easily linked to the rest of the country by road or rail, people wanting to travel to or from Tasmania or to move freight to or from Tasmania have to pay costs in addition to costs that those travelling between other states have to pay.

So while the Bass Highway and the Midland Highway are counted as part of the National Highway, the link to the mainland continues to be a problem.

This has an impact on the cost of living in Tasmania, as well as tourism and the cost of travelling to the mainland.

The Centre for International Economics published a report in 2000 that found schemes such as the Tasmanian Freight Equalisation Scheme focus on assisting Tasmanian producers with importing goods:

‘… while no attempt is made to address the inequity that Tasmanian consumers may experience owing to higher transport costs of importing consumption goods from the mainland. Therefore the assistance schemes
are limited in the extent to which they rectify inequities."

To quote Peter Brohier, who gave evidence to the Senate inquiry, “The Bass Strait Passenger Vehicle Equalisation Scheme was intended to offer to all Australians National Highway equivalence across Bass Strait.”

But while the Vehicle Equalisation Scheme subsidises some of the cost of getting a vehicle across the Bass Strait by ferry, there is no guarantee that there will be room on the ferry on any particular day for the return journey. So access to and from the mainland is not the same as the ease of access between states via the national highway system enjoyed by all other states and territories.

In other words, we don’t have the integrated and high-performing national land transport network promised by AusLink.

An Australian Bureau of Statistics report in November 2004 showed that Tasmanians are paying the highest retail prices in the country for goods like breakfast cereal, sugar, jam, instant coffee and baby food.

They’re the top retail prices for 25 per cent of surveyed items across the eight capital cities.

Many of these items are necessities—not luxuries we can do without. While all Tasmanians are affected, these high prices have more impact on lower income people.

The Federal Government funds the Tasmanian Freight Equalisation Scheme, which is supposed to compensate for the differential transport costs of getting goods to Tasmania. But the Scheme only compensates businesses in manufacturing, mining, agriculture, forestry and fishing. The impact of transport costs on the purchases of ordinary Tasmanians goes uncompensated.

The Federal Government should reform the Freight Equalisation Scheme to help rectify the disparity between mainland retail prices and Tasmanian prices.

I had a look at the Senate report into this bill and I could find no mention of the Tasmanian Freight Equalisation Scheme and the Bass Strait Passenger Vehicle Equalisation Scheme. Yet these schemes are vital issues for Tasmania.

The bill doesn’t directly consider the equalisation issues, but it does provide a framework which I hope can be used to further these issues for the development of Tasmania. I urge the Minister to consider this issue.

Tasmania still needs appropriate recognition as a state isolated by sea. There are extra costs involved in getting to and from the state. We have some federal assistance with the cost of transporting people or goods across Bass Strait, but that assistance is inadequate. Without adequate assistance to ensure that the state has, in effect, a highway link allowing the same ease of transport as between any other state or territory for the same cost, Tasmania’s economy will always find it difficult to grow.

As a consequence, the people of Tasmania will continue to struggle to share the relative prosperity of their fellow Australians on the mainland.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.17 pm)—In summing up on behalf of the government, I thank honourable senators for their contributions to the debate. The AusLink (National Land Transport) Bill 2004 and the AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004 represent major reform legislation. They will enable very significant changes in the approach to investment in land transport infrastructure. The AusLink program will help deliver a land transport system that can both meet the challenges of the transport task and make its contribution to a stronger economy.

Since coming to office, the government has already taken major steps towards positioning Australia to sustain long-term economic growth. It has reduced public debt by $70 billion and fundamentally restructured the tax system. High-performing land transport infrastructure is needed for ongoing improvements in our national productivity and competitiveness, as our population ages over the next 20 to 30 years. The AusLink initiative, in particular, introduces a new, modern
and innovative approach to land transport infrastructure planning, decision making and funding. It backs these reforms with a massive increase in funding which our sound economic stewardship has enabled us to provide.

The arrangements for which this legislation provides will drive the development of our key road and rail links and ensure they are forged into a single high-performing and safe national network, move beyond the entrenched arrangements for separate road and rail funding which hampered rail development, recognise the critical importance of links to our ports and airports in supporting a globally competitive transport system, and maintain support for the maintenance and upgrading of local road networks and the development of key regional links.

The government is investing in Australia’s future. These bills will provide for the planning and evidence based investment decision-making framework which Australia needs. The government will also provide unprecedented levels of funding for our national road and rail infrastructure. I note that the bills are supported and I commend them to the Senate.

Question agreed to.

Bills read a second time.

Third Reading
Bills passed through their remaining stages without amendment or debate.

TAX LAWS AMENDMENT (PERSONAL INCOME TAX REDUCTION) BILL 2005
Consideration of House of Representatives Message
Consideration resumed.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (12.20 pm)—I move:

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

By amending the Tax Laws Amendment (Personal Income Tax Reduction) Bill 2005, the chamber has made the political point that it wished to make in relation to this bill. There is nothing more to be gained by insisting on these amendments now that the House of Representatives has clearly rejected them. We have evidence that a majority of senators have said that they will not disallow the schedule to give effect to the proposed income tax scales. We still have the farcical situation of the formal opposition not being able to decide whether it will move a disallowance, but a clear majority have said that they will not disallow the schedule to give effect to the government’s proposed income tax scales. The tax commissioner has, therefore, said that employers should use the new schedule commencing 1 July. So taxpayers will receive the government’s tax cuts on 1 July regardless of what this chamber now does. These are, therefore, pious amendments, given that the new Senate will pass the government’s legislation to give effect to these tax cuts when the new Senate meets in August.

We regard it as quite irresponsible of this soon to be expired Senate to insist on this cobbled-together tax proposal of the Labor Party and to impose it on the recently re-elected government. The Labor proposal is an uncosted, complex and inadequate budget night knee-jerk response by an opposition that is floundering in the face of the government’s budget and initiatives. The government think that it is pretty outrageous for a Senate, of which half was elected six years ago and the other half three years ago, to deny a government re-elected with a clear swing in its favour only eight months ago its prerogative to provide all Australians with
the tax cut it deems to be the most appropriate.

Members of the House of Representatives, all elected only eight months ago, have now considered and rejected this Labor proposal agreed to by this chamber this week by, in effect, one vote. In our view a responsible Senate, respectful of the prerogatives of the newly re-elected government, should not now insist on these amendments, especially given that in the circumstances these are utterly pious and given that a majority of senators have said that they will not disallow the schedule to give effect to the government’s tax cuts. I think it is fair to say that the circumstances might be different if the government were proposing to increase taxation on Australians in some way that could be judged reasonably to be unfair or unjust or if we were blatantly contradicting a clear election commitment, but none of that is the case. We are not increasing taxation and we are not breaching any election commitments.

This is a government which, having been re-elected and having examined the budgetary situation over the forward estimates, has concluded that it is in a good position to provide all Australians with a tax reduction. This is a proposal by the government to reduce the tax paid by all Australians. This is completely and utterly different to the circumstances of 1993-94, which were referred to by Senator Sherry, when a government was seeking to impose higher taxation on Australians when it had been re-elected on the completely opposite premise: that it would reduce tax. We are proposing to reduce the tax burden on every Australian. Every Australian will pay less tax as a result of the government’s proposal.

It is fair enough that other senators and other parties say: ‘If we were the government we would do it slightly differently; we would give more tax cuts to these people and less of a tax cut to those people.’ It is reasonable that you have that view, but to use the power of the Senate to impose on the newly elected government a different methodology for reducing the tax paid by Australians is, we think, an abuse of that power. They purport to use the power of the Senate to stop the government reducing the tax burden on all Australians in a manner which it believes is appropriate in these circumstances.

The amendments which have been imposed by the Senate are utterly pious, and are not good ones in any event. I acknowledge Senator Murray, who said that it had been ‘cobbled together’ on budget night. That is the reality. The other reality is that this proposal would mean no tax cut for anyone on 1 July. No Australian would receive a tax cut on 1 July if this legislation were to stand and there was no tax schedule to give effect to our proposal. It would mean the bottom marginal rate would be 17 per cent, not 15 per cent. It would mean even greater complexity in our tax system—again, something Senator Murray acknowledged was a problem. And, in our view, it would detract from the international competitiveness of Australia’s personal income tax system compared with the government’s proposal.

The government’s proposal complements our previous reforms to income tax and, as I said yesterday, should not be seen in isolation. This is the fourth chapter in the book on tax reform and needs to be seen in the context that all the previous reforms were very much directed to lower income earners. We are now using this opportunity not only to reduce every single taxpayer’s tax burden but to deal with this very significant problem of the low level of income at which high marginal tax rates cut in. We want very much to ensure that we maximise the number of Australians who are in the 30 per cent tax bracket and that they will not go out of the 30 per cent tax bracket until they reach much
higher levels of income. This is about low- and middle-income Australians being able to aspire to earn higher incomes without going into higher tax brackets. It improves incentives to participate in the work force, it rewards effort and it increases the international competitiveness of our personal income tax system. I urge that senators not put the Senate into conflict with the House of Representatives on this issue and that the Senate not insist on these amendments.

Senator SHERRY (Tasmania) (12.27 pm)—On behalf of the Labor opposition, I indicate to the chamber that the Labor Party will not be supporting the motion. We are dealing with the Tax Laws Amendment (Personal Income Tax Reduction) Bill 2005, which was successfully amended in this chamber yesterday to ensure a fairer tax outcome for all Australians. I will get to the details of that in a moment.

It seems to me that one of the central points that the Minister for Finance and Administration was making to the chamber in his comments on the message from the House of Representatives was the very arrogant principle: ‘We were re-elected to government some eight months ago with an increased majority; therefore, we should do what we want, regardless of the Senate’s view.’ That is an exceptionally arrogant view. It is not a view the Labor Party subscribes to, and I have to say it is not a view that the current government ever subscribed to when they were in opposition in this chamber and had some influence on legislation.

The minister’s view might have more validity if this tax package had been presented to the Australian people in the run up to the last election, but it was not. The Labor Party certainly accept that we lost the last election, but we have some democratic rights and representation in the Australian Senate. The Labor Party are perfectly entitled, as was the current government on many occasions when they were in opposition, to express an alternative view and to fight and argue for that alternative view. So it is with this government’s tax package, which we argue is unfair. It is not just unfair; it does not provide sufficient incentives in the transition from welfare to work. We hear so much about this from this government, but they do not deal with fundamental reform in that regard.

I want to deal with a number of comments that have been made in the context of the amendments that were successfully moved in this chamber yesterday—the comments by the Treasurer, which were largely reflected in the comments made by Senator Minchin in his earlier contribution. But, before I do that, let me just remind this chamber and the many Australians listening in the gallery—that this is not being broadcast today—that Labor’s fundamental argument is about fairness and ensuring that those Australians earning less than $63,000 a year are more deserving of a tax cut than $6 a week, which is what this Liberal government is offering. Under our formula, there is a very significant cut for the majority of those Australians—not $6 a week but $12 a week.

Secondly, we maintain the tax cut for those earning between $63,000 and approximately $100,000 a year. It is a tax cut at a similar level to that which the Liberal government proposes to introduce, but the change is with respect to the level of tax: a cut being given to those earning more than $100,000. Taking an income of $125,000, under the Liberal government’s package there is a tax cut of approximately $65 a week. The tax cut for people at that income level is 10 times the tax cut for those earning less than $63,000 a year, who would get $6 a week. We do not believe that is fair.

The minister says we cobbled together a response. That is just not correct. The
shadow Treasurer, Mr Swan, the Labor leader, Mr Beazley, and a number of other Labor shadow ministers were in the budget lock-up on the night of the budget. Bear in mind, we have to read thousands of pages of budget documents in a period of about four to five hours. I was included in the so-called lock-up. It did not take us long to read the tax cut announcement from this government and come to the conclusion that it was fundamentally unfair. Whether or not this government has a majority in the Senate and whether or not the Liberal government won the last election, the Labor Party are not required to say, ‘Oh, well, we’re just going to roll over, agree to everything the government has announced and do nothing for the next three years.’ That is not the approach in a democracy and it is certainly not going to be the approach of the Australian Labor Party.

We have put forward a positive alternative that was accepted by this chamber yesterday. It was not cobbled together on the night; it was put together in a thoughtful way as a positive alternative, properly costed, over the couple of days after the budget was made public. That is one assertion of the minister that is incorrect. Labor will be seeking the support of this chamber to insist upon the amendments that were passed yesterday. The Labor Party does not intend to waver on its fair and sensible amendments that were carried in the chamber yesterday.

Let me deal with some other issues that Senator Minchin here and the Treasurer, Mr Costello, in the House of Representatives debate dealt with in their contributions yesterday. The first reason cited by the government is that there will be no tax cuts from 1 July if the amendments are successful. We know that is not the case. The tax cuts flowing from the budget are due to commence on 1 July and the Labor amendments reflect these and pass them on in full. In relation to the balance of the tax cuts for 2005-06, Labor’s view is that it is more economically responsible to deliver them on 1 January to allow the economy to traverse the current interest rate red zone.

Tax cuts commencing on 1 July will be of no use to families if they are swallowed up by further increases in interest rates. Domestic consumption is still outstripping incomes and, in the face of the variously discussed capacity constraints on supply, the government’s proposed tax cuts from 1 July could push up inflation and force the Reserve Bank to increase interest rates. Senators should also note that, due to the more generous tax cuts included in Labor’s package, 97 per cent of taxpaying households will be at least as well off or better off in the 2005-06 year compared to the government’s proposal, despite the 1 January start date.

The second reason cited by the government, and again by Senator Minchin earlier, is that Labor’s proposal does not reduce the bottom marginal tax rate. Labor’s proposal includes a superior mechanism for delivering incentives to low-income Australians. A reduction in the bottom marginal rate from 17c to 15c in the dollar will result in a tiny two percentage point improvement in effective marginal tax rates. It is simply spread too thin to generate the incentive needed to move people from welfare to work. Labor’s proposal increases the tax-free threshold to $10,000 for those earning under $20,000 a year, with the low-income and welfare to work tax offset. This reduces effective marginal tax rates by 17 per cent for those with a taxable income of under $10,000. It also delivers a superior tax cut. Low-income earners will pay less tax under Labor’s proposal. For example, the Liberal government’s proposal delivers a tiny $1.50 per week tax cut to those on $10,000 a year. Labor’s proposal delivers a tax cut of $8.50.
I digress slightly. Senator Harris raised this issue yesterday. Unfortunately, he did not realise that Labor had dealt with the issue of tax cuts in a markedly improved way to that of the Liberal government. When Senator Harris comes in to cast his vote, I urge him to give consideration to what was, I think, a new discovery for him yesterday: that we had delivered a better deal for lower income earners. I suspect that Senator Harris has been deliberately misled by the representations by the government on this particular area and I certainly urge him to reconsider his attitude, hopefully having given the debate some more reflection.

Thirdly, the government argues that Labor’s proposal adds to the complexity of the tax system. That is not the case. Labor’s proposed low-income and welfare to work tax offset simply replaces the existing low-income tax offset. It will operate in a similar manner and, as is the case currently, the tax office will calculate any entitlements for taxpayers. Indeed Labor has proposed that the benefit be included in the PAYG withholding schedules, allowing it to be automatically paid to taxpayers in the PAYG system. The transitional arrangements for the proposed low-income and welfare to work tax offset in 2005-06 are only fractionally more complex than the existing low-income tax offset formula. As I mentioned earlier, as this tax offset is calculated by the tax office no additional complexity is presented for taxpayers. It is a nonsense argument from the government.

Fourthly, the government claims that senior Australians will be worse off as a result of our tax amendments. That is just blatantly wrong. It is totally incorrect. I hesitate to use the word ‘lie’—I cannot use it in here—but it is just plain wrong. Labor does not accept that senior Australians would be disadvantaged in the transitional years. Under Labor’s proposal the income threshold where the senior Australians tax offset is withdrawn is higher than the government’s, meaning that the full value of the tax offset is available up to a higher income. This, combined with Labor’s increase in the 30c marginal tax rate threshold to $26,400 rather than $21,600, means that senior Australians will pay less tax under Labor’s proposals.

The final reason presented by the government is that Labor’s proposal will result in a less competitive tax system. Labor disagrees. The difference in the level of the top threshold for the highest marginal tax rate is not significantly different under Labor compared to the government’s figure. Labor proposes $100,000; the government proposes $125,000. More significantly, we have evidence now from the Melbourne Institute—it has come to light since yesterday’s debate—which shows that Labor’s package will result in a significantly greater boost to work force participation than the Liberal government’s proposal. Labor’s package will make our economy more competitive because it will encourage more people into the labour market. The Melbourne Institute’s analysis of the government’s and the ALP’s tax packages shows that Labor’s package delivers more tax relief for all but the highest income earners and—wait for this—encourages 75 per cent more Australians into the labour market. That is right: 75 per cent, or 78,000 Australians, independently modelled by the Melbourne Institute, and many of them moved from welfare to work.

Labor have consistently said that our package offers more incentive for low-income earners to move into the labour market, and here is the proof: the Melbourne Institute estimates that 78,609 individuals will be encouraged to enter the labour market under Labor’s proposal—that is, 75 per cent more than the 45,038 under the government’s proposal. How could the government, given its concerns about labour market participa-
tion, vote against a proposal that sees 81 per cent more sole parents and a massive 121 per cent more single males enter the labour force? The Melbourne Institute’s analysis also shows almost a doubling in the increase in average hours worked under Labor’s package compared to under the government’s. And get this: the Melbourne Institute’s analysis was done for 2006, when Labor’s low-income and welfare to work tax offset is still $130 a year short of its full value of $680. So the long-term changes will be much more significant. One can only imagine the ongoing improvements in labour supply as the low-income and welfare to work tax offset is further phased up.

Labor believe that the Liberal government has no rational or credible reason to oppose the amendments that were moved in this chamber and to suggest that they be removed. Labor’s proposed model is a better model. It is more thought-out than the cobbled-together, rushed model of the government, with its thousands of advisers and public servants. Labor have presented a fair model as an alternative for the Australian community to consider. Thankfully, this chamber has endorsed the approach. I acknowledge the role of the Australian Democrats—they did some work in this area as well and they supported our approach—along with the Greens and, I think, two of the Independents. (Time expired)

**Senator MURRAY** (Western Australia) (12.42 pm)—In dealing with this motion on the Tax Laws Amendment (Personal Income Tax Reduction) Bill 2005 I want to first deal with the central proposition put by the Minister for Finance and Administration concerning the rights and obligations of senators in voting on this matter. I understand that he would use whatever arguments are necessary to push his case but the principle he outlined is so serious that this chamber really should take note of it. The essential principle outlined is twofold. The first proposition is that, because the government will shortly have the numbers to pass anything it wishes, senators voting on these matters before 1 July should simply stand back. This presumes, of course, that coalition members will automatically vote in a way that can be forecast, but under the Constitution every senator has the freedom, the right and the obligation to vote as they see fit.

The second proposition is that retiring senators should have no right to oppose the government because the government has been elected and they have not—because they were defeated or are retiring. That is such a fundamentally misplaced view of the importance of parliament and of representation as to deserve a very thorough and full rebuttal. Any parliamentarian who is elected to parliament should always follow their conscience in how they vote.

Progress reported.

**CRIMES AMENDMENT BILL 2005**

Second Reading

Debate resumed from 14 June, on motion by **Senator Abetz**:

That this bill be now read a second time.

**Senator GREIG** (Western Australia) (12.45 pm)—I rise to very briefly indicate that the Democrats will be supporting the passage of the Crimes Amendment Bill 2005. It relates to the use of assumed identities by various Commonwealth officers. The substantive provisions relating to assumed identities were debated in this chamber in 2001. At that time it was in the context of measures to combat serious and organised crime, which were subject to a number of amendments, and which we Democrats then supported.

Cleary, the use of assumed identities is a sensitive issue. There is a need to ensure that this practice is properly regulated and subject
to comprehensive accountability mechanisms. At a time of increased community concern regarding identity theft and fraud it is very important that the use of fake IDs by law enforcement and other agencies is restricted to circumstances where it is strictly necessary.

I acknowledge that there are circumstances in which it would be justifiable to use assumed identities in the interests of law enforcement. Accepting that this is the case, it is clearly more desirable for the use of assumed identities to occur in a regulated rather than an unregulated manner. In this respect, I welcome the fact that the states and territories have decided to follow the lead of New South Wales by enacting legislation to regulate the use of assumed identities. As I understand it, participating Commonwealth agencies are already able to obtain assumed identity documents, such as birth certificates and drivers licences from the states and territories; however, this currently occurs in an unregulated fashion. This bill anticipates the imminent implementation of state and territory legislation and requires relevant state and territory agencies to provide assumed identity documents to Commonwealth agencies upon request but in accordance with their own state legislation. It is hoped that this will provide greater accountability and consistency in obtaining and using assumed identity documents. We Democrats welcome the legislation and are pleased to support it.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.47 pm)—I thank senators for their contributions to this debate. The Crimes Amendment Bill 2005 is an important part of the Australian government’s continuing battle to combat serious and organised crime. It will amend the Crimes Act 1914 to enable Commonwealth officers to obtain documents, such as birth certificates and drivers licences, establishing assumed identities in accordance with legislation in force in the states and territories. The legislative framework provided for this bill was not previously required due to the absence of state and territory legislation, except in New South Wales. However, now that the states and territories are beginning to regulate assumed identities, this bill will make the necessary consequential changes to the Crimes Act so that the Commonwealth law enforcement and national security agencies can take full advantage of the state and territory schemes.

This bill will further equip our law enforcement and national security agencies by supporting their undercover operations in their continuing defence of the security of Australia and its people. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

HEALTH LEGISLATION AMENDMENT (AUSTRALIAN COMMUNITY PHARMACY AUTHORITY) BILL 2005

Second Reading

Debate resumed from 14 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator McLUCAS (Queensland) (12.49 pm)—At the outset I need to say that the Labor Party will be supporting the passage of the Health Legislation Amendment (Australian Community Pharmacy Authority) Bill 2005 through this chamber. But, in doing so, I want to alert the Senate to what has occurred in the lead-up to the presentation of this bill.
In the House of Representatives, Ms Gillard moved, on behalf of the Labor Party, a second reading amendment to the bill. We do not intend to do that in this chamber today but it is important that we do understand the intent of that second reading amendment. Its purpose was to alert the government and the community to the fact that Mr Abbott in particular and the Department of Health and Ageing more generally have been quite tardy in their attempts to negotiate with community pharmacies and the Pharmacy Guild to finalise the negotiations of the fourth pharmacy agreement. Pharmacy agreements run for five-year periods and in the third pharmacy agreement there was a commitment made by both sides, the pharmacists and the government, that there would be negotiations undertaken to look particularly at the issue of pharmacy location. That commitment and agreement was made some five years ago and here we are at 10 minutes to midnight having to bring this legislation into the chamber to allow those negotiations to continue.

It is not as if Mr Abbott did not know that this was an issue that had to be resolved but I think the timing of last year’s election might have had something to do with it. Mr Abbott has made rock solid, ironclad guarantees to the pharmacists about the continuation of community pharmacies. He has given those rock solid, ironclad guarantees at the same time as apparently negotiating with Woolworths to commission a report from ACIL Tasman to have a look at the costs and the whole operation of pharmacies in Australia. I think Mr Abbott might be being a bit duplicous again with another rock solid, ironclad guarantee. The negotiations of the fourth pharmacy agreement began only early this year, when they knew that the agreement was to expire on 30 June this year. That is why we have this legislation in front of the chamber, which I have already indicated we will not be opposing.

So, in the House of Representatives, Ms Gillard moved a second reading amendment that said:

“whilst not declining to give the bill a second reading, the House condemns the Government for:

(1) failure to conduct the negotiations over the Pharmacy Agreement in a timely fashion ...

All players would have to agree that that is an appropriate second reading amendment to be carried. Ms Gillard also said that the House condemns the government for:

(2) failure to provide transparency about these negotiations and the savings the Government is seeking to achieve ...

I concur with that view. We have tried through Senate estimates to unclaw these negotiations. That has been very difficult to do. Commercial-in-confidence is an oft used term to try to keep discussions from people’s view. In some respects, this is a reasonable thing to be saying. However, this is an agreement that will take pharmacy delivery in Australia into the next five years, and it is not appropriate that it should be done completely behind closed doors. Thirdly, Ms Gillard moved that the House condemns the government for:

(3) ’walking both sides of the street’ by commissioning reports that undermine current pharmacy arrangements and simultaneously rejecting the findings of these reports ...

I referred earlier to the report that had been commissioned. Finally, Ms Gillard moved that the House condemns the government for:

(4) getting ready to break the Prime Minister’s pre-election commitment to community pharmacy’.

That is the real fear that we are walking up against. Community pharmacy has been a strong part of the delivery of health services
in Australia. It has been an area of contention between the government and the Pharmacy Guild in particular. For us to be at this point, at the end of a five-year agreement, without agreement on particularly contentious matters is extraordinary. As I said earlier, I think this is very much related to the timing of last year’s election. With that said, we will give passage of this legislation, and we look forward to some more robust and transparent negotiations around the fourth pharmacy agreement.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.55 pm)—The Health Legislation Amendment (Australian Community Pharmacy Authority) Bill 2005 amends the National Health Act 1953 to extend the existing arrangements for improving pharmacists to supply medicines subsidised under the Pharmaceutical Benefits Scheme. In summary, the extension will allow the government to fully consider the findings of the current joint review of pharmacy location arrangements by the department and the Pharmacy Guild in cooperation, prior to determining the future arrangements for pharmacy. I commend the bill to the house.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

FILM LICENSED INVESTMENT COMPANY BILL 2005
FILM LICENSED INVESTMENT COMPANY (CONSEQUENTIAL PROVISIONS) BILL 2005

Second Reading

Debate resumed.
It is a modest proposal that if fully successful will result in the injection of another $20 million into the Australian film industry over the next two years.

Given the current malaise of the industry, that is a modest enough target.

This bill seeks to promote further private investment in the film industry by allowing a 100%, up-front tax deduction for taxpayers investing funds in the company licensed to raise the proposed $20 million.

While such shares are tradable, the up-front deduction will only be available to the original investor.

These funds will be raised by June 2007 and must be invested by June 2008.

The bill contains a number of welcome provisions that seek to encourage a broader, more diverse film industry.

These include:

Limitations on the level of share of ownership available to any individual, as well as on the level of possible foreign ownership.

Requirements that films funded under this scheme “portray Australian perspectives and Australia’s cultural diversity” as well as the use of a competitive process for the allocation of the licence to raise this funding. Criteria have been established to ensure Australian management and direction of the successful company.

There is a long way to go before the Australian film industry is restored to health.

Tax issues remain to be resolved.

Potential investors need to be reassured.

The reach and extent of Australian content rules need to be re-examined, especially in light of recent government decisions.

We need to consider the practical assistance and opportunities for training we provide to scriptwriters, to film producers and directors.

Issues relating to support for the more effective promotion and marketing of Australian films is another matter worthy of greater attention.

The Film Licensed Investment Company Bill is a modest proposal, a small step, but at least it is a step in the right direction.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.56 pm)—In the Film Licensed Investment Company Bill 2005 and the Film Licensed Investment Company (Consequential Provisions) Bill 2005 the government has introduced a package of measures worth $88 million over four years to strengthen the local film and television sector. The package is aimed at attracting greater levels of private finance, redressing the current downturn in local production, and keeping the sector competitive through script and skills development. The package is carefully balanced. Strategic intervention takes a whole-of-industry approach. It is comprehensive and acknowledges that there is no single quick fix that can address the current challenges. The increases in direct funding to Australian government film agencies, recently confirmed in the 2005-06 budget, will bring total direct funding to a high of almost $160 million in 2005-06. The government is also committed to encouraging greater private sector investment in our local product, and increases in direct support are complemented by measures to make the film sector more attractive for private investors.

The extension of the Film Licensed Investment Company scheme, known as FLIC, is a key element in the government’s film package. The extended FLIC scheme seeks to encourage growth in funding from individuals and corporate entities and to restore investor confidence in the local film and television sector. The extended FLIC scheme will allow investors up to a 100 per cent up-front deduction on the purchase of FLIC shares in the year of investment. These funds will immediately flow to the FLIC, subject to certain licensing conditions being met. The FLIC must be an Australian owned and controlled company, raising funds primarily from Australian investors and qualifying
Australian films. The extended scheme will allow a single FLIC licensee to raise up to $20 million over a two-year period at a total cost to revenue of $8 million in 2006-07 and 2007-08. The extension of the FLIC scheme has been welcomed by the sector as a timely intervention in a difficult market where investor confidence in Australian films is low. I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

MELBOURNE 2006 COMMONWEALTH GAMES (INDICIA AND IMAGES) PROTECTION BILL 2005

Second Reading

Debate resumed.

Senator McLUCAS (Queensland) (1.00 pm)—Given that we are on non-controversial ground, I am very happy to speak until Senator Lundy gets here on the Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Bill 2005. ‘Indicia’ is a new word for me. I am sure that Senator Lundy will explain more fulsomely what it means. It is a very indicative word. I am sure it is going to be about making sure that, when we have the Commonwealth Games in Melbourne, they have protection over the images that will be developed. This is clearly an important piece of legislation that should be carried through this house. I know that all Australians are looking forward to the Commonwealth Games, as I am. I hope that it will be as amazing an event as the Sydney Olympics. Given that Senator Lundy is not able to join the chamber, at this point I seek leave to incorporate her speech into Hansard.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Is leave granted?

Senator McGauran—As is the tradition, which is to be upheld, the whips would like to read the speech before giving permission.

The ACTING DEPUTY PRESIDENT—So you are not granting leave, Senator McGauran?

Senator McGauran—Leave will not be granted until the speech is read.

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

Leave granted; debate adjourned.

STATUTE LAW REVISION BILL 2005 Second Reading

Debate resumed from 16 March, on motion by Senator Ellison:

That this bill be now read a second time.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.02 pm)—The Statute Law Revision Bill 2005 continues the important exercise of correcting minor clerical, drafting and misdescription errors and ensuring that bodies are referenced correctly in various current acts. The bill provides that the errors are taken to have been corrected immediately after the error was made, ensuring that the statute books are repaired promptly. In this way the bill performs the important function of keeping the statute books accurate and up to date, thereby contributing to the quality and accessibility of Commonwealth legislation. The government will be moving one minor amendment to ensure the ongoing administration and payment of youth allowance, Austudy and fares allowance. The amendment simply avoids an unintended consequence. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.
In Committee

Bill—by leave—taken as a whole.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.03 pm)—I table a supplementary explanatory memorandum relating to the government amendment and move:

(1) Schedule 1, item 45, page 15 (lines 17 to 20), omit the item, substitute:

45 Subsection 23(1) (definition of educational institution)
Omit “and Youth”.

Note: This item amends a definition to reflect amendment of the Student and Youth Assistance Act 1973.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.04 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

MELBOURNE 2006 COMMONWEALTH GAMES (INDICIA AND IMAGES) PROTECTION BILL 2005

Second Reading

Debate resumed.

Senator McLUCAS (Queensland) (1.05 pm)—I seek leave to incorporate Senator Lundy’s speech.

Leave granted.

Senator LUNDY (Australian Capital Territory) (1.05 pm)—The incorporated speech read as follows—

The Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Bill 2005 seeks to prevent the unauthorised commercial use of indicia and images associated with the Melbourne 2006 Commonwealth Games, and to provide a secure environment to raise revenue through sponsorship. The bill also includes provisions to prevent ambush marketing.

Labor supports this bill and will neither seek to amend or oppose its passage to legislature.

The Melbourne 2006 Commonwealth Games are only eight months away—this bill seeks to provide the necessary support to protect indicia and images associated with the Games in the lead up, throughout the games and also in the immediate aftermath.

The bill provides for an authorisation scheme to restrict the use of key words, phrases and images associated with the Melbourne 2006 Commonwealth Games.

The bill also provides a range of potential remedies including injunctions, damages, corrective advertisements and seizure of goods by the Australian Customs Service.

The bill includes a sunset clause so that the bill will cease to have effect from 30 June 2006.

This bill is complementary legislation to the Commonwealth Games Arrangements Act 2001 enacted by the Victorian Government. The Victorian Act only applies in Victoria and gives the power to seize goods by the Victorian police. The bill before the house allows the Australian Customs Service to seize goods and conduct similar functions and services as it provided during the 2000 Sydney Olympic Games.

This bill will provide protection for a range of indicia and images associated with the games including for example the following expressions:

- Melbourne 2006 Commonwealth Games;
- Melbourne 2006 Games;
- Melbourne Games;
- M2006;
- M06; and
- any other combination of the words ‘Commonwealth Games’ or ‘Games’ and the num-
bers ‘2006’ and ‘18th’ in numerical, written and roman numeral form;

- Queen’s Baton Relay; and
- the words bronze, sliver and gold when linked with the Commonwealth Games or Commonwealth Games Athlete.

This also includes indicia related to the Melbourne 2006 Commonwealth Games in languages other than English.

Whilst also protecting particular words and phrases associated with the games, the bill also includes images that could reasonably when broadcast or presented allow a person to think that the company or product is associated with the games. This association could be through oral or visual presentations.

The bill however does not prevent parties providing information (including reporting by the media) where the primary purpose is for criticism or review. This includes the use of criticism or review in newspapers, magazines, broadcast (both television and radio) and film. The use of indicia and images for this purpose is not deemed to fall within the use for commercial purposes.

The Victorian Government is seeking to raise $130 million in sponsorship revenue from the Games. This is an important revenue stream available to the Victorian Government to assist them in the hosting of the Commonwealth Games in March next year. In return for sponsorship of the games, sponsors will be allowed to use indicia and images associated with the Melbourne 2006 Commonwealth Games to publicise their support for this sporting event.

Under the Victorian Act the Melbourne 2006 Corporation has set up an authorisation scheme, where approved sponsors will be placed on a register. This register will assist the Australian Customs Service to determine who has the authorisation to use Commonwealth Games indicia and images.

It is important to support and protect these revenue streams, and in turn protect sponsors from ambush marketing.

Ambush marketing is the unauthorised association of business with the marketing of an event without paying for marketing rights.

This can be through the use on such goods that have the indicia and images woven, impressed and affixed on them. In the case of services this would include the use of indicia and images in advertisements or used in commercial documentation like catalogues, brochures, business letterheads and invoices.

Protecting these indicia and images would also give consumers greater certainty when purchasing officially licensed Melbourne 2006 Games merchandise.

This bill gives powers to the Australian Customs Service CEO to seize goods that have been imported into Australia and have not been authorised to do and who do not appear on the register. These goods will then be held in a secure location and the owner of these goods will be notified of the decision by Customs to seize them.

The bill also outlines the rights of sponsors to apply for court injunctions from the Federal Court, Federal Magistrates Court or State and Territory Supreme Courts against parties they deem to not have authority to use Melbourne 2006 indicia and images. There are remedies available to these sponsors including damages and the use of corrective advertisements.

At the same time the bill also provides for remedies against groundless threats by authorised users against other parties.

Labor supports this bill because we know the importance that revenue will play in the successful financial outcomes of the games.

We support it so as to protect the legitimate rights of sponsors and their investment in the games.

The Victorian Government and in particular the Minister for the Commonwealth Games, the Hon. Justin Madden MLC are undertaking an excellent job in their preparations for the games in March next year.

They have undertaken a massive task and I know and I am sure every senator knows that they will deliver outstanding games that will once again reaffirm Australia’s place as a leader in the worldwide sporting community.

Labor is pleased to support the Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Bill 2005 and I commend it the house.
The purpose of the Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Bill 2005 is to protect the Melbourne 2006 Commonwealth Games sponsorship and licensing revenue from being undermined by unauthorised use of games indicia and images by competitors of official games sponsors. The Australian government enacted similar legislation for the Sydney 2000 Olympics and the Paralympics. While Victorian legislation has been in place since 2001 to protect games related words, phrases and images in the state of Victoria, there is a need for complementary Commonwealth legislation to ensure that the government can enforce this in the Commonwealth’s jurisdiction—for example, so that Customs can seize offending goods at the border.

The key principle of the bill is to prevent unauthorised use of games related words, phrases and images for profit by restricting their use. However, third parties can use games related words, phrases and images provided it is for the provision of information or for the purposes of criticism and review. There are no financial implications for the Australian government. The bill has a sunset clause such that the bill will cease to have effect from 1 July 2006. In summary, this bill works with Victorian legislation to help to ensure that the exclusive rights being paid for by games sponsors are protected. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

PAYMENT SYSTEMS (REGULATION) AMENDMENT BILL 2005

Second Reading

Debate resumed from 14 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.07 pm)—As part of the suite of payment system reforms, the Reserve Bank of Australia set standards for credit and credit card interchange fees which came into force on 1 July 2003. It is also considering further measures for other payment schemes, using powers conferred under the Payment Systems (Regulation) Act 1998. To date these reforms have been successful, with Reserve Bank data indicating that credit card merchant fees are falling, resulting in annual savings to business of hundreds of millions of dollars—savings that, given the competitive nature of Australian retailing, will ultimately benefit consumers.

The passage of the Payment Systems (Regulation) Amendment Bill 2005 will ensure that these arrangements can remain in place. The bill effects a permanent resolution to a potential conflict with the operation of the Trade Practices Act and the replacement of existing regulations which are operable only until 30 June 2005. I can assure members of the opposition that the intent of this bill is not to provide a broad exemption for financial service providers from price-fixing restrictions in the Trade Practices Act. Rather, the bill is limited in its purpose and it will apply only where parties are acting in accordance with Reserve Bank of Australia standards. Further, such standards are limited to those in relation to bank interchange fees for matters relating to the setting and charging of those fees. I commend the bill to the Senate.
Question agreed to.
Bill read a second time.

Third Reading
Bill passed through its remaining stages without amendment or debate.

HIGHER EDUCATION LEGISLATION AMENDMENT (2005 MEASURES No. 2) BILL 2005

Second Reading
Debate resumed from 14 June, on motion by Senator Abetz:
That this bill be now read a second time.

Senator BUCKLAND (South Australia) (1.10 pm)—I seek leave to incorporate Senator Carr’s speech.

Leave granted.

Senator CARR (Victoria) (1.10 pm)—The incorporated speech read as follows—
The Higher Education Legislation Amendment (2005 Measures No. 2) Bill 2005 is the fifth Bill introduced to implement technical amendments associated with the introduction of the Higher Education Support Act which came into effect on 1 January.

The bill includes two issues which could be described as somewhat more than ‘technical revisions’ as the Minister described them in his speech.

These are:
1. Extend OS-HELP eligibility to students with one full-time semester left to complete their degree (down from one full-time year); and
2. Allow Higher Education Providers to alter their fee schedule more than once a year.

The first of these provisions extends eligibility to a larger number of students who may seek a loan to complete their studies at an overseas university.

The second provision returns Higher Education Providers to the status quo prior to the Higher Education Support Act when they were free to alter their fee schedule at anytime.

As has become common from this Minister, no rationale for the change has been included in either the Explanatory Memorandum or the Minister’s Second Reading Speech.

The Parliament has been provided with an explanation of the provisions, but not a justification. There is also no indication of the value of the loans and the potential impact of the proposed change.

The remainder of the bill is of a more technical nature flowing from difficulties in the implementation of the new Act.

They include:
- Clarifying which decisions by Higher Education Providers are reviewable and the procedures to be used
- Delegating authority to Higher Education Providers to remit HECS-HELP debts associated with work experience in industry units
- Clarifying the conditions under which students accessing income contingent loans must provide their Tax File Number (eg that they must provide it each time they enrol in a new course)
- Giving Open Learning Students access to FEE-HELP loans

These measures are uncontroversial and Labor will be supporting the bill.

FEE-HELP
The measure allowing Higher Education Providers to set their fee schedule more than once a year relates to a broader concern with FEE-HELP.

There is a real danger that FEE-HELP will have a highly inflationary impact on fee setting by those institutions whose students are able to access loans.

Figures provided by the Department of Education show that the Howard Government’s introduction of FEE-HELP loans will generate a massive new debt for thousands of Australian students and their families, skyrocketing to over $3 billion by 2008/09.

At a time when Australians should be being encouraged to go to university, the Howard Government is creating a US style system where massive amounts of money open university doors and
Australian families are saddled with huge debts which many will not be able to repay.

We know that the Education Minister has yet again been rolled in cabinet on his latest attempt to increase the amount which can be lent to full fee paying students at Australian universities.

The decision to cap FEE-HELP loans at $50,000 will mean students who can’t get into a HECS place will have to find a bank loan to cover the rest of the sky-rocketing cost of their degree.

The Education Minister assured ABC Melbourne Radio listeners last August that:

… this is one of the things I was determined to change, at the moment if you are offered a full fee paying place and you come from a poor family you might as well be offered a ticket to Mars.

(4 August 2004)

$5 billion in funding cuts and chronic under-funding is threatening quality in our universities.

The OECD has found that Australia had one of the largest declines in public investment in universities and TAFEs of any OECD country. Australia dropped by 8.7 per cent per student while the majority of our competitors increased their investment. Australia is one of only seven OECD nations to actually reduce government funding for tertiary education per student between 1995 and 2001.

The failure of the Budget to increase funding to our universities is a terrible blow to Australian universities, staff and students. And it guarantees Australian families will face still more massive fee hikes.

The Howard Government’s refusal to fund universities to keep pace with increasing costs is already leading to the inevitable of universities knocking on the door to ask for more HECS hikes.

The failure of the Howard Government to properly index grants means that universities will continue to be forced to increase fees just to tread water.

Already students and their families are being forced to make up for Howard Government funding cuts.

The Howard Government will take an extra $839 million out of students and their families over the next four years through 25 per cent HECS hikes. Students and their families can expect yet more fee increases as a result of the Howard Government’s latest Budget inaction and failure to properly fund universities.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.10 pm)—The Higher Education Legislation Amendment (2005 Measures No. 2) Bill 2005 amends three acts: the Higher Education Support Act 2003, the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 and the Taxation Administration Act 1953. The Australian government is taking the opportunity to refine and enhance the effective implementation of the Higher Education Support Act 2003 through a number of technical amendments which will give certainty to higher education providers and students. In particular, these amendments will enable higher education providers to respond to changes in student demand in a more flexible way. The amendments will also ensure that students are properly protected and are informed about the decisions made by higher education providers which affect them.

The bill makes technical amendments to the Higher Education Support Act 2003 including, among others, clarifying that the indexation formula in the act can apply to amounts specified in the Commonwealth Grant Scheme guidelines, clarifying provisions in relation to the cancellation of enrolments for people without tax file numbers and ensuring that a student is taken to have met the tax file number requirements for a given course of study only when the student has provided the tax file number in relation to that course of study. The amendments also include extending the scope of reviewable decisions to include those made in respect of
students undertaking work experience in industry, clarifying the provisions in relation to working out an accumulated Higher Education Loan Program debt and allowing the publication of more than one schedule of student contribution amounts and tuition fees per year. The amendments further include allowing more than one date to be specified for the publishing of census data and equivalent full-time student load values, extending overseas HELP eligibility to students who have at least a 0.5 equivalent full-time student load left to complete in their course of study, and ensuring that certain measures dealing with re-crediting a person’s student learning entitlement and those dealing with work experience in industry are mutually exclusive.

The bill provides that guidelines issued by the Commissioner of Taxation under the Higher Education Support Act 2003 are legislative instruments for the purposes of the Legislative Instruments Act 2003. The bill amends the Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003 to rectify an incorrect cross-reference. The bill also amends the Taxation Administration Act 1953 to allow students to declare on the tax file number or withholding declaration that they have accumulated Higher Education Loan Program debt under the Higher Education Support Act 2003. These amendments will build on the implementation of the new arrangements under the Our Universities: Backing Australia’s Future package of reforms. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

PRIMARY INDUSTRIES (EXCISE) LEVIES AMENDMENT (RICE) BILL 2005

Second Reading

Debate resumed from 14 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (1.14 pm)—I have waited for this moment and now it has come. The Primary Industries (Excise) Levies Amendment (Rice) Bill 2005 has the support of the opposition. I know the government was keen to know that. This bill amends the Primary Industries (Excise) Levies Act 1999 to allow the maximum allowable level of the operative rate of the rice levy to be increased from $2 a tonne to $3 a tonne, a 50 per cent increase. It also requires that in future the operative level of the levy will be set by regulation instead of ministerial declaration and also that the leviable varieties of rice will be set by regulation rather than by ministerial declaration.

In the view of the opposition, this is a very timely piece of legislation. The current drought has had a significant impact on this industry. Many rice farmers in the Riverina are in fact facing their fourth season of drought. Rice production this year is estimated to be 358,000 tonnes, which is well down on the 1.3 million tonnes that was previously the norm. Already, the industry has lost 200 jobs, with the Riverina being the area that has suffered most because of those job losses, which have mainly been in the facilities that process the rice.

The decline in rice production has meant that the amount of money collected through levies has fallen and therefore there has been less money available for important research for this industry. By increasing the operative level of the levy, as allowed for under the provisions of this bill, the industry will be able to make up the shortfall in research
funds. Research is absolutely vital for the rice industry. Over the last 10 years, as a result of improvements driven by research, this industry has been able to improve its water usage efficiency by 60 per cent.

The provisions in the bill that relate to the setting of the operative level of the rice levy and the determination of leviable rice varieties by way of regulation rather than by ministerial declaration bring rice into line with other commodities and other industries in terms of how the level of their research and development levies are set. Therefore, in the view of the opposition, this is a sensible piece of legislation. The opposition is aware that it has the support of the rice industry. The opposition is happy to lend its support in this place.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.17 pm)—I thank Senator O'Brien for his comments and his support of the Primary Industries (Excise) Levies Amendment (Rice) Bill 2005. He is right: it is an important piece of legislation. It is needed to sustain the research and development effort for the rice industry which has been dramatically reduced by necessity due to a lack of funds through the reduction in the rice crop. The support of the opposition for this piece of legislation is certainly welcome.

The government is certainly happy to support the rice industry's request for the amendment and, as Senator O'Brien said, it increases the maximum allowable R&D levy rate from $2 a tonne to $3 a tonne and changes the way the operative levy rate and associated levy administration issues are enacted from ministerial declaration to regulations. This change provides a higher level of accountability back to the parliament than the current arrangements and brings the levy arrangements for the rice industry into line with arrangements for other agricultural industries.

It should be noted that this bill will not change the rate applied to the collection of levies from the industry which the legislation refers to as the operative rate. The industry will need to come back with a proposal to change the current operative rate under the new maximum cap that is consistent with the government's levy principles and guidelines. The key to this is the need to demonstrate industry support for changes in the operative levy rate, and I understand that the industry is currently progressing that. This measure is in addition to the government's decision in April to grant full EC assistance to rice growers in the Murray Valley who have been impacted by the last three years of record low irrigation entitlements. This EC decision will provide assistance to eligible rice producers for a period of 24 months.

I trust that the levy changes proposed in the bill will help the industry continue its excellent track record of innovation. I certainly know the importance of the R&D effort to the industry. As Senator O'Brien said, it has helped it to reduce its water use immensely. It is unfortunate that, over the last few weeks, the industry has received some poor publicity due to some incorrect information being published in the media in relation to the amount of water that the industry uses. It is important to note that they use significantly less water than was reported. I think 21,000 litres per kilogram of rice was the figure reported in the Australian, when the figure is significantly less—something in the order of 1,600 litres, not something in the thousands. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.
CIVIL AVIATION AMENDMENT BILL 2005

Second Reading

Debate resumed from 14 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator GREIG (Western Australia) (1.20 pm)—I rise to speak very briefly on the Civil Aviation Amendment Bill 2005. While we Democrats acknowledge and support the need for strong safety measures within civil aviation, and to that end support the intent of this bill, we are also proud of our history in maintaining and defending the strength of antidiscrimination measures in this country. For this latter reason, the bill raises a number of concerns for us, all of which were discussed in detail as part of the committee inquiry into the bill, the report for which was tabled on 30 June last year.

We shared the concerns of a number of participants to the inquiry and joined with them in questioning the need for the bill. It is our view that existing provisions in both the Disability Discrimination Act and the Sex Discrimination Act already provide adequate scope to deal with many of the issues the bill seeks to address and that both acts have successfully achieved a balance between individual rights to freedom from discrimination and airline safety for well over a decade.

We also raised our longstanding concerns regarding legislation that operates retrospectively or grants wide-ranging exemptions to antidiscrimination legislation. This is especially the case given this government’s long history of attempting to undermine and water down the strength and effectiveness of existing antidiscrimination legislation through a variety of means, as well as the gradual erosion of the Human Rights and Equal Opportunity Commission’s capacity to properly fulfil its role. Its funding has been cut significantly. Another concern we held in relation to the original bill was the lack of any consultation requirement for the granting of exemptions beyond those that may occur within the human rights branch of the Attorney-General’s Department.

While we acknowledge the committee’s recommendations regarding consultation and the fact that they have been adopted in this bill so that HREOC must now also be party to those processes, we believe that this requirement, as currently worded, is far from guaranteed. The current wording requires that, while HREOC must be consulted about any regulations to be made, any failure to do so will not affect the validity of regulations so made. Does HREOC need to be consulted or does it not? Clarification from the minister on this point would be appreciated.

As I began by saying, the Australian Democrats support efforts to ensure the safety of airline travel in Australia and so we will support the passage of this legislation but, equally, we also believe it is important that our reservations about the bill be noted. We consider that the gradual erosion of the rights and protections afforded to the most vulnerable people in our community is an issue of serious concern and that all steps must be taken to ensure that nothing unduly impinges on those rights.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.23 pm)—The Civil Aviation Amendment Bill 2005 will empower the Governor-General to make regulations that are inconsistent with the Disability Discrimination Act 1994 and the Sex Discrimination Act 1992 where necessary for the safety of air navigation. As all senators would agree, this bill is necessary to maintain the high standard of aviation safety that Australia enjoys. I thank Senator Greig for his comments and contribution, and I commend the bill to the Senate.
Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Sitting suspended from 1.24 pm to 2.00 pm

QUESTIONS WITHOUT NOTICE

Palmer Report

Senator LUDWIG (2.00 pm)—My question is to Senator Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs. I refer the minister to the reports in today’s Sydney Morning Herald that prove that contents of the Palmer report have already been leaked. I ask the minister: where are these leaks coming from? The minister has confirmed that she has been having regular meetings with Mr Palmer and has been discussing the contents of his report. Are journalists being backgrounded by the minister’s office in order to turn the focus of attention away from the minister and back onto the department?

Senator VANSTONE—I thank the senator for the question. Senator, if I spent my life worrying about what I read in the paper and where people who write things in the paper get their stories from, frankly, I would not have time to do my job. Yet again in the senator’s question we see the misuse of estimates by the opposition. When you have estimates, presumably you want the answers and you look at the answers carefully. What the senator has put forward in his question is that I have confirmed regular meetings with Mr Palmer and discussed his report, whereas someone who looks at the estimates Hansard will see that I have confirmed that I have met with Mr Palmer a number of times—that does not mean ‘regular’—and made very clear that what I have a clear understanding of is what he was to recommend with respect to the remaining cases that need to be looked at. That was quite clearly distinguished in the estimates several times with Senator Faulkner, who, as we all know, can become quite obsessed about an issue and ask questions time and time again. So that has in fact been dealt with. In response to the suggestion that my office has leaked anything, to the best of my knowledge, belief and understanding, that is not the case. I would not guarantee that what you read in the paper is necessarily correct either.

Senator LUDWIG—Mr President, I ask a supplementary question. If this report is being distributed to people who were adversely named in order to protect Mr Palmer from possible defamation action, doesn’t this just demonstrate the total inadequacy of holding an inquiry with non-judicial powers? Will the minister be extending the same rights to view the unedited report to all the victims of her maladministration such as Cornelia Rau and Vivian Solon or their representatives? What further evidence does the minister need before she finally accepts the need for a royal commission into immigration matters?

Senator VANSTONE—The senator opposite may not care for the rules of natural justice, but it is normal and commonplace for someone who is being adversely named to have the opportunity to comment. I support Mr Palmer in doing that. I think it is quite appropriate that he does so. It does not necessarily follow that Mr Palmer will change anything in his report as a consequence of giving individuals the opportunity to respond. I am actually quite grateful that the opposition put on record that they think it is acceptable for public comment of an adverse nature to be made about individuals in any inquiry and those individuals not be given the opportunity to respond before the report is finalised. Senator Ludwig, I thank you for that concession from the Labor Party.
Mr Douglas Wood

Senator MASON (2.04 pm)—My question is to the Minister for Defence and the Leader of the Government in the Senate, Senator Hill. Will the minister provide the Senate with further details relating to the rescue of Mr Douglas Wood from captivity in Iraq?

Senator HILL—I am very pleased to do so. I am sure that all senators and all Australians felt incredible relief and joy at the news last night that Mr Wood was alive and free. Mr Wood has shown tremendous courage and strength in surviving this terrifying ordeal. We would all wish him a quick and full recovery in order that he can return to his family as soon as possible. In passing, I might say that the way his family here in Australia handled this matter was quite inspiring.

It could be some time before the full detail is known of what occurred. What I have been advised of so far is that the rescue took place during cordon and search operations being conducted as part of Operation Lightning, an ongoing coalition operation aimed at increasing security in Baghdad. The 2nd Battalion, 1st Brigade Iraqi army, supported by United States forces, approached a locked house in the Ghazalia area and demanded entry. Entry was refused, after which there was a scuffle which included weapon fire. The Iraqi soldiers secured the house, detaining two guards. A search of the house revealed two captives: an Iraqi and Mr Wood. The soldiers called in a quick reaction force support team and took up defensive positions around the house. Soon after, a US brigade combat team arrived and secured the area. The hostages were then passed to the Americans.

It was a violent recovery that was resisted but, due to the highly competent and professional actions of those involved, recovery was achieved without death or injury to the hostages. I sincerely thank those in Iraq, the region and Australia who worked tirelessly to secure Mr Wood’s release. The success of Iraqi forces in rescuing Mr Wood is an example of the determination of the Iraqi government to bring stability and security to Iraq. It is also an illustration of the growing capability of the Iraqi defence forces. They deserve great credit for this effort.

I would also like to commend the efforts of the emergency response team in Baghdad led by Nick Warner. The team is made up of ADF personnel, DFAT personnel and other officials. I would particularly like to commend the ADF special forces for their contribution during the last six weeks in what was a very stressful and dangerous time in the lead-up to the recovery. I mention them specifically because, as is the nature of their business, their contribution will not be detailed and they may not receive the recognition they deserve. I would also like to recognise the wider ADF, who have provided support both in theatre and from Australia.

I thank the government of Iraq and other foreign governments, particularly the governments of the United States and the United Kingdom, for their assistance. Despite all the other issues and pressures in Iraq, the US and the UK cooperation and help in this exercise was truly magnificent. I also acknowledge the efforts and supports of the Iraqi Islamic community and the Australian Islamic community, particularly Sheikh Taj al-Hilaly, who travelled to Iraq and made personal efforts to assist. The government is committed to continuing the reconstruction and rebuilding of Iraq to bring about greater stability for the Iraqi people and the region.

Immigration

Senator HUTCHINS (2.08 pm)—My question is to Senator Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs. Can the minister confirm

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reports that the Howard government tried to deport a suicidal and mentally ill Bangladeshi man? Can the minister confirm that this deportation is only suspended while his case is being considered by the Human Rights Committee of the United Nations? In light of this case and the deportation of Ms Solon, what guarantee can the minister give that there will be no deportations of persons needing medical treatment? How many similar cases are going to be revealed before we get a full and comprehensive royal commission?

Senator VANSTONE—I thank the senator for his question. I remind the senator what I have reminded the Senate of on a couple of days this week. That is, there was a young—possibly not young now—Aboriginal girl in a facility for youth in Queensland who was allegedly raped in the care of the facility and an inquiry was set up into that. When the change of government came, I understand all the materials in relation to that matter were shredded. It is the view of many people that that young woman has not got justice. I equally invite the senator to consider that Mr Doomadgee is not here to have lawyers argue the case for him and he or his family certainly have not been given the opportunity of a royal commission.

Having said that, to get directly to your point, there was a removal from Baxter yesterday. Since your point did go to a royal commission, I thought it was worth mentioning those two examples in Queensland. Mr Doomadgee is not here to speak for himself and he has not been given a royal commission. To go to the specifics of your question, there was a person removed from Baxter to Perth yesterday. There was, on the advice I have, a clearance from a GP that the person was fit for travel. I remind you that a GP is a practitioner qualified to certify someone against their will for mental health treatment. The advice I have is that it was taken by the person preparing the material that the GP’s advice was satisfactory. As a consequence of a concern being raised, the person is not proceeding any further than Perth and further inquiries into their health will be undertaken.

Senator HUTCHINS—Mr President, I ask a supplementary question. How does the minister respond to the reports that no fewer than five human rights organisations are today lodging a complaint with the OECD over the actions of Global Solutions Ltd, including the International Commission of Jurists, the Brotherhood of St Laurence and Children Out of Detention? Is the minister concerned that the corporation that the Howard government has appointed to run these detention centres is allegedly implicated in serious human rights violations?

Senator VANSTONE—There are proper processes for people who want to make complaints in relation to international companies. They are there for people to use and, if they want to use them, they use them. When a complaint is lodged it is properly investigated, as it should be.

Telecommunications: Services

Senator EGGLESTON (2.11 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Helen Coonan. Will the minister advise the Senate of how the Howard government is improving communications services in regional Australia? Is the minister aware of any other approaches to regional telecommunications?

Senator COONAN—Thank you to Senator Eggleston for a very timely question and, of course, for his continuing interest in improving the telecommunications services of regional Australians. Today I released the report on the mid-term review of the National Communications Fund, a $50 million fund established by this government in 2001 to fund large-scale telecommunications pro-
jects in regional areas. I am pleased to report that the outcomes are impressive. The Australian government funding has attracted $120 million in investment from state and territory governments and carriers. More importantly, almost 1,600 health, education and government sites across all states and the Northern Territory have received improved broadband access.

Of particular interest to Senator Eggleston, the Western Australian project Network WA is delivering high-speed broadband of up to 10 megabits a second to 357 health and education sites in 62 towns across the state, and it is estimated that over 100,000 people in regional Western Australia now use this network daily. In Tasmania, for those colleagues from Tasmania, 56 schools and colleges located in 48 rural and regional communities are now connected to broadband, benefiting more than 18,600 students. The benefits of this upgraded infrastructure are many, for health, for education and, of course, for economic development.

This builds on the impressive results Australia is now achieving on broadband penetration. Australia is moving up the global rankings for broadband take-up. According to Nielsen NetRatings, we now have the sixth highest take-up of the countries they survey. They found in April 2005 that almost 54 per cent of Australian home internet users are using broadband. That is 4.5 million Australians who are accessing the internet at high speeds. The latest data from the ACCC showed total broadband subscribers had increased 121.6 per cent in the last year to 1,548,300 subscribers in December 2004. In a recent article in the Australian, Telstra reported that approximately 20,000 customers were signing up to broadband services each week—many as a result of the government’s important initiative under the HiBIS broadband program. This is phenomenal growth and it is continuing under this government’s policies.

As to alternative policies, I must say that I have looked in vain to find some. Last year, Labor gave Australians a snapshot of what life would be like, and what the future of broadband might be, under an ALP government—with an election policy that did not commit one cent to telecommunications. Labor did not even commit to maintaining existing and successful broadband programs like the $108 million Higher Bandwidth Incentive Scheme that I just mentioned. The only proposal I am aware of is a recommendation by Labor senators that billions of dollars be spent on providing dial-up internet, which is now next to obsolete and which would have dudged taxpayers to the tune of about $5 billion had the government acted on that recommendation. In contrast, the Howard government have a plan and a commitment to telecommunications in Australia—including rural and regional Australia. We are committed to improving services for Australians, and we will maintain and continue to improve these services now and in the future.

**Telstra**

Senator CONROY (2.16 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. Is the minister aware of today’s comments by the President of the National Farmers Federation, Mr Peter Corish, that ‘the NFF will not even consider the sale of Telstra until all of the Estens recommendations have been implemented’? Is the minister also aware that Mr Corish stated that, two years down the track from the Estens report, the Howard government is failing on its promise to implement the recommendations? Does the minister stand by her comments to the chamber yesterday that the Howard government has a ‘wonderful record in rural and
regional Australia’ in telecommunications? If this is the case, why does the NFF state that there has been a decline in rural telephone repair performance right across Australia over the last five years?

Senator COONAN—How embarrassing it must be for Labor to have to hitch its wagon to the National Farmers Federation to try to get some inspiration for a question to this government on telecommunications. Senator Conroy has been playing ritual catch-up in this portfolio since he came into it. He has followed me around rural and regional Australia, he has tried to copy what I have been doing in rural and regional Australia, and still he seems to need to get his inspiration from something that the National Farmers Federation said. What we need to understand, if I could give the Senate some facts, is that what the government has said—and the reason Mr Corish does not have to worry at all—is that it will not be proceeding with considering the full sale of Telstra until it has implemented all of the recommendations of the Estens committee. In fact, that is what it is busily doing.

As I said yesterday, we have currently implemented about 30 of the 39 recommendations of the committee, and another seven of the remaining recommendations are currently in legislation before the Senate. Those relate to future-proofing. The remaining three are quite minor matters, and my current estimate is that they will all be implemented in the course of about another three weeks. That will mean that all 39 of the Estens implementations can be ticked off, and not even the Labor Party will be able to say that any of the recommendations are outstanding.

Opposition senators interjecting—

Senator COONAN—What the government has done is not to take anyone’s word for the adequacy of rural and regional services.

The PRESIDENT—Order! There is continual noise on my left. It is your question. At least have the manners to listen to the answer.

Senator COONAN—As I was saying, the government is right at the tail end of implementing the remainder of the 39 recommendations of the Estens committee. Those relate to the future-proofing legislation, which is currently before the Senate, and three other fairly minor remaining matters. So it is completely incorrect to say that either the government has not implemented the majority of the recommendations or the government does not intend to implement the remainder of the Estens recommendations. I am quite sure that the National Farmers Federation is happy to work with the government to ensure that all of these recommendations will be in place before the government seeks the authority to proceed with the sale of Telstra.

As we have always said, we will not be proceeding until we can be sure that services in rural and regional Australia are adequate—measured by a benchmark that has been put in place by two independent reports, the Besley report and the Estens report. The government have put their money where their mouth is on these matters. We have spent about $160 million responding to the Besley report and $181 million responding to the Estens report. No Australian need have any concern about this government’s record on rural and regional services and implementing equitable telecommunications services for all Australians. What they do need to be very concerned about is if the Labor Party, which is bereft of any policy position, ever got into government. Then Australians should really worry.

Senator CONROY—Mr President, I ask a supplementary question. Why won’t the minister listen to the chorus of voices from the bush and admit that telecommunications
services in rural and regional Australia do not have parity with services in metropolitan Australia? Doesn’t the government’s refusal to accept the reality of rural telecommunications service standards demonstrate its increasing arrogance and that, in the words of Senator elect Barnaby Joyce, the minister for communications is a ‘typical Liberal elite from Sydney’s eastern suburbs who is just completely out of touch with working rural Australia’?

Honourable senators interjecting—

The PRESIDENT—Order! Before I call Senator Coonan, there is far too much noise on both sides of the chamber. It may be Thursday but that is no excuse for the disorderly behaviour that is happening here today.

Senator COONAN—I have a degree of sympathy for poor old Senator Conroy. He cannot find a question for himself; he has to dredge around to find the National Farmers Federation or Barnaby Joyce or somebody to try to piggyback and get a question from. Unlike the Labor Party, this government has made a real difference to telecommunications in rural and regional Australia. The Labor Party closed down a mobile telephone service and let this government deal with the consequences. They have not committed a cent; they do not have any vision for telecommunications. All they can do is follow around and try to hitch their wagon to some other group. It is a pathetic vacation of a portfolio responsibility on Senator Conroy’s part.

Human Cloning

Senator STOTT DESPOJA (2.23 pm)—My question is addressed to Senator Patterson, the Minister representing the Minister for Ageing. Is the minister aware that the reviews of the Prohibition of Human Cloning Act 2002 and the Research Involving Human Embryos Act 2002 were required by the legislation to commence as soon as possible after 19 December 2004? Given that Monday, 20 June will mark six months into the 12-month reporting period, has the government actually established a review committee? Can the government explain when these reviews will commence? Indeed, what is the government doing not only to ensure that these reviews commence during this 12-month report period but to ensure that the reviews are finalised on time by 19 December this year?

Senator PATTERSON—I do not have a brief on that particular issue in my briefing papers from the minister for health. Let me just say that I am sure that the minister for health will be doing everything in his responsibilities to ensure that we have that review back in here and we have the legislation looked at again, as was required under the legislation that I actually had responsibility—I do not know if it was a pleasure—for taking through this chamber. If the minister can provide any more information, I will get it back to the chamber as soon as possible. It most probably will not be until after question time on Monday.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the minister for that commitment and ask her to refer that to the Minister for Ageing. Julie Bishop is responsible for this particular review process. I ask the minister: does she agree that, given six months are pretty much up in terms of the 12-month reporting period, it seems to be getting a little late? Will the minister not only come back to the chamber with a time line for the review process but also give the chamber a guarantee that the public consultation that is called for within the legislation will also take place?

Senator PATTERSON—I have a small amount of information here. The reviews will commence shortly and will be com-
pleted by 19 December, which I indicated I thought would occur. It was just a slip of the memory that Ms Bishop was the minister responsible. The agreement of each state and territory minister to the appointment of a person to undertake the reviews is being sought. The reviews will consider the scope and operation of the existing regulatory framework and will involve extensive consultation. Reports of the reviews will be tabled in both houses of parliament and will be provided to COAG. The Australian government will consider the outcomes of the reviews. If there is any more information that Ms Bishop can add, I will give that to you after question time on Monday.

**Commonwealth Games**

**Senator LUNDY** (2.26 pm)—My question is to Senator Kemp, the Minister for the Arts and Sport. Minister, who decided to issue the directive to the Victorian minister for sport demanding that coalition MPs and senators must have the most prominent role when the Melbourne 2006 Queen’s baton relay arrives in towns across Australia, even where the area is represented by a non-government parliamentarian? What was the minister’s own role in demanding that coalition parliamentarians be the only national representatives as part of the Queen’s baton relay, including the non-negotiable demand set out on page 2 of the directive? That directive states:

... the runner who brings the Baton to the podium should hand it to the Australian Government representative on the podium and that the Australian Government representative then place the baton in the Baton-stand.

Why is the government so blatantly politicising the Queen’s baton relay for the 2006 Commonwealth Games?

**Senator KEMP**—It is always a pleasure to get a question from Senator Lundy. They are so few and far between. It is always appreciated, even when it is a silly question like that one. Let me assure Senator Lundy: if you want to take a role in the Queen’s baton relay, we will see if we can find you a spot. I understand that you are very keen to take a role. Probably the best way to do it is for you to contact me and we can see what we can do to arrange that for you.

**Senator Conroy**—Arrogant!

**Senator KEMP**—That is strange coming from you, Senator Conroy. I have to say. The Australian government are very proud to be providing $15 million to fully fund the international and domestic legs of the Melbourne 2006 Commonwealth Games relay. The taxpayer, of course, through the Commonwealth government, is providing very generous support. Our aim is to ensure that this is a major event all around Australia. We want as many communities as possible to take part and as many people as possible to take part in the relay. We want as many people to have the opportunity to see the relay and, as I said, to take part. This may well involve MPs, and even senators, Senator Lundy.

I have seen comments in the press about this matter. Of course what has happened is that my officers have had discussions with the M2006 people. Those discussions are continuing and we expect that they will be very productive. We would hope that as many members of the community as possible will take part in these relays. Of course federal MPs are important members of the community and we hope that there would also be a role for them. I note that the state Labor government is very keen for state MPs to play a role. If that is not the case, you might like to advise me.

Senator Lundy, I think you should leave the planning committees to work out the appropriate arrangements. The Commonwealth government’s position is that we want as many members of the community as possible
to take part in the relay, and there will be a role, I hope, for federal MPs. The final role has to be decided and those negotiations are continuing. I hear your interest, Senator, and I hear your concern. This is important for the community; this is important for the M2006. I believe you will find that in the final analysis this will be appropriately arranged and everyone will have an appropriate place in the sun.

Senator LUNDY—Mr President, I ask a supplementary question. I note the minister seems to be running 100 miles from his earlier statements. But wait, it gets worse. Can the minister confirm he has demanded that videos of the Prime Minister and the Treasurer be shown at baton relay events? Has the minister demanded equal time for the Prime Minister and the Treasurer or will Mr Costello’s appearance be a mere fleeting glance? Given the blatantly political nature of these demands, why is there no demand for the Deputy Prime Minister to be included as well?

Senator Boswell—Absolutely.

The PRESIDENT—Senator Kemp, if you heard the question—I couldn’t—I would ask you to answer it.

Senator KEMP—Mr President, it was very hard to hear the question. As you know, I have long been an advocate in this chamber for standing orders against overacting. The reason is so that we would not have to face questions like this from Senator Lundy. Let me make the point to Senator Lundy that discussions on the relay are continuing. I am sure that there will be a very satisfactory outcome. The Commonwealth government is playing a very important role in funding the relay. The state government is playing important roles elsewhere. It is appropriate, given the role of the federal government, that we do make sure that the federal government’s role is appropriately marked.

Nuclear Waste Storage

Senator NETTLE (2.33 pm)—My question is to the Minister for the Environment and Heritage, Senator Ian Campbell. Does the minister recall his comments to ABC Radio on 30 September 2004 regarding a nuclear waste dump? He said:
The only options that we’re pursuing are on offshore islands. I think the reality ... is that there’s no one on the mainland who particularly wants a nuclear waste dump in their backyard, and that is why we’re pursuing the practical option of going to an offshore island, so the Northern Territorians can take that as an absolute categorical assurance. Can the minister today reiterate his absolute categorical assurance to Northern Territorians that no nuclear waste dump will be built in their backyard?

Senator IAN CAMPBELL.—It is very good to get a question from a Greens senator on something relating to the environment! I have visited their web site from time to time and you can see policies on trying to make it easier for schoolchildren to get access to drugs such as LSD, amphetamines and marijuana—how to grow your own marijuana. I have seen policies on introducing new taxes and new capital gains taxes on the family home. I have seen a whole range of policies.

Senator Hill—What is the Greens policy on disposing of low-level nuclear waste?

Senator Patterson interjecting—

Senator IAN CAMPBELL.—Of course, as Senator Patterson interjects, it is material that comes, by and large, from medical treatment, from cancer treatment, from radiation therapy, from X-rays. Each state and territory in this country is going to have to develop policies to ensure that this waste is dealt with in an environmentally and socially acceptable way. The Greens clearly will not address that problem. They would go to the families of the dying and the sick and say, ‘You should not have the benefits of nuclear
They would prefer not to see that sort of assistance being given to people, many of whom are in dire circumstances. There are huge benefits from nuclear science and nuclear technology for mankind. It is clearly an issue of putting your head in the sand if you want to ignore the fact that there are costs to the benefits, particularly with regard to nuclear medicine, nuclear science and nuclear research.

The Commonwealth is going through a process that is being run in fact by the minister for science, Dr Brendan Nelson, and, as I understand it, he will be bringing forward recommendations. The Commonwealth’s policy that I enunciated during the last federal election was that our first preference was to ensure that the waste was taken to an offshore island. That is the preference. That is what I clearly enunciated whenever asked during the election. The Labor Party and the Greens went around the country trying to scare people by saying, ‘The nuclear waste facility will be in your backyard or your backyard.’ No-one wants it in their backyard. Everyone wants the benefits of nuclear science, everyone wants the benefits of nuclear medicine and of course no-one wants the waste. If you are a populist politician, like Senator Nettle or Senator Brown, who want to go around promoting these policies and not dealing with the real issues, then you can go around scaring people depending on wherever there is an election. We are not going to go down that path. We are not going to rule in or rule out every single backyard in Australia.

I said very clearly that the preference was to go to an offshore island and, as a member of cabinet, I look forward to when Dr Nelson brings forward the submission to look at what will no doubt be a scientifically based, carefully thought through proposal. I think we also need to ask the territories and the states what they are going to do with their waste. It is a fair and sensible question. It has to be dealt with in a way that protects human health, protects the environment and is also socially responsible. I am absolutely certain that the Commonwealth’s response, when it is announced, will meet all of those criteria.

Senator NETTLE—Mr President, I ask a supplementary question. I note there has been no absolute or categorical assurance to Northern Territorians in your answer so far, Minister. Given that nuclear power is an incredibly expensive, non-renewable energy source that will not deliver a panacea for Australia’s greenhouse gas emission problems and will produce tonnes of radioactive waste that remain in the community for a quarter of a million years, what rationale can the government provide for why Northern Territorians, or any other Australians, should be left with the legacy of nuclear waste that continues to be produced by the government’s unnecessary and dangerous nuclear reactor in the heart of Sydney?

Senator IAN CAMPBELL—What Senator Nettle would have us believe is that the decision that the cabinet and the government will have to take in relation to low-level nuclear waste, which in most of the states and territories comes from the by-products of nuclear medicine, is all of a sudden about a nuclear reactor. There are only two politicians I have heard talking seriously about building a nuclear power reactor. You were talking about greenhouse gas, which is totally unrelated to the question of low-level nuclear waste. Only two politicians have said we should have nuclear power under consideration recently. They are the Labor Premier of New South Wales, who to his credit has belled the cat about low emissions and the cost of getting low-emissions power in the future—at least he has had the honesty to do that—and, of course, Peter Garrett, who came out and said the same thing but who was brought under control by his political
masters within about 21 hours of when he said it. Senator Nettle, what you are trying to do for a few votes in the election on the weekend is scare the Northern Territorians. You should not do that. You should know better. You should grow up. (Time expired)

Sport: Funding

Senator FORSHAW (2.39 pm)—My question is directed to Senator Kemp, the Minister for the Arts and Sport.

Senator Kemp—This won’t get you to the UN!

Senator FORSHAW—You guys might deport me. Can the minister confirm that the Howard government has consistently refused since first elected in 1996 to provide Commonwealth funding for small grants to sports facilities? Why did this policy suddenly do a complete about-face in the middle of last year? Why is it that the minister’s department has suddenly committed funding to 16 projects in the electorate of McEwen, held by the Minister for Small Business and Tourism, six projects in the electorate of Makin and six in the electorate of Bass?

Government senators interjecting—

Senator FORSHAW—Can you tell the Leader of the Government in the Senate to blow his nose and keep quiet? Can the minister credibly argue that this policy turnaround to promise funding to crucial seats immediately before the last election is a complete coincidence? Isn’t this just the Liberal Party’s own regional rort scheme?

Senator KEMP—I just hope that Senator Forshaw, if he wins the ballot to the UN, can be more effective at the UN than he has been in raising this issue. This issue was discussed at great length at Senate estimates. Senator Lundy took the running on this, and I see that she has now been dropped from this arrangement. This issue was discussed at great length. I invite people that are interested in it—and there may be some—to read the Senate estimates transcripts on this issue. To Senator Ray and others, I make the point that we are entitled to develop our election policies. We are entitled to go to an election stating our policies, and the grants in McEwen, for example, that were referred to by Senator Forshaw were part of our overall election policies.

I am delighted that Senator Forshaw has raised this issue, because he did query the facilities grants made in McEwen. I have some information for Senator Forshaw which may be of interest to him. The Labor Party apparently thought these were pretty good grants. Senator Forshaw, you may not have been advised when someone gave you that question to ask that your candidate in McEwen was Jenny Beales. My advice is that Jenny Beales indicated on behalf of the Labor Party that the Labor Party would match the sporting facilities grants committed by the coalition. The truth is, if this was a bad idea—and I guess the substance of your question was to convey to the public that this was a bad idea—why did the Labor Party decide—

Senator Lundy—Pork-barrelling!

Senator KEMP—Pork-barrelling, you said. At least on the advice that I have, the Labor Party pledged to match the sporting grants made by the coalition. If you want to look at the behaviour of political parties, particularly in McEwen, let me talk about the $174,000 grant made to the Friends of the Helmeted Honeyeater. What happened there was that Kelvin Thomson came into the area and indicated—and there is some very big press on this—that Labor committed to honeyeater funds. The only thing which was a surprise about this was that it was a surprise to the Friends of the Helmeted Honeyeater. It was a great surprise. I understand that Mr Anderson, who was the president of
the Friends of the Helmeted Honeyeater, said the federal Labor Party’s involvement came as a surprise, because the group had made its submission to the Victorian government. We have a question in which it is attempted to allege that somehow the coalition should not be making election promises in the lines of sports facilities. What we have discovered is that the Labor Party decided they were such a good idea that they would match them, but then there was an implication that somehow this was procedurally wrong. (Time expired)

Senator FORSHAW—Mr President, I ask a supplementary question. It goes to issues of procedure and process. When did the member for McEwen first contact the minister about the possibility of funding 16 sports facilities in her electorate? Did the minister follow proper process, including that set out by the Auditor-General, when he—that is, the minister—decided to fund sports facilities in the electorates of McEwen, Makin and Bass? Will the minister now reveal what processes he went through to decide how these sporting facilities were funded and who made the decision to fund them?

Senator KEMP—Again, I would refer people who are interested in this matter to the very extensive questioning—not always effective questioning—by Senator Lundy at Senate estimates and the answers that were given. Senator Forshaw, you seem to misunderstand what has occurred. This government is entitled to develop election policies. It is entitled to indicate what it plans to do if it wins the election. And, if it wins the election, the Labor Party is always concerned, like everyone else, including the government, to make sure that it keeps its promises. So, Senator Lundy and Senator Forshaw, I make this point: if the Labor Party is worried about the process, why do I have advice that the Labor Party said it would match the grants? If the Labor Party is worried about the processes of making election promises, why did it commit that money? (Time expired)

Child Care

Senator HUMPHRIES (2.47 pm)—My question is to the Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues, Senator Patterson. Will the minister inform the Senate of the government’s achievements in child care and how the Howard government’s strong economic management is providing further opportunities for Australian families? Is the minister aware of any alternative policies?

Senator PATTERSON—I thank Senator Humphries for his question. The Howard government has done more than any other government to support parents in accessing affordable, quality child care. In this year’s budget the government announced an additional 84,300 outside school hours care places and they will be made available over the next four years. This announcement represents more places than Labor funded in total in its last year of government. I am pleased to announce that this weekend the first 15,000 of these new places will be advertised. This will allow new and existing services to tender for these places. This is a far cry from Labor’s commitment in the last election of a further 8,000 places.

So on one weekend, next Saturday, the Australian government will advertise for almost twice as many outside school hours places as Labor would have provided in three years. In their election commitment they had 8,000 outside school hours places in three years and we are advertising 15,000 this weekend alone. No wonder the then shadow minister called Labor’s policy ‘just a drop in the ocean’. The 2005-06 budget contained additional funding of $266 million to meet the demands for child care. Over and above the 84,300 outside school hours places, there
are a further 2,500 family day care places and 1,000 in-home care places, and we will provide 52,000 low-income families with additional assistance with the cost of child care. These measures will support parents moving from welfare to work over the next four years. They will also meet projected demand over the next four years. These extra places and the further support for families are significant dividends that have been made available by the strong economic management of the Howard government. The measures will support the work first approach of the innovative welfare reform package and show our government’s commitment to Australia’s parents and children.

More families now get help with their child-care costs than ever before. The Howard government have spent, and continue to spend, more on child care than any Labor government ever did. The government expect to spend around $8 billion over this year and the next three years to support child care. The government’s ongoing commitment will be significantly boosted with the additional assistance of $1.1 billion in the 2007-08 financial year for the child-care tax rebate and grandparent carers measures, as announced in the election campaign. The innovative approach that we have taken, particularly with grandparents, will help those who have primary care of their grandchildren to access affordable child care. We have committed more than $70 million to that package.

Since the Howard government introduced the child care benefit in 2000, more families than ever before have been assisted with the affordability of child care. Child-care benefit now assists over 690,000 families, with an average of over $2,000 a year. Our record speaks for itself and, as I said, thanks to our government’s strong economic management, a record number of parents are now receiving assistance to access a record number of child-care places.

**Sydney Dance Company**

**Senator CARR** (2.50 pm)—My question without notice is to the Minister for the Arts and Sport, Senator Kemp. Can the minister confirm that the Australia Council has rejected the findings of the McRae report on the future of the Sydney Dance Company, as reported in the *Sydney Morning Herald* last Saturday? Can the minister confirm that the McRae report cost $25,000 and was undertaken by a senior member of the Australia Council board? If that is the case, can the minister also advise whether the Australia Council intends to write off this $25,000 or does it intend to commission yet more reports until it finally receives a report which it thinks the government wants to hear?

**Senator Hill**—What’s all that about, Kempy?

**Senator KEMP**—Senator Hill said, ‘What’s all that about, Kempy?’

**The PRESIDENT**—Minister, I ask you to ignore the interjections and return to the question.

**Senator KEMP**—Thank you, Mr President, but I was being sorely provoked by my leader, so I had to respond. It is an interesting issue. Senator Carr will be aware that this was discussed extensively at Senate estimates. There was a McRae report done. Ian McRae is a very distinguished arts practitioner and manager, and there was a McRae report done into the Sydney Dance Company. When I asked Senator Carr at Senate estimates, ‘Did the Labor Party support the McRae report?’—

**Senator Sherry**—What about the question?

**The PRESIDENT**—Order! Senator Sherry, it is not your question.

**Senator KEMP**—I know that this is a very sensitive issue. I asked Senator Carr whether the Labor Party supported the
McRae report. Senator Carr, to put it bluntly, went MIA. If my memory serves me correctly—Senator Sherry will correct me if I am wrong—the McRae report called for additional contributions to the Sydney Dance Company from the New South Wales Labor government. Senator Carr was quite correct in being a bit hesitant to indicate that the Labor Party supported the McRae report, because he was aware of the fact that, in the discussions that the Sydney Dance Company had with the New South Wales government, the New South Wales government said that they would not be putting any additional funding into the Sydney Dance Company. It is a serious issue.

The next issue is how we deal with the problem that the Sydney Dance Company is facing. Many in this chamber are very strong supporters of the Sydney Dance Company and we recognise the great work that it has done. It is certainly one of Australia’s finest dance companies. Let me assure you that the Sydney Dance Company has the government’s support. The government has already agreed to help the Sydney Dance Company through its temporary financial problems. The Australia Council and the board of the Sydney Dance Company, I am pleased to report, have agreed a financial package that brings forward the company’s regular grant payments and ensures cash flow. My advice is that the Sydney Dance Company has accepted this assistance and has confirmed that the Sydney Dance Company is a going concern.

Importantly—Senator Carr will appreciate this—the Australia Council has indicated that there is no risk to the size of the company’s ensemble. Senator Carr, there are significant issues with the Sydney Dance Company. Correctly, the Australia Council has sat down with the Sydney Dance Company and worked out a way forward. The coalition, like the Labor Party, is very keen to see the Sydney Dance Company continue as a vibrant performing arts company. My advice is that, as a result of the discussions, the directors have agreed to the package that was put forward by the Australia Council.

The McRae report raised some interesting and important issues. It looked at the role of the coalition government and, if my memory serves me correctly, the role of the state government. (Time expired)

Senator CARR—Mr President, I ask a supplementary question. I ask the minister to confirm whether or not the Australia Council has rejected the findings of the McRae report in regard to the nature of that financial package. The minister failed to answer that question. Can the minister also confirm that the McRae report states:

... the non-indexation of grants is placing performing arts companies under extreme pressure and increasing the likelihood of a recurring need for special intervention.

Is it not the case that the same criticism was also levelled by the Australia Council at its board meeting last November? Is it the case that it said that the funding arrangements were ‘unsustainable’? Can the minister also confirm that, having bowed to the pressure to find some form of compensation for some arts companies for the cost of the efficiency dividend, this government is now doing nothing to fix the problem of the unsustainability of the current funding model?

Senator KEMP—There are quite a few questions to be answered in one minute, but let me cut to the chase very quickly. The efficiency dividend has been a longstanding issue with arts companies and indeed, I suspect, right across government. Senator, I had noticed that over the last two years the Labor Party had raised what they saw as the problems of the efficiency dividend. I am glad that you mentioned that compensatory arrangements had been made in the last
budget. Over the last two years the Labor Party has raised these problems in Senate estimates hearings. Naturally, when Senator Lundy launched her arts policy, I rushed forward and managed to obtain a copy of it. I looked at whether, in its arts policy, the Labor Party had addressed this issue, which it had raised on many occasions over previous years. Again, we learnt that there was no mention of the efficiency dividend and—

(Time expired)

Employment: People with Disabilities

Senator LEES (2.57 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Minister, as part of the government’s strategy to help people on the disability support pension to find work, you have several initiatives for employers to encourage them to take on workers with a disability. Why is there no national strategy aimed at encouraging employers to keep employees who are diagnosed with a chronic illness, in particular before you remove the right to claim unfair dismissal? Currently, whilst some employers are very supportive, many are not, and if someone is diagnosed with, for example, multiple sclerosis, they are generally manoeuvred out of the work force and out of their jobs as soon as possible or are just forced to give up. I ask: will the government implement a national strategy to protect people who are diagnosed with chronic illness so that they can keep their jobs before you change the Workplace Relations Act and get rid of the opportunity for them to claim that they have been unfairly dismissed?

Senator ABETZ—I do not have a brief on that matter from Minister Dutton, so I will take the question on notice. Having said that, I am not sure that Senator Lees’ portrayal of employers necessarily does justice to the vast bulk of employers in this country who do look after their work force, are anxious to maintain their work force and enjoy a very good relationship with their work force, as witnessed by the fact that today we have the lowest rate of industrial disputation ever in this country. When I say ‘ever’, I mean ever since records have been kept—since about 100 years ago.

Opposition senators interjecting—

Senator ABETZ—There is an interjection: why change the act? We made certain changes to industrial relations, as a result of which we have seen a huge spurt in employment. We are now at a rate of 5.1 per cent unemployment. We do not think that is good enough; we think it can be driven down further by appropriate workplace relations reforms, reforms that we took to the Australian people and which they have overwhelmingly endorsed. At the end of the day, the Australian people have listened to the naysayers on the other side—those that said that with industrial relations reform there would be an increase in unemployment, a reduction in real wages and an increase in industrial disputation. In fact, the exact opposite has occurred on all of those three fronts. The Australian people now recognise that the Howard government, with its policy, has been the most jobs-friendly government that they have experienced in generations, and they have enjoyed a real increase in their wages as well.

The government has a very good record in this area in relation to the specifics. I am more than willing to take on notice the question of whether or not the minister has in mind a national strategy and get back to the honourable senator.

Senator LEES—Mr President, I ask a supplementary question. While we may wish to hope that most employers would persevere with workers who acquire a disability, unfortunately that is not the case. If we look at
people who are diagnosed with multiple sclerosis we see that most are between the ages of 25 and 30. Minister, are you aware that 80 per cent of them will lose their jobs within 10 years, while they are still in their 30s? That is not because they cannot or do not want to work but because employers do not want to make the allowances necessary or indeed to support them in any way. Now it at least takes some time before they are out of the work force. Once the unfair dismissal laws are changed they can be dismissed immediately. Will you look at implementing a national strategy to support employers? Or, will you exempt people with disabilities from the changes to the unfair dismissal provisions?

Senator ABETZ—As I indicated, I will take the question on notice. But, just by way of thinking about the issue, can I suggest to the honourable senator that there may be appropriate welfare requirements of the Australian people to bear in mind in relation to people that suffer from the sorts of long-term disabilities that you are talking about, as opposed to an employment situation that might in fact be struggling to make ends meet. I think there may well be a sensible shared responsibility in this area. I will take that further detail on notice as well.

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

ANSWERS TO QUESTIONS ON NOTICE

Question Nos 4, 47 and 477

Senator MARK BISHOP (Western Australia) (3.03 pm)—Pursuant to standing order 74(5), I ask the Minister for Defence for an explanation as to why an answer has not been provided to questions on notice Nos 4, 47 and 477. What progress is the minister making in responding to an outstanding order for production of documents in connection with roadworks at Gallipoli, as listed on the Notice Paper since 11 May 2005?

Senator HILL—In relation to the order I will have to seek further advice. In relation to the questions raised by Senator Bishop, I am advised that the two questions—4 and 47—relate to Gallipoli roadworks and the 2005 Anzac Day commemorations, and consists of 18 questions, in fact. The department is awaiting final costings from the post in Ankara to complete the response. Question 447 consists of 46 questions. The department is in the process of finalising the response that will be provided to the minister shortly. Compiling the information to respond to all these questions has been a major task requiring extensive research and considerable resources. Responses will be provided once the work is complete.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Arts and Sport

Senator LUNDY (Australian Capital Territory) (3.04 pm)—I move:

That the Senate take note of the answers given by the Minister for the Arts and Sport (Senator Kemp) to questions without notice asked by Senators Lundy, Forshaw and Carr today relating to sport and the Sydney Dance Company.

What we have witnessed today is the absolute height of arrogance on behalf of the coalition government and the Minister for the Arts and Sport in relation to not only the sports rorts grants but also the handling of the Queen’s baton relay. I can just imagine Senator Kemp, and perhaps Mr Costello, before the election, swirling their cognac and puffing on their cigars in the warm confines of the Melbourne Club, surrounded by dark timber and velvet, and determining who were going to be the winners in their little sports rorts scam. I can see them swirling their cognac and having a look around the Liberal marginal seats saying, ‘Who needs a bit of
special help? Who needs a few dollars on the side to spread around in their community to get them across the line? So it is no real surprise that they look to Makin and McEwen and the struggling candidates in those seats. They looked also to Bass, which had no less than $12 million thrown at it during the election campaign, more than half of which was related to the sports rorts grants.

Turning back to Makin and McEwen, the actual number of individual grants that were given to the member for McEwen during the election campaign is absolutely astounding—no less than 16 individual grants. In Makin there were six individual projects to the tune of some $210,000 and in McEwen there was funding to the tune of some $190,000. The question has to be asked: why on earth did the coalition not announce a program to fund regional sports facilities? There is no doubt that this is an area of need.

It seems to me that the new characterisation of handling the sport portfolio in this country is one of being highly partisan. What a sad day it will be when that sinking realisation pervades the Australian sporting community. There is no doubt that the issue of the Queen’s baton relay exposes the heights of hypocrisy that this government is prepared to go to, to put in place a profoundly partisan approach. The cold wind of sports partisanship is at risk of blowing this torch out, as the minister makes it a prerequisite that it has to go through government members’ hands on its way to podiums around the country.

It is appalling that the minister has written in this way and provided these guidelines, ensuring forever that the spirit of sport in this country is captured and constrained by the government of the day. That was not Labor’s way. That was not Labor’s approach to sport, because we understand that sport in this country is about the grassroots, and we respect the grassroots of the sporting community here. It is right that they not only get access to grants but are involved in community events such as the Queen’s baton relay, without being subjected to pictures of John Howard and Costello. Please! What sort of insult is that? When those videos are viewed around the country, it is going to remind every Australian just what a ridiculous government we have in place now and how prepared they are to exploit the good nature of sport—the community glue that sport is in everyone’s lives—for their own political purposes. They will put a big black mark against—(Time expired)

Senator EGGLESTON (Western Australia) (3.10 pm)—Labor’s way in terms of sports grants; my goodness! I thought we might have preferred not to go there. If we go back to 1995, we remember a certain Mrs Kelly, something called a whiteboard and the Labor sports rorts scandal. Heavens above! Senator Lundy, I am just astounded that you would want us to be reminded of what Labor’s real record was in the allocation of
sports grants. And they were not small sports grants but sports grants amounting to millions and millions of dollars which were allocated, quite unashamedly, to Labor electorates around the country, in the hope of propping up Labor’s diminishing chances of being elected in 1996. Senator Lundy, you said that Labor provides grants at grassroots level. The kinds of grants that Mrs Kelly was making 10 years ago were hardly grassroots grants; they were grants of millions and millions of dollars to big projects which were designed, as I said, to prop up Labor’s chances of re-election.

The small sports grants program which Senator Kemp was administering truly was a community funded project. It provided grants to quite small community projects across Australia which helped ordinary little people in small suburbs, in small country towns, to have better facilities for their communities to enjoy. I do not think that it is anything like the kind of scandal which surrounded the Kelly grants of 10 years earlier. The grants supported by Rod Kemp were, as I said, community focused and helped ordinary people in small communities. One can only say that there is no comparison whatsoever between the two. The Kemp grants were useful; the Kelly grants were nothing but a corrupt use of federal funds for the political purposes of the then Labor government.

This motion to take note of answers is on all the answers that Rod Kemp gave, which includes the answers on the arts board and the Sydney Dance Company and the financial support which the federal government—quite justifiably—has offered them. The Sydney Dance Company is one of Australia’s finest dance companies, and it definitely has the support of the federal government. The Australia Council has agreed a financial support package with the board that will bring forward the company’s regular grants payments and improve its cash flow so it can get through the temporary period of difficulty which it is experiencing.

As Senator Lundy no doubt knows, the Australia Council recommended to the Sydney Dance Company that they commission an analysis of their financial position, and the council agreed to meet the costs of this consultancy. The Sydney Dance Company subsequently commissioned Ian McRae, who is a very reputable financial consultant, to assess the state of affairs of the Sydney Dance Company. In his final report, he recommended certain support be given to the company. While the federal government does not agree with the key finding that the only way of addressing the Sydney Dance Company’s financial difficulties is to permanently increase their government funding, the government is certainly prepared to help them through this period of difficulty, while they rearrange their affairs and the kinds of shows they are putting on so that they can trade their way back into a more stable financial situation. That is the general approach the Howard government has been using in terms of supporting the arts to ensure that the arts in Australia do have the opportunity to proceed on a sound financial basis. The government in general terms has been supporting the arts in this country in a very admirable and strong way and will continue to do so. (Time expired)

**Senator Faulkner** (New South Wales) (3.15 pm)—I would like to put down some facts about this matter in the parliament this afternoon. Senator Kemp has tried to hide his tracks on this rort that is the facilities program. Senator Kemp probably did not think that anyone would undertake a thorough reading of the Department of Communications, Information Technology and the Arts additional estimates statements 2004-05, the portfolio budget statements 2005-06 and Mr Costello’s Making Australia Stronger—Delivering our Commitments

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**CHAMBER**
Unfortunately for Senator Kemp, the Labor Party did. What do these documents reveal? They reveal that 27 special sports facilities projects were promised by the Liberals prior to and during the election. Sixteen of those 27 projects are in the Liberal seat of McEwen in Victoria. Fran Bailey contacted the local sports clubs in her seat of McEwen and told them that the Howard government was offering them direct cash grants, to be paid after the election.

Another six of the 27 grants were in the electorate of Bass. All were announced by Liberal candidates and senators. Another five grants were in the seat of Makin, the infamous Ms Trish Draper’s seat. Each and every one of these grants represents a political fix by Senator Kemp. When these projects were announced there were no applications dealt with by the department, there was no vetting by his department and there was no assessment of these grants according to the Auditor-General’s Best practice guide for the administration of grants. We also now know from the media that the funding was actually allocated in Liberal Party headquarters. So there was no proper process at all. There was not even a pretence of proper process—nothing whatsoever. It is the most blatant and worst kind of pork barrel politics.

Not just limiting himself to a rort in relation to these grants, the minister even tried to rort the Commonwealth Games Queen’s baton relay. He has insisted that federal parliamentarians get their grubby little hands around the Queen’s baton—as long as they do it before any athlete does! The Liberal Party and the federal parliamentarians from the Liberal Party have to run the show. They are co-chairs of the local planning group. The Liberal Party representatives have to be on the podium in front of the big video screen that shows video images of John Howard and Peter Costello—he is also insisting on that! Anybody associated with a state or territory government, including the government of Victoria, is removed from the process completely. Anyone who is not associated with the Liberal Party is expunged from Senator Kemp’s process. We have never had a situation where the Commonwealth Games has been politicised like this contemptible and despicable work on the part of Minister Kemp. Never has it happened before. It is not the Liberal Party’s Commonwealth Games. It is not the federal government’s Commonwealth Games. It is everybody’s Commonwealth Games.

Won’t it be interesting in seats like Casey, where Mr Tony Smith, that solid supporter of Mr Costello, is the member. I wonder how much time Mr Costello’s clip will have in that seat and how little Mr Howard’s will have. Senator Fifield will have a problem when he fronts up in all of the Labor-held House of Representatives seats with Mr Howard’s video clip. Mr Georgiou of the seat of Kooyong will have a conflict of disloyalty—he hates both Mr Howard and Mr Costello! To be fair, they both despise him. (Time expired)

Senator SANTORO (Queensland) (3.20 pm)—Again, we have had another pitiful and hysterical performance by members opposite. What do their arguments come down to? I will summarise the arguments before I comment on them. What senators opposite have said today is that the administration of his department by Minister Rod Kemp means that he has taken the grassroots out of sport, that it provides for the Prime Minister and the Treasurer to represent the government—which, after all, administers sport in Australia, certainly at a government level—and that, somewhere along the line, there has been a sleight of hand in terms of McEwen. There are three arguments being put forward by Labor senators.
Let me just go through them one by one. First of all, there is the argument about McEwen. The Labor Party come into this place and display the most breathtaking hypocrisy when it comes to McEwen. Was the Liberal Party the only party that made commitments to the people of McEwen? What did the Labor Party do? Did they just stand still? Did they not try to impress or in fact—- I will be charitable at this stage—to look after the people of McEwen? Let us look at what the Labor Party—the self-righteous people opposite—actually promised to McEwen. They are not able to deliver it, but this is what they promised. They promised $174,000 to the Friends of the Helmeted Honeyeater. The group’s president, Mr Bob Anderson, was reported as expressing some surprise with the announcement as the group’s submission was made to the Victorian government. Tell me, did the Victorian government collude with the Labor Party candidate in the Labor Party organisation? Did the Victorian government go to the Liberal Party candidate? There is no answer from those opposite.

Up to $500,000 was promised to build or renovate a child-care centre in McEwen. Up to $1.6 million was promised to the Kilmore Primary School. One million dollars was allocated for a community service centre at Wallan, and there was a pledge to match sporting grants committed by the coalition totalling $190,000. All this from those opposite who are trying to make a case against coalition access to the electorate of McEwen. That attitude is blatantly hypocritical and is not accepted by the people on this side of the Senate. You should be ashamed to come into this chamber and sound so self-righteous when you have a track record of collusion with the Victorian Labor government. No opportunity was afforded to the Liberal Party in that electorate.

Those opposite talked about providing a role for the PM and the Treasurer in the Commonwealth Games Queen’s baton relay. The Prime Minister is most loved when it comes to giving prime ministerial support to sport. Australians recognise him as being a supporter of most mainstream sports in Australia. They recognise him as being genuine and knowledgeable. I listen to the ABC and I say again today that I support the ABC in so many ways. I hear the Prime Minister regularly commenting on the ABC on just about every sport that is played in Australia. There will not be one Australian who will resent the Prime Minister appearing and endorsing the Queen’s baton relay. The same applies for the Treasurer, who, particularly in his home state of Victoria, participates in so many sporting events.

I will turn now to grassroots participation. I also received a letter from Senator Kemp. The letter invited me to be involved in a genuinely community based committee. The local communities will have their hands all over the Queen’s baton relay project. So do not come into this place and say that somewhere along the line the community involvement has been taken away. You can say whatever you want to, but community involvement is there and it is entrenched in the arrangements announced by Minister Kemp.

You have a cheek to come into this place and talk about sports rorting. Senator Eggleston reminded you of your woeful record: the famous whiteboard and the famous minister who perpetrated one of the greatest rorts in the history of Federation. She was caught out absolutely. I did not hear many of you come into this place or the other place and condemn that rort. I say to senators opposite: if you want to come in here and criticise, do so from a position of strength and do so with community support and a good historical record. (Time expired)
Senator CARR (Victoria) (3.25 pm)—I want to speak to the answer from Senator Kemp to a question from me on the Sydney Dance Company. I think it is appropriate that we get a few facts on the table with regard to this matter. While Senator Kemp arrogantly and somewhat contemptuously sought to dismiss concerns that are being raised about his administration of the arts portfolio, he will not be able to direct attention away from his fundamental underachievement in this area. I think it is important that we get the facts clearly on the table. At a recent meeting of the Australia Council Major Performing Arts Board the $25,000 McRae report was effectively rejected. The Australia Council took the view that they were unable to support one of its key recommendations for the total cost base for the Sydney Dance Company to be increased. They were not able to support the proposition that grants to arts agencies, including the Sydney Dance Company, be indexed to the CPI to significantly diminish the risk of financial failure. The council were also not able to support a one-off grant to eliminate the dance company’s deficit.

Not satisfied with rejecting those recommendations of the McRae report, the Australia Council is now considering yet another inquiry. It is not happy that it has an inquiry report that comes forward in such a manner; it has to find a new one which it hopes will come forward with answers that the government wants to hear. Under the direction of this government, the Australia Council is proving time and time again that it is a lacklustre advocate for the arts within the government itself. The McRae report was obviously a shock to the minister and to the Australia Council. It was a shock particularly because the producer of that report was not only a highly respected arts administrator but a member of the Australia Council itself and the chair of its Theatre Board.

Mr McRae said that the Sydney Dance Company is not sustainable under the current funding arrangements. That view was supported by the Australia Council in its chief executive officer’s presentations late last year. So it should not have been a surprise that the McRae report was so damning of the government’s funding arrangements. It seems that the minister did not want to hear this advice. He particularly did not want to hear the advice from Ian McRae that ‘the existing financial model is clearly not sustainable’. In Mr McRae’s opinion, the company’s problems lie not just in its cost structures but with the funding model being imposed by the government. Nearly a year after this problem was brought to the attention of the Australia Council, no adequate solution has been found.

The question that we are entitled to ask on that issue is: why have no answers been provided at this time? It is quite clearly a major problem for the Australia Council. It is an inability to solve in a timely manner a problem that has been highlighted for some considerable length of time. The problem essentially lies with the government itself. Ian McRae rightly identified the question of sustainability. That is a theme that the Australia Council touched on in a briefing note to the board last year. It said:

The Government funding is unsustainable ... squeezed by partial indexation ...

The nub of the minister’s problem is that he cannot persuade his colleagues that there has to be serious movement on this issue. He cannot continue with this farce of providing some compensation to get over what he sees as being a short-term or temporary hiccup.

What we have seen in the last few years is that up to five or six of the 29 major arts companies have been in deficit. The Sydney Dance Company is not the only one of those companies that is facing a serious financial
problem. This shows that the profits after bequests and private donations cannot sustain their funding base. It is quite apparent that this government has done nothing to deal with a number of problems that are now emerging as a result of this pattern being repeated again and again across our major arts companies. We cannot just rely on philanthropic support for these companies. The government has to intervene and provide assistance in a realistic way to ensure that the vagaries of the economic cycle do not produce circumstances in which companies such as the Sydney Dance Company face the enormous financial pressures that they face at the moment. *(Time expired)*

Question agreed to.

**COMMITTEES**

**Reports: Government Responses**

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.30 pm)—I present four government responses to committee reports as listed on today’s *Order of Business*, as well the government’s response to the 57th report of the Joint Standing Committee on Treaties. In accordance with the usual practice, I seek leave to incorporate the documents in *Hansard*.

Leave granted.

*The responses read as follows—*

**GOVERNMENT RESPONSE TO THE SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE’S REPORT COMMONWEALTH FUNDING FOR SCHOOLS**

**Introduction**

The Senate referred the Commonwealth funding for schools inquiry to the Employment, Workplace Relations and Education References Committee on 13 May 2004. The terms of reference for the inquiry covered the principles of Commonwealth funding for schools with particular emphasis on how these principles apply in meeting the current and future needs of government and non-government schools; and whether they ensure efficiency and effectiveness in the allocation of school funding. The committee also investigated accountability arrangements including through the Ministerial Council on Education, Employment and Youth Affairs.

The committee tabled its report on the inquiry in the Senate on 11 August 2004. The report makes 7 recommendations relating to these issues which have been considered by the Government in formulating this response.

**Response to recommendations in the report**

The Government’s response to each of the recommendations contained in the Senate Committee’s report is set out below.

**Recommendation 1**

The committee recommends that the Howard Government should accept responsibility for resolving the divisiveness its school funding decisions have generated, and that the Commonwealth should demonstrate leadership in developing a new national consensus on school funding, with a renewed focus on equity and a determination to raise the quality of education in schools that are poorly resourced to deal with underachieving students.

**Response**

The Government does not support this recommendation. Much of the divisiveness that has arisen has been driven by misleading information produced by the Australian Education Union in an attempt to revive the State Aid debate.

The Australian Government has already responded to those students and schools in need of extra help, providing almost $5 billion over four years for special purposes. Of this, $2.1 billion will be invested in the education of the most disadvantaged students, with a focus on literacy, numeracy and help for students with disabilities. Another $2.5 billion will be spent on school buildings; $117 million will improve the educational experience of geographically isolated children; $246 million will help newly arrived students from non-English speaking backgrounds learn English; and $114 million will be provided for students to learn languages other than English.
The Australian Government’s SES funding formula is needs-based. It gives more funding to schools serving needy communities and less to schools serving wealthy communities. Maximum funding under the SES model, payable to schools serving the neediest communities, has been significantly increased from about 59% to 70% of the average cost of educating a student in a government school.

**Recommendation 2**

The committee recommends that the Australian Government accepts its responsibility for the support of high quality public school systems as a national priority, including the endorsement of the MCEETYA principles for schools resourcing.

**Response**

The Australian Government has always supported high quality public school systems. Over the next four years, the Australian Government will provide $10.8 billion to the states and territory governments in specific funding for their state schools. This is a $2.9 billion increase over the current four year period and will continue to provide funding increases to state schools of around 6 per cent per annum. Total funding in 2004-05 will be 79 per cent higher than that provided in 1996.

The Australian Government’s general recurrent funding for state schools over the next quadrennium represents a 39 per cent increase over the current four year period.

The Australian Government did not endorse the funding principles developed by MCEETYA because they were developed without consultation with the non-government sector, representing one third of Australian students. As the Australian Government is committed to collaboration with all stakeholders and to effective choice for parents educating their children, it could not endorse these principles as an agreed framework to apply to education funding within Australia.

**Recommendation 3**

The committee recommends that the Commonwealth note the overwhelming evidence put before the inquiry on the flawed nature of its funding arrangements for non-government schools, including:

- failure to take into account the total resources available to a non-government school in assessing relative need for funding;
- adoption of a funding scale that has provided the largest increases in funding to non-government schools that were already operating well above the resource standards in government schools; and
- creation of instability and insecurity in the post 2008 funding for the 50 per cent of non-government schools that are in one of the two funding maintained categories for the 2005-2008 quadrennium, including 60 per cent of schools in Catholic systems.

**Response**

The SES approach, unlike the Education Resources Index (ERI) system which it replaced, is transparent and objective, based on independent data that are consistent for all schools. One of the key principles that underpin the SES model is that private investment in education should not be discouraged and, therefore, it does not take into account a school’s private income from fees or any other sources.

The Australian Government is aware of the need for stability and certainty in the schools sector and will ensure that the sector is consulted early on arrangements for the 2009-2012 quadrennium. The issue of the funding for the so-called ‘wealthy’ schools has attracted considerable media attention largely due to the misleading campaigns of the Australian Education Union and the Australian Labor Party who have endeavoured to make the public believe that the high fee schools receive the most amount of public funding of any school in Australia—government or non-government.

The facts are that the higher fee schools receive the least amount of public funding per student, typically a quarter of that provided to a state government school. The Australian Government believes that all students should receive some public financial assistance towards their education, regardless of the school they attend. The SES model provides the greatest level of assistance to non-government schools serving the neediest communities, and the least assistance to those serving the wealthiest.
Recommendation 4
The committee recommends that the SES non-government school funding model should be linked to the economic capacity of school communities, modified to include sources of private income including fees and linked to the educational needs of each school and its students.

Response
The Australian Government does not support this recommendation. The SES policy ensures that schools are not penalised for raising private income. The Australian Government believes that parents should not be discouraged from investing in their children’s education.

Recommendation 5
The committee recommends that the Commonwealth, through MCEETYA, should exercise its responsibility to ensure that financial data regarding school income and expenditure, whether on an aggregated or disaggregated basis, is provided and publicly presented and reported in a standard format, using a single accounting basis and reporting period. In the case of non-government schools, this data, both aggregated and disaggregated to the school level, should be provided to the Commonwealth in a standard format on an annual basis, and tabled in the Parliament. Provision of full financial information in this manner should be a condition for receipt of recurrent funding.

Response
The Australian Government believes the public funding of all schools should be fully transparent. The Australian Government has published the estimated annual general recurrent grant funding from the Commonwealth for every non-government school or non-government school system in Australia. Figures have been published for every year from 2003 to 2008. The Australian Government believes that the States and Territories should be as equally transparent as the Commonwealth.

Recommendation 6
The committee recommends that accountability provisions regarding non-government schools should be strengthened to require reporting by schools on a range of matters including:

- enrolment of students with disabilities;
- enrolment of Indigenous students;
- admission and exclusion policies;
- teaching staff;
- curriculum; and
- discipline policies.

Response
The Australian Government does not support this recommendation. The items listed by the Committee would simply add unnecessary reporting without driving genuine improvements in schools. In contrast a key feature of the 2005-2008 quadrennium legislation is a greatly enhanced performance framework. The strengthened accountability and reporting requirements will reinforce the link between the funding provided under Australian government programmes and improved outcomes for all Australian students. These requirements will underpin the Australian Government’s national priorities in schooling. Key elements are included as conditions of funding in schools legislation for 2005-2008, including:

- greater national consistency in schooling, including starting ages, and curriculum and testing standards;
- commitment to achieve performance targets for Year 3, 5 and 7 literacy and numeracy and to report against performance measures for Year 3, 5 and 7 literacy and numeracy;
- report to parents their child’s performance against the Year 3, 5 and 7 benchmarks literacy and numeracy;
- better reporting to parents, including plain language reports and meaningful information on school quality;
- transparency of school performance;
- greater autonomy for school principals;
- creating safer school environments;
- common commitment to physical activity; and
- making values a core part of schooling.

The requirement for all schools to publish and make readily accessible a range of school performance information will include such information as academic outcomes, curriculum offerings
such as what vocational, education and training options are offered, school leaver destinations, the professional qualifications of teachers and professional development undertaken by teachers. Reporting against measures and targets such as the literacy and numeracy benchmarks, will include reporting by students’ sex, Indigenous status, socioeconomic background, language background and geographic location using the national definitions being agreed through MCEETYA.

The Australian Government accountability and reporting requirements apply equally to government and non-government schools.

**Recommendation 7**

The committee recommends that, pending discussions with state and territory governments through normal MCEETYA processes, the Government should be mindful of the rights of states and territories to legislative and administrative autonomy with regard to the operation of schools. The Government should not use school funding legislation as a vehicle to impose on the states and territories policies and practices that would normally be the subject of agreement through MCEETYA.

**Response**

The Australian Government is the single largest funder of school education. As such it has the right to set financial, policy and administrative directions. The Australian Government will exercise its leadership role in schooling in areas where national reform is required. This may involve consideration by Ministers through MCEETYA processes on specific matters. However the Australian Government has the right and the responsibility to attach conditions to its very significant schools funding to ensure that important reforms are implemented.

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**INQUIRY INTO ADMINISTRATIVE REVIEW OF VETERAN AND MILITARY COMPENSATION AND INCOME SUPPORT**

I refer to your Committee’s report on Administrative Review of Veteran and Military Compensation and Income Support which was tabled on 4 December 2003.

I have noted the four recommendations made in the report to which I make the following responses:

**Recommendation 1**

The Committee recommends that the Australian National Audit Office conduct an audit of the reported practice of the Military Compensation and Rehabilitation Scheme using private law firms for the purpose of the entire reconsideration of the original decision. It also recommends that DVA, in consultation with the ANAO, establish guidelines for private law firms in providing advice to ensure that the authority of delegated decision-makers is not being bypassed. (Para 5.54)

**Response**

Agreed in principle, although I note that the program of ANAO audits is a matter for the Auditor General. Guidelines on the use of private law firms have been agreed by the Military Rehabilitation and Compensation Commission, which assumed responsibility for the Military Compensation and Rehabilitation Service on 1 July 2004. Those guidelines will be reviewed by the Military Rehabilitation and Compensation Commission in the light of any subsequent ANAO recommendations.

**Recommendation 2**

The Committee recommends that the future administrative review process under the new Military Rehabilitation and Compensation Scheme (MRCS) should be the same for all ADF and ex-ADF personnel. All appeals to the Administrative Appeals Tribunal should be heard by one Division which might be titled the Military Division. This new process does not apply to the existing review process under the MCRS (Para 5.68).

**Response**

Agreed and already adopted in part.

The Military Rehabilitation and Compensation Act 2004 (MRCA) provides appeal paths that are available to all claimants. These appeal paths are the same for both current and former ADF personnel.

The recommendation for one Division of the Administrative Appeals Tribunal to deal with claims under the MRCA and the Veterans’ Entitlements Act 1986 is a matter for the consideration by the
President of the Administrative Appeals Tribunal and the Attorney-General as this would require an amendment to regulation 4A of the Administrative Appeals Tribunal Regulations 1976 (AAT Regulations). I am able to advise the Committee that agreement in principle has already been reached with both the President of the AAT and the Attorney-General for such an amendment to be made to the AAT Regulations to implement this part of the recommendation.

**Recommendation 3**

The Committee recommends that in order for ex-service organisations (ESOs) to provide an adequate and sustainable advocacy service, funding arrangements for the TIP and BEST programs should be reviewed in order to improve the effectiveness of the programs. Funding for the programs should be on at least a bi-annual basis to enable ESOs to make better use of their available financial resources. (Para 5.94)

**Response**

Agreed in part. As part of the ‘Saluting Their Service’ election commitment, the Coalition Government committed additional funding of $9.2m over 4 years for BEST and TIP. The BEST grants will be increased by $1.7m per year and TIP by $0.6m per year. An additional round of grants funding and TIP allocation will occur this year to take account of the additional funding.

I have responsibility to allocate the BEST grants money and the Department allocates the TIP funding at the beginning of the financial year. This allows the ESOs to plan their activities and allocate resources for the full financial year. In addition one round per year minimises administrative requirements for the applicants. It is our understanding that the majority of the ESO community would wish to continue this arrangement. Therefore it is proposed to continue with the existing one allocation of funding per year.

**Recommendation 4**

The Committee recommends that a two-year trial be initiated in one State with the agreement of the veterans organisations in that State for a variation to the existing review process. That new process should include:

- the introduction into the VRB of pre-hearing mediation and conciliation processes as currently employed in the AAT including the presence of the claimant, the advocate and the DVA;
- an increased use of VRB Registrars to ensure that applications are not deficient with regard to all necessary supporting material, including medical evidence;
- enhancement of medical disbursements prior to the VRB. The disbursements are to be equivalent in value to those currently available at the AAT, but once they are taken they are not to be made available a second time should there be a further appeal to the AAT; and
- the same legal aid provisions that exist under the current review mode (Para 7.34).

The Committee also recommends that DVA undertake a review of the trial at the conclusion of the two-year period. The review should assess the outcomes of the trial against a set of performance indicators to determine whether there is scope either to extend the trial period or introduce the revised VRB process in other States and on a permanent basis. The review and any decision to introduce a revised process should proceed in consultation with all major stakeholders (Para 7.35).

**Response**

Not generally agreed. While the scope for earlier resolution of applications for review is supported, the particular strategy proposed in the recommendation would give rise to certain anomalies and administrative difficulties.

The essential concerns about the general proposal are as follows:

- It would create a two tier system at the intermediate level of external review. Hence a preliminary conference at the VRB could be seen as simply another step in an already full hierarchical system consisting of a primary decision, internal review under section 31 of the VEA, review at the VRB, preliminary conferences on an appeal to the AAT, and a substantive hearing before the AAT.
The proposed trial could only go ahead if the Repatriation Commission were represented at the preliminary conference. This in itself may cause difficulty in that the present quality of veterans’ advocates is variable and participation in a conciliation conference is possibly beyond some of the veterans’ advocates that presently appear at the VRB. It has the potential to introduce an adversarial element in a review process in which the Repatriation Commission currently chooses to exclude itself. This would be counter-productive to the stated aim of early resolution of claims.

It would call for a staff restructuring at the VRB which would be expensive. The Repatriation Commission would also require additional resources to provide representation.

It would eliminate the element of service experience in the first step in external review. At the present time each VRB panel includes a Services Member. The ex-service community places considerable importance on the presence of this member in the 3 member, intermediate level tribunal. Provision for a conference registrar would eliminate this aspect, at least as a first step in external review.

If a preliminary conference failed to resolve an appeal it would simply add to the time taken to reach completion.

The enhancement of medical disbursements prior to the VRB is not agreed at this time. The proposal would seem to create a risk of greatly expanded cost for the larger number of applications dealt with at the VRB. Should further medical reports be necessary it is open to the VRB to request such reports from the Repatriation Commission under section 152 of the Veterans’ Entitlements Act 1986.

While the legal aid recommendation is agreed to in principle, it is noted that legal aid is the responsibility of, and a matter for implementation by, the Attorney-General’s Department.

As an alternative, the VRB is presently upgrading staff and developing new roles to improve the process of resolution of appeals at the VRB level. A general concern has arisen out of the number of ‘unrepresented’ veterans who often do not understand the material that must be considered or the type of information that should be presented to the VRB. The general aim is to train staff to a level that they can discuss such issues with veterans—initially the ‘unrepresented’ veterans (or widows) and subsequently any veteran, widow or representative. The staff will not be expected to ‘make a case’ for an applicant but should be in a position to indicate the particular decision-making steps of the VRB and the place of particular supporting material in those steps. This alternative recognises the complexity of the VEA, the variable quality of ex-service organisation representation, the fact that in some cases veterans do not seek any assistance, and the utility of careful collation of all relevant supporting material prior to a VRB hearing. The process should be built into the usual presentation of material to a hearing and would complement the Committee’s recommendation about enhanced use of the VRB Registrars. It would not require attendance by the Repatriation Commission.

Thank you for the opportunity to comment on this report.

GOVERNMENT RESPONSE TO JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE REVIEW OF THE DEFENCE ANNUAL REPORT 2002-03

Recommendation 1:
The committee recommends that in 2005 Defence should undertake another review of the conditions of service for Australian Defence Force members on the Army ATSIC Community Assistance Program (AACAP) projects to ensure that there are no anomalies in conditions of service and that they are commensurate with the work performed.

(Paragraph 4.24)

Government Response:
Agreed. Defence will undertake a review of the ATSIC Army Community Assistance Program conditions of service in 2005. The scope of the review will focus on whether current allowance rates appropriately recognise the arduous conditions and duration of the ATSIC Army Community Assistance Program tasks.
The Army is to undertake two further related reviews in 2005. The Army has recognised the potential inequities in relation to the remuneration rates of electricians in various Corps. This situation is scheduled for review in August 2005. The Army construction trades remuneration rates were last review in 1996. These trades are scheduled for review in May 2005.

Recommendation 2:
The committee recommends that the Australian Defence Force consider developing, in consultation with relevant government agencies, programs similar to New Zealand’s Youth Life Skill (YLS) and Limited Services Volunteers (LSV) programs. (paragraph 4.39)

Government Response:
Not agreed. Defence already actively supports, and makes a significant investment in, youth development through its commitment to the Australian Defence Force Cadets, the sail training ship Young Endeavour and participation in state and territory work experience programs for secondary school students.

The Australian Defence Force Cadets provide thousands of young Australians with opportunities to experience Service life and develop important life skills, such as self-discipline, teamwork and leadership. Defence allocates approximately $38 million per year to support over 24,000 cadets in over 480 locations across every state and territory of Australia.

The Navy also operates and maintains the sail training ship Young Endeavour and the Young Endeavour Youth Scheme. The scheme provides young Australians with a unique, challenging and inspirational experience that increases their self-awareness, develops their teamwork and leadership skills and creates a strong sense of community responsibility.

Defence also participates in state and territory work experience programs for secondary school students. Opportunities exist for young Australians to seek placements at Defence establishments to broaden their perspective regarding employment opportunities and develop an understanding of the Defence environment.

In preparing this response, Defence consulted with the Department of Family and Community Services which raised a number of issues and concerns about the Youth Life Skill and Limited Services Volunteers programs, including possible duplication with existing initiatives, such as ‘Outward Bound’, and funding priorities in the context of existing programs. The Department also advised preliminary findings from a study of young people participating in existing youth development programs’ suggest that programs that have the most potential to instil positive change are those that work with young people over a continuous period of time and are strongly grounded in schools. This strongly contrasts with aspects of the Youth Life Skill model, which is based on exposure to training and values education in a camp environment over a few days.

Recommendation 3:
The committee recommends that, at the start of the next Parliament, the Minister for Defence requests the committee to conduct an inquiry into the ability of the Australian Defence Force to maintain air superiority in our region to 2020. (paragraph 5.101)

Government Response:
Not Agreed. The Defence Capability Plan makes sufficient provision to maintain Australia’s air combat capability at a level at least comparable qualitatively to any in the region. The Government continues to monitor regional developments and, were there a need to, the Government would adjust the Defence Capability Plan.

Recommendation 4:
The committee recommends that, in 2006, the Government should make a statement focusing on:

• the most accurate delivery date for the replacement combat aircraft;
• the implications this date will have on the decision to retire the F-111 in 2010;
• the need to ensure that key upgrades and deep maintenance on the F-111 continues through to 2010 with the possibility of extending the lifespan should the need arise; and
• the measures the Government will take to ensure that Australia’s superiority in air
combat capability in the region is main-
tained. (paragraph 5.102)

**Government Response:**

**Partially Agreed.** The ADF New Aerospace Combat Capability is an important issue on which announcements by the Government can be expected at key milestones. Similarly, the Government will make relevant announcements relating to other air combat capabilities such as F/A-18 Electronic Warfare Self Protection, Tactical Air Defence Radar Systems, Airborne Early Warning and Control.

1 The study, funded over three years by the Australian Government, has been completed and the report is expected to be completed in April or May 2005.

**GOVERNMENT RESPONSE TO THE REPORT OF THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES**

**A NATIONAL CAPITAL, A PLACE TO LIVE: INQUIRY INTO THE ROLE OF THE NATIONAL CAPITAL AUTHORITY**

**Introduction**

The Annual Report of the National Capital Authority (NCA) stands referred to the Joint Standing Committee on the National Capital and External Territories (the Committee) for any inquiry the Committee wishes to make. On 26 March 2003, the Committee resolved to use the NCA’s Annual Report for 2001-02 as the basis for conducting an inquiry and reporting on the role of the NCA. On 31 March 2004, the Committee extended the inquiry to incorporate a review of the NCA’s Annual Report for 2002-03.

The Australian Government (the government) established the NCA when self-government was introduced for the Australian Capital Territory (the Territory) in 1989. On behalf of the Commonwealth the NCA, through the National Capital Plan, is responsible for ensuring that “Canberra and the Territory are planned in accordance with their national significance”. Under its establishing legislation the NCA also has responsibility for the maintenance, development, enhancement and promotion of the national capital aspects of Canberra and the Territory.

The ACT Government, through the Territory Plan, is responsible for ensuring “the planning and development of the Territory to provide the people with an attractive, safe and efficient environment in which to live and work and have their recreation”. Any proposed variations to the Territory Plan are considered by the NCA to ensure their consistency with the National Capital Plan.

The ACT Government has established the ACT Planning and Land Authority (the ACT Authority) and the Land Development Agency which effectively manage planning for the majority of land in the Territory.

**The Committee’s Report**

On 2 July 2004, the Committee presented to Parliament its report a national capital, a place to live: Inquiry into the role of the National Capital Authority (the report).

The report acknowledges those aspects of Canberra that make it unique—Canberra is a purpose built national capital on the one hand, and an evolving city and community on the other. The report further acknowledges the role that the NCA plays in securing the government’s continuing interest in the planning and development of the national capital.

The report also notes that, in the Committee’s view, there is considerable confusion and frustration in relation to the responsibilities of the NCA and the ACT Government for the various elements of planning in the Territory.

The report concludes that a critical issue to resolving any complications experienced by users of the current planning system is the matter of overlapping jurisdictions. It notes that both the NCA and the ACT Authority agree that it is desirable to eliminate multiple planning and development control responsibilities in any one area.

The report includes a series of recommendations which the Committee believes would simplify the planning regime in the ACT and create a more integrated approach to planning.

The report notes the imperative that the planning authorities’ decision-making processes are consistent, transparent and accountable. To achieve this, the report recommends the introduction of statutory consultation and appeal processes, wider representation on the NCA and an independent
and comprehensive review of the National Capital Plan. It also recommends a reduction in Designated Areas and that responsibility for planning arterial roads is transferred to the ACT Government.

THE GOVERNMENT’S RESPONSE

Recommendation 1:
That the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) be amended to include a requirement for all draft amendments to the National Capital Plan and proposed works in the Parliamentary Zone to be referred to this Committee for its consideration.

Disagree.

The Resolution of Appointment is the source of authority for the establishment and operations of the Committee. The current Resolution was passed by the House of Representatives and the Senate on 18 November 2004 and provides that the Minister for Local Government, Territories and Roads (the Minister) may refer draft amendments to the National Capital Plan to the Committee for its consideration. While it has generally been the government’s practice to refer draft amendments to the National Capital Plan to the Committee, the government considers that the Minister should retain the discretion to do so.

Works within the Parliamentary Zone require the approval of the NCA as well as the approval of both Houses of Parliament. The current Resolution provides that matters coming within the terms of section 5 of the Parliament Act 1974 (works in the Parliamentary Zone) may be referred to the Committee by either House of Parliament; the Minister responsible for administering the Parliament Act 1974; or the President of the Senate and the Speaker of the House of Representatives. Some works are not referred to Parliament because they are considered to be of a trivial or temporary nature. The practice is for a quarterly report of such works to be referred by the Minister to the Committee for information. The government is of the view that the current arrangements provide the Committee with adequate opportunity to consider works within the Parliamentary Zone.

Recommendation 2:
That an integrated approach be adopted by the Territory and Commonwealth planning authorities for future planning projects affecting both Territory and Commonwealth planning policies.

Agree.

There are currently routine liaison meetings between the NCA and the ACT Authority. There is also cross representation on a number of committees, advisory panels and/or project working groups with some projects being co-funded. Since August 2004, the ACT Authority has been invited to attend each NCA meeting with a standing agenda item to discuss matters of mutual interest.

The Australian Capital Territory (Planning and Land Management) Act 1988 (the Act) requires the NCA to consult with the ACT Authority regarding any proposed amendments to the National Capital Plan, to have regard to any views expressed by it and to alter the draft if it thinks fit. The NCA must advise the Minister in writing of the consultations and views of the ACT Authority.

Recommendation 3:
That Section 33 of the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) be amended to provide for an increase in the number of members on the National Capital Authority to six (excluding the Chairperson and Chief Executive), and that:

• three of the six members be appointed from other states and territories on a rotational basis; and
• the full-time Chief Executive be appointed in an ex-officio role as a non-voting member of the Authority.

Recommendation 4:
That the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) be amended to include the provision for an independent appeals process against National Capital Authority decisions regarding works approvals, in addition to the current option for review under the

Recommendation 5:
That, in addition to Recommendation 3, the Federal Government negotiate with the ACT Government to initiate reciprocal representation on the respective boards of the National Capital Authority and the ACT Planning and Land Council, and that Section 33(1) of the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) and the relevant Territory legislation be amended to facilitate this.

Recommendations 3, 4 and 5:
Noted, pending further consideration.

The government announced in August 2004 that responsible ministers are to assess their portfolio statutory bodies against principles and recommendations contained in the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig report). The assessment of the NCA is expected to consider its roles and responsibilities, appropriate governance structure and stakeholder relationships. It is appropriate that the Committee’s Recommendations 3, 4 and 5 are considered in the context of the application of the Uhrig report to the NCA.

Recommendation 6: That, in collaboration with the Territory Government, the Federal Government initiate an independent and comprehensive review of the National Capital Plan on the basis of the implementation of the recommendations of this report and the need for a more integrated approach by both planning bodies.

Recommendation 7:
That Section 10 (2b) of the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) be amended to remove planning of arterial road systems from the National Capital Plan and that responsibility for the planning of arterial roads be transferred to the Territory.

Recommendation 8:
That the National Capital Plan be amended so that Designated Area status is uplifted from all Territory land with the exception of the Deakin/Forrest residential area, the Inner Hills and the main avenues and approach routes; and that in assuming planning responsibility for the areas to be uplifted, the Territory Government uphold the principles articulated in the National Capital Plan.

Recommendation 9:
That the National Capital Plan be amended to incorporate a set of agreed planning principles for areas of Territory Land subject to special requirements, and that:
- these principles to be developed jointly by the Commonwealth and Territory planning authorities;
- the Territory assume planning responsibility for these areas; and
- the Territory act in accordance with these agreed principles.

Recommendations 6, 7, 8 and 9:
Disagree.

The government considers that it is appropriate to maintain the Australian Government’s powers in relation to the planning and development of Canberra and the Territory in accordance with their national significance.

Recommendation 10:
That, for all sites fronting State Circle between Hobart and Adelaide Avenue (Blocks 1-8 Section 6 Forrest and Blocks 5-9 Section 3 Deakin):
- building height be no more than two storeys and no point more than 8 metres above the natural ground level immediately below (regardless of whether the blocks are amalgamated or not); and
- plot ratio for residential development of existing blocks should remain at 0.4, and in the case of amalgamated blocks be up to a maximum of 0.8.

Disagree.

This matter has been the subject of intensive consultation and protracted debate since 2000, including detailed consideration by the Committee in its October 2002 report Striking the Right Balance: Draft Amendment 39, National Capital Plan. The government’s response to that report, tabled in Parliament on 16 June 2003, agreed that land in the Deakin/Forrest area should continue to be used for residential purposes and that the area between State Circle and National Circuit should retain Designated Area status. The government’s
response also agreed in principle that development along State Circle between Hobart and Adelaide Avenues should occur in a manner that ensures the design and landscape outcome is appropriate to the setting of Parliament and reflects the role of State Circle as a Main Avenue.

Following the release of the report in July 2004 the NCA conducted a further workshop with residents, lessees and prospective developers to discuss the controls that should apply to properties fronting State Circle. Consensus was not reached at the workshop and further consultative processes were conducted during August 2004. Again, no agreement was able to be reached with residents/lessees.

It is not always possible to accommodate the views and preferences of all interested and affected parties in planning and development processes.

The government considers that the design and siting requirements in the February 2004 Draft Amendment 39 have been prepared to achieve balanced, quality urban outcomes and provide appropriate protection to the amenity of residents. These requirements include permission for three storey multi-unit developments on blocks fronting State Circle under certain conditions.

Recommendation 11:

That the Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) be amended to require public consultation by the National Capital Authority in relation to works proposals in Designated Areas.

Noted, pending further consideration.

It is appropriate that Recommendation 11 is considered in the context of the application of the Uhrig report to the NCA.

GOVERNMENT RESPONSE TO REPORT 57 OF THE JOINT STANDING COMMITTEE ON TREATIES

The Australian Government would like to thank the Joint Standing Committee on Treaties (JSCOT) for their consideration of the amendments to the Safety of Life at Sea, 1974, Convention and the International Ship and Port Facility Security (ISPS) Code in hearings and in its Report 57.

The Australian Government responds as follows to the two recommendations in the Report:

Recommendation 1

The Committee recommends that a review of the Maritime Transport Security Act 2003 be conducted 12 months after its implementation, so that any operational concerns with regard to the Act or its regulations can be raised by interested parties, with a view to improving the legislative provisions (paragraphs 4.7 and 4.8 refer).

On 21 March 2004 the Deputy Prime Minister and Minister for Transport and Regional Services, the Hon John Anderson MP, announced that Australia’s maritime security framework would be assessed by the Secretaries’ Committee on National Security (SCNS) as part of the Australian Government’s continuous review of Australia’s security arrangements.

Among others, the purpose of the assessment is to identify gaps in the legislative framework established by the Maritime Transport Security Act 2003 (the MTSA) and its Regulations and prioritise measures to fill these gaps. The assessment includes consultation with key industry stakeholders.

The Australian Government believes that this process gives industry a significant opportunity to raise any operational concerns with regard the MTSA or its regulations with senior government officials. The context of the maritime assessment lends itself to discussions regarding amendments to the legislative framework and identification of further policy development work to be undertaken by the Australian Government in consultation with industry.

Given the current assessment process, the Australian Government does not consider it necessary to instigate a review of the MTSA 12 months after its implementation.

Recommendation 2

The Committee recommends that a briefing be provided to it by representatives of the Department of Transport and Regional Services after 1 July 2004 on the possible effects to the Australian maritime industry, including a status report.
on the amendments to the SOLAS Convention and the ISPS Code (paragraphs 4.9 to 4.12 refer).

The Australian Government agrees that the Department of Transport and Regional Services brief the Committee after 1 July 2004 on how the Australian maritime industry is adapting to the maritime security regime.

TASMANIAN PULP MILL

Return to Order

Senator HILL (South Australia—Minister for Defence) (3.31 pm)—by leave—This statement is on behalf of the Minister for the Environment and Heritage. The order arises from a motion moved by Senator Brown, as agreed by the Senate on 12 May 2005, and it relates to correspondence concerning Gunns Ltd’s proposed pulp mill in Tasmania. The minister wishes to inform the Senate that he, his staff and officers of his department correspond on a regular basis with proponents, non-government organisations and members of the community regarding proposed developments with likely impacts on the environment. The objectives of the minister’s department are to protect and conserve Australia’s natural environment and cultural heritage. The minister is always keen to provide relevant information on all matters before him and the department. However, such a fishing expedition would be an unwarranted diversion of resources from their key role of environment protection.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Additional Information

Senator TROETH (Victoria) (3.32 pm)—At the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I present additional information received by the committee on its inquiry into the provisions of the AusLink (National Land Transport) Bill 2004 and a related bill.

NOTICES

Presentation

Senator Hill to move on the next day of sitting:

(1) That the following matter be referred to the Procedure Committee for inquiry and report:

The adequacy and appropriateness of the Register of Senators’ Interests in relation to the issue of share market activity by senators, their spouses or partners and dependants having regard to:

(a) whether the requirements under Resolution 1 of the resolutions relating to the registration and declaration of interests, agreed to on 17 March 1994, adequately reflect changing practices in the nature of Australian shareholdings and the growth of share trading;

(b) the appropriateness of the advice requirements in Resolution 1 in relation to changes in the nature of shareholding interests where share trading occurs on a frequent basis; and

(c) any related matters.

(2) That the Procedure Committee may seek advice from, and take into account the views of, the Standing Committee of Senators’ Interests.

COMMITTEES

Corporations and Financial Services Committee

Report

Senator CHAPMAN (South Australia) (3.34 pm)—I present the report of the Parliamentary Joint Committee on Corporations and Financial Services on the exposure draft of the Corporations Amendment Bill (No. 2) 2005, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CHAPMAN—I seek leave to move a motion in relation to the report.
Leave granted.

Senator CHAPMAN—I move:

That the Senate take note of the report.

The Corporations Amendment Bill (No. 2) 2005, which has been released in exposure draft form but not yet introduced, is the latest step in the Howard government’s long process of reforming Australia’s corporations laws so that we continue to lead the world in this sphere. The bill also represents a significant success for the Joint Committee on Corporations and Financial Services. A number of the reforms implemented in this proposed legislation arise from the recommendations of previous reports by our committee. It is clear that the committee continues to make a significant contribution to the development of Corporations Law, and it is pleasing that the government takes our recommendations seriously. In this case, the committee has chosen to examine an exposure draft, rather than waiting for legislation to be introduced into parliament. This allows for our contribution to be reflected in the final bill when introduced and may minimise the need for further inquiries that would delay the bill’s progress.

This proposed legislation is all about redressing the balance of power between minority special interest shareholder groups and the great majority of shareholders. It is about using shareholder resources responsibly and in a way that reflects the wishes of the majority. The draft bill proposes to abolish the rule whereby any 100 shareholders of a public company can call an extraordinary general meeting. This is intended to prevent frivolous or vexatious efforts by minority special interest groups to call such meetings without having any chance whatsoever of passing their resolutions. Such meetings cost companies, and therefore the great majority of shareholders, a great deal of money and ultimately achieve nothing.

Instead, the alternative current threshold will apply. The threshold allows members holding five per cent of shares in a company to call a general meeting. It is a more appropriate threshold for shareholders to meet, as it poses a better balance between the interests of minority shareholder groups and the interests of the bulk of shareholders. Indeed, this was what was asked of the committee by the vast majority of submitters to the inquiry. In practice, it means that, for such a meeting to be held, at least one major or institutional investor must agree.

The bill, as initially released, would remove the 100-member rule for companies but not for managed investment funds. That would be contrary to earlier efforts to introduce almost identical provisions for both types of organisations. Government members on the committee suggested that the arguments in favour of abolishing the 100-member rule are just as sound for managed investment funds as they are for companies. We have therefore recommended abolishing the 100-member rule for managed investment funds as well.

However, in the case of mutuals, a five per cent rule would be almost unachievable. In mutual companies, each shareholder has the same number of votes. There are no institutional or large investors holding large parcels of shares. So, in the case of mutuals, government members on the committee suggested a one per cent threshold, which will make it reasonably possible to call an extraordinary general meeting when necessary but will prevent the abuse of the power to call an extraordinary general meeting. That is a recommendation that is contrary to the draft legislation, which proposed that the five per cent rule would also apply to mutuals. So, in that respect, our recommendation departs from the exposure draft.
The exposure draft bill proposed a new measure allowing any 20 members to place resolutions on the agenda for annual general meetings. The evidence before the committee was overwhelmingly against that proposal, which may see an explosion in the number of resolutions. The committee was told that this new measure was introduced to offset the loss of the 100-member threshold for calling a special meeting. However, the removal of the 100-member threshold is a sensible idea in its own right which does not require any offsetting measures. The committee suggested that the final bill should not include the measure regarding the listing of resolutions on the agenda of annual general meetings, having 20 members as a sufficient requirement for that listing.

The bill also included measures to allow any 20 shareholders to have a member statement distributed by the company. The distribution of member statements can be an important mechanism to allow members to influence one another and the company management. However, again there is potential for this lower threshold to result in a deluge of member statements. We have, therefore, recommended that if the threshold is lowered, each member statement must be limited to one page and must be forwarded to the company in a timely manner so that it can be distributed with the package of materials to shareholders, prior to the annual general meeting.

The exposure draft bill also includes measures to reduce the cherry picking of proxies, whereby proxyholders decide whether or not to exercise proxies which have been given to them. When a shareholder issues a directed proxy to a proxyholder, it would be reasonable for them to do so knowing that their vote will be exercised as directed. Similarly, when a person takes a proxy, they should only do so if they are willing to exercise it as directed. The proposed bill includes provisions to increase the responsibility of proxyholders to exercise their proxies as directed. However, that also raises the question of whether future corporate governance can find better ways for shareholder voting than the use of proxies. It should be possible to remove proxies from the process altogether by allowing shareholders to cast a pre-poll vote either on paper or electronically. The committee has recommended that the government look into this option further.

Finally, the bill removes the legislative requirement for companies to file in Australia information filed in overseas stock exchanges. That is important, as the information filed overseas may not be considered material by the Australian market. In addition, there is an anomaly in having most market reporting requirements in the Australian Stock Exchange listing rules and yet having this requirement in the act.

Yet again, the committee received excellent public submissions to this inquiry which allowed us to make what we believe is a sensible contribution to the government’s legislative development process. I trust that the Treasurer will find the report useful and that our recommendations will be considered as the final bill is developed. I thank the members of the committee. I also thank the committee staff—and especially the committee secretary, Dr Anthony Marinac—for their work in considering the draft legislation and in supporting the committee in handing down the report.

Senator WONG (South Australia) (3.42 pm)—I rise to speak on the motion moved by Senator Chapman that the Senate take note of the report of the Parliamentary Joint Committee on Corporations and Financial Services on the exposure draft of the Corporations Amendment Bill (No. 2) 2005. At the outset, I echo Senator Chapman’s view. We
do not agree on everything but we do agree on one thing: this committee has made a significant contribution to the discussion in the parliament of changes to Australia’s Corporations Law—I think for the better—and I hope that continues to occur after 1 July.

Senator Chapman commenced with a suggestion that this was all about minority special interest groups and the need to ensure that they did not abuse these provisions. Labor take a somewhat different approach. Our view is that the Corporations Law should not only ensure the efficient functioning of companies but also enable appropriate shareholder engagement and participation in the management of those companies in which people invest. The view we take is not so much to try and target those groups that we do not think are good enough or to make some value judgments; rather, the approach we take is to ask what law should be applied to Australia’s companies to ensure that companies have an efficient, competitive regulatory system and also a system which facilitates and allows shareholder participation.

My predecessor in this area, Senator Conroy, has articulated on many occasions in this chamber Labor’s view that Australia is best served by a system which empowers and enables shareholders to participate in the companies in which they invest, and that will continue to be a theme of Labor’s approach to this matter. Having said that, we do recognise that you cannot have laws which essentially build in inefficiencies and mechanisms which can be abused or which do not lead to the efficient and proper functioning of Australia’s companies. For that reason, we sought an inquiry by this committee into the government’s exposure draft, because it seemed to us there were important policy principles underlying the proposed legislation which go very much to the heart of the basis of shareholder participation and the appropriate rights, as well as considering the views of Australia’s companies and mutual organisations regarding the efficiencies of the system.

The stated objective of the bill is to more effectively balance shareholder participation and the cost of that participation. That is an objective Labor endorse in principle. What we sought to examine through the process of the investigation of this inquiry was whether these proposed changes met both the concerns which have been raised by some in the business community regarding potential abuse of the existing avenues for shareholder participation and the legitimate right of small shareholders to participate in company governance processes. As more and more Australians own shares, it is important that we have a system which does enable small shareholders to participate in the companies in which they invest. This ought not be only the preserve of large investment institutions. There ought to be avenues for the mums and dads who invest in Australia’s companies to have a role in the processes of the companies in which they invest. Our view of the bill is that a more effective balance of these objectives is required than is contained in the government’s legislation. As I said, we do value the right of shareholders to participate fully in company governance processes, and we have reflected this in our response to the exposure draft which is contained in Labor’s minority report.

I will start with the 100-member rule. There were a great many submissions to the committee regarding the potential cost and risk of abuse of the 100-member rule. From Labor’s perspective, there was little evidence presented to the committee of widespread abuse of this provision. Having said that, we recognise that in today’s modern economy 100 members being able to requisition an extraordinary general meeting is probably not an appropriate threshold, given the size of many of Australia’s companies and, per-
haps more importantly, given the costs associated with requisitioning an EGM. We are not talking about annual general meetings here; we are talking about extraordinary general meetings—and we do share the view that was put by representatives from both corporate Australia and the Australian Shareholders Association that 100 was too low a threshold for the cost of an EGM to be imposed on a company. We also take the view that it is appropriate that there is an alignment of economic interests between those shareholders requisitioning the EGM and the company.

The proposition that Labor is putting forward in our minority report is that we support the removal of the 100-member rule, and we support in principle the five per cent rule being required—that is, that five per cent of share capital is required to call an EGM. We support that for some of the reasons that Senator Chapman outlined—that is, if you are going to have an EGM, you ought to be able to have at least some prospect of the successful passage of your resolution. However, there is at the larger end of Australia’s companies a problem with the five per cent rule. In our view, it creates too high a threshold for the requisitioning of an EGM. So our proposal is to cap the requirement of five per cent to a threshold of 1,500 members. That would be the maximum number needed for the calling of an EGM. We think this cap properly balances the issues of cost and potential for abuse in the calling of an EGM which the 100-member rule does give rise to, but sets a cap so that the participation of shareholders is not unduly thwarted.

In relation to the 1,500-member cap, we are proposing that, if that applies, the shareholder should be required to have a genuine economic interest in the company if they are contemplating the calling of an EGM. We say that these members should, at minimum, hold a marketable parcel of 100 shares in the company. That will ensure that there is an alignment of economic interests between those calling the EGM and the company. It is a reasonable threshold. We think that the proposition we have put forward balances the need and importance of shareholder participation against the reasonable concerns of a number of organisations from corporate Australia, as well as shareholders, that a 100-member rule imposes too low a threshold on that.

I will briefly address the issue of mutuals. This is a problematic issue, given the nature of those organisations. As Senator Chapman said, they are one member, one vote—or one member, one share—so the imposition of an unameliorated five per cent would create an unreasonably high threshold for members of those organisations to require an EGM to be held. I want to make this point by reference to the majority report proposition that one per cent be applied. A one per cent threshold in relation to Australia’s largest mutuals would effectively ensure that those mutuals could never have an extraordinary general meeting called. For example, the NRMA has about two million members. One per cent is obviously around 20,000 people. That is simply going to ensure that an EGM can never be called.

We think that, in the case of mutuals, as in the case of other companies, there ought to be an appropriate cap placed on the application of the five per cent rule to ensure that there is at least the prospect of an EGM being called if there is sufficient shareholder interest in so calling one. In our view, the application of one per cent, as suggested by the majority report, will simply ensure that EGMs are out of the reach of members of large mutuals. So our proposition is to retain a five per cent rule in relation to mutuals but to cap it at 5,000 members. That would significantly increase the current threshold but also ensure that you do not have completely
unattainable thresholds for the calling of EGMs in relation to Australia’s largest mutu-
als.

Finally, Labor’s minority report—and in the time that I have remaining I do not think
that I can go through it in detail—raises a number of issues which are aimed at increas-
ing shareholder participation at annual general meetings, and I commend those for con-
sideration by this chamber and the government. If the government is serious about en-
suring that shareholders can participate in annual general meetings, then some of the
proposals that Labor is putting forward which would facilitate that are certainly wor-
thy of consideration. In closing, I also thank the committee secretariat for their assistance
in preparing this report.

Senator MURRAY (Western Australia) (3.52 pm)—The report by the Parliamentary
Joint Committee on Corporations and Financial Services of its inquiry into the exposure
draft of the Corporations Amendment Bill (No. 2) 2005 has thrown up quite consider-
able disagreement between the members of the committee. It is unusual in that respect
because the committee more often than not agrees on most issues. However, the commit-
tee members do agree with the fundamental proposition—namely, that the 100-member
rule needs to be changed. That, at least, is a good starting point.

The important point about this process is that, in view of the fact that this is an expo-
sure draft and the committee is commenting in a broad fashion on an exposure draft, there
is the opportunity for the government to move towards the broad positions and broad under-
standings arrived at by the various committee members. In my framework, that
means that the government should compromise its draft by taking into account the views of the committee and arriving at a re-
sult which has broader support than its pre-
sent bill.

The Australian Democrats disagree with a number of the recommendations contained
within the majority report. We think the pro-
posed changes are largely unnecessary, have
not been the subject of sufficiently detailed
public discussion—despite the usefulness of
the committee process—and are likely to
reduce the ability of shareholders, particu-
larly smaller shareholders, to effectively par-
ticipate in the governance and the commit-
tees of the companies of which they are part
owners. It has long been an important part of
our advocacy that corporate democracy
needs to be much further enhanced than it
has been to date.

Turning to the 100-member rule, the pre-
sent provisions of section 249D of the Cor-
porations Act 2001 read as follows:

(1) The directors of a company must call and
arrange to hold a general meeting on the request
of:

(a) members with at least 5% of the votes
that may be cast at the general meeting; or
(b) at least 100 members who are entitled to
vote at the general meeting.

The government is again trying to reform
this provision by just keeping paragraph
(a)—in other words, setting a minimum of
five per cent economic interest before being
able to requisition a special general meeting.
The Australian Democrats do not share the
majority report’s support for a move to a
simple five per cent rule under section 249D.
Although we have not come to an agreement
with the Labor Party, we certainly share their
view that the government has gone that yard
too far.

We recognise that there is a case for mod-
est change to reflect an appropriate reaction
to the very few instances of reported abuse
of the current provisions. However, we are
not persuaded that the need for change is great and we are not persuaded that the changes should be as significant as those planned. The committee majority appears to have been persuaded by the evidence of the companies themselves that change is necessary. However, the committee also received well-considered academic evidence which suggested that there is no pressing need for change. Professor Stephen Bottomley, from the Centre for Commercial Law at the Australian National University, put his view very clearly, based on sound research. He said:

Put simply, I see no reason for that amendment to be made. There is no evidence of widespread abuse of the right of 100 members to request a special general meeting. My submission refers to research that I undertook involving 217 companies drawn from a list of the top 500 public companies in Australia. That research collected information about extraordinary general meetings that were held between 1998 and 2002. The information I received was that there were only five special general meetings requisitioned by shareholders during that time. That includes meetings requisitioned by either the 100-members rule or the five per cent rule. My data was not able to differentiate between those two.

My concern is that the drive to repeal the 100-member rule is driven more by anecdote than by fact. To my knowledge, over the past six years there have been only four examples where the use of the 100-member rule has been considered to have caused some controversy. Those are examples that are probably well known to the committee. It seems to me that those few instances are driving the move to amend this provision.

That comes from the transcript of evidence. Mr Ted Rofe, who is well-known to the committee and to the parliament as being a well-respected advocate on shareholder issues, made a similar point and also pointed out that simply requisitioning meetings in circumstances of controversy—or so-called controversy—does not amount to abuse of the provisions. Indeed, any circumstances which lead to the use of section 249D are likely to be controversial—the provisions are there precisely to accommodate the extraordinary, and that is a very important point. Corporate democracy requires there to be a situation where this kind of steam can be let off, as it has been occasionally.

An appropriate principle might be to move the thresholds as far as is necessary to prevent blatant abuse but no further. The current proposal to have the five per cent rule as the only threshold is far more onerous than necessary, yet the government, having failed to successfully implement this policy of theirs by regulation in 2000—because the regulations were disallowed—now seek to do so by legislative amendment.

There is a good case for retaining two thresholds within section 249D. Companies in Australia vary so dramatically in size that trying to adopt one threshold to suit them all appears ridiculous. Even within the ASX top 200 there are massive variations. Telstra has over six billion shares held by nearly 1.7 million shareholders. Wattyl, on the other hand, has 83 million shares held by approximately 9,300 shareholders. A single threshold is unlikely to provide for successful shareholder participation in companies with such significant differences in size.

If change is necessary—and we Democrats are not persuaded that it is—then a far more sensible solution would be to adopt as a second threshold a square root rule with a floor and a ceiling; that is, the number of shareholders required to requisition a meeting should be the square root of the total number of shareholders but should be no lower than 500 and no higher than 1,500. This proposal would lift the 100-member threshold by at least 500 per cent without making it completely unattainable by smaller shareholders.

As an additional safeguard against abuse, we would support a return to a minimum
shareholding for each requisitioner at the time of requisitioning. A minimum shareholding of 100 shares would seem appropriate and would mean that the minimum total shareholding for requisitioning a meeting would be 50,000 shares—namely, 500 members with at least 100 shares each. The proposal we have made could apply equally well to managed investment funds and mutuals.

I will give some examples of how this would work—and there is an appendix at the back of my minority report which deals with this. From the information I have gleaned at this stage, Telstra has 1,682,882 shareholders. The square root would deliver 1,297 members. That is how many would be needed to call an EGM. On the other hand, the five per cent rule says that, since there are 6,182,363,532 shares, to call a special general meeting you would need 309,118,170 shares. Well, that is never going to happen, is it? It is an absolutely ridiculous proposition.

By contrast, my information on the small company I mentioned earlier, Wattyl, is that they have 9,320 shareholders. The square root puts that at 97. We have set a minimum of 500—so you bump that up to 500. The number of shares that they have is 83,626,206, which would be, on the five per cent rule, 4,181,310 shares required. Frankly, that means that only someone with a very significant financial or economic interest could call a meeting. We think our proposition is far fairer and far more reasonable than that of the government’s, and we would recommend our approach to the government when it designs its final bill.

Question agreed to.

National Capital and External Territories Committee
Report: Government Response

Senator O’BRIEN (Tasmania) (4.01 pm)—I seek leave to return to the govern-
In the foreword to the report, the chair of the joint standing committee—Mr Acting Deputy President Lightfoot—said:

The Committee cannot ignore these concerns. Thus, we have made a number of recommendations with a view to simplifying the planning regime for the ACT and ensuring that the Authority fosters a consistent, transparent and accountable decision-making process.

Unlike, the joint standing committee, the Minister for Local Government, Territories and Roads is prepared to ignore these concerns. That is evident by the weak response to the report tabled in the minister’s name today.

Of the 11 recommendations contained in the report, the government has rejected six, delayed consideration of four and effectively rejected the other recommendation by claiming that it already does what the committee proposed. Clearly, Minister Lloyd has no interest in responding to the concerns of the residents and other stakeholders, including resident and business groups and the ACT government. In fact, the minister’s response to this report is little more than a giant raspberry to the ACT community.

I have to say that I am a little surprised. I had hoped that this minister would be a little more committed to his job than some of his colleagues who previously had responsibility for the territories portfolio. Certainly back in March this minister appeared committed to the task. Three months ago, Minister Lloyd told the *Canberra Times* that he was prepared to consider some recalibration of the role of the National Capital Authority. He said:

I understand and accept some of the concerns in the community in relation to some of the more controversial issues.

I’m not completely close-minded in relation to those concerns.

He told the *Canberra Times* that ‘times had changed since self-government in 1989’ and, as minister, he was prepared to look at anything that was put forward. Back in March, the report of the joint standing committee was gathering dust on his desk. Clearly, he had not read it then—and there is not much evidence that he has read it since.

There is certainly no evidence that the minister has been prepared to exercise an open mind on reform of the National Capital Authority. In fact, the response today looks like something drafted on the desk of the NCA chief executive and forwarded to a disengaged minister for the minister’s approval.

It is clear that Minister Lloyd has been prepared to say one thing to the *Canberra Times* and another to the parliament.

Labor not only understands that times have changed since ACT self-government in 1989 but also is committed to reforming the role of the National Capital Authority. I urge the minister to open the joint standing committee report and read it for himself. If he has read it, I urge him to read it again and, this time, understand the basis on which the joint standing committee—including, of course, a majority of members of his own party—has made recommendations to reform the National Capital Authority’s role.

The people of Australia, including the ACT community, deserve a modern and functioning national capital. The Commonwealth will always have an interest in planning and development in the ACT, but that interest must be balanced against the interests of Canberrans, who call the national capital their home. That balance is reflected in the title of the joint standing committee’s report, which is *A national capital, a place to live*. Frankly, the government response to the report not only demonstrates a lack of understanding of the balance but also betrays a
lack of interest. I seek leave to continue my remarks.

Leave granted; debate adjourned.

VETERANS’ ENTITLEMENTS AMENDMENT (2005 BUDGET MEASURE) BILL 2005

First Reading

Bill received from the House of Representatives.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.09 pm)—I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (4.09 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

VETERANS’ ENTITLEMENTS AMENDMENT (2005 BUDGET MEASURE) BILL 2005

I am pleased to present legislation to give effect to a Federal Budget initiative that will benefit up to 44,000 Australian veterans, war widows and widowers.

This bill will amend the Veterans’ Entitlements Act 1986 to extend eligibility for the Australian Government’s seniors concession allowance to holders of the Gold Card who are over veteran pension age and who are not otherwise eligible for the seniors concession allowance or the utilities allowance.

The seniors concession allowance was introduced by this Government in December 2004, carrying through an election commitment to assist self-funded retirees in paying the costs of water, sewerage, electricity, rates and motor vehicle registration.

The allowance is currently available to DVA and Centrelink Commonwealth Seniors Health Card holders as a non-taxable payment of $200, paid in two instalments in June and December each year. The amount of seniors concession allowance is indexed twice yearly.

The bill also provides for the seniors concession allowance to be paid to eligible Gold Card holders if they are temporarily absent from Australia for no more than 13 weeks.

With passage of this bill, the first payment of seniors concession allowance to eligible Gold Card holders will take place in December 2005.

This legislation broadens the Government’s support for our older veterans. In 1999, we extended the Gold Card to Australian veterans and mariners aged 70 or over with qualifying service from World War II.

In 2002, we further extended eligibility for the Gold Card to include all Australian veterans aged 70 or over with qualifying service from any conflict.

This year’s Budget increases funding for the care of the veteran and defence force communities to more than $10.8 billion, a rise of $278 million on 2004-05.

The 2005-2006 Budget includes $4.6 billion for health care—an increase of $203 million on 2004-05—and $6.1 billion for compensation and income support, up from $6 billion last financial year.

Veterans’ Affairs funding has risen under this Government from $6.5 billion in 1996 to more than $10.8 billion in this Budget—an average annual increase of 5.8 per cent.

Over a decade, the Government has committed more than $86 billion dollars in recognition of the special needs of our veterans and war widows.

Through our commitment to working with the ex-service and defence communities to identify and address key priorities, the Government has delivered a repatriation system that continues to be highly regarded around the world.
The 2005-06 Budget builds on our hard work, to ensure that our veterans, whether they served in the world wars or in more recent deployments, will receive the care they need and the support the community expects for this important group of Australians.

This initiative recognises the needs of our older Gold Card recipients and continues this Government's strong commitment to the Australian veteran community.

Debate (on motion by Senator Coonan) adjourned.

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

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (FAMILY ASSISTANCE AND RELATED MEASURES) BILL 2005

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Bill 2005, and informing the Senate that the House has not made the amendments requested by the Senate.

Ordered that consideration of the message in Committee of the Whole be made an order of the day for the next day of sitting.

TAX LAWS AMENDMENT (PERSONAL INCOME TAX REDUCTION) BILL 2005

Consideration of House of Representatives Message

Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The committee is considering message No. 153 from the House of Representatives in relation to Tax Laws Amendment (Personal Income Tax Reduction) Bill 2005. The question now before the chamber is that the Senate does not insist on the amendments disagreed to by the House of Representatives.

Senator MURRAY (Western Australia) (4.10 pm)—Earlier I was remarking on the situation we face, whereby the government, in theory—and it is always a theory, because you never know how people will vote; I suppose it is a pretty good bet, but it is a theory nevertheless—will have control of the Senate after 30 June and, therefore, whether the Senate is of its right mind to continue to resist a proposition which a majority have so far indicated they oppose. Of course, in putting that argument, the government is reflecting a real world situation and a real world view, but senators must do their duty until they leave this place and they must vote according to their conscience. It is to the great credit of the Australian Democrats party that we always allow a conscience vote. It is perfectly open to retiring senators or any other senators in the Democrats to vote differently to their colleagues and according to their conscience. I believe it is still a part of the Liberal Party's constitution. Although I have not seen it exhibited much in reality over the last nine years, I will accept that it is still a right they are all accorded.

I have noted—and this is more concerning to me—many media commentators putting the proposition that the Senate should just step aside on this vote. That is fine for those media commentators who support the government's tax cuts approach. If they have that view, they should support the tax cuts approach, but to support the view that the Senate should step aside simply because things change from 1 July is an abhorrent and antidemocratic view in my opinion, because I think that senators retain their full rights and obligations for as long as they sit. To put an unrealistic and fantastical example: if the proposition before the Senate were to take the vote away from women or to reintroduce capital punishment, would the media
be out there saying that, just because the government could do that from 1 July, the Senate should just roll over and accept those propositions? Of course it would not. I think the argument is flawed at its very base.

Let us return to the problem before us. The government have a policy which is reasonable to put forward and to hold to—that is, where a surplus of revenue over expenditure is achieved and forecast for a number of years, it is perfectly proper policy to return some of those funds to taxpayers. You can argue that there is a better, alternative use for the money—for instance, in infrastructure, health or education—but it is certainly a reasonable policy they have in that regard and they have exercised that policy a number of times over the last few years.

The difficulty with it is that every time that happens there is an argument over what they are doing and their motives for doing so—namely, claims that it is designed to bolster their election prospects if it is close to an election period or that it is rewarding particular constituents that the government of the day regards as being its own. In that criticism lies a real problem for the government—that is, it is not seen to have a plan. If it had a plan with respect to income tax reform—and this particular package could be seen in the context of that plan—then it would be more likely to get support, because it would be part of a whole. It is perfectly reasonable, when you are conceiving of income tax reform, to recognise that it is possible only over a number of years.

So, for instance, if the government had adopted the Democrats structural reform plan—which consists of the five parts I outlined earlier: raise the tax-free threshold, index the rates, broaden the base, raise the top rate and reform the tax welfare intersects—and this were part of it, then you might have us considering it differently. We might disagree with the priorities, because we would put low-income tax reform first. But they have not done that, they have simply said, ‘We are going to reward high-income earners, and there might be no prospect whatsoever of income tax reform for low-income earners at a later date.’ Given that either/or, sudden death situation, what is an opposition party to do? An opposition party’s requirement, surely, is to say, ‘We believe that if there is only one chance of it then that chance should go to those who need it most.’

It is an absolute fact that the highest effective marginal tax rates in this country apply to low-income earners, not to high-income earners, and they are the people who are most affected by an income tax system which needs structural reform. Furthermore, it is quite apparent to anyone who has read the material and had any interaction with the people concerned that the most consistent reason for people refusing to take up jobs and remaining on welfare is because they say it does not pay, because the tax effects and the welfare losses are so great that they cannot see the benefit of working instead of being on welfare.

I respect the fact that the government has made efforts in that respect: it reduced the taper rates in 2000 and, indeed, in the current budget package. So it is not as if the government is not cognisant of that problem. But that is the problem and that is why the Democrats have paid so much attention to the low-income tax-free threshold, which, as you know, we advocate should be raised initially to at least $10,000 a year, which would deliver a tax cut of $680 a year to every Australian—$13.08 a week to low-income earners as well as high-income earners.

However, we have lost that battle, so we have to face a situation where we have to decide whether the Labor proposition is bet-
ter in toto than the government proposition. I accept, acknowledge and recognise the minister’s comments that the Labor proposition has not been fully costed. It cannot be fully costed, frankly, given the kinds of modelling resources and so on that the Labor Party is likely to have, so, to a degree, we have to take their judgment and assess the risk. If it were a very marginal risk you would be concerned, but bear in mind that the forecasted surpluses after the tax cuts are there as a contingency buffer so that is in my mind as well.

There is another point I want to make in discussing our proposition, in the hope that one day the minister and the government would agree with us about the tax-free threshold. The Minister for Finance and Administration quite properly indicated that raising the tax-free threshold results in a very considerable cost. It is true that if, for instance, you had indexed the $6,000 tax-free threshold from 2000—the year it was introduced—it would be around $7,054 today and it would cost around $1.65 billion a year to have done that indexation. That would have kept it, at least in real terms, constant to the position that was envisaged in 2000. That has not happened, but it does give an idea of the sort of money involved when you shift a threshold.

The other point is that our income tax thresholds are highly discriminatory. There is a whole section of Australians who are advantaged over other Australians at present. From 1 July 2005, which is after the budget tax cuts, senior Australians who are eligible for the senior Australians tax offset will now pay no tax on their annual income up to $21,968 for singles and up to $36,494 for couples. That is how high the tax-free threshold is for those Australians who qualify: $21,968 for single senior Australians. Senior Australians are described by the ABS, the Australian Bureau of Statistics, as men over 65 and women over 62½ years of age. It is less for veterans: 60 years for men and 57½ years for women. The Australian Bureau of Statistics says the number of people aged 65 years and over in Australia has reached just over 2.6 million, and this age group comprised 13 per cent of the total Australian population. So I made a fairly rough calculation and I would estimate that nearly three million Australians would benefit from the seniors high tax-free threshold.

So we have a situation where the minister and the government are arguing against increasing the tax-free threshold from $6,000 upwards: indexing it, raising it—they are completely against it, yet they already are giving nearly three million Australians tax-free thresholds up to $21,968 if they are singles and $36,494 if they are couples. If it is good enough for 13 per cent of Australians and older Australians, why isn’t it good enough for other Australians—younger and lower-income Australians as well as everyone else? It is a question of money. That is what lies behind it. But the equity, efficiency and simplicity of our proposal address that inconsistency.

I can only conclude, Minister, that if your income tax package were part of overall structural reform which included a plan which said, ‘We are going to give so much money to low-income earners at this time in this manner,’ if it were to be introduced over a number of years, if it were part of a plan like the Democrats propose—raising the tax free threshold, indexing the rates, broadening the base, raising the top rate and reforming the tax and wealth intersects—we would probably look at this a little differently. But right now we are faced with what has been given to the Australian people as a sudden-death choice: it is high-income earners and the government package or it is the Labor package which delivers a greater return to lower- and middle-income earners. That is why we support the Labor proposals and we
will continue to insist on them, despite the fact that we believe that our own proposals are the best of the three packages.

Senator CONROY (Victoria) (4.24 pm)—We often hear media commentators lament, ‘There is no significant difference between the major political parties in this country; it is Tweedledum and Tweedledee.’

Senator McGauran—This is your idea of difference?

Senator CONROY—I am not talking about you, Senator McGauran.

Senator Coonan—We agree with the ‘dumb’ bit.

Senator CONROY—It would be ‘Tweedledumber’ if I were talking about Senator McGauran.

The debate on the Tax Laws Amendment (Personal Income Tax Reduction) Bill 2005 demonstrates how wrong the government are. Yesterday the government arrogantly refused to accept the amendments made by the Senate to ensure a more equitable distribution of tax relief. There is now a clear dividing line between government and opposition about the fundamental issue of what constitutes fairness in relation to the tax system. The government think that it is fair to give the top 10 per cent of income earners 45 per cent of the tax cuts. That is right: the top 10 per cent get 45 per cent of the tax cuts. They think that it is fair that the maximum tax cut should only be received by the top three per cent of taxpayers. So the maximum tax cut goes to the top three per cent. They think it is fair to give a worker on the minimum wage a tax cut of $6 per week while millionaires pocket $65—more than 10 times as much. Labor are drawing a line in the sand on the issue of fairness and we will insist on these amendments.

Let the government take their twisted conception of fairness to the people at the next election. John Howard and Peter Costello cynically think that workers will forget that they chose their first budget after the election to pour billions of dollars into the bank accounts of their core constituency: well-heeled, high-income earners. Labor believes that they are wrong. The people already see through the government’s attempts to pervert and destroy fundamental Australian values—like fairness. Our candidates will be happy to debate the issue of tax equity with Liberal and National members in town halls, community centres, television and radio studios, and street corners right across this country.

For over 100 years Labor Party representatives have come into this parliament and fought for the rights of working men and women of this country. This is the reason our great party was created. We have fought for an independent industrial relations umpire to protect the rights of the low paid. We have fought to establish, defend and extend Medicare to ensure that all Australians can get decent health care. We have fought for expanded access to higher education to promote opportunities for all, regardless of social class. Labor’s approach on all of these issues is essentially based on the Australian concept of the fair go. This concept is also at the heart of our plan for real tax reform. Labor’s amendments call on this government to ensure that the millions of Australians earning between $35,000 and $60,000 a year can get a meaningful tax cut of $12 a week rather than the miserly $6 tax cut offered by the government. For people earning up to $20,000 per year our low income welfare to work tax offset would deliver an effective tax-free threshold of $10,000. As result, a person on the minimum wage would get a $15 tax cut under Labor’s plan.

In addition to being fairer, Labor’s plan is economically superior to the Treasurer’s plan. It will encourage work force participation and the growth of the economy. The
Melbourne Institute has calculated that Labor’s package would encourage 78,609 Australians to get back into the labour market. The institute found that over 30,000 more workers would enter the labour market under the Labor plan endorsed by the Senate yesterday. That is 30,000 more than under this government’s plan. That would benefit the budget by around $1.3 billion each year, through a combination of less expenditure on social security payments and higher taxation revenue. Labor would fund its proposed increases in the size of the tax cuts by reducing by one-third the tax cuts received by people earning over $100,000. Those taxpayers would still receive a significant tax cut of $40 per week.

Labor would also retain the superannuation surcharge. The surcharge is a tax paid by people on an income greater than $99,710, with maximum benefit to those on an income of $121,075 per annum or greater. It applies to just five per cent of income earners. The abolition of the surcharge is just another example of this government’s twisted priorities. But we know where it comes from. Every Liberal Party branch in the country has passed a resolution begging this government to abolish the surcharge since they introduced it. It has been the one tax that the Liberal Party’s tax avoiding friends have not been able to get out of. It has been the one tax that this mob has been unable to avoid. That is why the screams have been so loud. That is why there has been a nine-year campaign from their own party membership to knock this tax over. Because, as Peter Costello said on the day it was introduced—

The TEMPORARY CHAIRMAN—Mr Costello.

Senator CONROY—Thank you, Mr Acting Deputy President. We know that they are losing a bit of sleep at night because those hard numbers men and women of Mr Costello’s little faction are working hard at night. There they are lined up, and Senator Minchin is scared of them. You would be: there is Chris Pyne, Bruce Baird, Joe Hockey and Marise Payne. Look at him: he is shaking in his boots over there. He knows that it is just a matter of time before the Treasurer walks in and those destabilisers, the Petro Georgiou political terrorist faction, will be after the Prime Minister. It is alright; Senator Coonan is safe; she has changed factions. But we know that Senator Minchin has got plenty on his plate keeping them under control.

So we know why the superannuation surcharge has hit the fence. It is because Mr Costello is desperately trying to round up votes in the Liberal Party. That is what this budget has always been about. Labor believes that the $2.5 billion saved from the
surcharge should be used to provide a fairer income tax cut. Senators may recall that when he introduced the surcharge in 1996 Treasurer Costello stated, to use his exact words, that it was ‘designed to make superannuation fairer’. He also argued that a major deficiency of the current system was that tax benefits for superannuation are overwhelmingly biased in favour of high-income earners. That is why we needed the tax. But the Liberal Party membership and backbench is more important to Mr Costello than a fair tax system. That is what is going on here.

The abolition of the surcharge should not be the first priority for a government interested in fairness in the tax system. The amendments that the Senate requested are an affordable and economically responsible way to give tax relief to all hardworking Australians and to restore some equity to the tax system. I call on all senators to insist on the amendments to this bill that the Senate passed yesterday and let the Prime Minister, Mr Howard; the Treasurer, Mr Costello; and Senator Minchin, in his time off from defending the Queen and the Prime Minister, stand up and tell Australians why they do not want to give seven million Australians a $12 a week tax cut, which is on offer right now if the government changes its mind. Twelve dollars a week compared to $6 a week for seven million Australians—that is what is possible today. That is why the Labor Party agree with us on that matter.

Secondly, in relation to the Labor Party, I note Senator Conroy’s reference to the Melbourne Institute report on these tax proposals released today, from which he seeks to find comfort. I draw to the committee’s attention that that very same Melbourne Institute report finds that the Labor proposal will cost at least 30 per cent more than the government’s proposal. That amounts to some $1.6 billion more in revenue forgone in 2006-07, and that is before the full effect of the Labor proposal that would come in 2008-09. This does nothing more than underline the government’s repeated assertion that this is an unfunded and uncosted proposal from the Labor Party, which the committee is now going to insist upon apparently. It just highlights the irresponsibility of the committee in so adopting a measure which, as the Melbourne Institute
has found, will cost substantially more than the government’s proposal and that extra cost will blow out in future years. On that ground, and on the grounds that I highlighted in my earlier contribution, I do urge the committee not to insist on these amendments.

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

The committee divided. [4.43 pm]
(The Chairman—Senator JJ Hogg)

Ayes............ 31
Noes............. 32
Majority........ 1

AYES

Abetz, E.  Barnett, G.
Boswell, R.L.D.  Brandis, G.H.
Calvert, P.H.  Chapman, H.G.P.
Colbeck, R.  Cooman, H.L.
Eggleston, A.  Ellison, C.M.
Ferguson, A.B.  Ferris, J.M.
Fierravanti-Wells, C.  Fifield, M.P.
Hill, R.M.  Humphries, G.
Johnston, D.  Kemp, C.R.
Knowles, S.C.  Macdonald, I.
Macdonald, J.A.L.  Mason, B.J.
McGauran, J.J. *  Minchin, N.H.
Patterson, K.C.  Santoro, S.
Scullion, N.G.  Tchen, T.
Troeth, J.M.  Vanstone, A.E.
Watson, J.O.W.

NOES

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Bolkus, N.
Brown, B.J.  Buckland, G.
Campbell, G. *  Collins, J.M.A.
Conroy, S.M.  Cook, P.F.S.
Denman, K.J.  Faulkner, J.P.
Forshaw, M.G.  Greig, B.
Hogg, J.J.  Hutchins, S.P.
Kirk, L.  Ludwig, J.W.
Lundy, K.A.  Marshall, G.
McLucas, J.E.  Moore, C.
Murray, A.J.M.  Nettle, K.
Ridgeway, A.D.  Sherry, N.J.

Stephens, U.  Stott Despoja, N.
Webber, R.  Wong, P.

* denotes teller

Question negatived.
Resolution reported; report adopted.

NATIONAL SECURITY INFORMATION LEGISLATION AMENDMENT BILL 2005

Second Reading

Debate resumed from 16 March, on motion by Senator Vanstone:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (4.47 pm)—I rise to speak on the National Security Information Legislation Amendment Bill 2005. The opposition supports the objective of this important piece of legislation which establishes a regime for the handling of sensitive national security material in civil proceedings. The bill broadly adopts the same process for dealing with sensitive national security material in civil proceedings as for federal criminal proceedings under the National Security Information (Criminal Proceedings) Act 2004. Importantly, differences between the criminal regime and the civil regime exist. This has required careful consideration of the security regime in the civil context.

This bill represents the second set of amendments made to the original act. The first of these, the National Security Information (Criminal Proceedings) Amendment (Application) Bill 2005, which passed earlier this year with opposition support, clarified ambiguities with respect to the operation of the original act. The opposition supported the expeditious passage of those amendments in
the national interest. The extension of the original act to encompass certain civil proceedings in this bill conforms with recommendations made by the Australian Law Reform Commission in its report *Keeping secrets: the protection of classified and security sensitive information*, released in May 2004. The ALRC did some important work on the development of the original act and the provisions contained within the present bill. It is fair to say that, as a result of deliberations by the Senate Legal and Constitutional Legislation Committee and the discussions with the government, the substance of the original act and this bill reflects the major recommendations of the ALRC report.

This bill was introduced into the House on 10 March 2005 and was debated on 15 March 2005. The legislation will operate once the Attorney-General has issued a notice to the parties and to the court that security-sensitive material is likely to be adduced in the proceedings. Importantly, it is specified that the Attorney-General must appoint a minister to perform the Attorney-General’s function under the act where the Attorney-General is a party to a proceedings. This requirement is not necessary in federal criminal proceedings, which invariably involve an officer of the Crown—for example, the Director of Public Prosecutions.

Before the substantive hearing in civil proceedings begins, the parties may apply to the court to hold a conference to consider issues relating to any potential disclosure in the substantive hearing of information that may affect national security. At this stage the legislation envisages that the court may issue orders to give effect to any agreements made between the parties and the Attorney-General. Following notification, the Attorney-General makes a decision as to whether national security information is contained in the material, and the certificate issued may either prevent the disclosure of the information or allow the information to be presented in a redacted or reduced form.

Upon receiving the certificate, the court has an obligation to conduct a closed hearing to determine how the national-security-sensitive information will or will not be used. This is obviously a controversial issue, but we have to bear in mind that, while there is certainly a public interest in open justice and transparency before the courts, here we are counterbalancing national security considerations. While the certificate is obviously an executive act, at the end of the day it is considered by the judiciary. In the closed hearing the court may agree with the certificate or order that the certificate be modified or set aside if it does not agree that security-sensitive information will be revealed in the proceedings. Appropriately, all parties have a right to appeal any orders made in the close hearing.

The bill provides for the court to give reasons to the parties and their legal representatives for its decision to make an order for admitting, excluding or redacting the information of witnesses. A record of the closed hearing must be made and can be disclosed to the security-cleared self-represented parties or legal representatives. Of course, all parties have a right of appeal in the orders made in closed hearings. The bill requires parties to the proceedings to be security cleared in order to be entitled to access security-sensitive material. Importantly, the bill extends the security clearance provisions to all parties to the proceedings, not just to legal representatives, allowing self-represented litigants to participate in closed hearings.

If a party or a party’s legal representative does not apply for a security clearance within 14 days after the day on which the notice is received, or within such further period as the secretary allows, the secretary may advise the court that a party or a party’s legal repre-
sentative has not in fact sought the clearance. An important safeguard has been incorporated into the bill such that the relevant court must defer or adjourn the proceedings until these matters are resolved. This power to adjourn proceedings exists in addition to any general powers of a court to direct the conduct of its case, including the power to order an adjournment.

There has been concern in some quarters that the security clearance provisions in the original act and in the present bill in some way make it obligatory for a party to obtain a security clearance. However, the way in which the bill deals with security clearances is in fact facilitative. It does not create a situation where the executive vets who can appear in the proceedings. The model that has been adopted in the bill and in the primary legislation is that which has been recommended by the ALRC: confirming the right of a party to appear or to retain a lawyer of their choice with the knowledge that, in the unlikely event that the lawyer fails a security clearance or chooses not to seek a security clearance, that may result in the lawyer not having access to certain national security information. In short, the legislation attempts to address the balance, identified by the ALRC, of protecting national security without impeding a litigant’s right to a lawyer of their choice.

During the second reading debate in the House, several concerns were raised by the opposition regarding the operation of the bill, particularly with respect to whether the power of a court to stay proceedings under the proposed section 19 would inadvertently deliver unfairness to a party to proceedings affected by this legislation. A criminal court has the power to stay proceedings against the accused in circumstances where the court is of the view that the accused would not be given a fair hearing. It is in many ways a far more complex issue in civil proceedings. In particular, staying proceedings commenced by a plaintiff is not analogous to staying proceedings commenced by the Crown and may in fact cause real injustice to the plaintiff. For instance, where a party to a personal injury suit has their proceedings stayed, they may be deprived of compensation. Equally, striking out or limiting a defence may similarly cause injustice to the respondent. The government did not demonstrate that it had considered the issue, and the bill was referred to the Senate Legal and Constitutional Legislation Committee for inquiry and subsequent report.

Unfortunately, like clockwork, after referring this important legislation to the Senate Legal and Constitutional Legislation Committee, the Attorney-General issued an ill-thought-out press release criticising the Labor Party for obstructing the passage of this legislation. The Attorney-General said:

I am the first to welcome the constructive input of the Senate Committee on legislation put before it ... But the Committee has already considered the principal act—the National Security Information (Criminal Proceedings) Act 2004—and the Government accepted many of its recommendations. What the Attorney-General has seemingly failed to appreciate are the notable differences between the principal act and the present bill which could give rise to real injustice to the parties to proceedings and the findings noted by the Senate Legal and Constitutional Legislation Committee, legal experts and professional bodies, including the Law Council of Australia. The Attorney-General should stop playing politics with this type of national security information—and national security more generally, might I say—and get on with working constructively with the opposition and, where necessary, with the committee system, because it can deliver and has delivered sensible and ap-
propriate outcomes for the security of all Australians.

The work of the Senate Legal and Constitutional Legislation Committee should be recognised. It has provided a valuable contribution to the resolution of these important matters. At the outset, the committee noted:

... it is necessary to provide a consistent and appropriate scheme for protection of national security information in civil proceedings. In particular, the committee recognises that extension of the national security information protection regime to civil proceedings is desirable to ensure consistency of protection across criminal and civil proceedings.

Several submissions received by the committee commented on the concern that a stay of proceedings would have different consequences in civil proceedings compared to criminal proceedings. Mr Peter Webb, from the Law Council of Australia, noted:

... an unfortunate perception could be created: that a stay of proceedings compelled by difficulties relating to the admission of security sensitive information and ministerial certificates has enabled the government to evade a civil liability for which it might otherwise have been found responsible.

Similarly, the Human Rights and Equal Opportunity Commission submitted:

... in civil proceedings, the court’s power to stay, discontinue, dismiss or strike out the relevant proceedings (where unfairness results from the fact that confidential information cannot be revealed) will work against parties seeking to use the courts to obtain effective remedies for violations of fundamental rights.

Professor Weisbrot from the ALRC also acknowledged that a stay could ‘operate differentially’ in certain civil proceedings. He went on to say:

... in the bulk of civil cases that I can envisage, either delay or stay would favour the government’s interests because the government would normally—but not always—be the defendant in those proceedings.

In the end, although several independent organisations and individuals made submissions on the issue of staying proceedings, regrettably no alternative mechanism to improve the ostensible unfairness of the stay of proceedings provision was developed. The committee recommended that, in light of these circumstances, the stay provision of the bill should be retained. It is worth reading from the committee report, which said:

... in its inquiry in relation to the Criminal Proceedings Bill, it recommended that the courts retain the power to stay proceedings if the defendant could not be assured of a fair trial. However, the committee acknowledges that a stay of proceedings could have a very different impact in the context of civil proceedings. The committee also recognises that it is very rare for a court to order a stay in civil proceedings.

3.3.8 Nevertheless, the committee considers that the court should retain the power to stay civil proceedings as a last resort, and notes the ALRC’s observation that the particular consequences of the stay of any given proceedings would be given due consideration and weight by the court exercising its discretion. The committee also considers that its recommendations later in this report will give the court a greater discretion over other matters during civil proceedings, and may therefore help avoid the need for a stay of proceedings.

In light of this outcome, the opposition foreshadow that we will move an amendment as proposed in section 19(5) of the bill that requires a court, in deciding whether to order a stay of the civil proceedings, to consider the extent of any financial loss that a party would suffer as a result of the proceedings being stayed and whether a party has reasonable prospects of obtaining a remedy in the proceedings, among other matters. This amendment takes us closer to a solution of removing any unfairness that may be visited upon a party to civil proceedings in circumstances in which a stay of those proceedings is considered.
The committee also received submissions on several other issues, including whether a sunset clause should be introduced into the bill in order that a review of the legislation take place. The committee did not see the need for a sunset clause to be introduced into the bill. However, following negotiations with the government, the opposition has received an undertaking from the government that as soon as practicable after three years from the date of the legislation’s commencement the minister must cause to be laid before each house of parliament a comprehensive report on the operation of the act, including the provisions of the bill. This time frame is consistent with the review process of security legislation that has passed before the parliament and will ensure that the operation and effectiveness of the legislation is open to parliamentary scrutiny.

Again, the work of the committee should be commended. The issues considered by the committee were difficult. The government was not able to identify a workable solution to the issues of unfairness arising from a stay. Indeed, it appeared that they did not turn their mind to the issue at all. In the end this legislation attempts to resolve what are complex issues. On the one hand it seeks to secure open justice by ensuring that self-represented litigants and counsel are able to present their case without fear or favour—that is a vitally important public interest goal that we all value in Australia. On the other hand it is also a significant public interest goal that our government agencies receive and continue to receive intelligence from overseas and, indeed, they can use intelligence that is obtained in Australia without prejudicing that intelligence. In these times of heightened security it is important to recognise that it is in the public interest that we receive and can appropriately manage and deal with security-sensitive information.

Therefore the opposition supports this important piece of legislation.

**Senator GREIG** (Western Australia) (5.02 pm)—I state from the outset the Democrats’ opposition to the National Security Information Legislation Amendment Bill 2005. However, before going on to set out the reasons for that, I would like to reiterate some of the comments I made in my speech in the second reading debate on the principal bill. One of the questions that arises in relation to this entire regime is the basic justification for it. As we know, there are already a range of mechanisms available to the courts to ensure the protection of sensitive information. The most notable of these in relation to national security is the doctrine of public interest immunity. Other mechanisms include the holding of closed hearings, the editing of documents to be tendered in court and requiring confidentiality undertakings from the parties. Given the availability of these mechanisms, the Law Council of Australia concluded that the current regime is adequate, observing:

The courts in Australia have a long and credible history of being able to manage sensitive evidence in all kinds of situations ...

However, the Australian Law Reform Commission, which conducted a comprehensive inquiry into the handling of national security information by the courts, took a different view. It found:

At the moment, it isn’t clear how far courts can go to accommodate legitimate national security interests.

So there is this initial question of whether or not there is any proper justification for the legislation. On this question we Democrats have taken the view that legislative clarification which helps to combat uncertainty and ambiguity is desirable. However, the challenge is obviously to ensure that any legislation strikes an appropriate balance between
the need to protect Australia’s national security and the vital importance of maintaining a fair, open and publicly respected justice system.

In speaking to the principal legislation I acknowledged that the government faced some complex issues in seeking to craft an appropriate and balanced regime. In the end, however, we felt that it got the balance horribly wrong and we were compelled to vote against the legislation at that time. The bill before us today elicits many of the same concerns that arose in the context of the principal legislation, but it also raises additional issues that arise specifically as a result of its application to civil proceedings.

Once again, the application of the national security regime to particular proceedings will be triggered when the Attorney-General issues a notice to the parties. The Attorney-General may also issue certificates regarding specific evidence. These certificates can either prevent the disclosure of evidence or require that it be disclosed in a summarised or reduced form. A court may make orders in relation to information that it is subject to an Attorney-General’s certificate, but in doing so it must give primary consideration to national security. The court must consider whether the making of an order for the exclusion of information or to prevent a witness from being called would have a substantial adverse effect on the fairness of the hearing. The bill dictates that these matters must be considered in the context of a closed hearing of the court. The parties to the litigation and their legal practitioners may be excluded from such a hearing and must not be provided with a record of the hearing if they have not submitted to a security clearance.

The bill also creates a number of offences. In particular, it is an offence for a party to fail to notify the Attorney-General if the party believe that they or one of their witnesses will disclose information which relates to national security. Strict liability applies to this offence. This offence raises concerns regarding the broad definition of national security adopted by the bill, which incorporates Australia’s defence, security, international relations or law enforcement interests. We Democrats are particularly concerned by the inclusion of international relations, which is also defined broadly as ‘political, military and economic relations with foreign governments and international organisations’. As the Australian Muslim Civil Rights and Advocacy Network has argued, this definition could catch almost any matter involving a non-Australian citizen. The organisation further argued:

... given the breadth of the definition of “national security” and all of its inherent vagueness and biases ... it would be almost impossible for a person, especially one who is unrepresented, to form an opinion as to whether or not the information is likely to prejudice national security.

Amnesty International and the Law Society of South Australia made similar arguments. Indeed, these are the very arguments that I made earlier, during debate on the principal legislation. We Democrats believe it is unacceptable for the parliament to now create ambiguously defined offences which attract not only strict liability but also penalties of imprisonment. This is particularly so in the context in which litigants are increasingly choosing or being forced to represent themselves before the courts.

As with the principal legislation, one of the most controversial aspects of the bill is the issue of security clearances. Whereas the principal legislation provided for security clearances for legal practitioners, this bill extends this to include the parties to a civil action. While it is not mandatory to submit to a security clearance, the bill is constructed in such a way that it may as well be. This is because the court can order that information
be withheld from parties and their lawyers who have not been security cleared. This may have the effect of compromising a defendant’s right to choose his or her own lawyer, given that the first lawyer of choice may not receive security clearance or may not want to submit to the security clearance procedure.

I understand that the proposed security checks are very extensive, covering things such as the lawyer’s place of residence, travel and overseas contacts over the previous decade. They may even incorporate a form of personality testing relating to the lawyer’s trustworthiness. For this reason the Law Council has previously argued:

The prospect of the Government holding detailed private information about lawyers who regularly defend in contentious cases always creates the appearance, if not the actual risk, of a misuse of that information. Such a prospect exists no matter how secure and how separate the relevant sections within Government are from each other.

The conduct of security clearances will be in accordance with the Commonwealth Protective Security Manual, which is not a public document and can be changed at will by the government. While I am informed that lawyers who receive an adverse security assessment would have the opportunity to seek a review of that decision, there is no provision to compensate a lawyer for any loss suffered as a result of such an assessment.

Of course, by requiring the parties to also obtain security clearances, this bill creates the potential for the government to hold detailed, sensitive information about its legal opponents in a case. Given that such information will have been obtained in accordance with this legislation, what is there to stop the government from using such information to damage the credibility of its opponents? This provides yet another disincentive to Australians who may consider seeking a remedy when their rights have been violated by the government.

Another aspect of this bill which has particular significance in the context of civil proceedings is the power of the court to order a stay of proceedings in those circumstances where a fair trial cannot be guaranteed. While this power is vitally important in the context of criminal cases, it has the potential to operate very differently when exercised in civil proceedings. This is because the government will often be the defendant in such proceedings. Professor Weisbrot from the ALRC told the Senate committee:

... in the bulk of civil cases that I can envisage, either delay or stay would favour the government’s interests because the government would normally—but not always—be the defendant in those proceedings.

The Law Council of Australia expressed concern that:

... an unfortunate perception could be created: that a stay of proceedings compelled by difficulties relating to the admission of security sensitive information and ministerial certificates has enabled the government to evade a civil liability for which it might otherwise have been found responsible.

Mr Patrick Emerton expressed the view that:

... for the defendant, in a civil suit, a stay is as good as a win, and so by making a stay the last resort in the interests of justice, the Bill establishes as the default position a victory for the defendant. But it is far from clear that such an outcome is always consistent with the interests of justice.

The potential for the court to order a stay of proceedings will be particularly problematic in cases where an individual is seeking a remedy for a violation of their human rights, which was a concern raised by HREOC. The likelihood that in most civil cases involving national security information the defendant will be the government is relevant in assessing the whole regime. While the court’s
power to order a stay is the most obvious form of advantage to the defendant, the entire regime has the potential to advantage the defendant by excluding evidence that is crucial to the plaintiff’s case. What is most disturbing is that it is the government, through the Attorney-General or a delegate minister, which issues the certificate in the first place.

To summarise the Democrats’ concerns in relation to this bill, we believe it has the potential to: undermine procedural fairness in the context of civil proceedings and limit the right to a fair and public hearing; compromise the right to access effective remedies in relation to violations of human rights; breach Australia’s international human rights obligations; decrease, rather than increase, Australia’s national security; generate delays in civil proceedings; increase the cost of civil proceedings; blur the separation between the executive government and the judiciary; and reduce public confidence in the rule of law.

We do not agree with the Attorney-General’s assertion in his second reading speech that ‘the government has yet again struck the right balance between protecting national security and protecting the rights of parties’.

We are particularly conscious of the many and varied civil proceedings which could potentially be covered by this bill, including urgent applications to challenge the validity of detention by the Australian Security Intelligence Organisation, family law proceedings involving intelligence officers, defamation proceedings in cases where the government has defamed an individual and proceedings for the review of an administrative decision, just to name a few. In many cases, the executive government will be the defendant or the respondent in the proceedings, yet it will also have the power to determine whether or not the national security information regime applies. We Democrats believe that the proposed regime represents an inappropriate interference by executive government in the processes of Australian courts. Even if it could be argued that such an interference is not inappropriate, there is a risk that it will be perceived to be so, thereby undermining public confidence in the rule of law.

The government’s stated intention in introducing this bill is to protect Australia’s national security. While I have already outlined the Democrats’ concerns in relation to the broad definition of national security in the bill, it is also relevant to consider what the Australian community sees national security as embodying. This is because the community’s concept of national security will determine its perceptions about the appropriateness of the bill. We Democrats suggest that, in the minds of many Australians, national security means the protection of the physical safety and fundamental rights of all Australians. Given that national security involves protecting not just physical safety, but also freedom and liberty, we should ask ourselves whether national security initiatives which infringe the rights of Australians are actually compromising, rather than strengthening, Australia’s national security. In the context of this bill, we Democrats are concerned that it has such a profound impact on the rule of law and the rights of Australians that it might actually be detrimental to Australia’s national security.

Having carefully considered the provisions of this bill, the Democrats have concluded that the bill is flawed. At best it is unworkable, but it is also potentially dangerous. For these reasons, we do not believe that it should be passed. However, if the bill is to be passed by parliament, we believe that a sunset clause is critical. Given the significant implications of this bill for the independence of the courts, the rule of law and the rights of Australians, it is important for the bill to be fully debated by parliament if it is to continue beyond three years.
It will also be important to monitor the operation of the legislation carefully during that period; and in this respect the Democrats welcome the Senate Legal and Constitutional Committee’s recommendation for a formal review after a period of 18 months. We express our strong hope that the government will implement that recommendation. It will be particularly important for such a review to test the government’s position that it has struck an appropriate balance between protecting national security and protecting the rights of parties. The evidence may well prove otherwise, in which case the parliament may conclude that there is no justification for the legislation to be re-enacted.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.16 pm)—As part of its fundamental role to protect Australia’s national security, the government has sought to strengthen the protections for security-sensitive information. These protections were significantly enhanced earlier this year with the commencement of the National Security Information (Criminal Proceedings) Act 2004. This act applies to federal criminal proceedings to protect information that relates to, or whose disclosure may affect, national security. The aim of the act is to facilitate the prosecution of an offence without prejudicing national security and the rights of a defendant to a fair trial. The National Security Information Legislation Amendment Bill 2005 seeks to extend these protections to include certain civil proceedings.

It has become apparent that security-sensitive information may, and often does, arise in civil proceedings—including, in particular, accident, compensation and family law proceedings. As with prosecutions for criminal offences, it is essential that parties can use security-sensitive information in these cases without jeopardising Australia’s national security.

The bill introduces a number of measures to strengthen the protections in civil proceedings for information that is likely to prejudice our national security. It broadly adopts the same procedure that applies to federal criminal proceedings under the principal act but with some necessary departures to account for the distinctive features of a civil proceeding. As with criminal proceedings, the bill will apply only when notice is given to parties to a proceeding. Once it applies, the bill enables information to be disclosed during a civil proceeding in an edited or summarised form. It also provides for closed hearings to consider the disclosure of information that may prejudice national security. Only parties and their legal representatives who possess security clearances to an appropriate level may attend these closed hearings. This raises a significant point of difference with the principal act.

The bill departs from the procedure for criminal proceedings by requiring that the parties, not just their legal representatives, obtain security clearances to an appropriate level. Unlike in criminal proceedings, parties to civil proceedings come from all walks of life, and many qualify for—or already have—security clearances. In addition, many parties will represent themselves in civil proceedings. In recognition of the significant financial burden involved in engaging a security-cleared legal representative to attend a closed hearing, the government has agreed that a self-represented litigant involved in a civil matter under Commonwealth law who is unable to obtain security clearance at the appropriate level would be eligible to apply for financial assistance under the non-statutory special circumstances scheme. If approved, this would provide financial assistance for the legal costs and related expenses.
associated with engaging a legal representative to attend the closed hearing.

Whilst the bill significantly changes the way that information that may affect our national security is used in civil proceedings, it also seeks to uphold the interests of the parties to the proceedings. The bill makes it clear that courts, in making an order in relation to the disclosure of information or a witness, must consider whether the exclusion of information or a witness would have a substantial adverse effect on the substantive hearing in the proceeding. It also ensures that a court can stay a proceeding where it would have such an effect, even if the court had previously found otherwise.

The bill requires the court to give reasons to the parties and their legal representatives for a decision to make an order to admit, exclude or redact information, or to exclude a witness. The court must also make a record of the closed hearing and provide this record to security-cleared parties. These measures demonstrate that the government has yet again struck the right balance between protecting national security and protecting the rights of parties. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland) (5.21 pm)—I move opposition amendment (1) on sheet 4575:

(1) Schedule 1, item 13, page 7 (after line 28), after subsection 19(4), add:
Factors to be considered when deciding whether to order a stay of a civil proceeding

(5) In deciding whether to order a stay of the civil proceeding, the court must consider:

(a) the extent of any financial loss that a party would suffer as a result of the proceeding being stayed; and
(b) whether a party has reasonable prospects of obtaining a remedy in the proceeding; and
(c) any other matter the court considers relevant.

During the second reading debate in the House, and as I said in my speech in the second reading debate in the Senate, several concerns were raised by the opposition regarding the operation of the bill in this area, particularly with respect to whether the power of a court to stay proceedings under proposed section 19 would inadvertently deliver an unfairness to a party to proceedings affected by this legislation.

While a criminal court has the power to stay proceedings against the accused in circumstances where the court is of the view that the accused would not be given a fair hearing, in many ways it is not easily translatable as a concept in civil proceedings. In staying proceedings, there is a device that might create fairness in criminal proceedings against the defendant. It is certainly a very different circumstance in civil proceedings.

In criminal proceedings the Crown is represented by the Director of Public Prosecutions, who then ensures that there is fairness in that respect and will not proceed if they might provide injustice to the defendant in that place. However, in civil proceedings, as I have said, the issues are far more complex. The Crown may be the plaintiff. It is not, I think, directly analogous to the criminal proceedings.

This has the capacity to cause real injustice to the plaintiff. For instance, where a party to a personal injury suit has the proceedings stayed, they, as I said in my speech in the second reading debate, may be deprived of compensation. Even a delay of
some time may cause an injustice with regard to them being compensated or having the matter settled. Delay in itself may be what the other party seeks to achieve and therefore it would work against at least one party in this instance—the defendant in this example—getting fairness in the system. Equally, a respondent striking out or limiting a defence may similarly cause an injustice to the respondent. So they are not easy issues to explain, work through or follow.

It is clear that there does need to be more than what is currently provided for in this bill. In light of that position, we have proposed new subsection 19(5) of the bill, which requires a court, in deciding whether to order a stay of the civil proceeding, to consider:

(a) the extent of any financial loss that a party would suffer as a result of the proceeding being stayed; and

(b) whether a party has reasonable prospects of obtaining a remedy in the proceeding ...

among other matters. This ensures that the court will turn its mind to some of these more complex issues to ensure that there is fairness between the parties.

This amendment takes us much closer to removing any unfairness that may be visited upon a party to a civil proceeding in circumstances in which a stay of those proceedings is being considered. Although the National Security Information Legislation Amendment Bill 2005 was examined by various experts and the ALRC, in this instance this amendment provides, I think, an advance from the government's position and a more complete picture to ensure fairness between the parties, which is, after all, sought by both the government and us in these types of civil cases that can and do arise.

Of course, the types of civil cases that can and do arise are not easily definable. They are many and varied. Unlike in criminal proceedings where there is a little bit more certainty in the process, in civil proceedings a self-represented litigant can be a party, the Crown can be a party, the respondent could be the Crown and the applicant or the plaintiff could be the Crown. In those circumstances, the court should be given the ability to turn its mind to some of these issues.

**Senator GREIG** (Western Australia) (5.26 pm)—Senator Ludwig has detailed very clearly the policy purpose behind his argument. We can support that. From our perspective it is a question of greater accountability. That is very much our key concern with the legislation. We will support the amendment proposed by Labor and will then be advocating our own further element of additional accountability through our proposal for a sunset clause.

**Senator COLBECK** (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.27 pm)—The opposition’s amendment has arisen to address issues of the use of stay provisions in civil proceedings. In making an order about disclosing information or calling a witness, clause 38L(7) of the bill requires a court to consider whether the exclusion of information or a witness would have a substantial adverse effect on the substantive hearing in the proceeding. This means that the court must consider the effect of its order on both parties to the proceeding. Even if the court initially determines that the order would not have a substantial adverse effect, proposed subsection 19(4) provides that the court retains its power to stay the proceeding if it later finds otherwise.

The intention of the government was to ensure that the parties to a civil proceeding receive a fair hearing where national security information is being considered or is excluded. The courts will not automatically grant a stay of proceedings and indeed do so...
rarely in civil proceedings. In his majority judgment in Rann v Olsen [2000] SASC 83, Chief Justice Doyle stated:

The grant of a stay involves the exercise of a discretion, and it is to be exercised with considerable care and by reference to all aspects of the case.

The opposition has proposed an amendment to clause 19 of the bill by requiring the court, in deciding whether to stay a civil proceeding, to consider the extent of any financial loss that a party would suffer as a result of the delay, whether a party has reasonable prospects of obtaining a remedy in the proceeding and any other relevant matter. Whilst the government maintains that this amendment will not add anything to change the position under the bill or the common law, it is prepared to support it in the interests of securing a quick passage of this legislation through parliament. The amendment will not apply to the criminal regime and will still leave the discretion to stay the proceedings with the court, to be exercised with considerable care and by reference to all aspects of the case.

Question agreed to.

Senator GREIG (Western Australia) (5.29 pm)—I move Democrat amendment (1) on sheet 4597:

(1) Page 2, after clause 3 (after line 11), insert:

4 Cessation of operation of Act

The amendments made by this Act, and the National Security Information (Criminal and Civil Proceedings) Act 2004, as amended, cease to operate at the expiration of 3 years after the commencement of this Act.

I spoke about this in my second reading contribution and made the point that we had recommended in our minority report to the inquiry on this bill that we believed there were strong grounds for including a sunset clause in the bill—that is, the opportunity to revisit and then re-enact the legislation if parliament were to desire that. I note that the government has given an undertaking to conduct a review of the legislation, and I understand that review will be after three years. However, that review is not legislatively mandated. We believe that a wiser, more cautious approach would be to see how the legislation operates over the next three years, then give parliament the opportunity to come back and debate it again in full. The key issue which will need to be monitored closely over this time of course is whether the legislation strikes the appropriate balance: the balance between protecting national security and protecting the rights of parties. The evidence may prove otherwise.

We do not take lightly the application of a sunset clause in this bill. As I have made clear, we are very concerned about the potential impact of the legislation. Our strong concerns in relation to the original act are in fact exacerbated by this bill. It is important to point out that we are not alone in holding these views. We share them with many well-known and reputable organisations, from human rights organisations like HREOC and Amnesty International to ethnic and cultural organisations such as the Australian Muslim Civil Rights Advocacy Network, which I spoke of. Perhaps the most significant concerns are those which have come from the legal profession. After all, it is lawyers who are most familiar with the court processes and who are therefore in a good position to judge the potential impact of this bill. Given the very serious concerns raised by these and other organisations—concerns that we Democrats share—we believe there is a sensible and compelling argument in favour of a sunset clause, and I commend the amendment to the chamber.

Senator LUDWIG (Queensland) (5.32 pm)—The opposition have considered the Democrat amendment and unfortunately at this time we will not be supporting it. We
listened carefully to Senator Greig’s speech during the second reading debate and the contribution during the committee stage in respect of his amendment. The government have indicated to us, which we expect they will also put on the record, that there is an opportunity for this legislation to be reviewed, as I explained in the second reading debate. As I understand it, I am certain that the government in this chamber will commit to that in the transcript. To be fair to the government, which is probably an unusual statement for me to make in relation to the government, they have consistently held up their side of these bargains and there is no reason why I should doubt them in this respect. They say they will do a comprehensive review of this legislation. We can always look at this legislation again in a committee.

One telling factor in this instance is that this amendment is inconsistent with the current criminal and civil regime and would cause a difference between what is currently within the criminal area and that which is within the civil area. In that respect, it is not an overarching argument but it is certainly an argument that the Senate Legal and Constitutional Legislation Committee considered very carefully when it dealt with the civil proceedings. The committee did not want to look once again at the criminal issues that it dealt with in respect of the first bill. The committee was also cognisant of the fact that there should be a degree of compatibility between the two. Therefore, on that basis, the Labor Party have not been persuaded to adopt the Democrat amendment. Without taking up too much time, I think the legislative program needs to be sparked along, so I will leave it to the government to tell us of its commitment.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.35 pm)—The government will not be supporting the Democrat amendment, but I do put on the record the government’s undertaking to conduct a departmental review of the legislation and provide a report to each house of the parliament on the operation of the act after the end of three years from the date of the act’s commencement. The government considers this to be more than an appropriate time frame for cases to run their full course and to effectively evaluate the operation of the legislation. The government does not consider it necessary to amend the legislation to provide for a review or for sunset provisions to the act at that time.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (5.36 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

COMMITTEES

Corporations and Financial Services Committee

Erratum

Senator McGAURAN (Victoria) (5.37 pm)—At the request of the Chair of the Parliamentary Joint Committee on Corporations and Financial Services, Senator Chapman, I present an erratum to the report of the committee on the exposure draft of the Corporations Amendment Bill (No. 2) 2005.

Ordered that the document be printed.
Second Reading

Debate resumed from 14 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (5.37 pm)—I rise this evening to speak on the Maritime Transport Security Amendment Bill 2005. This bill amends the Maritime Transport Security Act 2003 in two important ways. Firstly, the bill amends the act by extending its coverage to Australian offshore oil and gas facilities. Secondly, the bill amends the act to allow for the introduction of the maritime security identification card, or MSIC as it will now be known. The MSIC will be introduced to cover unmonitored personnel who are required to access what are called maritime security zones, which are now going to be known by the acronym MSZ. The MSZs may be areas in ports, areas surrounding ships or areas on ships.

The bill will bring the security of offshore oil and gas facilities in line with existing maritime security arrangements, providing a regime for these facilities to reduce the risk of unlawful interference. There will be two main industry groups affected by the bill. The first are the operators of offshore facilities. The second will be the various service providers for these facilities—notably, helicopter charter operators, ship based equipment providers, store supply services and the like. Under the bill, offshore oil and gas facilities will be required to develop security plans that consider the risks and assess the needs of the operators, including the special nature and location of the facilities. The offshore facilities vary from conventional steel fixed platforms and concrete gravity platforms through to miniplatforms, monotowers or monopods and minipods; floating storage off-take units, or FSOs; and floating production storage off-take units, or FPSOs. You can imagine all that floating offshore.

The bill also puts in place the same risk based security planning for offshore oil and gas service providers—that is, contractors of specialist offshore related services or port related services, such as helicopter and supply vessel service providers. DOTARS have indicated that they expect to receive 40 security plans and anticipate that the cost of developing a security plan will be of the order of $50,000 for each facility. In accordance with stated government policy, that security is the cost of doing business. DOTARS have confirmed that they will recover costs from industry. DOTARS have indicated that they expect to receive draft security plans from the facilities by 1 July 2005 and expect to have the security regime in place by 1 October 2005.

In that sense, the government claims some urgency in the passage of this legislation, and we will certainly be watching to ensure that those outcomes are achieved. At present, there is no regime in place that requires background checking of people working in Australian ports, ships and offshore oil and gas facilities, as is the case in the aviation industry and in the maritime industry in comparable Western countries. Anyone who requires unmonitored access to a maritime security zone will be required to have an MSIC. This will include, amongst others, dock workers, truck drivers and rig workers. Applicants apply for the MSICs from an issuing body. Private companies, employee unions or industry associations, amongst others, can apply to be an issuing body as long as they have the capacity to perform this regulatory function.

DOTARS has indicated that issuing bodies will not be given access to personal information gathered through background checking; rather, following the background checks, the
relevant issuing body will only be advised as to whether the employee can be issued with an MSIC or will not be issued with an MSIC. The estimated cost of issuing an MSIC is approximately $150, including $50 for the cost of conducting relevant background checks. The legislation provides that regulations will be made to enable the issuing body to recover the cost of issuing the MSICs. Although the framework for issuing MSICs will be set out in regulations, these regulations have yet to be issued. At present, the bill merely allows the bodies that will be responsible for issuing the MSICs to recover the costs associated with administering the process, including the background checks. However, we have yet to see whether these costs will be passed on to employees who are required to be security checked.

MSICs will be issued after the completion of several background checks, including a criminal background check by the Australian Federal Police and a security assessment by ASIO. If required, an unlawful non-citizen check will be conducted by DIMIA. As yet, we have not been informed as to the level of criminality that will prevent an individual from receiving an MSIC and the appropriateness of how this level of criminality is to be determined. While the major unions involved in offshore platforms have been consulted, there are concerns that those unions representing individual trades may not have been consulted, although common issues will obviously arise with regard to all unions and their members. In the context of the security failings in Australian airports that have emerged in the last few weeks, it is worth noting that the issuance of a security card is no panacea against the potential for unlawful interference at Australian port facilities, ships or offshore installations.

The government’s principal approach to maritime security protection is by legislative and regulatory means. In 2003, the opposition welcomed the passage of the Maritime Transport Security Act to enable Australia to expeditiously develop and implement a nationally consistent maritime security framework. I will say that again, given what has happened in the last couple of weeks: it was to expeditiously develop and implement a nationally consistent maritime security framework. However, legislation and regulation alone are incapable of preventing security threats and breaches at our ports, on our ships and at our oil and gas facilities.

In April this year the Australian Strategic Policy Institute published a damning report into the state of Australia’s security arrangements called *Future unknown: the terrorist threat to Australian maritime security*. This report identified, amongst other things, inadequate security checks of crews from foreign-flagged vessels arriving in Australian ports. In 2002 a total of 115,000 foreign crew arrived. The report also identified the absence of a nationwide approach to manage the security of high-risk ships such as foreign naval vessels and those carrying dangerous goods like ammonium nitrate. Security arrangements vary of course from state to state and port to port. The report also identified a lack of coordination between relevant agencies, including Customs, Navy, the Department of Transport and Regional Services and the states. It also identified a lack of consistency between state and territory jurisdictions in their legislation covering maritime security. In addition, it identified a lack of critical information and data to properly assess the vulnerability of Australian ports.

Despite its often shameless and consistent ‘tough on security’ oratory, the government is undeniably failing in key structural areas. The concerns raised by ASPI are not new. Federal Labor has been highlighting maritime security problems month after month, year after year, but the concerns are now clearly articulated by an expert body specifi-
ally established by the government to provide frank strategic advice. However, the only response to this report to come from the office of the Deputy Prime Minister, Mr Anderson, was:

... it was unlikely the Government would adopt the recommendations ... we're continuing to look for any holes that might emerge in our maritime security net.

It is high time the government not only looked for these holes in our maritime security arrangements but acknowledged that they in fact exist and constitute a significant threat to Australia's national security. The government must listen to this independent expert advice and act swiftly to remedy the litany of threats to our maritime security. We do need now a commitment from the government that they will address these problems and assure the Australian public that their borders are secure and the government are on the job. Yet while these and other security breaches have taken place, the government appear to have been completely asleep at the wheel. Despite the announcement of the establishment of the position of Inspector of Transport Security in December 2003, with a budget of $1.6 million, the position was not filled until December 2004. In the most recent Senate estimates hearings it was revealed that, having been filled, the position has now been left vacant for months.

The Inspector of Transport Security was established with a mandate to investigate major incidents and systemic transport security weaknesses to ensure security vulnerabilities are identified and addressed. That is what it was set up to do. Yet this week we have witnessed the Minister for Transport and Regional Services equivocate as to what he knew about the litany of serious allegations of drug smuggling and potential terrorist activities in our airports. Given the epidemic of security failures that we have seen at our airports, there has never been a greater need for independent oversight. I suggest that the minister reinstate the inspector and allow him to get on with his mandate post-haste.

At the heart of Australia's maritime security concerns, there is in any event a fundamental lack of resources available to these agencies to patrol Australian maritime borders. With some 37,000 kilometres of coastline and a great deal of critical offshore oil and gas infrastructure, our Customs and Naval maritime patrol boats are being asked to perform the task of securing the nation's borders and infrastructure with nowhere near the resources that are required. Indeed one expert has said that to cover the same amount of land as they are required to cover of the ocean would be equivalent to having something in the order of only 50 police cars to patrol the whole of Australia. We are, it is clear, totally underequipped in our ability to fight illegal activity in our maritime zone.

Australia's maritime border control arrangements also remain hopelessly fragmented. At least eight government agencies, including Defence, Customs, Coastwatch, the Department of Transport and Regional Services, the Australian Fisheries Management Authority, the Australian Maritime Safety Authority, the Australian Quarantine and Inspection Service and the Department of Immigration and Multicultural and Indigenous Affairs, administer at least 11 pieces of legislation relating to maritime security. Under those 11 pieces of legislation the powers and authorities given to officers of the Commonwealth vary considerably. There is no dedicated chain of command in the preparation of briefs of evidence. Who is in fact the prosecuting authority? What powers are available for coercion and when can they be exercised? This is a completely unsatisfactory state of affairs for the legislative and legal framework that applies to border
protection. Yet the government has failed to provide any comprehensive review to examine the inconsistencies across this raft of legislation and to assess what needs to be done to coordinate the approach.

In port security the situation is no less alarming. We have recently heard the Deputy Prime Minister talk about regulating Australia’s ports at least from the point of view of infrastructure planning, but nowhere has corresponding argument been presented regarding the need for national supervision of our port security. In our ports we presently have a situation where hundreds of thousands of empty cargo containers are shipped into Australia without being screened and, in some instances, such as in Sydney, are stored adjacent to a major international airport—in fact, on the border of the metropolitan area. There is a failure to prevent cargo ships that do not report the contents of their cargo—despite legislative requirements to do so—from entering our ports. One recalls the Prime Minister in a fanfare announcing a reporting zone. You can all recall that. In fact, there is effectively no interdiction capacity for these vessels, meaning that all too frequently potentially dangerous cargo is being unloaded at Australian docks and left, as we have been advised by government officials, for a couple of days before Customs establishes the content of that cargo.

The maritime nature of Australia’s strategic and geographic environment, however, makes us particularly vulnerable to maritime terrorism. There have already been attacks on oil facilities and personnel in the Middle East such as the attempt on the al-Basra oil terminal off southern Iraq on 24 April 2004. Al-Qaeda has identified Australia as a legitimate target on seven separate occasions and it has carried out threats and actions intended to damage Western economies, particularly the oil and gas industry.

Numerous studies have been undertaken to assess the economic risks from maritime terrorism. In terms of maritime trade, for example, one study found that closing down all US ports for a period of seven to 10 days would cost the US economy some US$75 billion. By way of comparison, Melbourne’s ports handle $A70 billion in trade every year and support some 20,000 jobs whilst Sydney’s ports handle about $A45.5 billion in international and domestic trade and generate more than 17,000 jobs. The secure flow of maritime trade and production is therefore essential to the economic and national security interests of Australia, the region and the globe.

While the opposition support the passage of this bill, we maintain that there are a number of concerns about the operation of the regulatory scheme, particularly with respect to the issuance of the MSIC. It is true in this instance that the devil is in the detail and, while the government has provided us with a draft form of the regulations that will operate under the bill, we are informed that these may still be the subject of change. Nowhere in the draft form of the regulations is there a commitment to maintain and protect the privacy interests of individuals with respect to the information gathered through security checking, nor is there a clear outline of who will bear the costs of receiving the MSIC—will it be the employer or employee? In that dogfight the employee is probably likely to lose, and there should be an assurance from government about these issues. There is no discussion about the adequacy of compliance or oversight of security initiatives at Australian ports, nor is there any consideration of why it is that foreign seafarers—some 120,000 who arrive in Australia yearly—are not subject to the same security-checking requirements as Australians. For these reasons, while the opposition supports the passage of this bill, it is appropriate that a
reference has been made to the Senate Rural and Regional Affairs and Transport Legislation Committee for a comprehensive review of the regulatory framework that will operate under the act.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (5.55 pm)—I rise to speak on the Maritime Transport Security Amendment Bill 2005. It is rather odd that we are having this debate tonight, given that the regulatory regime contained in the bill has been referred for inquiry by the opposition. The bill is being debated in the chamber, the ALP will presumably vote with the government to pass it and then we are going to look more carefully at the provisions. That does not make a lot of sense to us, especially given the doubts that have already been expressed about this bill. It is a great pity the Senate has not been given more of an opportunity to look at the bill and work through issues that have been raised, but I will participate in the Senate inquiry that takes place over the next few weeks and look in more detail at the regulatory regime.

The Democrats are committed to transport security and Australia’s commitments as a signatory to the International Convention for the Safety of Life at Sea, the so-called SOLAS convention. We supported the Maritime Transport Security Bill in the Senate last year, which implemented the International Ship and Port Facility Security Code. We support the object of the ISPS Code as providing a standardised international framework for security related risk evaluation and management in the maritime transport sector.

On 20 July last year the Prime Minister announced a number of policy and funding initiatives with respect to maritime security. The intention to introduce the maritime security identification card system that is being introduced in this bill was amongst the matters identified. The Prime Minister also said the government would review security arrangements for offshore oil and gas facilities, and that review was completed in November last year by a Commonwealth interagency group called the Taskforce on Offshore Maritime Security. One of the problems is that no public version of the task force’s review has been released; however, on 15 December last year the Prime Minister announced a number of measures stemming from that review process, and this bill apparently has been introduced as a result.

There are two main purposes to the bill: to extend the existing legislative maritime security framework applying to specified ports and shipping to offshore oil and gas facilities and to facilitate the introduction of a maritime security identification card system for persons who have unmonitored access to maritime and offshore security zones. The system, presumably similar to that currently applying to the aviation industry, will be established through regulations.

I think it is regrettable that the provisions of the bill have been introduced as a result of recommendations of a departmental review of offshore security when the report of that review, as I have said, has not been made public. It is very difficult for the Senate to make informed decisions about the appropriateness of these measures without the benefit of that information. I am quite certain the government would expect us to take it on trust, and I do not think we should be asked to do that. It is not unimaginable for a bill relating to national security that is introduced by this government to go a step or two too far in terms of a proportionate response. I do not think we can trust the government with that idea.

I note that the Parliamentary Library’s Bills Digest points out that the SOLAS convention amendments and the ISPS Code do
not appear to directly cover offshore oil and gas facilities; therefore, it seems that there would be no imperative under international law to extend the Maritime Transport Security Act to offshore facilities. However, the digest points out that the explanatory memorandum to the bill notes that the energy sectors have been targets for terrorist attacks by al-Qaeda and associated groups. According to the explanatory memorandum, the United States has also legislated the requirement for maritime security plans to apply to large offshore facilities under its US Maritime Transportation Security Act 2003. Apparently this bill is along similar lines.

The regulatory scheme contained in the bill will be introduced through regulations, the development of which are being coordinated by the Department of Transport and Regional Services and will be completed for formal implementation by 30 September this year. The maritime security plans that are being developed in accordance with the Maritime Transport Security Act will have regard for the special nature and location of these offshore facilities, the practical needs of operators and the need to complement rather than duplicate existing risk management and safety plans.

As I said in the debate on the Maritime Transport Security Bill last year, when implementing any new regulatory regime or system the government would be well advised to consult with those affected to ensure that the implementation goes smoothly and that the aims and objectives are achieved. I hope that the department will implement the provisions of this bill with that in mind. In closing, I want to say that I will pay close attention to the Senate committee inquiry into this regime, given that it seems that is where we will get the most useful information about how the scheme will work in practice. Once again, I note with disappointment that we do this examination after the effective passage of the legislation.

**Senator COLBECK** (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.01 pm)—The Maritime Transport Security Amendment Bill 2005 builds on the excellent work that has already been done in developing the Maritime Transport Security Act 2003. This bill further strengthens Australia’s maritime security regime, ensures that both national and international confidence in Australia’s oil and gas facilities is retained, strengthens Australia’s relations with international trading partners and provides the mechanism for dealing with a potential terrorist attack on oil and gas facilities. There are two parts to the bill. The first part of this amendment bill is designed to reduce the risk of terrorist attack on Australia’s offshore oil and gas facilities. Such an attack would have severe consequences for Australia’s economy and environment, as well as jeopardise the lives of industry workers. The second part of the bill provides additional measures to improve the robustness of the maritime security identification card—MSIC—scheme. The MSIC will be produced to cover all personnel who are required to have unmonitored access to a maritime or offshore facility security zone.

The amendment bill requires all offshore oil and gas facility operators and other prescribed offshore industry participants to undertake a risk assessment of their facilities and then to develop and comply with security plans. In developing this amendment, the government has consulted extensively with representatives from the offshore oil and gas industry, industry associations, employee associations and state and Northern Territory governments. I am pleased to report that industry is in general agreement with the proposal to extend the act to cover offshore oil and gas facilities and agrees with the need to
have security risk assessments and security plans for offshore oil and gas facilities. DOTARS does not anticipate recovering government costs for oil and gas security regulation from industry.

Regulations will be introduced in early July 2005, which will confirm further information for the offshore oil and gas industry on the content and form of the offshore security plans. The MSIC will provide the maritime industry with a nationally consistent identification card that identifies the cardholder as having met the minimum background requirements to be unmonitored in security zones of a port facility, a regulated Australian ship or an offshore oil and gas facility. I take this opportunity to remind the chamber that the Maritime Transport Security Act 2003 currently provides the power to introduce the maritime security identification card. This amendment bill ensures that any information used by organisations to background check MSIC applicants is used and disclosed in accordance with the Privacy Act 1988 and allows for the regulations to be made to enable any reasonable cost to be recovered by any person involved in issuing an MSIC.

The government has undertaken extensive consultation to ensure that the MSIC scheme is both efficient and effective. This extensive consultation, a noteworthy model of collaborative work, involved the formation of a working group whose members included industry, employee and employer associations, port operators, facility operators and other government agencies that work in the maritime environment. In a similar way, the draft MSIC regulations are now being tested with all relevant and affected parties. The MSIC will ensure that only people who have committed serious crimes that pose a threat or risk to maritime security are disqualified or excluded from having an MSIC, depending on the nature of the conviction.

The government believes that this is a fair and just approach in balancing an individual’s right to rehabilitation after having discharged their debt to society while reducing the risk of a maritime terrorist incident occurring. Background checking for the MSIC will commence from 1 October 2005, and we anticipate the roll-out will span nine months to 1 July 2006. As senators are aware, the background checks involve a criminal history check by the Australian Federal Police, a security assessment by the Australian Security Intelligence Organisation and, if required, an unlawful noncitizen check by the Department of Immigration and Multicultural and Indigenous Affairs.

I want to take this opportunity to assure members that, during this roll-out phase, only the Australian government will have access to the background check information. Industry and employers will not have access to personal information about their employees. The MSIC will not be an access control card. Separate arrangements can be made by maritime industry participants regarding access control measures, which will need to be approved by the maritime security plans. From 1 July 2006 the MSIC scheme will be subject to a full audit and compliance regime conducted by officers from the Office of Transport Security.

I welcome the opposition’s support for the passage of this amendment bill. I understand the opposition has referred the regulatory framework to the Senate Rural and Regional Affairs and Transport Legislation Committee to, in particular, undertake a detailed dissection of the MSIC regulations. The government does not want such an examination to hinder or effectively delay the introduction of this scheme. It is therefore the government’s intention to have the regulations made in July. As I have highlighted, the scheme commences its roll out from 1 October this year.
I urge the opposition to redefine the terms of its referral. The government believes the scope of the referral is not clear or specific enough. The amendment bill primarily addresses the incorporation of offshore gas and oil facilities within the maritime security regime. There are just six clauses to be amended by the MSI scheme. When one examines the notice of motion, the seven areas of interest highlighted would seem to relate more directly to the MSI scheme than to the offshore oil and gas sector. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.09 pm)—I move:

That government business order of the day no. 4 (Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005 and a related bill) be postponed till after consideration of government business order of the day no. 7 (Customs Tariff Amendment Bill (No. 1) 2005).

Question agreed to.

BORDER PROTECTION

LEGISLATION AMENDMENT

(DETERRENCE OF ILLEGAL FOREIGN FISHING) BILL 2005

Second Reading

Debate resumed from 11 May, on motion by Senator Coonan:

That this bill be now read a second time.

Senator BARTLETT (Queensland) (6.09 pm)—The Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, as the name suggests, deals with and seeks to deter illegal foreign fishing. The minister’s second reading speech spoke of the need to have a stronger regime to deal with the increasing number of illegal foreign fishers in Australia. The Democrats support that goal of more effective action to deal with illegal foreign fishing.

There were three measures to deal with illegal foreign fishing outlined in the minister’s second reading speech. The first measure was additional resources to be provided to the Australian Fisheries Management Authority to assist in the apprehension and prosecution of illegal foreign fishers. I assume that would also include detection. The second measure was additional resources to be provided to AQIS, the Australian Quarantine and Inspection Service, to enhance its ability to monitor and protect Australia from potential quarantine risks posed by apprehended vessels. The third measure that is the subject of this legislation concerns the processing and detention arrangements for suspected illegal foreign fishers. It is that aspect that the Democrats have concerns with and it is that aspect that is at the core of this legislation.

The legislation was referred to a Senate Rural and Regional Affairs and Transport Legislation Committee for a quite brief inquiry. It had one hearing, which was conducted whilst the Senate was sitting and attracted just a couple of submissions. The principal purpose of the bill is to ensure consistency between the Fisheries Management Act 1991, the Torres Strait Fisheries Act 1984 and the detention arrangements under the Migration Act 1958. The detention regime under the Migration Act has, of course, been the subject of an immense amount of public and parliamentary debate for many years. I have spoken on that matter in this chamber many, many times including, I think, at least three times just this week. It is
an issue that the Democrats have incredibly strong concerns about.

As I said in my comments in the committee report on the legislation, the principle of ensuring a consistent approach on any area between the different acts is certainly one that I support. Ensuring uniformity in the laws and practices surrounding fisheries and immigration detention is a good idea. It is not a good idea to have different arrangements for migration detention as opposed to fisheries detention when there is clearly some overlap in the way they operate. But everybody in this chamber knows, and most people in this country know, that there are fairly major concerns with how immigration detention currently operates. So, while the principle of ensuring uniformity is a good idea, the notion of making fisheries detention more uniform and aligning it with a system that clearly has such massive problems is something that strikes me as not terribly wise until we have sorted out the problems with immigration detention. It is my and the Democrats view that consideration of this bill and this aspect of unifying fisheries and migration detention should not occur until there has been a proper review of the adequacy and appropriateness of the migration detention regime.

It seems to me to be completely the wrong time to be bringing fisheries and migration detention into line when migration detention is being shown daily to be operating so appallingly badly. For that reason, the Democrats oppose this legislation at this time. I could move an amendment to defer consideration of it until a later date, but I think it is neater and cleaner to simply oppose it now. I urge all other senators to do so. Uniformity is good but not uniformly bad law. If a regime is bad you do not add other things to it, and that really is the problem.

One example I mentioned in my comments in the committee’s dissenting report was the recent judgment by Justice Finn in South Australia. It was about an asylum seeker in detention, but it is still relevant to the fact that our detention regime is failing to even provide duty of care in some key areas. When we cannot even guarantee that the existing regime will provide proper duty of care and meet its duty of care obligations then it does not strike me as a terribly good idea to bring more people into the orbit of that regime. To further expand the reach of detention laws before a proper review of the regime has occurred seems to me to be a particularly bad idea.

It is worth noting that the Senate Standing Committee for the Scrutiny of Bills, which reviews all legislation—not in terms of their policy application or justification but purely in terms of a key set of principles, criteria and basic rights—raised some significant concerns about the bill. The committee has a standing brief for all bills to consider whether they trespass unduly on personal rights and related matters. It draws the Senate’s attention to a range of aspects of this bill, not least of which is the provision it contains to empower fisheries officers to strip search and conduct other searches without search warrants. The bill gives very significant powers to fisheries officers without adequate checks and balances, in my view.

The scrutiny of bills committee, as it tends to do, notes this potential trespassing on people’s rights and leaves it to the Senate to determine whether those rights are unduly trespassed upon. My view and the Democrats' view is that they are unduly trespassed upon, and that in itself is sufficient reason to reject this bill. I have a number of amendments which were circulated about a month ago which, if the bill does proceed to the committee stage, would at least ensure that some of the more objectionable aspects, such
as those related to strip searches, would be removed from the legislation.

I need to emphasise that our opposition to this legislation should not be portrayed in any way as a lack of concern for illegal foreign fishing and its scale and nature. The Democrats are strongly concerned about this and indeed we have criticised this government’s failures in some aspects of this issue. But this bill is about detention and about empowering fisheries officers and indeed contractors operating as officers—not just public servants and officers of the Commonwealth but also others. In the same way that immigration detention centres are now basically run by private operators, this bill allows the same thing to apply to people in the fisheries area who have something to do with fisheries detention. I understand the rationale for that: it is to allow consistency—but again I would point to the problem that you are bringing something into line and making it consistent with an area that has also been specifically strongly criticised. Again, I refer to that judgment of Justice Finn which went in part but quite significantly to the problems with the contracting out of some of these activities, including detention and the provision of other services, to people who are not officers of the Commonwealth but private operators. That, I think, is a serious problem.

As this legislation is attempting to bring exemptions contained within the Migration Act across to the fisheries area, I would draw attention to the section right at the start of the legislation which says that, if any person, whether under the Fisheries Management Act or the Torres Strait Fisheries Act, restrains the liberty of a person on a boat—as a result of an officer’s exercise of the powers under this bill—that restraint by definition is deemed to be not unlawful. It also says that civil or criminal proceedings in respect of the use of that power to restrain may not be instituted or continued in any court against the officer, any person assisting the officer, the Fisheries Management Authority or the Commonwealth.

So there is an attempt to provide a blanket exemption from any form of civil or criminal proceedings against any person using those powers under the bill. I think those sorts of mechanisms are incredibly dangerous. They seek to exempt not just officers of the Commonwealth but indeed any officer or person assisting that officer in using these powers from having court proceedings instituted against them. The same provision exists now under the Migration Act. From recollection, that provision was brought in following the *Tampa* incident to try and ensure that all people involved in boarding vessels at sea, and in other activities they felt were needed on the boats in that process of apprehending and detaining people, are basically given legal immunity. That is an incredibly dangerous precedent and an incredibly dangerous signal for the parliament to send—that it believes that the activities of officers in this area should be devoid of any possibility of court action against them. The only protection against that, and it is specified in the amendment, is:

This subsection is not intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

What that means in layman’s terms is that people can still take action in the High Court. They have to go straight to the High Court; they cannot institute proceedings in any other forum. That in itself makes a mockery of this government’s continual protestations about the burdens on the High Court, about the High Court being continually locked up and having its workload dominated by migration and detention related matters.

The reason for that, of course, is that that is the way this government has designed it.
under the law in order to try to prevent people from appealing or instituting matters in relation to a whole lot of areas. The only reason they have not done that with the High Court is that they cannot because of the Constitution, which gives the High Court basic power and initial jurisdiction to oversee and pass judgment on the activities of the Commonwealth and Commonwealth officers. And it is a good thing, too.

It continues to astound me that a so-called Liberal government continues to try to undermine such a basic principle as the accountability of the actions of government officers before the courts. But it is all part of this government trying to exempt itself from independent scrutiny of any sort, including by the courts of this land. Thankfully, they cannot do so in relation to the High Court, but the whole notion of exempting people from action under any other court is, firstly, an appalling principle and signal to send and, secondly, simply highly inefficient. It forces the High Court to deal with matters that should not be dealt with by the High Court and that could be more quickly, more efficiently, more appropriately and more cheaply dealt with by lower courts. But that is all part of bringing in consistency. It does make it more consistent—it makes it consistently bad across the fisheries area as well as the Migration Act. That is just by way of one example.

I think that reinforces the problem here: the notion that you need to have this power of protection against any sort of court action and to have powers of total discretion in relation to detention while an offence is being investigated. It is about allowing detention while an offence is being investigated, not just because it is suspected that an offence has been committed. The bill gives such wide powers. No-one is arguing that people should not be apprehended if they are illegally fishing and that there should not be appropriate powers and a requirement for that to happen effectively. But to just give open slather to officers and in many cases to people who are not even government employees or government officers but who are contracted out is an incredibly dangerous precedent. We have seen in the area of migration detention what the effect of setting that precedent is.

As I often say, one of the reasons it is so important for the broader community to fight against the dangerous precedent set in the Migration Act, with the migration detention regime and the immense powers that are given to a whole range of people without proper independent scrutiny and accountability, is that it can then be applied to other areas once the precedent is set. That is what is happening here. It is shifting away from just applying that principle to people who are a so-called threat to our borders in the form of asylum seekers and applying it more widely to other people. Again, once it is broadened further by this legislation then the risk that it will be widened out even further becomes greater.

The committee report into this area did raise some useful issues about the problems with contracting out and the accountability of contract officers in comparison to that of officers who are government employees under the Public Service Act. I think that is also a problem with this legislation. The Labor senators on the committee made some comment on that. I will leave them to speak about that. I broadly support the concerns that were expressed by the Labor senators. Because my view is that the legislation should not proceed at all, I did not think it necessary to go into that in great detail. But that area is a particular problem in itself, and it is one that the legislation as it stands does not properly address.

In short, the Democrats’ view is that the legislation is not necessary at this time. It is
certainly not desirable to be further widening
the scope of a detention regime and all of the
powers surrounding that, such as strip
searching and exemptions from court action,
at a time when there are clearly widespread
problems with the existing regime under the
Migration Act. I think that in itself is a suffi-
ciently significant problem.

The other area with detention is the length
of time. We have seen this of course with
migration detention for years and years.
Most fisheries detentions are not going to be
within that sort of scope, but I will give you
an idea of the sort of blase approach to this
area even as it exists at the moment. The evi-
dence given to the committee by the General
Manager, Operations, Fisheries Management
Authority said:

... people are only in fisheries detention for
a maximum of seven days, and often it is a lot
less than that.

Yet the committee goes on to contrast that
statement with the figures provided in the
Ombudsman’s report from 1998 that the av-
average number of days in detention was 26.5
for Broome and 26.8 for Darwin. In addition
to the maximum of seven days described by
AFMA, there were further days in detention
pending repatriation.

The argument is that this new regime will
reduce that. It might reduce the amount that
they are in fisheries detention but I do not
see that this is likely to reduce the overall
number of days in detention; it just provides
an opportunity for a smoother transition from
them being officially under fisheries deten-
tion to instead being under immigration de-
tention. So, while technically they may be in
fisheries detention for a shorter period of
time, I do not see their total length of time in
detention as likely to change at all. The con-
tinuing problems of staff with migration de-
tention continue to apply. So it allows an
easier transition into a system that is not
working and is failing badly. I think that is
an appalling principle. For those reasons, I
oppose the bill at the second reading but, if
we get to committee stage, I have some
amendments which seek to remove some of
the more problematic aspects of the legisla-
tion.

Sitting suspended from 6.29 pm to
7.30 pm

Senator O’BRIEN (Tasmania) (7.30
pm)—While the opposition support the gen-
eral thrust of the Border Protection Legisla-
tion Amendment (Deterrence of Illegal For-
eign Fishing) Bill 2005, we do, however,
have a difficulty with some of the detail. As a
result, I will be moving a number of amend-
ments to this piece of legislation. This is an
important piece of legislation for a number
of reasons. Most importantly, it will give
greater power to fisheries officers and others
charged with protecting Australia’s $2.3 bil-
lion fishing industry against incursions by
foreign fishing vessels into Australia’s exclu-
sive economic zone. Fishing is a major Aus-
tralian industry that generates export income
of around $1.8 billion and is the economic
mainstay of many coastal regional communi-
ties. This bill is also important because it
facilitates the establishment and operation of
the onshore detention facility that is being
established in Darwin to house the crew
members of foreign fishing vessels appre-
hended on suspicion that they were fishing
illegally in Australia’s fishing zone.

The tragic deaths of two crew members
from boats that were apprehended for illegal
fishing highlight in the worst possible way
the need to provide decent onshore accom-
modation for those who are waiting to be
charged or deported. It is simply not accept-
able to continue to detain crew members on
their boats for any length of time. It is now
more than 12 months since Northern Terri-
tory coroner Greg Cavanagh criticised that
practice of detaining crew members on their boats. Mr Cavanagh’s comments were made on 19 March last year in the context of his inquiry into the death of Mansur Laibu, a 21-year-old Indonesian fisherman who had been held, along with six others, in cramped conditions on a 13.5-metre boat in Darwin Harbour for several weeks. There was evidence presented at the inquest that this boat had no modern conveniences such as toilets, and the only sleeping quarters and protection against Darwin’s wet season for the seven men was an area described as a ‘small box’.

The Northern Territory coroner found:

...the deceased was held by Federal Government agencies for some weeks against his will, as a virtual prisoner without charges being preferred against him, without trial and without access to judicial review.

Unfortunately, another detained Indonesian fisherman who was confined to his boat in Darwin Harbour died only a few weeks ago. And it is not as though the government has only recently become aware that the conditions under which these crew members are being detained are unacceptable. Back in July 1998 the Commonwealth Ombudsman published a special report on the administrative arrangements for Indonesian fishermen detained in Australian waters. In his report the Ombudsman found that the conditions under which the fishermen are being kept in Darwin are unsatisfactory even for short stays. He went on to recommend that a shore based detention facility be established in Darwin.

Labor strongly supports measures designed to better house the crew members of boats which have been apprehended. These crew members have not been found guilty of anything and deserve to be treated much better than they have been to date. It has taken far too long for the government to adopt a measure recommended by the Ombudsman nearly seven years ago and to develop an alternative to holding crew members on their boats in the harbour.

The Commonwealth Ombudsman made a number of other recommendations back in 1998 in relation to the detention of fishermen caught operating illegally in the Australian fishing zone. Some of these are finally being taken up in this piece of legislation. The bill we have before us today aims to ensure that key provisions of the act which governs fisheries in the Torres Strait, the Torres Strait Fisheries Act, are broadly in line with similar provisions in the act which governs fisheries in the rest of Australia, the Fisheries Management Act. In particular, it brings the two acts into line in relation to their investigation, detention and forfeiture provisions. It also brings these provisions into line with similar provisions contained in the Migration Act 1958.

The bill increases and to some extent clarifies the powers of fisheries officers in relation to the investigation and detention of suspected illegal foreign fishing vessels. To the extent that these provisions streamline Australia’s legislative response, Labor supports the approach the government is taking in this piece of legislation. The acts amended by this bill to some extent constitute Australia’s legislative response to the obligations and rights that fall to us under the United Nations Convention on the Law of the Sea. Article 61 of that convention confers on Australia the obligation to ensure that we have a legislative and enforcement regime that will protect and maintain the flora and fauna living within our exclusive economic zone and especially to ensure that the environment in our exclusive economic zone is not threatened as a result of overfishing. Article 73 of the UN Convention on the Law of the Sea authorises coastal states such as Australia to detain foreign fishing vessels found to be operating in our exclusive economic zone. It is through the operation of the Fisheries
Management Act and the Torres Strait Fisheries Act that Australia meets its international obligations to sustainably manage and responsibly exploit our fish stocks.

Over the last few years there has been a significant increase in the number of recorded incursions into Australia’s fishing zone by foreign vessels fishing illegally. Between 1 July 2004 and 20 January 2005 there were 4,122 recorded sightings of foreign fishing vessels in the Australian fishing zone. While it is true that the actual number of incursions may be lower than this figure as some of these may have been multiple sightings of the same vessel, it is deeply concerning that only 107 were apprehended and a further 94 were the subject of administrative seizure—that is, 94 were dealt with under the minister’s ‘tag and release’ policy. In the 2004 calendar year, 161 boats were apprehended. Of these, 80 were bonded, with 68 eventually being destroyed. Twelve boats were sunk while under tow. The fact that only a very small proportion of boats sighted are eventually apprehended makes a mockery of the minister’s claim in a 2002 press release:

We are winning the war on illegal fishing.

It is clear that we are not winning the war against illegal fishing, but the piece of legislation we are considering here today may be of some assistance in doing better in the future. Currently persons suspected of illegal fishing in Australian waters who are detained under powers contained in the Fisheries Management Act are automatically granted an enforcement visa which enables them to be brought into Australia’s migration zone for questions and further investigation. Persons who are detained under these provisions do not automatically acquire a right under the Migration Act to apply for residency or asylum in Australia. In the past there were no similar provisions in the Torres Strait Fisheries Act to enable persons suspected of fishing illegally to be detained while investigations proceed.

The bill we have before us today will bring the detention provisions of the Torres Strait Fisheries Act into line with those contained in the Fisheries Management Act. This is an important step and one that has the support of the Australian Labor Party. Labor also supports the extension of the provisions relating to the forfeiture of fishing vessels and fishing equipment currently contained in the Fisheries Management Act to the Torres Strait Fisheries Act. This bill will also ensure that fisheries officers will have adequate powers to screen and search persons suspected of fishing illegally in Australian waters and to confiscate weapons and other items that could be used in an escape attempt. The coercive powers given to fisheries officers will be increased, and the offence of obstructing a fisheries officer will be broadened and will attract increased penalties.

While Labor does support the general thrust of this piece of legislation, we are concerned about some of its provisions. Labor’s key concerns were dealt in the report of the Rural and Regional Affairs and Transport Legislation Committee into the provisions of the Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, which raised serious reservations about the decision of the government to privatise Australia’s fisheries detention regime.

The report offers conditional support for the bill, subject to amendments to insert provisions relating to minimum training for authorised officers performing certain functions. The report also recommends that the government enforce the operation of a rigorous code of conduct for staff before entering into any contract for the provision of fisheries detention staff with a private provider.
Labor senators have endorsed the majority report, which contains a less than enthusiastic endorsement of government policy with respect to fisheries detention and is replete with warnings about proceeding with the legislation in the absence of additional checks and balances.

The committee’s concerns almost exclusively relate to the provisions in the bill that permit the minister to engage private contractors to perform fisheries detention tasks and those that further permit the Australian Fisheries Management Authority to authorise private contractors to perform critical screening, searching, identification and detention functions. The additional comments by Labor senators expand on the reservations expressed in the majority report about the engagement of private contractors. The bill, subject to inquiry, seeks to align Australia’s fisheries detention regime with the immigration detention regime, incorporating most particularly performance of duties by private contractors. At a time when public confidence in the administration of Australia’s immigration detention regime is plummeting, this strikes me as odd. In an article in the Australian newspaper my colleague Senator Ludwig has presented a cogent and persuasive argument in favour of a royal commission into aspects of Australia’s immigration detention regime.

It is not just the Labor Party that is deeply concerned about the Howard government’s management of immigration detention. A growing cohort of Liberal Party members and senators and National Party members have been prepared to speak out about the failing administration of immigration detention, of which private sector management is such a significant component. Yet, at the same time, Minister Truss and the minister here, Senator Ian Macdonald, are proposing in the bill the adoption of the immigration detention model as best practice.

Labor’s concerns relate to staff training, accountability for staff conduct, protection for whistleblowers and Commonwealth liability for workplace injury, among other matters. With respect to training, Labor is concerned about the wide range of powers available to contractors appointed as authorised officers under the provisions of the bill. These powers include the power to move, screen, identify, search and strip-search persons in fisheries detention. Labor senators on the committee share government senators’ concerns about the failure of the bill to provide for minimum staff training despite an undertaking from Minister Truss during his second reading speech in the other place that:

An important part of the authorisation process will see any prospective officers receive comprehensive training in the effective and responsible use of these powers under the relevant acts.

Indeed, according to evidence taken by the committee during its inquiry, training is discretionary. In our additional comments Labor senators note a further concern that, despite the provision of detailed information about protocols that apply in the operation of the immigration detention regime, no guidelines for fisheries detention were available to the committee. The committee was told in evidence:

Guidelines for AFMA’s purposes here may not have been developed as yet.

The committee was told the Australian Fisheries Management Authority intends to replicate the immigration detention system, including contracts and protocols consistent with those currently in force. We were provided with documents outlining the relationship between the Department of Immigration and Multicultural and Indigenous Affairs and its contract service provider, GSL Australia. However, Labor senators note that no decision has been made about the contract management of the new fisheries detention facility in Darwin. Evidence about GSL Australia
may be irrelevant should that contractor not ultimately be awarded the contract for fisheries detention.

A rigorous and effective training regime, particularly for the class of officers appointed as authorised officers under the amended act, is critical for detainees and staff and the maintenance of public confidence in the fisheries detention regime. Labor senators who participated in this inquiry could not be satisfied, on the basis of information provided to the committee, that the government had adequately addressed this matter. With respect to staff rights, Labor senators also note with concern that the bill provides contract staff with no whistleblower protection, and we endorse the call in the majority report for the government to give this matter urgent consideration before seeking passage of this bill. The committee heard uncertain oral evidence and received highly qualified written evidence that gave Labor senators no comfort with respect to the intent to protect the rights of workers engaged to perform fisheries detention tasks under contract. We had hoped the comments in the report would prompt the government to reflect on our concerns in relation to this matter.

On a related matter which is important for both staff and detainees, Labor senators have expressed concern about the discretionary application of provisions designed to protect the interests of detainees subject to strip searches. The bill provides that authorisation of a strip search must be recorded in writing but it explicitly provides that failure to do so does not affect the validity of the search. This matter was subject to effective and searching questioning from the chair, Senator Heffernan, during the public hearing on 17 March. In the interests of detainees and staff, Labor senators have urged the government to reconsider its decision to grant de facto discretionary status to the requirement that authorisation of strip searches be recorded in writing.

Another key issue addressed by Labor senators, in our additional comments, is the application of a code of conduct to the performance of contract fisheries detention officers. Labor senators do not accept the validity of the government’s claim that the code of conduct employed by current immigration detention contractor GSL Australia is broadly equivalent to the Australian Public Service code of conduct. Instead, we prefer the view put in the Community and Public Sector Union submission that the APS code of conduct binds public sector employees to the highest standards of professional and ethical conduct and has no direct equivalent in the private sector. We explicitly endorse the majority report’s call for the implementation of a code of conduct for any contractor engaged to perform fisheries detention functions that extend beyond that currently administered by GSL Australia in respect of its staff.

On the matter of accountability, it is of particular concern to Labor senators that, during the course of the inquiry, the Commonwealth had to seek ‘GSL authorisation’ before providing the committee with a copy of the code of conduct in force with respect to the performance of contract immigration detention duties. I repeat: they had to seek GSL’s authority to produce it. This augurs poorly for accountability to the parliament in the event the government eventually succeeds with its decision to privatise fisheries detention functions.

Labor senators have deep reservations about the impact of engaging private contractors to perform fisheries detention tasks. For these reasons, I will be moving amendments designed to address Labor’s concerns about the operation of this piece of legislation. The amendments will remove the power
of the minister to appoint private contractors to carry out functions that ought to be handled by fisheries officers or other fully accountable public officials. They will also ensure that officers carrying out their duties under this legislation will receive the training they need to do their jobs effectively.

Australia has a duty to properly manage fish stocks in our northern waters. With the incorporation of the amendments that I intend to move, this piece of legislation will play an important part in tackling the problems of illegal incursions by foreign fishing vessels in Australia’s fishing zone. I will deal with those matters in the committee stage.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (7.48 pm)—I thank the two speakers for their contributions to the debate, and I particularly thank Senator O’Brien and the Labor Party for indicating their support for the broad thrust of the legislation, although they do have some reservations.

Senator Bartlett has suggested that we should not proceed with this matter any further just now. I think it might be useful to all senators participating in this debate if I explain a few facts. It might make the whole issue a lot clearer for everyone, because it is important to understand what currently happens. For example, Senator O’Brien said that he did not want fisheries detention to be privatised. For a long time now, fisheries detention has been privatised and we have had private contractors doing the fisheries detention work. But I agree with Senator O’Brien that the current situation is not one that we want to continue with. Since I became the minister almost four years ago, it has been quite obvious to me that the situation has not been appropriate. I might say that it has been carried over from the days when Labor was in government; we have continued the boat based detention that was started under the previous Labor governments.

As Senator O’Brien said, the Ombudsman, the Human Rights and Equal Opportunity Commission, the coroner and a couple of parliamentary committees have made comments about boat based detention. Generally speaking, I agree with them, although I think it is helpful to the debate to understand that these are fishermen who know they are doing the wrong thing. We do not invite them into our waters; they come here knowing that they are acting illegally. They actually live on these boats for weeks and even months at a time. It has been suggested that they are, as the coroner said—and Senator O’Brien quoted this—confined to ‘a small box’. Of course, while they are out fishing for weeks and even months at a time, they live in that small box. That is of their own choosing; those are the boats they choose to go to sea in. That is not to say that it is right when they come into Australia’s control, but I think it helps put the debate in a bit of perspective to know exactly what we are talking about. Senator O’Brien mentioned a couple of deaths, and they are regrettable; but, in both instances, they were deaths from natural causes in no way connected with the method of detention or anything the Australian private contractors who conduct the fisheries detention have done.

This is important for the debate in the committee stage, when I can go through it again, but it is important to raise it now. When a vessel that is said to be fishing illegally is apprehended in Australian waters, it is brought into Darwin, let us say. From the moment those apprehensions are made, the alleged illegal fishers become subject to enforcement visas under the Migration Act. They immediately and automatically, I think, get an enforcement visa, or on arrival they will get enforcement visas. That applies for a maximum of seven days. If we decide to
charge within that seven days, it only applies until we decide to charge, so it may be a matter of two or three days. If we decide not to charge, that enforcement visa more or less finalises.

Let us take the two scenarios. If we decide not to charge, they technically move from fisheries detention, which they have been in for two or three days, automatically into immigration detention for the purposes of transporting them back to Indonesia at the earliest possible time. It is very important to understand that. The maximum time they will be in fisheries detention is seven days. It is normally two, three, four or five days while the investigations happen. Some of them we are not going to charge, so they immediately go into immigration detention to be sent back to Indonesia. Those that we are going to charge also go automatically into immigration detention to be subject to the processes of the law. That is what happens now.

The suggestions that Senator Bartlett was making about changing the immigration detention arrangements or putting particular obligations on the fisheries detention, which is for two or three days, might be okay in the wider debate on migration that everyone has referred to as happening now, but that is a debate for another time. We are trying to regularise the situation here so that these rights and obligations are clearly known.

The references committee did make some suggestions. One of them refers to training. I think I can live with that amendment; we will discuss that later on. But the idea of not allowing private contractors to look after these apprehended fishermen while they are in immigration detention would simply mean that you would have a group of contractors doing the work more broadly but, for the two, three or 10 fishermen you have, you would have to have a different set of people who are government employees. For the two or three days that happens, that seems to be quite unreasonable. I can understand the point that senators are making but it is important that we keep in mind just how impractical those suggestions are. Whilst we will debate those amendments, the government is not in a position to accept an amendment to this legislation which will not in any way coincide with the Migration Act, which is what we are trying to do in this particular piece of legislation.

The training point that the committee has reported on is one that we would do anyhow. If the Senate feels that that needs to be made obligatory by legislation then the government has no particular objection to that because, as I say, we intended to do that in any case. I would ask Senator Bartlett, who wants to delay all of this: what is the alternative proposed until all of these other issues are sorted out? We are trying to correct the situation. We are trying with this legislation and with the establishment of the new facilities in Darwin, hopefully by the end of this year, to get people off the boats as early as possible—immediately they hit Darwin—and get them on shore. We agree that the current situation is not appropriate and we want to do something about it. Certainly delaying this bill is not going to help the situation that the government is trying to amend and alter. It is a situation that the Labor Party support. They want to get this done as quickly as possible. They recognise that there have been faults in the past in the way the system operated. We are all in furious agreement on that. We now have to make sure that that actually happens.

We are not here today to change the Migration Act. Even if we wanted to, this is not the legislation to do that. It is important that we accept the legislation or the migration arrangements as they currently are. These proposals are better, I would suggest, than the current situation where we keep people
on boats and we are not quite sure who is looking after them—I mean, we are sure who is looking after them but, in a legal sense and in a technically legislative sense, I think the situation urgently needs clarification.

There is another difference here that I think it is important for senators to understand when they consider this legislation. Whilst references are made to the general migration situation, there is a difference. In the migration situation there are people coming into Australia who want to be in Australia. They want to get out into the community. Because the Australian government do not think they are genuine refugees, we want to send them back to where they came from, but they want to stay here. These Indonesian fishermen do not want to come to Australia. They did not come here of their own free will. They only came into land because we apprehended them and brought them in. All they want to do is get back to their home country at the earliest possible time. I have not actually spoken to them about this but I guess that those who are going to be charged would adopt the attitude that the sooner the prosecution is embarked upon and the sooner they are jailed or fined or whatever, the sooner they can pay their debt to society and get back home. So there is a real difference in considering these sorts of issues.

Someone suggested to me—I do not think it has been mentioned in this debate—that when you are arranging these things you need facilities for the disabled and for women and children. Again, this misunderstands the nature of these fisheries offences. These are fishermen who are out there for three weeks and there are not too many women and children on board and there are certainly no disabled people on these very small boats. It has to be kept in perspective. There is a difference. To ensure the smooth administration of these arrangements, we do want to regularise the situation.

I think the senators who have spoken have adequately summarised the balance of the bill, and the second reading speech certainly went through it in some detail. The Australian government is very conscious of the need to protect our borders and to deal humanely with those who have come into our waters illegally, and they are being dealt with according to Australian law. I should not let this opportunity go, seeing as we are on broadcast—though I suspect there are few people listening and there is certainly not a great audience in the chamber—

**Senator O’Brien**—There were a few at the start; you’ve driven them away.

**Senator IAN MACDONALD**—I have driven them away, have I? Perhaps they might come back when they hear that you are about to speak again, Senator O’Brien. Your comment about the number of sightings and your description of ‘catch and release’—a nice, politically catchy phrase by whoever your publicists are—just happen to be totally inappropriate and wrong. But ‘never let that stop a good story’ I guess is the attitude of the opposition. The number of sightings are many more than the number caught. So far this calendar year, up until a few days ago, we have caught 100 boats. That is an all-time record, which I think indicates the effort, the assets and the money that this government has put into protecting our northern borders.

Sure there are other sightings, and Senator O’Brien mentioned some of those. He did realistically say that you cannot really count them because many are dual, triple, quadruple, septuple or whatever sightings. They are multiple sightings of the same vessel. So you cannot actually take a lot of notice of the sighting figures. A lot of those sighting figures too are in what is called the MOU box. According to Australia, they are illegally in Australian waters, but there is a memorandum of understanding in place with Indone-
sia—since the Labor government’s days, I might add—where we do acquiesce when Indonesian boats come into that MOU box. However, that is something that has to be looked at very closely in the future, because I am told by the Department of the Environment and Heritage that that MOU box area is now almost a marine desert. It has been grossly overfished. A lot of boats come in there and we acquiesce in them being there.

We are very proud of our record in the north and of the efforts that we have put into deterrence of illegal fishing. We are very conscious of the fact that it is a question of not only protecting our borders but protecting our very carefully managed fisheries. It is also a question of protecting the shark stocks up there, which have been brutally and inhumanely dealt with by the Indonesian fishermen. At the moment in Asia, shark fin is selling at something like $600 to $700 a kilo, which makes it a fairly attractive magnet to Indonesian fishermen. Notwithstanding that, we are determined to stamp out this illegal trade and this illegal catching and we have assets to do that. We intend to continue to prosecute in the strongest possible way to protect our fisheries and our borders.

You would all be aware of Operation Clearwater. It was a very significant combined operation which was overseen by Coastwatch and included fisheries officers, migration officers, immigration officers, the Army, Navy and Air Force, and Customs officers all working together in a major sting. Over a few days, 29 boats and almost 250 illegal fishermen were netted. Of course, getting 250 illegal fishermen into Gove and Darwin at the one time puts a lot of pressure on the facilities. I want to use this opportunity to congratulate all of those involved, not only in the apprehension but in dealing with the Indonesian fishermen when they came on shore. It was a massive effort and it just shows how good our Australian authorities are and how well they work together in a combined operation.

As I say, the bill has been well summarised by other speakers and I will not hold the Senate by again repeating the provisions of the bill. I have mentioned that the Senate Rural and Regional Affairs and Transport Legislation Committee suggested some amendments. We are quite happy to accede to some of those, and we will deal with them in the committee stage.

I should correct something on the record. I had indicated that fisheries detention had been privatised. I am told that the correct description is that contractors provide the essential services to the fishermen and it is the officers who do the detaining. It is not the contractors who do the detaining; the officers do that. When the fishermen have been detained, private contractors provide all of the essential services, including provisioning, caretaking, exercising and looking after their health needs and concerns, which is particularly good. I should also mention that, once these Indonesian fishermen are brought into an Australian port, they are immediately medically screened. If there are any problems detected—and I suspect that for some of them it is probably the first time they have had a decent medical check-up—they are taken to hospital and looked after by the Australian authorities.

I only say that to illustrate that we do exercise our obligations very carefully. We do look after these people as best as the arrangements allow. For many years now, this situation has continued, but I think we all agree that it is a situation that should not continue. We need to get them off the boat as soon as possible and we need to regulate the arrangements. That is what this bill is doing. The government have provided the money for this—it was included in the budget. We are ready to go. We want to move things
along. What we do need is for this bill to help. The other important aspect of the bill, which has been summarised—and, again, I will not go into that—concerns the fact that the Torres Strait Fisheries Act had not been aligned with the Fisheries Management Act in relatively minor areas. We want to correct all that with this bill. That is an important thing to be done. That is why I welcome the support of the Senate for this bill.

Senator BUCKLAND (South Australia) (8.08 pm)—I seek leave to incorporate Senator Crossin’s speech.

Leave granted.

Senator CROSSIN (Northern Territory) (8.08 pm)—The incorporated speech read as follows—

This bill is aimed at ensuring that the investigation, detention and forfeiture provisions of the Torres Strait Fisheries Act, 1984 are consistent with those contained in the Fisheries Management Act 1991 and that the detention provisions are in line with those of the Migration Act 1958.

It seeks to clarify and strengthen the Commonwealth’s powers related to the investigation and detention of suspected illegal fishers, particularly in the Torres Strait and to ensure seamless transfer between fisheries and immigration detention.

It must be said however that this legislation has been made necessary by the government failure to date to curb the illegal fishing that goes on in our fishing zone, and in Northern waters particularly. We would all be well aware that illegal foreign fishing is a great threat not only to our fish stocks as a major resource, but potentially a quarantine issue too.

Our quarantine protection is vital, designed to protect key rural industries and our unique physical environment. Breach of quarantine could easily allow the introduction of several potentially highly damaging diseases into our agriculture industry.

The Australian fishing industry at present produces around $2.3 billion of catch of various kinds. Around $1.8 billion is exported. (Gavan O’Connor second reading speech). The total annual catch is about 250,000 tonnes. Prawns are worth around $350 million, tuna over $300 million. So we are looking at a valuable industry here.

Unfortunately it is a resource that is much in demand, and easily overexploited. The Bureau of Rural Sciences Fisheries Status Report 2002-03 says that 16 fish species are classified as overfished, 16 more are fully fished, 34 as uncertain and only 4 as underfished. (quoted by Gavan O’Connor in second reading speech). So the balance is precarious. Foreign, illegal fishing boats put further pressure on an already heavily used resource.

As has been pointed out by colleagues in the other place, between July 1st 2004 and 20th January 2005 there were some 4,122 recorded sightings of foreign vessels fishing within the Australian fishing zone. While some of these may have been multiple sightings, it is clear that a lot of foreign boats are entering and fishing illegally. I say more of this later.

Of those, a mere 107 were actually able to be apprehended and 94 were the subject of administrative seizures ("tag, confiscate catch and gear then release"). Many of these administrative seizures would end up as repeat offenders, so this is not a great way to reduce the number of offenders.

To date this government has “protected” our fishing zone with only one dedicated vessel—The Oceanic Viking (armed with one machine gun) which has done a great job in often awful conditions down in the Southern ocean. We support any efforts at protecting our fishing zone and our valuable fish stocks, many of which could quickly become endangered if unprotected. But one dedicated vessel for the size of our zone and the length of our coastline is just not enough.

In addition there are eight customs vessels and 14 naval patrol boats roaming the ocean and watching out, among other things, for illegal fishers. However, my colleague the Shadow Minister for Homeland Security pointed out in the other place that bearing in mind the area of our fishing zone, this is the equivalent of having about 50 police cars to patrol the whole of Australia. I am sure the Australian people would be most unhappy if we allowed that situation to arise.
I understand that furthermore the Navy does not have, under its rules of engagement, the power to fire on illegal fishing vessels, making it harder to detain them and which would enable some of these illegal fishers to get away.

Section 84 of the Fisheries Management Act empowers officers of the Commonwealth to use appropriate force to stop illegal foreign fishing vessels, including any reasonable means consistent with international law, including firing a warning shot or using a device to prevent or impeded the propulsion mechanism—but the customs boats are not equipped with any fixed armament so cannot do this either. Our boats and crews have to rely on being able to stop and board these foreign vessels in other ways, and of course, except for the smallest and slowest boats this they cannot often do.

This is clearly just not adequate and much more is needed and must be done. Some improvement may come about when the new Armadale class Navy boats are in use. These are bigger and will have somewhat better capacity and range than the current Fremantle class vessels. But the question remains whether catching illegal fishers should be a task for our navy.

The fact also remains that at present, whichever way you look at it, this government makes a lot of noise about border protection, but leaves the resources to do so spread alarmingly thinly on the oceans. As has been said they have talked the talk but NOT walked the walk.

Only recently there were reports of illegal fishers in numbers off the NT coast—one spotted by a private charter boat operator off the Wessel Islands and reported but nobody could get there for a couple of days so that boat got away. Then a large number were even found way down into the Gulf of Carpentaria, happily fishing away without having been spotted for days.

Information from Nhulunbuy was that recently they had thirteen illegal boats brought in there and detained. There is obviously a lot of illegal fishing activity, and it is not getting less.

Last year around 130 illegal fishing boats were detained and brought to Darwin Harbour (figure quoted Monday Dec 13th by Anne Barker on ABC PM program in discussing detention centre with the then Fed Fisheries Minister Ian McDonald). All their crews were kept on board in cramped, unhealthy conditions.

This bill also then paves the way for the establishment in Darwin of the immigration detention centre for illegal fishers, together with processing and temporary detention points in other centres.

Those of us familiar with Darwin are also familiar with driving past the former Coonawarra naval base, and seeing the detention centre there—surrounded by razor wire, and unused for years. At last there might be a use for this facility, built and since maintained at a cost of several million dollars and to date never used.

This will certainly be a great and humane improvement on the present arrangements where detained foreign fishers are left to live (and die in a few cases) on their boats anchored in Darwin Harbour. Those who might have seen these boats would know that this is not a comfortable solution, many of the boats being very small with no facilities on board. Detainees have indeed died on board. I am sure this would not be anything to do with the provisioning of these boats though, done as it is by a local company formerly run by a well known NT politician!

There have been criticisms of this detention method—of the conditions detainees have been left in. There was a 1998 report by the Commonwealth Ombudsman, as well as the NT coroners report into the death in 2003 of a detainee on board a vessel in Darwin Harbour.

Following the recent death of another detainee on board a boat detained in Darwin Harbour one can only expect a further critical coroners report and hope that the detention centre for illegal fishers will very soon be opened in Darwin.

So Labor will support the general thrust of this bill, but have a couple of concerns about the legislation.

As initially framed there is provision for the Minister to appoint a person, or class of person to be detention officers—a new class of officer with limited powers of detention under the Fisheries Management Act. Labor has a problem if contractors, not directly responsible to the Commonwealth as employees, are given such powers of detention, since unlike Commonwealth employ-
ees who clearly have a line of responsibility and accountability through their department to the Minister, contractors would not.

We would be concerned at this lack of accountability, as well as the possibility that contractors may lack the training and experience that Commonwealth (or state/territory government employees) would have in managing a situation. For this reason we will recommend referral of this bill to a Senate Committee to examine this aspect.

Labor welcome the fact that under Section 24 a detainee must be provided with access to legal advice. However, there appears to be nothing clearly in the legislation that requires officials to inform detainees that they have the right to access reasonable facilities for obtaining this advice, and we would urge the government to amend the bill to include a requirement that detainees be informed of the right to obtain legal advice (especially since most detainees would probably be non English speakers.)

However, this is an important piece of legislation and goes in the right direction to improving our border security and protecting our fisheries. The problem of illegal fishing has not gone away, but has indeed multiplied. Not only have numbers gone up but so has the type and sophistication of many of the boats and their equipment.

It is just unfortunate that this government, like everyone else, has known about this problem for several years, but it has taken them until now to do anything meaningful about it. We can only hope that improved fisheries and border protection is not being improved after the horse has bolted.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator BARTLETT (Queensland) (8.09 pm)—The Democrats oppose schedule 1 in the following terms:

(1) Schedule 1, Part 1, page 4 (line 2) to page 5 (line 6), TO BE OPPOSED.

Firstly, I note for the record that the Democrats’ opposition to the bill during the second reading stage was the only voice of dissent in the Senate. I addressed our opposition to schedule 1, part 1 of the legislation in my contribution to the second reading debate, so I will not elaborate on it in great detail. I am sure the government will say this just matches the powers under the Migration Act, which it does, but the Democrats did not support those powers going into the Migration Act, and we do not support them going into the Fisheries Management Act or the Torres Strait Fisheries Act for the same reasons. I do not believe it is appropriate for actions of AFMA officers, other officers or any person assisting those officers in restraining the liberty of a person under the fisheries act to be immune from any action under any court in Australia—for that restraint to be automatically deemed as not unlawful by definition.

Both sections do still provide the scope for proceedings—civil or criminal—to be instituted in the High Court, because that power cannot be removed, as the government was reluctantly required to concede when this issue was debated in relation to the migration legislation about four years ago. It is pleasing to see that acknowledged in the bill, but that does not negate the key problems. Firstly, I think it is a very bad principle to have legislation that gives carte blanche, blanket exemption from any civil or criminal proceedings in respect of the actions of a wide range of people in carrying out the restraints. Secondly, apart from the principle being bad, the practical consequence is that somebody does still have the power to institute proceedings but they have to do it in the High Court, which is not the place to initiate those sorts of proceedings. It clogs up the High Court unnecessarily. Even from a procedural point of view, I think it is highly unwise and this is all the more reason to remove it from the Migration Act rather than add it to other acts. The Democrats oppose this part of the legislation.
Senator O'BRIEN (Tasmania) (8.12 pm)—Labor will not be supporting this amendment. The clause that is proposed to be omitted gives legal protection to fisheries officers carrying out their duties. We think that it is not appropriate that those officers might be constrained in carrying out their duties because of uncertainty about their legal position or, even worse, the possibility that they will be subject to legal action on the basis of actions they are required to carry out by their employer, which we suggest should be the Commonwealth. Those officers ought not to be the subject of action against them as individuals. We will therefore not support this amendment.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (8.13 pm)—The government do not accept the amendment either. Under the Fisheries Management Act and the Torres Strait Fisheries Act, there are currently statutory powers that allow fisheries officers to detain or tow a boat or require it to be moved to a place in Australia so that suspected illegal foreign fishing offences can be investigated. This bill seeks to provide protection to those officers when they are lawfully exercising their duties. This power is consistent with other border protection legislation, such as the Customs Act and the Migration Act. We do think that the officers require and deserve that protection when they are acting lawfully in connection with their powers. For those reasons, we reject the Democrats’ amendment.

Senator BARTLETT (Queensland) (8.14 pm)—I will not labour the point unnecessarily, but I do think several points need to be made clear for the record. The first is that the amendments basically have the effect of automatically making people’s actions not unlawful. It is not a matter of preventing them from having the power to detain or tow boats or whatever; it is a matter of giving them exemption from any civil or criminal proceedings being initiated as a consequence of how they carry out that restraint on somebody’s liberty.

The second point to be made is that, because of the savings provision in the Constitution that the High Court has original jurisdiction, it still does not have the practical effect that the minister says it does or that the opposition says it does. People can still take those proceedings; it just has to be in the High Court. As I said, that is an inefficient and ridiculous place to require people to undertake some of the sorts of proceedings that might be brought. It just imposes a further burden on the High Court and it is unnecessary.

The final point I want to make is that, even if one wanted to accept the notion that the individual officers should be safe from potential prosecution—and I am not convinced that that should be the case, but even if it were—this does not just exempt the officers; this exempts AFMA, it exempts any person assisting the officer and it exempts the Commonwealth itself. Even if you wanted to say that the individuals perhaps could be exempt on the grounds that they are just carrying out their orders or their duty, to have the Commonwealth exempt from any sort of action as a principle I think is very dangerous. Of course people should be able to carry out their duties under the law and the law gives them the power to do so, but to say that they can do that without any fear of any court action being undertaken with regard to how they carry out those duties is treading on very dangerous ground.

The whole notion, in my view, of the checks and balances of our system of governance is that actions by Commonwealth officers and by the Commonwealth should be subject to oversight, by an independent authority such as the courts, if they carry out...
those powers in a way that people believe is inappropriate for some reason. To suggest that that should be able to be exempt from oversight by the courts I think is a very dangerous principle. I think I have made that point a few times in various ways so I will not labour it, but I think it is important to make clear that these are fairly significant components. The fact that they are already in a few other acts in a way just emphasises my point about why I am concerned that they go in some more acts, because the more acts they get in, the more the argument continues to be repeated that since they are already in this many acts there is no problem putting them in more. That is the danger with letting the precedent of these sorts of exemptions get too much currency.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is that part 1 of schedule 1 stand as printed.

Question agreed to.

Senator BARTLETT (Queensland) (8.18 pm)—by leave—I move Democrat amendments (2) and (3) on sheet 4573:

(2) Schedule 1, item 13, page 7 (lines 17 and 18), omit paragraph 1(2)(a), substitute:

(a) are reasonably suspected by an officer of having committed an offence against section 99, 100, 100A, 101, 101A, 101B, 105E or 105F or an offence against section 6 of the Crimes Act 1914 relating to such an offence; and

(3) Schedule 1, item 13, page 7 (line 25) to page 8 (line 9), omit subclause 1(4), substitute:

(4) The third main object is to facilitate the repatriation of persons by authorising the disclosure of personal information about individuals who are or have been in fisheries detention to persons, agencies and organisations responsible for their repatriation and welfare.

These amendments go to the objects of the bill, which on page 7 state at the moment that an object is to provide for the detention of persons who are reasonably suspected by an officer of having committed an offence involving the use of a foreign boat. In my view that is an extremely broad object. This is an object that is to go in the Fisheries Management Act, but the description there does not mention fishing at all; it just talks about an offence involving the use of a foreign boat. I think that is too broad. The alternative wording you have there is, I believe, narrower. It ensures that it does relate to fisheries type offences and I think that is a better way to go. Similarly, amendment (3) narrows it down more specifically to what I believe are the objects and the intent of this amending legislation.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (8.20 pm)—The government opposes both of these amendments. Senator Bartlett, we are trying to bring together the Fisheries Management Act and the Torres Strait Fisheries Act and to align them with the obligations, powers and duties under the Migration Act insofar as detained fishermen are concerned. Your amendment—although I am sure this was not what you intended—would have the exact opposite effect. You are proposing amendments only to the Fisheries Management Act and not to the Torres Strait Act, so you are going to have them out of sync anyhow. It also makes them unworkable in relation to another bill that is coming before the Senate later on tonight, hopefully. This issue was raised by the committee, I have to say. They detected a technical problem with the bill, which was raised in the committee report and which the government is actually amending, but it relates to those same issues. So, in relation to that, we would be opposing the first of your amendments. The second of your amendments changes the objective section of the detention schedule to remove references to the transition from
fisheries detention to immigration detention and focuses on the repatriation of detainees.

This amendment and others that you are proposing later seem to suggest that illegal foreign fishers should not be held in immigration detention after they have been held in fisheries detention or before they are repatriated. This proposition is simply not acceptable. Once a person has ceased to be in fisheries detention, they are an illegal noncitizen under the Migration Act, and it is mandatory under the Migration Act that illegal noncitizens are detained and repatriated as soon as possible. In the fisheries context, repatriation normally takes place, as I mentioned earlier, in a short period of time. We reject both of the amendments that you have proposed.

Senator O'BRIEN (Tasmania) (8.23 pm)—The opposition will not be supporting these amendments. We believe they would narrow the scope of the legislation and may limit the ability of Customs, Navy or fisheries officials to apprehend persons on vessels found illegally in our fishing zone. Also, the amendments could potentially limit the ability to transfer persons in fisheries detention to immigration detention. We agree that a seamless transfer is one of the major aims of the bill and we will therefore not be supporting these amendments.

Senator BARTLETT (Queensland) (8.23 pm)—Briefly, I recognise the numbers here and the comments being made but I draw attention to the title of the legislation, which is about deterrence of illegal foreign fishing, not deterrence of everything illegal in fishing zones. I realise the title aligns them. As I said in my initial contribution, aligning something is a good idea in principle as long as the thing it is being aligned with is something that you support. Perhaps that is where we will naturally continue to disagree all the way along because the Democrats' position on that is different from both the larger parties. Again, for the record, even though the legislation refers to deterrence of illegal foreign fishing and that is something we all support the aim of, it indicates as it currently stands that fisheries officers—and others—will potentially be involved in detaining people suspected of any sort of offence involving the use of a foreign boat. That is a lot wider, potentially, than the deterrence of illegal fishing.

Question negatived.

Senator O'BRIEN (Tasmania) (8.25 pm)—by leave—I move opposition amendments (1) and (5) on sheet 4577:

(1) Schedule 1, item 13, page 8, (line 25) to page 9 (line 3), omit section 3, substitute:

3 Appointment of detention officers

The Minister may, by instrument, appoint:

(a) an officer or employee of AFMA or of the Commonwealth, or of the administration of a Territory (other than a Territory mentioned in paragraph (b)) or of an authority of the Commonwealth; or

(b) an officer or employee of a State, the Northern Territory or the Australian Capital Territory, or of an authority of a State or one of those Territories, in relation to whom there is in force an arrangement between the Commonwealth and the State or Territory, as the case may be;

to be a detention officer.

(5) Schedule 1, item 20, page 54 (lines 2 to 12), omit section 3, substitute:

3 Appointment of detention officers

The Minister may, by instrument, appoint:

(a) an officer or employee of AFMA or of the Commonwealth, or of the administration of a Territory (other than a Territory mentioned in paragraph (b)) or of an authority of the Commonwealth; or
(b) an officer or employee of a State, the Northern Territory or the Australian Capital Territory, or of an authority of a State or one of those Territories, in relation to whom there is in force an arrangement between the Commonwealth and the State or Territory, as the case may be;

to be a detention officer.

The point I make in relation to these amendments is that, as I said in my speech in the second reading debate, the Senate committee’s concerns almost exclusively relate to the provisions of the bill that permit the minister to engage private contractors to perform fisheries detention tasks and that further permit the Australian Fisheries Management Authority to authorise private contractors to perform critical screening, searching, identification and detention functions. These amendments, together with others which I will come to later, deal with concerns we have about the contracting out of this work by removing provisions that allow for the engagement of private contractors. Amendment (1) specifies that the minister may appoint only persons who are employees of the Commonwealth, a state or one of the territories, or an authority of one of the states or territories. There is an arrangement in force to be a detention officer. We are proposing to exclude the contracting out of that provision to a private provider by not permitting the legislation to authorise persons other than those mentioned in section 3, as outlined in the amendment. I have already addressed the substance of our concerns in my speech in the second reading debate, and I commend these amendments to the Senate.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (8.27 pm)—I ask Senator O’Brien to perhaps reconsider this. I am not quite sure what the Democrats’ view on this is, but I would hate the bill to have to come back over these amendments, because they are not ones the government can accept. As I explained before, if these were passed and accepted by the government it would mean that when fishermen were brought into Darwin, say, they could be dealt with only by government employees. If after two or three days the investigations are complete and we decide to charge or not to charge, they immediately go into immigration detention. This means that for up to a maximum of seven days they are looked after by government employees and after that they immediately go over to immigration detention where they can be looked after by private contractors under the current Migration Act. The amendments would make it administratively inoperable, because you have to have two different sorts of officers to deal with these people in a continuous operation.

What is intended by the government is that when the fishermen are brought into Darwin one set of contractors would immediately detain them and look after them—look after their health and exercise needs. After two, three, four, five, six or a maximum of seven days, those same contractors would still be looking after them but they would be contractors to the immigration department rather than to the fisheries department.

So, even if your amendment were accepted, from your point of view—I do not agree with this—it would only fix the situation for a couple of days. But, after a couple of days, they would still go into immigration detention where private contractors could be used. So, cost wise, as well as administratively, it makes it unacceptable. For those reasons, the government cannot accept it. I recognise the point you are making. The government cannot accept it. Even if your amendment were to become law it would only make a difference for a maximum of
seven days, but normally two or three days. Then a different situation would apply. You are not going to change the Migration Act by your amendment; it is only the fisheries act that we are dealing with. For those reasons, I do ask that the Senate not support the first amendment proposed. The second amendment, of course, follows on from the first one. Whatever happens to the first will determine the fate of the second.

Senator O’BRIEN (Tasmania) (8.31 pm)—Of course, the minister’s point is only valid if you assume that it is not possible, under the Migration Act, for the officers under the proposed section 3 to be appointed under the Migration Act, which we say is possible. In other words, these not being the same facilities that are currently generally used under the Migration Act could enable it to operate differently. I say that because the straw man that you put forward has that fundamental flaw: it makes the assumption that there is not an alternative to the current arrangement under the Migration Act in relation to the engagement of persons to carry out the detention function.

I hear what the minister says about what the government’s view is. It is the opposition’s view that this function ought not to be carried out by contractors. These are sensitive functions. I made the point, in my contribution to the second reading debate, that the reputation of our detention regime under the Migration Act is not good in the public eye at the moment. In our view it would certainly be better with other arrangements. As far as we are concerned, the arrangements we propose involve better integrity controls. All of the evidence the committee received in relation to GSL—and I stress that some of it was only received because GSL permitted the government to give the evidence, not because the government could, as a matter of course, give the evidence to the committee—is only relevant to GSL.

Upon the passage of the legislation in the form the government suggests, the parliament will have no control over who obtains the contract in the future or codes of conduct and the like. The laws of the parliament are much more relevant in relation to the engagement of the officers from state, territory or Commonwealth employment sources. We will pursue our amendments. We hear what the minister says, but we are not persuaded that the regime that we suggest be put in place would be unworkable.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (8.33 pm)—Mr Temporary Chair, let me have another go at persuading Senator O’Brien. It is a matter of fact that private contractors are engaged by the immigration department. They are not going to change their attitude, right or wrong. I think it is right but, right or wrong, it is their position. They have had that for a number of years right around Australia. In fact they do it under an amendment to the Migration Act introduced by the Labor Party in 1991. In those days your party thought contractors were a pretty good idea and allowed for it.

Let me put this scenario to you, Senator O’Brien. I speak in practical terms, because this applies in other parts of Australia where this is relevant. I will again use the example of Darwin. As we bring the alleged illegal fishermen into Darwin, we want to move them straight off their boats and put them in the land based Darwin detention centre. That detention centre will have in it other fishermen, perhaps other detainees, who are being looked after by the immigration department—because they are then in the control of the immigration department. You have the guards, the providers, the cleaners and the caretakers already in place in this facility looking after the existing inmates. We bring some fishermen into the same facility and you have the ludicrous situation, for two or
three days, of one set of guards, caretakers and cleaners looking after five fishermen in this facility for two or three days. The other 20 that might be in there are being looked after by these private contactors because they are already in immigration detention. Do you not follow me or are you disagreeing with the—

Senator O’Brien—I follow you, but I disagree with you.

Senator IAN MACDONALD—You are disagreeing with the factual situation?

Senator O’Brien—The class of people that you describe as being in detention.

Senator IAN MACDONALD—Let us say that one boat comes in this week and there are 10 people on it. After two days we decide to charge them, so they all move into immigration detention. At that stage they are being looked after by the immigration department using private contactors. If your amendment passes, when the next boat comes in a week later and we immediately move those five people off the boats and straight into the same facility, you are going to have one group of people—that is, the private contactors—looking after the 10 people that were there a week ago, and you will have a different set of people, the government employees, looking after this next lot of fishermen for two or three days. You will not be able to do the cooking for the whole 20 in there.

Senator O’Brien interjecting—

Senator IAN MACDONALD—They are the officials. You will have to have two sets of people doing the same job for a matter of two or three days. For those reasons, the government simply cannot accept that. If you were able to somehow change the Migration Act—which you cannot by this legislation—at some time in the future, that would be fine. But, if this amendment is passed, you are going to have this quite ludicrous and very costly situation where you have two groups of detention officers looking after the same group of people in the same facility.

Senator BARTLETT (Queensland) (8.37 pm)—I hesitate to say it, but the minister has a point. There is an inconsistency that would apply if this amendment was passed. It highlights the point that I have been making, which is that the whole purpose of the Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005 is to enmesh activities of fisheries officers, fisheries related activities and more into the existing mandatory migration detention regime with all of its attendant problems. Senator O’Brien has alluded to some of them, and some of them relate specifically to concerns about contracting out of positions such as detention officers. They cannot be disconnected—the whole purpose of the bill is to connect them—and it does create an inconsistency.

The Democrats have never supported the contracting out of detention powers to private providers and naturally, therefore, in principle we do not support it being able to be done in this legislation. In principle, as I have already made clear, we oppose the whole bill. So we are, if you like, in a bit of a conundrum because the principle of not contracting out detention powers to private providers is something that the Democrats have held consistently, whether it is migration detention or fisheries detention. We stick to that principle but we recognise that if the bill passes with this amendment there would be that inconsistency and what seems to be, apart from anything else, a major inefficiency. My understanding is that we actually could amend the Migration Act through this legislation, because this legislation does make other amendments to the Migration Act. Indeed, just to make the point to the government, the potential was there for the Democrats to use this bill to move a stack of
amendments surrounding the whole area of migration detention which we chose not to do because we thought it would be a misuse of a power that was, nonetheless, open to us. It might have made a point, but it would not have been terribly constructive.

One aspect of the matter for the Democrats is that we support what Senator O’Brien’s amendment proposes to do and, if I understand his comments, there is an alternative approach that the government could take to deal with this amendment. The government could just choose to appoint government officers to take over those facilities, and we would not need to amend the Migration Act to scrap GSL’s role in detention centres as the private contracted providers. I imagine the government would have to pay out a pretty big compensation payment to GSL and, as well as a range of other things, it would be a huge upheaval. It would be an outcome that the Democrats would support, of course, because we do not support private providers playing the role that they currently do. But I recognise that this amendment does present an anomaly. I think that is clearly the case.

Nonetheless, firstly, for reasons of consistency—our position is consistent whether it is migration detention or fisheries detention—and secondly because, to be frank, we do not support the bill so any amendment that might create difficulty with it being passed would also be a reason to consider supporting it, we are of a mind to support Labor’s amendment. I think it does call into question why Labor does not support some of the Democrat amendments that have been put forward because, clearly, once this amendment is passed, the notion of having absolutely seamless operations across the Migration Act and the other acts will go out of the window, and there is still scope to have at least some of the less desirable components of the migration detention regime not apply in this circumstance. In supporting Labor’s amendment, once we do make one change that moves this bill away from total unanimity with the Migration Act, I would ask Labor to consider some of the other Democrat amendments relating to strip search powers and the like that might also be able to applied.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (8.43 pm)—Senator Bartlett was going pretty well in the first part of his speech. Whilst it is against his principle, I thought that he had convinced himself of the inappropriateness of supporting an amendment which is just not one the government can accept. It would simply mean that there would have to be an entirely separate facility for four or five fishermen for two or three days, staffed by a different group of people. After the two or three days, they would move into this other facility where there are private contractors anyhow.

By making your point you will be delaying this legislation for another two months—with all the attendant problems that that will have for the fishermen—and extending yet again the situation that I acknowledge has been in place far too long. I take some blame for that, but we have eventually got to where we are a stone’s throw away from fixing a problem that has existed since long before we became the government. We are almost there and then, right at the death, you say it is a matter of principle.

You have made your point, Senator Bartlett. It is on the record: you do not agree with the legislation, you do not agree with any of the private contractors. We accept that. I do not think anyone would ever accuse the Democrats of not having made that point. But, having made that point—if I cannot convince the Labor Party, can I please convince you—this situation that would happen for two or
three days would not make any difference in the long term, because after two or three days they would go into immigration detention and be looked after by private contractors in any case.

You have made your point on the principle, Senator Bartlett, but I do ask the Senate to consider that this is simply not an amendment the government can accept. Sure, we could change the whole immigration regime right around Australia and use government employees, but that is not likely to happen. It is not my area, it is Senator Vanstone’s area, but I feel fairly confident in saying that we are not going to change the regime around Australia for a few Indonesian fishermen who happen to be in fisheries detention for two or three days. That is not going to happen. The effect of this amendment would simply be to delay even longer the implementation of this amendment bill.

I ask Senator Bartlett to reconsider that point. I thought he had convinced himself at the beginning of his speech that, whilst as a matter of principle the Democrats opposed the bill, as a matter of good government and getting this legislation that we all agree is necessary in place at the earliest possible time, having recorded your opposition generally, you could understand the sense of this bill. Can I again emphasise that. You have got the same facility with 10 fishermen in it who have been there for more than a week. Into it come another three fishermen who, for two or three days, would have to be looked after by a different set of officials. Then, after two or three days, they move into the facility and are looked after by the set of officials that were looking after the 10 before them. It would be a ludicrous situation in the one facility; which of these fishermen is this set of officials looking after and which fishermen are that set of officials looking after? What would then be required would be a completely separate facility. Perhaps we would have to leave them on the boats, which is a separate facility. That is the situation we are trying to avoid. The Ombudsman, the Human Rights Commissioner and the coroner have all said that you should not leave them on the boat for those two or three days—you should not leave them on the boats at all. We are trying to fix that, but in effect this amendment would mean we would have to find another facility. We are not going to build another $20 million or $50 million facility in Darwin to house two or three fishermen for two or three days, or 20 fishermen for two or three days, when we have this facility already there being operated by a group of privately engaged contractors under the Migration Act. It is simply not going to happen. The only alternative in practical terms would be for us to detain them on their boats for two, three, four, five, six or a maximum of seven days until they then automatically went into immigration detention. They can come on land and be looked after by the private contractors in the Darwin detention facility.

Whilst I understand your point in principle, Senator Bartlett, in practice and in all practicality the government cannot accept the amendment of the whole migration operation for these very few allegedly illegal fishermen. I would ask that the Senate reject the amendment on a practical basis and then we can have this legislation passed, move on and fix a problem that has been there for many years now and that we are desperately trying to fix. It has been too long in coming here. We have the opportunity tonight to fix it. The passage of this amendment would mean that it would be delayed even further.

Senator O’BRIEN (Tasmania) (8.49 pm)—A massive number of red herrings have been drawn across the path in the minister’s contributions to date. Firstly, the facility will not be built until December, so there will be no interim arrangements affected by
this legislation. Secondly, there is no contract with GSL in relation to these matters at this stage, nor is a contract with GSL guaranteed for the new facility. That was the evidence before the committee. So these arrangements would not involve compensation to GSL; they cannot, because there is no guarantee that GSL would be the contractor. That is the evidence before the committee.

As for all of the classes of employees that the minister referred to—the butcher, the baker, the candlestick maker almost—as being affected, I suspect that none of those, nor indeed those under the classifications of cleaner, caretaker or cook that he referred to, are likely to be detention officers. Detention officers are in a provision under the legislation that we have been talking about, so I fail to see how those employees, other than those responsible for detaining the fishermen, would be necessarily affected.

In relation to the facility, if the government were looking at this on the basis of the legislation as we propose it and the most cost-effective way of running the facility, clearly it would not be cost effective to have some of the work carried out by contractors and some by direct employees—and as part of that they would be mandated as direct employees. The government, making a sensible financial decision, I would assume, would have all of the facility run by direct employees under both acts. That is a matter in the hands of the government.

We have moved amendments which we believe have been borne out by the evidence before the committee. There are strong views from the whole of the committee about these matters. We have taken them to the point of saying that the issue of the contractors in this area appears to us to be insoluble, so we are pursuing our amendments in the form that we have to overcome the problems by removing the concerns we have about codes of conduct and the standards that would be applied at that level by contractors versus the integrity of those who are directly employed by Commonwealth, state or territory departments or authorities. I simply say: if you distil the argument and remove the red herrings, that is the essence. The essence is that it is the Commonwealth’s choice. One assumes the Commonwealth would make the sensible decision to operate the facility with direct employees rather than contractors.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (8.52 pm)—That is simply not the case. The government has an arrangement around Australia whereby the detention officers can be privately contracted. That is not going to change—not through this legislation. I have just been discussing this with the officials. They tell me you will simply be unable to have in the same facility two different classes of people. You cannot have three detained people intermingled amongst another 20. What if one of them tries to escape? Which day is it? It is day 3. That guy there has been charged, so he is an immigration detainee. So, as he jumps over the wall and tries to escape, the private contractors can tackle him. But the guy with him has only just come in. He is under fisheries detention, so the Commonwealth employee will have to be the one to tackle him. If we happen to get it wrong, we will be in all sorts of trouble. That is how ridiculous it is.

You would have to have two lots of officials there, looking after two groups of people. Perhaps we would have to get one group to wear red shirts and the other to wear white shirts or something so that we knew which official could deal with whom. We are not going to, Senator O’Brien, much as you might think it is a good idea, but it is not happening in this debate. There are arrangements in place by the
immigration department right around Australia, not just in this detention centre but everywhere else. We are not going to have the detention officers right around Australia become government employees just so that we do not have a contrary situation with two or three Indonesian fisherman in there for two or three days. You will understand that it is simply not something the government can accept.

The alternative is that we can put them in a different facility. There is not another facility in Darwin. We can separate them, though, by leaving them on the boat for up to the maximum of seven days until either they are charged or we decide not to charge them. Immediately we decide to charge them or not to charge them, they become immigration detainees anyhow. Then they can go on the land base. That means that you are going to be forcing the fisheries detainees to remain on their boats because there is not another facility. The government will not be building another facility for two or three days. You are going to make that an alternative that the government will have to seriously consider.

We do not want to do that. We want to get them off the boats and into a land based facility, where they will be properly cared for, at the earliest possible time. That is why it is essential that the same sets of rules apply to all those who are in the detention facility. I again ask the Senate to consider that, whilst you may have ideas of principle on the wider argument, in relation to this particular impact of that argument it is completely unworkable. If the amendment were passed, it would make it unworkable. The detainees would have to be detained in another facility, probably on their boats. That is what we are trying to get out of doing through this legislation.

Senator BARTLETT (Queensland) (8.56 pm)—I have a couple of points in response to both the minister and Senator O’Brien. I think it was actually me who raised the issue of possible compensation to GSL. My understanding is that the current arrangement with GSL is that they are contracted to provide so-called detention services—although I am not sure that is the right word—that is, to be detention officers for all migration detention facilities in Australia. That is the way their contract is framed. So, if there were to be a detention facility operating in Darwin or anywhere else that included immigration detention and that did not go to GSL, I presume there would be some requirement to amend the contract or pay some sort of compensation. That is what that was referring to.

I am pleased the department and the government are acting on the concerns of the Human Rights Commissioner. I know this is not Senator Ian Macdonald’s area but, as I said, this bill does enmesh an extra group of people and another area of activity with the immigration detention regime and all the debates around mandatory detention and everything else. It is appropriate to continue to make that point. There are any number of reports from the human rights commission, not least the huge one into children in detention that had been completely ignored by the government. If I saw some signs that the government were taking some of those concerns by the human rights commission and many other reports and bodies seriously, I would feel a bit more comfortable about it.

I do still acknowledge the key inconsistency or anomaly that the minister points to, at least for detention officers. It does appear to be the case from what I would see as the effect of this amendment. The minister’s plea that this would delay the bill does not necessarily sway me because—and I make the point again—we do not support the bill. If it is delayed, I am not going to weep tears of blood over that. If the minister were persuaded to consider some of the later Democ-
rat amendments about screening procedures—very minor amendments, but again on an important principle—or strip searches then perhaps I could be a little more magnanimous. If one happened to see some clear indication from the government, although again I know it is not the minister’s area, about a royal commission or a clear, strong, properly empowered inquiry into the migration detention area and I was convinced that it was solid action to clean up this area then I would be more willing to consider it. But to enmesh another area, another group, another area of activity into that whole arena, which is clearly so dysfunctional, without making any sort of commitment to clean up that dysfunctional area is a real problem for the Democrats. The particular bit that these amendments go to—that is, the contracting out of services—is one of the key areas. I mentioned the court decision in Adelaide just last month. It is a major problem.

If you were going to accept contracting out to non-government employees for detention, I would think the area you would be more likely to do it in is fisheries, where you are talking about a small number of days, rather than migration detention. But that is not the situation we have, of course, and that is not going to happen under this legislation. Again I make the point that we could amend the Migration Act at this time. I could probably incorporate amendments that completely mirrored Mr Georgiou’s legislation if I wanted to do that, but that would be a shallow stunt of no value whatsoever to anybody, so I shall not do that.

The opposition’s amendments do create inconsistencies, but I think the undeniable overriding logic of the position the Democrats are taking to this legislation, which I have outlined a number of times now, means that we have to support the opposition’s amendments, despite acknowledging that they do create some anomaly. Again, if there was some indication of some willingness to move on some of these other areas then perhaps that might lead us to give some reconsideration to the matter. But in the absence of that—and I realise a lot of those things are not in Minister Macdonald’s purview—I think we are in a position where we have to support the opposition amendments at this time.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (9.01 pm)—I would almost do anything to have this bill dealt with today and come into effect today so that we can get the fishermen off the boats and onto a land based facility at the earliest possible time. But, Senator Bartlett, your price is too high. I will not be supporting any of your other amendments, mainly for the same reason, I might say: because you are then creating two different classes of people in the same situation. As I understand it—and I will just get some assistance from my officials—you mentioned the strip searches. If your amendment on strip searches was passed, it would mean that for the two or three days they were in fisheries detention they could not be strip-searched, but after they went into immigration detention after, say, the third day, then they could be. That is why we will not be supporting any of—

Senator Bartlett—Waiting a couple of days to strip-search somebody is not going to kill you.

Senator IAN MACDONALD—No. But what is your point? You do not like strip searches—I accept that. I do not think anyone would accuse you of supporting them. I am saying that I cannot support it, because we are trying to get a seamless transition. We are trying to get the same rules to apply from the day the fishermen are brought into the port, so that you do not have one set of rules for a couple of days and then a different set
of rules for the rest of their time in incarceration. It just makes the administration of these things impossible. The effect of it is that we cannot have them in the same facility. Even wearing a red shirt and a white shirt it is impossible to have them in the same facility. The logical conclusion from that is: ‘I’m sorry, but because of the Democrats and the Labor Party, until we make the decision to charge or not charge’—at which time they become immigration detainees and go onto the land based facilities—you’ll have to be separated.’ And that means leaving them on their boats or building a new facility—building a new facility for a dozen fishermen, maximum, for seven days, maximum, but two or three days on average. If you are in government, you are never likely to do that. So the alternative is: leave them on the boat.

You mentioned the Human Rights and Equal Opportunity Commission, and I did before. But the reports I was talking about those people had raised were not the issues you were talking about, Senator Bartlett. It was the fact of leaving them on the boats. It was the coroner, the Ombudsman and the Indonesian consul wanting to get them off the boats. That is what we are trying to do: put them on a land based facility straightaway. But the effect of this amendment will be that we have to separate them. We cannot put them into the land based facility with other detainees—other fishermen—who have been here longer than seven days, so they are in the facility being looked after by the immigration officials. We will not be able to do that, so we will have to leave them on the boat, and that is directly contrary to what we are trying to achieve by all this.

Question agreed to.

Senator O’BRIEN (Tasmania) (9.05 pm)—by leave—I move opposition amendments (2) and (6) on sheet 4577:

(2) Schedule 1, item 13, page 9 (lines 16 and 17), omit subsection 5(2).

(6) Schedule 1, item 20, page 54 (lines 26 and 27), omit subsection 5(2).

I do not propose to say anything further about these. These are consequential amendments, in our view, tied to the proposition that we put about contractors carrying out these tasks. We believe they are consistent with the other amendments. They also ought to amend the bill to form the new regime.

Question agreed to.

Senator O’BRIEN (Tasmania) (9.06 pm)—by leave—I move opposition amendments (3) and (7) on sheet 4577:

(3) Schedule 1, item 13, page 9 (line 22), at the end of subsection 6(1), add “from among officers and/or detention officers who have successfully completed minimum training prescribed by a legislative instrument.”

(7) Schedule 1, item 20, page 55 (line 5), at the end of subsection 6(1), add “from among officers and/or detention officers who have successfully completed minimum training prescribed by a legislative instrument.”

These are provisions which insert training requirements into the legislation. Labor senators on the committee shared government senators’ concerns about the failure of the bill to provide for minimum staff training, despite an undertaking from Minister Truss during his second reading speech in the other place:

An important part of the authorisation process will see any prospective officers receive comprehensive training in the effective and responsible use of these powers under the relevant acts.

Labor’s amendments taken together are designed to ensure that the commitment made by Mr Truss in relation to training is met. The effect of these amendments will be to ensure that officers carrying out functions under this legislation are adequately trained for the task by undertaking a training pro-
gram set out in a disallowable instrument. In this way the parliament will be able to ensure that the training program provides officers with the skills and knowledge that they need. I commend the amendments.

Senator BARTLETT (Queensland) (9.07 pm)—I think I heard the minister say earlier that the government was willing to accept these, so I will not go on, but I do want to make one point. I think the minister said in his earlier contribution, ‘This can go in because the training will happen anyway.’ I referred in question time yesterday to an article in the Weekend Australian last week which clearly provided evidence that GSL officers have not received training in certain areas. So making it a legal requirement rather than just something the government says will happen because it is in some administrative document somewhere might seem overkill, but the evidence shows that it is necessary. I think the point needs to be made that, at least in the immigration area—and, again, I know it is not Senator Macdonald’s purview or his fault, but we will be bringing these people into that regime—the evidence is that training has not always been happening. This may have a helpful flow-on effect of making it even more likely that it will happen in the migration area as well.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (9.08 pm)—As I mentioned in the second reading debate, the government does accept these amendments. The training would have been required and would have occurred in any case, so the government is quite happy to make it mandatory by legislation. The hour is late and there is a lot of government legislation to proceed with. I indicate that the government will oppose every other amendment before us. To save the time of the Senate I will not get to my feet to say that henceforth. Quite clearly this bill will not be dealt with tonight, and that is very regrettable. It means that it will have to come back, hopefully in the August session, and hopefully we will have a different outcome at that time.

The passing of those previous amendments has meant simply that we are in practice delaying this much-needed correlation of the Torres Strait Fisheries Act with the Fisheries Management Act and both acts with the current detention powers under the Immigration Act. It is a great disappointment to me that I was unable to persuade the Senate of the futility and stupidity, I might say, of the previous amendment. For the want of a different set of arrangements, it will now mean that we will have to hold these people for a couple of days in a separate place, and that logically means on their boats. Hopefully we can get the legislation through as soon as possible.

This is a great disappointment to me. This situation has been there for any number of years now, running on from the days when Labor was in government. I have recognised since I became minister that it is untenable and should be fixed as quickly as possible. It has taken a long time for me to get to this point, and I thought, with some dialogue in the debate, that we might achieve that today. It is not going to happen today. Hopefully, when it is debated at some time in the future I will be able to convince the Senate of the practical sense of proceeding with the government’s legislation.

I would have hoped the Labor Party and the Democrats would be as keen as the government to fix a situation which has gone on for far too long. In the future I certainly will refer to the Labor Party and the Democrats any complaints from the authorities and the media as to why this situation, which we all recognise is untenable, has to continue for longer when it did not need to. Believe you me, it has taken a lot of effort to get it to this
stage, and it is a disappointment that we cannot remedy the situation at once.

I hope that my colleagues in the Senate from the Democrats and the Labor Party are gratified that the effect of their amendment has simply been to leave the fishermen on the boats for up to a maximum of seven days. It is a situation I have been trying to correct. It has not been easy to get to this stage, but we are here now, and we have been rebuffed. Hopefully when it comes again, as I said, I will be able to convince the Senate. I will have to perhaps do some work on my persuasive talents so that when it comes back I will be able to persuade the majority of the Senate that this amendment is ridiculous, unworkable, untenable and never likely to be adopted by this government.

That being the case, we can then get on and do what this bill is really all about—correcting a bad situation and enabling us to bring the fishermen onshore into this land-based facility immediately they hit the dock in Darwin. That is what the government’s aim has been; that is what we have been working solidly towards for several years. What I hoped might be the final stage tonight of that long saga is now going to be delayed for a little longer. I regret that, but such is democracy; such is the numbers game in this place. Unless I have been able to persuade my colleagues in the Senate to recommit the previous amendment, it looks like further debate on this bill, as far as the government is concerned, will be relatively worthless.

Senator BARTLETT (Queensland) (9.15 pm)—I cannot let a couple of things that the minister said pass without responding straightaway. The minister talked about dialogue and persuasion straight after he said that he is going to oppose every other amendment that has been moved—before we have even had a chance to explain them. It does not sound like he himself is terribly open to persuasion or dialogue. I did indicate that, if there was some indication by the government of willingness to move on some of these other areas that I do not accept would prevent people from being removed from being detained on boats, I might reconsider my position on Labor’s amendment. For him to talk about persuasion and dialogue in that context is a bit rich, frankly.

It is good to see that Minister Macdonald has acted in this area, where this situation has gone on for too long. To suggest that this vote tonight keeps people on the boat longer is nonetheless misleading. Senator O’Brien made the point earlier that the facility in Darwin is not going to be ready until December anyway; so to suggest that, by not passing the legislation tonight, people who are being kept on boats would otherwise be magically removed tomorrow is misleading. That does not help the debate either. But it is a good sign that Minister Macdonald has been able to move in this area. In the broader debate about detention, a lot of people have been calling for the resignation of Minister Vanstone. I have tended to say that it is not really relevant or important; the problem is the law and the policy, not the minister. But if we have a minister here who does act to fix up problems that are identified by the Human Rights and Equal Opportunity Commission, then maybe we should move him across to the migration area. With his forceful determination to repair problems that are obvious to everybody, we might actually get some movement. But I appreciate that it is not in his power—unless his powers of persuasion are particularly good.

I am a bit unsure about what Labor’s policy position is now on contracting out for people to be detention officers. I do not know whether they now do not support that being done for migration detention, because that is an area that is clearly the bigger problem. The principle applies equally whether it
is fisheries detention or migration detention, but having people responsible for keeping people locked up for seven years is a bigger problem than having people who are responsible for locking them up for seven days. I think they have got their focus the wrong way round, particularly as the minister rightly made the point that it was Labor that introduced the contracting out of migration detention back in the early 1990s. If there is a shift in that position, that is good, but I think they are pushing at the wrong end of the problem. But I guess any movement is welcome.

The other things the minister has to acknowledge—for the Democrats position, at least—are, firstly, consistency across the board with fisheries and migration detention; secondly, that they are at least engaging in the debate from a fisheries and detention point of view; and thirdly, I know the government wants the same rules to apply, but our problem is that we do not support some of the rules that apply in the Migration Act. Why would you support more people being subjected to rules that you do not support in the first place? The practical consequence of that, the minister says, is that people have to remain detained on boats. That will keep happening until December at least anyway.

We would like to see some indication of willingness to move on at least some of these areas of principal—even the later one about screening procedures, which I will talk to at the time although the minister has already made up his mind to oppose it. That is simply a very minor amendment to enable people to get legal advice without having to ask for it. There is provision in the Migration Act where they cannot get legal advice unless they know to ask for it, and I know that the government wants uniformity. I assume that currently people picked up for fisheries offences under the existing fisheries act have a right to legal advice without having to ask for it. I cannot see why the minor variation that these people would be able to get legal advice without having to ask for it, at the point when they are first detained, would force them to have to stay on the boat. If you cannot sort out that degree of flexibility, you are not really trying. We know from the minister himself that he can sort out these difficult problems when he tries, because he is a man of action, as he has emphasised to the Senate. So I am sure, with all of the skills behind him, and his intellect, creativity and goodwill, the minister could sort out a way. But if it is just going to be, ‘We are voting against everything, we are not listening, we are not even going to talk anymore,’ then do not come lecturing us about the consequences of this action tonight.

Question agreed to.

Senator O’BRIEN (Tasmania) (9.21 pm)—by leave—I move opposition amendments (4) and (8) on sheet 4577:

(4) Schedule 1, item 13, page 9 (lines 23 to 27),
omit subsection 6(2).

(8) Schedule 1, item 20, page 55 (lines 6 to 10),
omit subsection 6(2).

These are consequential amendments on (1), (2), (5) and (6). I have already argued the case in relation to the general proposition, and I do not propose to add anything further other than to say that my understanding of the regime which is intended to be implemented, pending the construction of the facility in Darwin, is that facilities such as police stations on Horn Island, Weipa and Broome will be used for detention of fishermen pending their transportation to Darwin when the facility is put into operation. My understanding would be that if there were police officers at those facilities, depending on where it was, they would be able to be authorised, under our provisions, as detention officers. Nothing in our provision in the interim prevents the acceptance of these pro-

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visions, were the government concerned about the long-term provision.

I just make the point that again we have been dealing with a straw man argument put up by Senator Macdonald about the immediate impact of the amendments that we propose. We believe that the appropriate regime is the one that we have put forward but, in terms of the minister’s suggestion that other legislation could come forward in the August session, be that as it may. There is nothing in the amended bill as we propose it that could not be implemented in the interim, given that there will be no facility, no contract for GSL or any other contractor. The committee was told by officers of the minister’s department and AFMA that there was no guarantee that GSL would be successful.

Senator Ian Macdonald—No, but there would be private contractors.

Senator O’BRIEN—There was no guarantee that it would be those contractors and there was no guarantee that they would be the same contractors, for that matter. The straw man that has been created about the red and white T-shirt effect and different employees is just that—a straw man argument. It depends on the arrangement that the government wants to put in place.

I just felt the need to put that on the record because there have been a series of propositions put forward as to why the legislation as we propose it cannot be implemented. Of course, that is not the case. On the evidence before the committee—we had officers of the department before us, we had DIMIA before us; we had DIMIA saying that, in relation to what GSL did, they would, with the approval of GSL, supply other material to the committee—I am absolutely certain that the legislation as amended by the proposition that has so far been carried is able to be implemented.

If the government chooses to do something else and can persuade the Senate, as Senator Macdonald suggests he expects he will be able to do after 1 July, so be it. We cannot alter that. All we can do is pursue the legislation as we would intend to see it in its final form. Yes, we are having an argument that we continue to have, but I feel the need to put on record that a number of the propositions that the minister puts forward are not substantial propositions.

I ask this question: what happens to the detainees from Christmas Island when they go to Perth? They end up in other detention arrangements and not under the control of GSL, just as the arrangements that are proposed by AFMA will see police officers potentially appointed as detention officers under the provisions that we propose on Horn Island or at Weipa or Broome. So the regime we are proposing is consistent with a number of the aspects of the scheme that the department advises us will be put in place, certainly in the interim but I believe on an ongoing basis when the facility at Darwin is put into effect sometime very late this year, if indeed that timetable is achieved, but much more likely, I suspect, in 2006. Whether it is or is not, it is a long way ahead of August.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (9.26 pm)—Senator O’Brien has just demonstrated that the Labor Party is simply engaging in a process of sheer obstructionism for the sake of obstruction. He seems to be quite fixated with GSL. It has got nothing to do with GSL. Quite frankly, I do not even know who GSL are. The distinction is between government employees and private contractors. Whether it is GSL or anyone else makes little difference. Senator O’Brien, I suspect that you—

Senator O’Brien—I do not think you have thought about it.

Senator IAN MACDONALD—I have thought about it for a very long time. Even if
I had not, and I have, I have a department—in fact, I have three departments in this area—who have thought about it long and hard. Should I have happened to have misread it, I am quite certain the much cleverer people in the three departments involved who have all considered these amendments have thought about it, and they have simply advised me they are unworkable and are just a delaying tactic—sheer obstructionism.

You obviously do not understand the situation on Thursday Island and at Gove. The continuation of the debate, when we have a lot of other legislation to get through at the moment, is not going to achieve anything. I am not going to go into it except to say that it is clear from what Senator O’Brien has said that he does not understand the situation. It is very clear that the government is not going to set up a whole separate regime for two or three days.

Senator O’Brien—and Senator Bartlett fell for this—is justifying this position: the Berrimah facilities will not be available but perhaps there could be other arrangements to take them off the boat and put them together in another facility until that happens. But, under this amendment, you will not be able to do it because you have to have two separate lots of people looking after the same group of people. How you will distinguish them, apart from giving them red and white shirts, will be anyone’s guess.

You are delaying, through what I can only describe as obstructionism, this good news story, this attempt to fix a bad situation—something that we all agree with. I do not like to talk about tax cuts and those sorts of things, but I hope I will be able to persuade the Senate in August that this is the right way to go. It is the way that the government can handle it. It is the way that any government would handle it. Whether it was a Labor government or, heaven forbid even more, a Green government in charge, they would not engage two sets of people to do the same job with a similar group of people. That would never be done. It is a great disappointment, because this obstructionist approach is not going to achieve anything. At least the Democrats run a principle of opposing this across the board. I know the Labor Party does not have that same principle, because it was the Labor Party that amended legislation in 1991 to allow for private contractors, when it had a majority in both houses of parliament, as I recall.

Senator O’Brien interjecting—

Senator IAN MACDONALD—Yes, that is right—you did have a majority in this Senate. You had yourselves and your left faction, the Democrats, at the time. You might remember, as I well remember, that on every significant vote back when I first came into the Senate the Democrats used to support the Labor Party.

Senator Bartlett—We didn’t support them on this one.

Senator IAN MACDONALD—That was when the rot started in, but at least the Democrats have a principle of opposing private contractors across the board. The Labor Party are just delaying what I hope, in a few months time, I will be able to convince the Senate is the inevitable. In the meantime, this puts all these arrangements in jeopardy for longer. If it is not sheer obstructionism, it simply demonstrates a complete misunderstanding—perhaps that is a more polite way of putting it—of the facts of the situation and how the issue works. I will try not to be provoked again, Madam Chair. As I have said, further debate is not going to achieve a great deal. I repeat that we will be opposing all other amendments.

Question agreed to.
Senator BARTLETT (Queensland) (9.32 pm)—The Democrats oppose schedule 1 in the following terms:

(4) Schedule 1, item 13, page 17 (line 22) to page 21 (line 35), Division 3, **TO BE OPPOSED**.

I will not speak long on this, though obviously it does not make any difference because the minister has already made up his mind. The provision which was referred to in the report of the Committee for the Scrutiny of Bills raised concerns about the powers to conduct a strip search and the breach of people’s rights. To use the logic the minister put before, somehow or other, having this difference where people cannot be strip searched while under fisheries detention for a couple of days, even though that can happen now under migration detention, just mucks everything up and therefore people have to be detained on boats. I do not accept that. I do not believe that an inability to strip search somebody for a couple of days is sufficient reason to keep them detained on a boat. I think that argument really does not hold water.

I accept the real argument—the position of the government which is at least consistent—that they support the power in the Migration Act for people in immigration detention to be searched, including strip searched, without warrant. Naturally enough, they do not have a problem with this being the case for fisheries detention as well. I guess that that is at least consistent. The Democrat position is consistent in the other direction: we did not support this power going into the Migration Act and we do not support it going into any other act.

The problem that always happens when you set a precedent in one act is that it allows wide power without appropriate oversight about its use and misuse. This is the sort of thing that happens: the government come along and say: ‘We’ve already got it in this act. We need to make it consistent. We’ll put it in another act.’ They bring in another group of people in another set of circumstances who will also be subjected to it. We do not support it under any of those circumstances, so we certainly do not support it being broadened, as happens in this bill. So we oppose that division.

Senator O’BRIEN (Tasmania) (9.34 pm)—The opposition will not be supporting this amendment. We acknowledge that a provision to allow strip search is a matter which requires careful consideration, but we believe that properly trained and authorised officers need to have such a power available in appropriate circumstances. We are concerned that some of the objections to the current regime are due to the fact that there is not a proper accountability process, and that derives from the fact that a contractor regime operates. We have made our point about contractors already. We believe that with the amendment that has been carried, it is appropriate that the power remain. There are circumstances, limited though I must say they would be, where this provision may be found to be necessary. We would not wish to take that power away under this legislation. It may well be to do with the protection of officers, other persons in the vicinity or indeed the person being searched with regard to their health and wellbeing in some circumstances. We will not be supporting this amendment, and I can indicate, to assist the Senate, that we will not be supporting any other amendments on the information we have before us, except for amendment (7).

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that item 13, part 3, division 3 in schedule 1 stand as printed.

Question agreed to.
The TEMPORARY CHAIRMAN—
Senator Bartlett, are you proceeding with amendment (5)?

Senator BARTLETT (Queensland) (9.37 pm)—I think to save time I will pass on amendments (5) and (6). I move Democrat amendment (7):

(7) Schedule 1, item 13, page 26 (lines 27 and 28), omit “, at the detainee’s request,”.

I will not need to employ my powers of persuasion here, at least on Senator O’Brien, given his indication of support. I think this is an important point of principle.

Amendment (7) relates to detainees’ rights to facilities for obtaining legal advice. Again, the minister and the government would say that by changing this we create a difference between the migration detention regime and the fisheries detention regime. Firstly, I think that it is not a huge variation. It would certainly not be a variation that would prevent the government from being able to take detainees off the boats—I think we can put that furphy to one side. This is an important principle and I raise it partly to reinforce how outrageous it is that it does not apply in the Migration Act on a much wider scale.

As the section reads, the person responsible for the detention of a detainee must, at the detainee’s request, afford to him or her all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to their detention. It sounds reasonable, but the key words are ‘at the detainee’s request’. That is what this amendment goes to. The person responsible only has to afford detainees reasonable facilities for obtaining legal advice if they ask for it. If they do not ask for legal advice or somebody else asks on their behalf, then bad luck; they do not get it.

Quite frankly, this is an absurd part of the migration regime. It is counterproductive. In my view, it was brought in out of pure malice and a warped obsession with keeping legal advisers, migration agents and everybody else away from people under this bizarre notion that somehow or other they coach people to make things up, cheat the system or something. All it has meant—as often happens in this area—is that, if people do not have access to decent legal advice and they do have an aspect of their case that merits legal consideration, it usually takes a lot longer to sort out than if things had been got right in the first place with some proper, quality advice. That has clearly been the case. There is massive evidence that that has been the consequence of this stupid provision in the migration area. This paranoid refusal to allow legal advisers near detainees wherever possible has just delayed the proper consideration and final resolution of people’s cases.

That is the sort of thing we need to fix, if the government are genuine about reducing the length of time it takes for people’s claims to be assessed and therefore the length of time people are in detention. The government should get it right the first time, not just put in lots of extra barriers that stuff everything up and drag it out. But we do not get that from the government. When they talk about speeding the process up, they are still talking about making it harder for people to get advice and take claims to courts. It does not work and it will not work. I know we are discussing the fisheries area, but bringing that notion from the migration regime into the fisheries area, even on the limited scale that applies here, just makes a bad law that little bit worse, because it applies to more people. There is no reason why a detainee should not get reasonable facilities for obtaining legal advice—it should not be dependent on them asking or somebody else
asking on their behalf or seeking to approach them. To take that simple barrier out of this legislation is both good policy and good law.

I can never see a case arising where the broader facilities for obtaining legal advice under the fisheries act would mean that people would have to stay detained on boats rather than elsewhere. To go back to the point I was making earlier, if there was at least some willingness on the part of the government to consider simple matters like this, which would clearly not impair their general goal, we might be more willing to listen to some of the government’s concerns. In the absence of that willingness, we are not of a mind to change our view. I welcome the indication from Senator O’Brien that he supports this amendment. I hope that has not changed following my contribution. I ask the government to consider the issue and the principle as well.

Senator O’BRIEN (Tasmania) (9.42 pm)—We will stick with you on this one, Senator, although I must say that the case was apparent to us without your contribution. The amendment would have the effect of requiring that detainees be afforded reasonable facilities for obtaining legal advice or taking legal proceedings in relation to the detention in question. The bill as written only provides for access to legal assistance if the detainee makes a specific request. We are talking about detaining people from another country off a foreign vessel. In many cases, they do not speak English and have quite different cultural experiences from those in this country. Given all of those facts, it seems reasonable to us that legal assistance be available as a matter of course, not simply on request. For heaven’s sake! The government front bench seems to be full of lawyers these days. Every lawyer I have met tells me that ignorance of the law is no excuse but, in this case, we have people on vessels from another country who probably do not speak our language and certainly have not read our statutes, yet we are limiting their access to legal assistance in what might be the unlikely event that they are being improperly dealt with. I think we do not do ourselves justice with the provision in this legislation. It may be that it would be inconsistent with other legislation but, on the advice that I have in relation to this matter, Labor’s position on this amendment is to support it.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (9.44 pm)—The government opposes the amendment.

Question agreed to.

Senator BARTLETT (Queensland) (9.45 pm)—by leave—I thank the chamber for that support at least and move Democrat amendments (8), (9) and (10) on sheet 4573:

(8) Schedule 2, page 115 (after line 12), after item 8, insert:

8A Section 164C

Repeal the section, substitute:

164C When enforcement visa ceases to be in effect

The enforcement visa of a non-citizen who is in fisheries detention ceases to be in effect:

(a) at the time the non-citizen is released, or escapes from, fisheries detention; or

(b) where the repatriation of the non-citizen is imminent; or

(c) if the non-citizen fails to comply with such reasonable reporting conditions as are prescribed.

(9) Schedule 2, page 115 (after line 12), after item 8, add:

8B Subsection 164D(2)

Repeal the subsection, substitute:

164C When enforcement visa ceases to be in effect

The enforcement visa of a non-citizen who is in fisheries detention ceases to be in effect:

(a) at the time the non-citizen is released, or escapes from, fisheries detention; or

(b) where the repatriation of the non-citizen is imminent; or

(c) if the non-citizen fails to comply with such reasonable reporting conditions as are prescribed.

(2) While a non-citizen who has held an enforcement visa remains in Australia when the visa ceases to be in effect, the non-citizen may not:
(a) apply for a visa other than a protection visa; or

(b) be detained in a detention facility in accordance with this Act.

(10) Schedule 2, page 115 (after line 16), after item 9, insert:

9A Subsection 250(1) (at the end of paragraph (b) of the definition of suspect)

Add: “, not being an offence against section 99, 100, 100A, 101, 101A, 101B, 105E or 105F or an offence against section 6 of the Crimes Act 1914 relating to such an offence”.

These are all actually amendments to the Migration Act. This demonstrates the point I made before: that we could at this time move a whole scad of amendments to the Migration Act should we be so minded. But we have taken the approach to this legislation in good faith—an approach the Democrats have consistently taken on legislation over many years, and it has got us where we are today.

These amendments reflect our belief that the enforcement visa should only cease to be in effect when the repatriation of a person is imminent or if they escape from Fisheries detention or fail to comply with reasonable reporting conditions. They also provide for the period when a person is not held in Fisheries detention. The aim is to ensure that enforcement visas continue until removal, thereby preventing the Fisheries detention being immediately converted to Immigration detention.

In layperson’s terms it again boils down to the fact that the Democrats do not support mandatory detention. These amendments would prevent people from being pulled into the mandatory detention regime. I recognise that the larger parties do, in differing ways, still support mandatory detention, at least at this point in time. I look forward to the day when that is not the case, but we are not quite there yet. Again, I think that for the Democrats to be consistent it is important to move these amendments.

I just want to say something on that point of consistency. Firstly, I should say that I welcome the position of the Labor Party on the previous amendment. Even though it is a small amendment it is a very big principle—of somebody being given access to legal advice when they are being detained and having their freedom taken away. That is something that we give to people who are suspected of crimes of violence—murder and the like. Those people have a right to legal advice. But we do not give that right to people as a matter of course when they come under the Immigration detention regime. That is a pretty poor state of affairs.

On the point of consistency: I know it is not Senator O’Brien’s purview or portfolio, but that part of the Migration Act did only come into force because of the position the Labor Party took back in, I think, 1998. I would like to think that this position they have taken on that point of principle might indicate a modifying of their view on Immigration detention area as well. It might seem like a small point, but there was a specific whole piece of legislation devoted to taking away that right from people in Immigration detention and we have seen the results since. It has basically had the reverse effect, of just delaying justice for a lot of people. I guess I have made that point.

These amendments simply make the point that we do not support mandatory detention. The bill as it stands brings an extra group of people into the ambit of mandatory detention. That is one of the key reasons why we oppose the bill as a whole but also why this modifying set of amendments is put forward.

Senator O’BRIEN (Tasmania) (9.48 pm)—As I indicated, the opposition will not be supporting these amendments. I think they actually are consequential in a sense on ear-
lier amendments we have opposed, so consistent with that we will be opposing these amendments.

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (9.49 pm)—The government opposes the amendments.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

**Third Reading**

**Senator IAN MACDONALD** (Queensland—Minister for Fisheries, Forestry and Conservation) (9.50 pm)—I move:

That this bill be now read a third time.

**Senator Bartlett**—Rather than arrange to have a division called, I would just like to record the Democrats as the sole voice of opposition to this bill.

Question agreed to.

Bill read a third time.

(Quorum formed)

**IMPORT PROCESSING CHARGES AMENDMENT BILL 2005**

**CUSTOMS LEGISLATION AMENDMENT (IMPORT PROCESSING CHARGES) BILL 2005**

**Second Reading**

Debate resumed from 14 June, on motion by **Senator Abetz**.

That these bills be now read a second time.

**Senator LUDWIG** (Queensland) (9.53 pm)—The Import Processing Charges Amendment Bill 2005 and the Customs Legislation Amendment (Import Processing Charges) Bill 2005 deal with legislative change and appropriation to bring about the revenue measures outlined in the 2005-06 federal budget. In the coming financial year, it is estimated that approximately 222,000 importers will generate in the order of 3.6 million customer declarations, 99 per cent of which will be electronically lodged. Each of these declarations will attract a processing charge, as they currently do. These bills provide the legislative authority for the structure of the import declaration and the warehouse declaration processing charges contained in the Import Processing Charges Act 2001.

Under the existing legislation, these charges are calculated with reference to the value of the goods. Currently, imports valued at less than $250 are self-assessed by the importer. The bills will amend the Import Processing Charges Act so that the charges will be assessed by mode of importation—that is, by air, sea or post—without reference to the value of the goods. Further, the bills modify the Customs Act 1901 and the Import Processing Charges Act to remove references to the old system, if you could call it that, of self-assessed clearance declarations and charges. Considered together, the bills remove the self-assessed clearance declaration charge from lower value imports of below $250 in value. Instead, the revenue will be collected through increases in the processing charges.

Labor had several questions in relation to the Import Processing Charges Amendment Bill 2005 because it was unclear from the explanatory memorandum how the revenue arrangements worked. Import processing charges are collected under taxing legislation, and Customs receives the revenue through its annual appropriations. Revenue from air or post charges is split between core import processing costs of about 78 per cent and increased quarantine inspection costs of about 22 per cent. Revenue from sea charges is split between core import processing costs of 59 per cent and container examination logistics costs of 41 per cent. Import processing costs and increased quarantine intervention costs include employee, supplier and
depreciation costs. Container examination logistics costs only relate to the transport of containers to examination facilities and include contractor and related contract management costs.

I thank the government and Customs staff for providing additional information to clarify how those additional costs are recovered. It was one of those areas where originally there were some concerns when we looked at it on budget night. We went through the various ways the revenue might be expressed, and how the bills would bring about the change. We took the opportunity to liaise with industry to ensure that consultation had been undertaken. We were assured that it had been by government, and industry also concurred that consultation had taken place over some time.

The additional costs, as I said, are to be recovered from the container examination logistics of about $1.4 million. The cargo management re-engineering related net impact is $6 million. These figures include depreciation of what is commonly referred to as CMR. The 50 per cent estimate for the import processing share of CMR depreciation is calculated as follows: firstly, an estimate of the number and types of messages relating to imports was calculated based on current transaction flows through legacy systems and the number of input/output messages needed to finalise each type of transaction under the ICS; secondly, this estimate was used to directly derive the share of depreciation cost of the Customs connect facility related to import processing; thirdly, the functions of the ICS were divided into imports, exports and others; and, lastly, the other function costs of ICS were allocated to import processing based on estimated import messages.

We have a relatively comprehensive picture of how the import processing charges would be structured and the costs recovered in that instance. The bill, as far as the opposition is concerned, can be supported. It is clear as to what the bill will achieve, how it will achieve it and what the cost structures associated with it are—albeit, it was perhaps a little obscure in the beginning, but that might be attributable to a whole range of circumstances that I will not go into. In addition, Customs were able to provide the opposition with the information that was requested and, on that basis, we thank Customs and their staff for that, particularly for the minister’s facilitation. Without that, the position could have been a little different in respect of how we addressed this particular bill. Therefore, given the nature of this and the time, the opposition are not going to spend an unseemly amount of time dealing with this legislation. In truth, we regard it as being almost in the non-controversial basket, and we will wait to hear from the Democrats.

Senator MURRAY (Western Australia) (9.59 pm)—The two bills before us are the Import Processing Charges Amendment Bill 2005 and the Customs Legislation Amendment (Import Processing Charges) Bill 2005. The customs bill will repeal the self-assessed clearance declaration and the screening charge. The import processing bill increases the import declaration and the warehouse declaration processing charges. We have examined this legislation and it forms part of a long process of change. I see its gestation in that long arm wrestle we had over the trade modernisation bills, when the Democrats and the coalition combined to defeat Labor’s opposition to it. Those bills and those changes are now embedded in the legislative psyche but we still know that there are problems with getting all the new systems established. I want to particularly thank Labor for its work during estimates and the department for their response. The consequence of that work and that response and the government’s
greater clarification mean that these bills can be accepted entirely as they stand. They are virtually non-controversial, and we support them.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (10.01 pm)—I thank other senators for their contributions. I hear senators saying that this matter is now almost non-controversial. I also thank the other parties for their support for this legislation.

Question agreed to.

Bills read a second time.

Third Reading

Bills passed through their remaining stages without amendment or debate.

CUSTOMS TARIFF AMENDMENT BILL (No. 1) 2005

Second Reading

Debate resumed from 12 May, on motion by Senator Ellison:

That this bill be now read a second time.

Senator LUDWIG (Queensland) (10.02 pm)—The Customs Tariff Amendment Bill (No. 1) 2005 presents minor amendments to the Customs Tariff Act 1995 of a technical nature that are important but generally uncontroversial. The first measure amends item 22 of schedule 4, which relates to goods for use in oil and gas exploration to reflect changes in technology and to extend the coverage of the item. The changes are expected to have a minor impact in cost to the federal government of about $220,000 per annum in lost revenue. The second measure seeks to amend chapter 9 of the tariff to insert a new additional note to allow the chemical paraquat dichloride with an added emetic to be classified. Paraquat dichloride is used in agriculture as a herbicide. This change is also expected to have a minor financial impact.

Effectively this is an omnibus bill. Some of these matters have been before this parliament but have failed to be passed for a number of reasons not related to the actual measures contained within the bill. The third measure amends item 68 of schedule 4 to the tariff to extend the operation of the South Pacific Regional Trade and Economic Cooperation Agreement (Textile, Clothing and Footwear Provisions) Scheme for a further seven years to 31 December 2011. It is estimated that the cost to the government in customs revenue foregone owing to the extension of the scheme will be approximately $1.2 million per annum for the first five years of the extended scheme. The fourth measure seeks to amend the country codes for Poland and Wake Island to reflect the codes used by the International Organisation for Standardisation—in truth, a relatively uncontroversial amendment.

The fifth measure is to increase, on and from 1 January 2005, the rates of customs duty payable on certain US originating alcohol and tobacco products in accordance with the consumer price index announced on 28 July 2004. The sixth measure is to increase, from 1 February 2005, the rates of customs duty payable on certain US originating alcohol and tobacco products in accordance with the CPI announced on 25 January 2005. This is an important adjustment because, based on import volumes of alcohol and tobacco products from the United States of America in 2004, it is estimated that, if this measure was not taken, the revenue shortfall in the first 12-month period would be in the vicinity of $6 million.

This bill is supported by Labor because it is in effect a housekeeping bill to tidy up and update several areas of the Customs Tariff Act 1995. Of course, attention to detail is an important part of operating a portfolio. We are well aware of what can happen when a minister is inadequate to the task and does
not undertake proper supervision of their portfolio. We have seen one of those instances in this case. I think it provides an opportunity to deal with some of those areas when you examine the integrated cargo system for imports as a part of the cargo management re-engineering project. Although I did not take the opportunity with the last import processing charges bill, I thought this customs omnibus provided an opportunity to comment briefly on some of those issues in one area where the minister could have been a little more diligent in ensuring that his portfolio ran well.

The cargo management re-engineering project is a good idea. It is a vital part of trade modernisation for our increasingly globalised world. There are real efficiency gains to be had by streamlining the way industry interacts with government, and this was truly the original aim of the cargo management re-engineering, or CMR, project. Labor supports this project. The first time I heard of the project was at a Senate committee hearing when the outsourcing of the software development was first discussed. One of the interesting parts of that is that it started off as a project with an estimated cost of between $30 million and $35 million—but I am willing to be corrected on that. By 2001 the price tag had got to $35 million and by the end of the 2002-03 financial year the estimated cost of the project had multiplied four times to $145 million.

In estimates in December Labor again asked about the project costs, only to find that when those costs were aggregated they had come out to a whopping $204 million. That is certainly a long way from where we started prior to 2001. It is one of those areas where better management by a top-down approach could have reined in the costs or could at least have ensured that the costs did not blow out to such an extent. The only explanation we have ever received on the continual ratcheting up of costs has been inadequate. This project is not finished yet, so we expect that at the next estimates we will have the opportunity to again question the government on how this project is proceeding, when it will be finalised and how the costs have been examined. We can then tote up the entire cost. There are, of course, ongoing costs associated with the project and we will examine those as well.

The project is now something of the order of three years overdue. We have been told again that the start-up might be delayed. I am sure Senator Ellison can provide further information on how that project is going. Perhaps he will not do so in this debate, but he might now take the opportunity to explain some of these other issues as well. Unfortunately, I think Senator Ellison has also taken the opportunity to shift the blame from Customs to industry. As I understand it, the minister claims that somehow this delay was the fault of industry because they could not get ready for an early July start-up, which would have ensured that the CMR project had a whole import and export program.

In reality it is the minister who has not supplied the program to industry on time, so they have not had a reasonable amount of time to train their staff, upgrade their hardware, introduce new systems and generally change the way they run their business. This is a significant change for business to deal with and you would expect a reasonable lead time for business to be able to adjust their processes accordingly. Certainly if the program were ready on time industry would have had plenty of opportunity to make the necessary adjustments. But now it has been delayed again while extra tests are carried out. We need to know what this delay might add up to in time and cost. We have learnt from estimates that the system cut-over will probably occur smack bang in the middle of the busiest time of year for importers. We
understand that it could be in the lead-up to Christmas. This will provide a significant gift from the minister to small- and medium-sized businesses, but that gift will probably be unwelcome because it will also involve an impost.

At some point either the minister or Customs will have to accept responsibility for this ongoing debacle. I understand the minister has sought to blame Customs, repeatedly claiming that he would ‘keep the pressure on them’. I point out to the minister that he is in charge of the department and has ultimate responsibility. The buck stops with the minister. The minister should sort it out and get on with the CMR project. The cargo management re-engineering project has weaved its way from one problem to another at enormous expense to taxpayers and has caused uncertainty for business and industry. What might have been a reasonable cost, first outlined in 2001, is now an extraordinary cost borne by and large by both industry and government. It is an extraordinary tale of waste, mismanagement, poor planning and no attention to detail. That aside, Labor commends the bill before us to the Senate. But on no account can we commend the minister’s handling of the Customs portfolio in respect of this project.

Senator MURRAY (Western Australia) (10.12 pm)—The Customs Tariff Amendment Bill (No. 1) 2005 has six parts. As we heard earlier, the first part relates to goods for use in oil and gas exploration to reflect changes in technology and to extend the coverage of the items. The second part allows the chemical paraquat dichloride with an added emetic to be classified in the part of the chapter to which the tariff refers. The third part extends the operation of the South Pacific Regional Trade and Economic Cooperation Agreement (Textile, Clothing and Footwear Provisions) Scheme for a further seven years to the end of 2011. The fourth part amends the country codes for Poland and Wake Island to reflect the codes used by the International Organisation for Standardisation. The fifth part increases, from 1 January 2005, the rates of customs duty payable on certain United States originating alcohol and tobacco products, in accordance with the consumer price index announced on 28 July 2004. The last part does the same job but with respect to the CPI announced on 25 January 2005.

The issue that concerns us with respect to this bill is our strong belief that it would seem appropriate to extend coverage of item 22—that is, the first schedule—to relate to goods for use in renewable energy generation as well as gas and oil exploration in order to provide an equal playing field on tariffs to all forms of energy generation in Australia. We have prepared an amendment to this end, which has been circulated, and we will address that in the committee stage.

The second major issue I wish to deal with is paraquat dichloride, which is a controversial chemical that has been outlawed in as many as 11 countries because of health and environmental concerns. The existing framework discourages use of the herbicide when it contains an emetic. Given the herbicide’s history as a popular suicide agent in rural areas, the addition of an emetic should not mean it is disadvantaged in tariff schedules. However, there is some pressure for a ban on the chemical in Australia and, as a result, we have a second reading amendment, which has also been circulated, calling for its phasing out.

In passing I should refer to the extraneous remarks of the shadow minister concerning problems with the cargo management re-engineering program. I think he is quite right to point the finger at the escalating cost of the program and an inability to complete the program on time, with constant adjustments.
needed to both appropriations and legislation dealing with that matter. The Democrats did support the cargo re-engineering program, but of course we do not have either the resources or the capacity to conduct any oversight of that. All we can remark upon is the fact that its management has proven to be costly and it has achieved far lower results than we would have hoped for.

I turn now to the main issues we wish to deal with in this bill. With respect to renewable energy technologies, there is little doubt that the risk posed by climate change to our lifestyle, agriculture, future productivity and environment is real. There is abundant evidence that our rainfall patterns are changing. There is abundant evidence that global average temperatures are rising. The link between these and greenhouse gas emissions is internationally accepted, as is the link between greenhouse gas emissions and energy generation. In this context, any legislative treatment favouring the fossil fuel industry should be considered in terms of what legislative treatment favours the renewable energy industry—and, in fact, both should be reconsidered in the light of the risks that we face.

The Democrats understand that the part of the bill which amends schedule 4, item 22 of the Customs Tariff Act, allowing for the duty-free entry of goods for use in the exploitation for oil or natural gas or in the development of oil or natural gas wells, is to be extended to include other technologies associated with the development of fossil fuels. Our amendment calls for the same treatment for renewable energy technologies to be specified further in law but to include technologies in the development or installation of solar, wind, ceramic fuel cell, ethanol, hydrogen or biogas facilities.

We understand that the Minister for the Environment and Heritage places great importance on his Solar Cities program and we commend him for his recent initiative to extend the photovoltaic rebate program in order to encourage the installation of small-scale solar power systems throughout Australia. We Democrats urge him to ensure that, should suppliers or consumers wish to import solar technologies which are not locally available or cannot be manufactured in Australia, they are able to do so in the absence of significant tariff barriers.

To reassure the chamber that our proposal will not impact on domestic renewable technology manufacturers, we note that application of schedule 4 in this context does not apply to goods where substitutable goods are produced or are capable of being produced in Australia by any person in the ordinary course of business. So we are seeking to amend the bill to ensure the beginnings of a level playing field for renewable energy technologies and we hope that the Senate will support our amendment.

The Democrats consider that, in light of the significant dangers surrounding paraquat dichloride and the fact that a number of other countries—11, I am advised—have already banned its use, it must be properly considered when setting import duties. Paraquat is a commonly used herbicide that is highly toxic. It is known to cause serious adverse health effects, including skin, eye and lung irritations; nosebleeds; abdominal pains; nausea; vomiting; diarrhoea; serious lung problems; and, in the most severe cases, death. Sweden, Denmark, Finland and Austria are among the 11 countries that have found the health effects of this chemical serious enough to outlaw its use. However, it is also of note that the European Union has recently renewed its approval for the use of paraquat in the face of objections from a va-
riety of European Union environmental groups.

The bill as it stands proposes to remove the five per cent import duty that is currently applied to paraquat dichloride that contains an emetic. This move would bring imported paraquat which contains the safety feature into line with paraquat currently imported without the safety feature or with other safety features such as colouring and stenching. However, it is worth noting the finding of the Senate Rural and Regional Affairs and Transport Legislation Committee that the inclusion of an emetic in no way guarantees the safety of people using and storing this chemical.

The Democrats would like to see a commitment to phasing out the use of paraquat dichloride on the basis of not only health and potential health impacts but also the potential for deleterious effects on the environment. In this regard, it is known to be extremely toxic to aquatic organisms and is highly persistent, which raises risks of food and water contamination. We note that the Australian Pesticides and Veterinary Medicines Authority is currently conducting a review of the status of paraquat dichloride under the agricultural and veterinary chemicals code. We look forward to the completion of the review later this year.

In light of the fact that this bill seeks to remove an anomaly—identified in the 2003-04 budget statements for the Attorney-General’s Department—that treats different kinds of paraquat with different tariff levels, the Democrats support that move. However, in tempering our support for part 2 of this bill, which we believe we must do in the case of this highly toxic and outdated chemical, we call on the Senate to accept our second reading amendment, which has been circulated. I move:

At the end of the motion, add “but the Senate, recognising that a number of other countries have outlawed the use of paraquat dichloride due to health and environmental concerns, urges that priority be given to phasing out the use of paraquat dichloride in Australia in the near future”.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (10.22 pm)—At the outset I say that the government opposes the second reading amendment moved by Senator Murray. The committee that looked at this bill recommended that it be passed in its entirety. It did not make a recommendation otherwise. I draw to the Senate’s attention that the Australian Pesticides and Veterinary Medicines Authority advised in March this year that its report on paraquat dichloride was 14 months away from completion. The government is therefore of the view that we should await this report, which will be forthcoming in perhaps May to July next year, and then assess that report at that time. But it does not see its way clear to agreeing to the second reading amendment as proposed by Senator Murray.

I again say that the Senate committee recommended that this bill be passed in its entirety. Senator Murray has foreshadowed an amendment, and I will deal with that in the committee stage. Senator Ludwig outlined the provisions of this bill; I will not go over them again. It is a bill which deals with a number of issues. It is an important bill and I commend it to the Senate.

**Senator LUDWIG** (Queensland) (10.24 pm)—I have now had an opportunity to have a look at Senator Murray’s amendment. You always have to be careful about the way the opposition addresses these sorts of matters. After careful examination, I can see the importance that Senator Murray suggests in relation to the second reading amendment. I recognise the gravity with which he has provided his contribution to the second reading
debate and the concerns he has expressed in relation to paraquat dichloride. I recognise that he is obviously quite interested in this area and committed to ensuring that this matter has got some exposure in the Senate. However, looking at the amendment, the opposition is unable to support it at this time. It is one of those areas that deserves serious consideration by the government. I understand the government would take on board those concerns. There are significant issues that might need to be addressed, but at the moment we are unable to provide support for this particular second reading amendment.

Question negatived.

Original question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (10.26 pm)—Before I move my circulated request for an amendment on sheet 4574, which is accompanied by the explanatory memorandum, I must say I am a little disappointed with the response of the minister to my remarks concerning paraquat dichloride. I would expect the government to at least acknowledge that this is a controversial chemical. It is banned by a number of OECD countries. It is causing a great deal of concern across a wide sector of the community. I would not expect the government to just shrug its shoulders with respect to those concerns.

We recognise that it is not possible to phase it out immediately. We accept that—otherwise we would not be supporting the bill. We are not being unrealistic or unreasonable about it, but we do think that it is a matter of quite considerable concern. The very fact that we are adjusting the tariff because we want to encourage the presence of an emetic in this dangerous chemical is because the government, amongst others, has recognised that it has some dangerous health consequences. Maybe it was because you were tired or preoccupied, Minister, but I would have expected a little more sensitivity—I will put it that way—about such matters.

I am not going to go through the full motivation for this request for an amendment again, but I point to two basic principles to which we are trying to draw attention. The first is that we think it is necessary to have consistency across incentives for energy technologies and tariff provisions. We would therefore encourage the government to give at least as much support to renewable energy technologies as it gives to fossil fuel technologies.

The second principle we point to is that it is actually in the interests of the country and in the interests of the environmental concerns which all parties share, even if to a different degree, to promote renewable energy technologies. One of the mechanisms to do so is through either tax incentives or tariff incentives. We recognise of course that this has a cost consequence. We are unable to cost that, which always leads to some difficulties with government. However, we are also very cognisant of the fact that you have a vast surplus, so we move this as a strong motivation for the treatment of renewable energy technologies at least equal to that of fossil fuel technologies and goods covered by those tariffs, as well as in an attempt to promote the sector. I move:

(1) Schedule 1, page 3 (after line 6), after Part 1, insert:

Part 1A—Renewable energy technologies

Customs Tariff Act 1995

1A Schedule 4 after (item 22)

Insert:
22A Goods, as prescribed by by-law, for use in the renewable energy sector in the development or installation of solar, wind, ceramic fuel cell, ethanol, hydrogen or biogas facilities

Statement pursuant to the order of the Senate of 26 June 2000—

This amendment is framed as a request because it is to a bill which increases a tax (tariff). It is therefore a bill imposing taxation within the meaning of section 53 of the Constitution. The Senate may not amend a bill imposing taxation.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000—

As this is a bill imposing taxation within the meaning of section 53 of the Constitution, any Senate amendment to the bill must be moved as a request. This is in accordance with the precedents of the Senate.

Senator LUDWIG (Queensland) (10.30 pm)—I think this is in part one of those issues that is similar but obviously different from the issue of paraquat dichloride. What we have is a customs tariff amendment bill—and perhaps ‘omnibus’ is not a good descriptive word, given that there certainly is not a lot of bulk in it—which contains a range of disparate measures designed to change in a technical sense some of the customs tariff legislation. It is not a place where the policy or the intent of some of this legislation is being progressed.

One of my concerns, as with the paraquat dichloride, is that there are clearly some in the community who might be concerned about that particular chemical and who might wish to have it phased out. Balanced against that is the issue of the farming community and their needs, but that in itself is a policy position about which we can have a debate in the appropriate place at the appropriate time. What we were debating then, as we are now, are technical amendments to the tariff legislation.

The same applies to the debate that you want to have about renewable energy. I think there is a place for a debate on renewable energy, and the Labor Party is only too happy to join you in that debate about renewable energy. We have a shadow minister who is keen to progress debate on renewable energy, particularly in these particular fields. But what we have before us is in effect a technical piece of legislation designed to address technical issues that are required to be dealt with. In our view, this legislation is not the place for policy decisions about renewable energy to be progressed in this way.

If we were going to have a debate about those sorts of issues, it would be preferable that we have an appropriate piece of legislation designed to progress not only the policy issue but also the ways and means by which that might be progressed. Given that that is not before us, Labor is not minded to support the technical request for an amendment that is being proposed in respect of this quite technical piece of legislation, although we do understand and appreciate the position that Senator Murray has put to the chamber this evening and the passion and interest that he obviously brings to some of these areas of renewable energy. Likewise, that is shared by the Labor Party, but, as I have said, we are not in a position to support this request for an amendment in this way at this time.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.33 pm)—This would expand greatly the range of those items which would be duty free. Of course I can understand the sentiments that Senator Murray has expressed in relation to providing incentives for those forms of renewable energy, but I agree with Senator
Ludwig that really the debate for that is in another place and time. This would, I might add, involve extensive consultation with industry and would in fact cause a delay in the implementation of this bill. That is the advice that I have. So for more than one reason the government does not support this request for an amendment.

I might just add while I am addressing this bill that the government did not mean in any way to downplay the significance of paraquat dichloride as a chemical. I take Senator Murray’s comments on board. It is a chemical with properties which make it potentially dangerous in the wrong circumstances of use. That is why the safeguards that we are seeking to have put in were sought. So we do not downplay the significance or the potential danger of that chemical. It is just that we believe that we should await the report and see what it says. The government will not be supporting this request for an amendment.

Question negatived.

Bill agreed to.

Bill reported without requests; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.36 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (10.36 pm)—I move:

That government business order of the day no. 4 (Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005 and a related bill) be postponed till the next day of sitting.

Question agreed to.

VETERANS’ ENTITLEMENTS AMENDMENT (2005 BUDGET MEASURE) BILL 2005

Second Reading

Debate resumed.

Senator GEORGE CAMPBELL (New South Wales) (10.37 pm)—I seek leave on behalf of Senator Bishop to incorporate his speech on the Veterans’ Entitlements Amendment (2005 Budget Measure) Bill 2005.

Leave granted.

Senator MARK BISHOP (Western Australia) (10.37 pm)—The incorporated speech read as follows—

This Bill extends the seniors’ concession allowance of $200 per year to holders of the veterans’ Gold Card.

This therefore is a small additional benefit to 44,000 veterans and war widows who are self funded retirees.

One would normally have described the bill as non controversial.

But in fact, as I’ll point out, this Bill corrects a dirty deed by the Howard Government.

In essence it gives to self funded retiree veterans what all other self funded retirees received last year.

It’s also equivalent to the $200 a year utilities allowance paid to age and service pensioners.

These allowances were election promises made by the Prime Minister as he sprayed billions of dollars around like confetti before the election.

Basically the seniors allowance is a non means tested benefit to assist self funded retirees.

Its purpose is to help pay their power and gas bills, their car registration, and their water bills.

In effect it’s a political trade off for the utilities allowance given to pensioners.
We don’t begrudge anyone these benefits of course, but we do note the blatant electioneering this allowance represents.

This allowance which was first introduced in December 2004, is paid in two instalments each year in June and December.

The utilities allowance paid to pensioners is also paid in two instalments in March and September.

For Gold Card holders already in receipt of the Service pension or the Income Support Supplement, the utilities allowance was paid along with the rest of the pensioner population.

Previously, to be eligible for the seniors concession allowance a person must hold a Commonwealth Seniors Health Card (CSHC).

Consistent with other veteran entitlements, it’s available at age 60, compared with the 65 age limit for other retirees.

But Gold Card holders have no need of the CSHC because all their health care needs are taken care of.

As a result, those veterans and war widows who are classed as self funded retirees—that is, not in payment of the Service Pension or the Income Support Supplement, missed out.

This was either a negligent oversight or a deliberate ploy to save money.

Either way, self funded retiree veterans were denied what normal self funded retirees were given—but without any reason or explanation.

If it was a negligent oversight the Government should be condemned for its carelessness in ignoring 44,000 people.

They were effectively discriminated against.

If it was deliberate, the same applies.

Perhaps some explanation and apology should be given. These circumstances can only be described as totally silly.

Simply because those veterans and widows were eligible for a CSHC and only had to apply.

As I understand some in fact did so.

In that way, the oversight or omission was got around.

And may I add, this matter was first raised with me by the War Widows’ Guild.

They were concerned on behalf of war widows who did not have a CSHC.

The matter doesn’t end there though.

A sizeable portion of the population has been effectively cheated.

In these cases payments ought to be made in arrears. Not so in this case.

In fact it’s worse.

The first payment to self funded veteran retirees will not be made until December this year.

That means a loss of two payments of $100 at least.

Yet of course, the gloss put on this as usual is one of extreme generosity and kindness.

In fact the Minister’s deceptive spin in her budget press release was just that.

It was the centrepiece of the entire veterans’ budget.

Veterans and war widows need to know it’s nothing of the kind. They have in fact been short changed.

This is a benefit provided to everyone else late last year.

Mr Acting Deputy President, this is typical of the duplicity and fudging for which this Minister is a specialist.

Indeed when we look at the entire veterans’ budget this year, it’s a non event.

If this Bill constitutes the centrepiece, and it’s effectively a fraud, then the whole budget package is a fraud too.

Let’s look at the detail.

Putting aside all the spin and rhetoric, there’s only $10 million for new budget measures alone in 2005/06.

Against these there are savings of $52 million—which flow on from the Health portfolio.

Apart from the long overdue increase in dental limits, there’s no change in entitlements.

As for the $411 million increase in DVA’s total budget, most of that’s due to normal cost increases $393 million in fact.

In the budget papers these are described as
• ‘parameter adjustments’,
• ‘variation in rates and fees’,
• ‘growth in numbers and or usage rates’,
• or ‘movements between low cost and high cost services’.

The so called initiatives for anaesthetists and allied health providers are part of those normal increases.

To this $393 million should be added $60 million carried over from previous years’ budgets.

So essentially in terms of government policy initiatives for veterans, the Government has gone backwards.

The savings exceed new spending—it’s as simple as that.

So Mr Acting Deputy President, that’s all there is to this paltry measure.

Veterans have been conned again, and cheated.

In fact I challenge the Minister to make good and make this bill retrospective to December 2004.

Only in that way can the honourable thing be done.

Nevertheless we support the bill.

Senator BARTLETT (Queensland) (10.37 pm)—I would like to speak on the Veterans’ Entitlements Amendment (2005 Budget Measure) Bill 2005. The essence of the bill is simple. It pays a seniors concession allowance of $200 to gold card holders, the majority of whom have income in excess of $50,000 for a single person or $80,000 for a couple. A cynic might wonder at the appropriateness of the targeting of this measure in terms of assistance and equity. The bill is being rushed through the parliament to provide assistance to a group that can hardly be recognised as cash poor on the whole.

The Democrats are not particularly persuaded by the argument of the government that provision of the allowance to this group recognises their special needs. That gold card veterans have special needs is certainly not in dispute, and indeed I have spoken about that a number of times in the Senate and outside it. Our concern is whether the provision of this allowance to this group is the best recognition of those special needs or perhaps a way of making the government feel better about the fact that more immediate special needs are not being properly addressed in some areas.

I and other Democrat colleagues have often stood up in this place and strongly pressed the government to address the needs of veterans. I am pleased to note that there has been action in some areas in that regard. But it is a message that needs to be repeated continually because, as has been said continually by the Democrats and others, this is a group of people who signed up to serve their country in the Defence Force and were sent overseas to serve their country in military action at the behest of governments. Oftentimes governments are quite willing to wrap themselves in the flag and the political rhetoric of rallying the troops, sending them off, giving them parades and farewells, and welcoming them home. But the key test is, when veterans’ service to the country as well as to the government is done, whether they see that their needs are properly met and they are not cast aside.

The Democrats acknowledge that independent retirees often live on low incomes and yet, because they are not drawing a pension, they are assumed to be well off and are therefore excluded from many of the concessions and discounts which are automatically offered to those on a pension. These include concessions for car registration, drivers licence fees, public transport, rent, and electricity and gas. They can also include a range of privately offered concessions such as entry to sport and entertainment venues where these are not covered by state seniors cards.

Low-income retirees in the past couple of years have been granted Commonwealth seniors health care cards and just last year...
they were granted the concession allowance. That is not the group who is targeted by this bill. This bill now directs concession allowance to Australians who do not have a Commonwealth seniors health care card because their income exceeds those limits of $50,000 or $80,000. I acknowledge that there is a much smaller group who will benefit from this bill and whose incomes are not at that level, but they are quite few in number. Nonetheless, they certainly should be assisted.

The issue of concession allowance to self-funded retirees is based on the premise of failure—failure of the Howard government to deliver on an election promise it made in 2001. At that election the then Minister for Family and Community Services promised electors that she would deliver a range of concessions to self-funded retirees who were not on veterans or social security income support and that states would partly fund it. That was a noble promise, but the minister forgot or did not care to be bothered by one critical element—that at the time of making the promise she had failed to negotiate any arrangement with the states.

Predictably, the states subsequently rejected the minister’s approach because the proposition did not accord with state government policies to extend concessions to those in greatest need. Most states were simply not in a position to give financial priority to extending concessions to a wider group of Australians. The government was left in a position of being unable to deliver on an election promise. As usual, it blamed the states. It failed to acknowledge its own blame in this and instead set about implementing a system which offered senior self-funded retired Australians an annual allowance. Self-funded retired veterans and older Australians were still left without concessions. A system of seniors concession allowance last year added yet another level of complexity to veterans and social security administration, with huge administrative overheads—all for $200 per person and twice that for a married couple.

The Democrats do not support policies which discriminate against those who have saved and invested wisely for their own retirement. We commend self-funded retirees for their savings to the public purse. But the ability to become self-funded is not one of choice, lifestyle or degree of financial or moral turpitude, as is sometimes suggested. If you are a disadvantaged Australian, perhaps with a disability, unable to access education in your early years or living in an area away from secure and sustained employment, you will not have had the opportunity to contribute to superannuation or savings for your retirement. That is not a matter of choice; it is just a reality of social circumstance. The Democrats will never endorse the tenet or the implication that people obliged to draw on the public purse are lesser citizens. Social and economic disadvantage befalls people and in most circumstances it is not a choice. It is our view that the minister is justifying payment of a concession allowance—to, in this case, Australians who are independently reasonably well off—not out of a special need but out of a need to mask the government’s failure to deliver on an election promise now almost four years old.

The Democrats do wholeheartedly recognise the contribution that gold card veterans have made to our national security, defence and protection of Australia. As I said earlier, and I have said it many times: if there is one group that we do owe a special obligation to, it is our veterans. They have performed a service to the country that no-one else in the community has done. They have made sacrifices and taken risks of a type and nature that other Australians have not. Gold card holders are a select group of veterans and dependants and are worthy of assistance. But, in consid-
ering the range of unmet needs of gold card holders, it remains that concession allowance would not be at the top of the list.

Many times in this place over the past few years, I have pressed the government to address the critical issue of gold card holders’ inability to access specialist medical services. Many medical specialists have closed their doors to veterans because government payments to the doctors did not keep pace with the increasing costs of treatment. The problem is worse for veterans in rural and regional areas, where there are fewer specialists. Many orthopaedic and other specialist services in my own state of Queensland have closed services to gold card holders or have advised them that they would be charged like other seniors—$80 for an initial consultation and $40 for a follow-up. Others have faced being transported long distances, even interstate, away from support and family, to access gold card services. I acknowledge that there has been some action in this area, and I certainly welcome that. But the core underlying problem still remains in many areas. If we are going to direct funds towards an area of immediate need for gold card veterans, then I would suggest that would be a better place to direct it.

It was and still is an unsatisfactory answer when you consider the contribution these people have made to the national security of the country; more so when other agencies treat those in their care better. Many gold card veterans do feel let down, and I think they are right to do so. The government could not guarantee veterans access to their choice of doctor, but they could guarantee that they would be treated, even if it meant transporting them from country towns into regional centres or cities.

The budget from last year, which included fee increases for specialists, was a welcome if belated recognition by the government that the Repatriation Private Patients Scheme was seriously underfunded and that specialists could not be expected to continue treating veterans as private patients for such poor returns. However, these increases were on a very low base. The 2004 fees for the Department of Veterans’ Affairs patients still fall well short of those in the Australian Medical Association’s list of medical services and fees. The AMA continues to be concerned that fees will increase only by the movements in the Medicare benefits schedule—which means they will go backwards in real terms. Such is the AMA’s lack of ongoing faith in the government’s ability to deliver specialist health care services to gold card holders, even today they have on their web site an entire section devoted to advising specialist medical practitioners how to exit the PPS.

The gold card was designed to offer eligible veterans and dependants specialist treatment that is as good as private health cover. It fails to do so. Instead of doing anything tangible to further address this problem, the government is spending money paying a small select group of veterans—the majority of whose income is in the range of middle to high—a $200 annual payment. There are many other unmet veterans’ needs. Adequate indexation of TPI, recognition of the full range of recommendations from the Clarke report, disability services, financial health, employment and care, including for veterans’ wider families, are just some of these.

Let me make it clear that the Democrats do not oppose this bill. In the end, it is a beneficial measure to a small group of Australian veterans. But other gold card veterans and their families would, I believe, be better served by the funds going towards other, more critical needs. It is important to make that critique. Whilst supporting the legislation, clearly there could have been a better use for this amount of funds to address more
pressing needs of gold card veterans, particularly those who are less well off. The Democrats will not oppose the legislation, but we will continue to urge the government to do more to address the needs of veterans. We acknowledge that no-one can ever do everything—there is always a limit—but it is certainly part of what I see as the Democrats’ role to maintain that pressure on the government to continue to do more and to provide a mechanism for giving a voice to those veterans whose concerns we believe are not being properly addressed by the government. Some of those still apply in the gold card area as well as in wider veterans’ issues. Whilst we support this legislation, we will certainly continue to raise those issues when we believe it appropriate.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (10.50 pm)—I thank senators for their support for the Veterans’ Entitlements Amendment (2005 Budget Measure) Bill 2005. It will benefit up to 44,000 Australian veterans, war widows and widowers by giving them access to the government’s seniors concession allowance. The allowance was introduced by the government in December 2004 as an election commitment to help older self-funded retirees pay the costs of water, sewerage, electricity, rates and motor vehicle registration. A similar allowance, the utilities allowance, was also introduced to assist Australia’s older pensioners. The bill will extend eligibility for seniors concession allowance to holders of the gold repatriation health card who are over the veteran pension age and who are not already eligible for seniors concession allowances or the utilities allowance. Once the legislation is passed, the first payments will be made to eligible gold card holders in December of this year.

The government has a strong record in the veterans’ affairs area and has committed further funding for it in the budget. The budget does build on the strong support we have provided to the veterans and Defence Force communities, including last year’s commencement of the Military Rehabilitation and Compensation Scheme, which is now working to meet the needs of generations of veterans. The Australian repatriation system remains a vital commitment to those who serve in the defence of our nation. Under this government, the repatriation system will continue to work to meet the needs of serving members, veterans and their families. I thank all members for their support. I thank the minister for her attention to this particular matter, which will deliver real benefits to our veterans and their families.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

FISHERIES LEGISLATION AMENDMENT (INTERNATIONAL OBLIGATIONS AND OTHER MATTERS) BILL 2005

Second Reading

Debate resumed from 17 March, on motion by Senator Ellison:

That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (10.53 pm)—The main purpose of the Fisheries Legislation Amendment (International Obligations and Other Matters) Bill 2005 is to give effect to Australia’s obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. Labor will be supporting this piece of legislation. The western and central fishing convention is a treaty between South Pacific coastal states and the distant water fishing nations that fish in the western and central Pacific Ocean. It was ratified by Australia on
22 September 2003. It establishes a commission to manage and conserve highly migratory fish stocks, such as tuna and billfish, in the region. Ratification was unanimously recommended by JSCOT.

To date, 16 nations have ratified the WCPFC, including three of the so-called distant water fishing nations—China, Korea and Taiwan. The three other distant water fishing nations—the United States, Japan and the European Union—have signed but not ratified the treaty. However, the United States and the European Union are members of the Fish Stocks Agreement and, as a result, cannot fish for the species covered by the WCPFC unless they comply with its measures.

The key provisions of the WCPFC include a range of conservation measures that must be applied within Australia’s exclusive economic zone and a set of similar obligations on Australian flagged vessels operating in WCPFC waters outside of Australia’s fishing zone. Australian flagged vessels operating in those waters outside Australia’s fishing zone will have to be fitted with satellite positioning equipment and must be prepared to carry regional observers. The WCPFC introduces a requirement to enforce a range of conservation and management measures and maintain an effective monitoring and surveillance regime.

Where it is alleged that Australian nationals have violated the WCPFC, Australia will have an obligation to provide details about them to the WCPFC commission and relevant member nations. Where there is sufficient evidence to show that an Australian flagged vessel has engaged in unauthorised fishing, Australia is obliged to take appropriate action. If a serious violation is proven, Australia is obliged to ensure the vessel ceases fishing until all sanctions are complied with. Australia must collect and share fishing information and research results, and Australia is required to apply the precautionary principle.

The provisions of the bill are broadly consistent with existing Australian fisheries legislation, especially the Fisheries Management Act. The legislation has the support of bodies representing the Australian commercial fishing industries as well as most state governments. There have, however, been some concerns expressed by representatives of the recreational fishing industry in Western Australia about the possible impact of the treaty and this enabling legislation on the activities of their members. This is because of an existing arrangement in Western Australia whereby only recreational fishers may land certain fish species in that state and commercial fishers who catch those fish species are not able to bring these species ashore in Western Australia.

Unfortunately, it is not possible to treat Western Australia differently from other states in this matter, and this treaty and this piece of Commonwealth legislation will override the Western Australia law. The concerns of Western Australian recreational fishers are noted but they must understand that once Australia signed up to this treaty all Australians and all states have to be treated in the same way.

It is of concern that the Parliamentary Library picked up a drafting error in the legislation in relation to the definition of ‘serious violation’. New section 87FC(5)(a) seems at odd with new sections 105H and 105I in deeming whether the commission of a serious violation requires the use of ‘a boat for fishing’ or not. I understand that the government will be moving amendments to correct this error during the committee stage.

Items 15 to 21 of the bill deal with entirely separate fisheries matters unrelated to the western and central Pacific fishing con-
vention. These items implement a recommendation of the Commonwealth Fisheries Policy Review to remove reference to the ballot system for the creation or allocation of fishing rights. Auction or tender processes provide market based mechanisms for valuing access rights to new fisheries resources while balloting does not. This provision is supported by industry groups. Labor will be supporting this bill with the amendments the government will move to correct the drafting error. I commend the bill.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (10.58 pm)—I thank Senator O'Brien for his support for the bill. He has very precisely indicated what the bill is about. The second reading speech that I tabled also does that. I think there is some prospect we might be able to deal with the committee stage before 11 pm; there are some government amendments which I think everyone supports. They relate to the issue Senator O'Brien spoke about that were picked up by the Parliamentary Library, for which we are grateful. Having seen that we were slightly out in our drafting, we are very happy to accept the suggestions and move those amendments. I commend the bill.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (10.59 pm)—by leave—I move the government amendments as circulated:

(1) Schedule 1, item 42, page 19 (lines 30 and 31), omit paragraph 105DA(1)(c), substitute:

(c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and

(2) Schedule 1, item 42, page 20 (line 5), omit “the fishing”, substitute “if the fishing itself is the act that contravenes the WCPFC conservation and management measure—the fishing”.

(3) Schedule 1, item 42, page 20 (lines 25 and 26), omit paragraph 105DB(1)(c), substitute:

(c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and

(4) Schedule 1, item 42, page 20 (line 33), omit “the fishing”, substitute “if the fishing itself is the act that contravenes the WCPFC conservation and management measure—the fishing”.

(5) Schedule 1, item 42, page 21 (lines 14 and 15), omit paragraph 105DC(1)(c), substitute:

(c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and

(6) Schedule 1, item 42, page 21 (lines 28 and 29), omit paragraph 105DD(1)(c), substitute:

(c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and

(7) Schedule 1, item 43, page 22 (lines 11 and 12), omit paragraph 105H(1)(c), substitute:

(c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and

(8) Schedule 1, item 43, page 22 (line 16), omit “the fishing”, substitute “if the fishing itself is the act that contravenes the WCPFC conservation and management measure—the fishing”.

(9) Schedule 1, item 43, page 22 (lines 28 and 29), omit paragraph 105I(1)(c), substitute:

(c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and
(10) Schedule 1, item 43, page 23 (line 1), omit “the fishing”, substitute “if the fishing itself is the act that contravenes the WCPFC conservation and management measure—the fishing”.

I have tabled a supplementary explanatory memorandum relating to these government amendments. The memorandum was circulated in the chamber yesterday.

**Senator O’BRIEN (Tasmania) (11.00 pm)—**I just want to be certain that the amendments listed on sheet QB245 are these amendments and that they only go to correct the deficiency which was established after the bill was promulgated.

**The TEMPORARY CHAIRMAN (Senator Moore)—**Can you clarify that, Minister?

**Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.00 pm)—**Yes, absolutely. These were the errors detected by the Parliamentary Library. The government took them on board. They are correct.

**Senator O’BRIEN (Tasmania) (11.00 pm)—**In that case, the opposition will be supporting these amendments.

Question agreed to.  
Bill, as amended, agreed to.  
Bill reported with amendments; report adopted.

**Third Reading**

**Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.01 pm)—**I move:  
That this bill be now read a third time.  
Question agreed to.  
Bill read a third time.

**ADJOURNMENT**

**The PRESIDENT—**Order! It being just after 11.00 pm, I propose the question:  
That the Senate do now adjourn.

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**Senator Fierravanti-Wells**  
**Australian Achievers**  

**Senator TCHEN (Victoria) (11.02 pm)—**Earlier this week, Senator Fierravanti-Wells delivered her first speech to the Senate chamber. It was an excellent contribution and, fittingly, it was witnessed by perhaps the most people ever seen in a gallery of this parliament. Not only were all three galleries filled to the brim; the enclosed top gallery was as well. I congratulate Senator Fierravanti-Wells on her auspicious beginning and wish her a long and distinguished parliamentary career.

There was something that Senator Fierravanti-Wells said that all of us who are Australian by choice or whose parents are Australian by choice would heartily echo: Australia is a wonderful place where:  
... with hard work, determination, dedication and the will to succeed you can do anything, you can be anyone and you can go anywhere.

When I made my first speech nearly six years ago, I wish that I had expressed the same sentiment with the same elegant simplicity. Senator Fierravanti-Wells also spoke of the philosophy of individual effort for just reward that is embodied in the stories of millions of migrants who helped to shape the destiny of our great nation. The same philosophy is also behind the great Liberal Party that she represents. I am pleased to say that this is a privilege that she and I have in common, although I do hope that her career will enjoy a longevity absent from mine, as a one-termer.

At the end of next week, I shall be leaving the floor of this chamber for the last time in company with 13 colleagues. Much has already been written about this event, I suspect in lieu of the availability of other political news. Its significance will be the loss of nearly 200 years, actually about 192 years, of parliamentary experience, including that of
ex-senator John Tierney, who left before the budget. In terms of years of corporate experience, I am not sure how much substance my paltry six years represent. However, I do know that in terms of personal experience it has been six exuberant and privileged years. By this I do not mean that we senators live a privileged and pampered life. Indeed, part of the privilege attached to this job is the quality of the people one gets to work with—senators and Senate officers, great and small. I hope that I will have a further opportunity to speak on this next week.

Tonight my aim is to speak of some of the achievements of the Australian people, the people we represent who turn the wheels of industry, fill the coffers of commerce, till and seed the soil, tend the home and rear the child—in short, the ordinary people who do the daily work. The real privilege of this job is the opportunity it gives us to go out and meet the people and to share in their achievements. In return, the best we can do is to make sure that they are not obstructed in their work through our meddling. I am pleased to say that part of the pleasant memory I shall take away with me is the knowledge that I have been a member, albeit one who sat on the interchange bench, of a government that recognises its role as being a facilitator of ideas and a manager of resources rather than a director of action and a controller of opinions.

This is the secret of the success of the Howard government, a secret that has proved to be beyond the understanding of the elite class. The fact is that it set out in 1996 to manage Australia’s development in partnership with the people of Australia—to support them in their will to succeed, to value their determination and dedication and to help them achieve their aspirations for themselves, for their children and for their communities. I witnessed this process in my capacity as senator when I was welcomed to schools, where I saw how the dedication of teachers, the enthusiasm of parents and the goodwill of communities turned capital investment, made by the government on their behalf, into places where young Australians have the opportunity to develop all their potentials.

In six years, I visited 147 schools across Victoria to witness the opening of Commonwealth funded capital works on behalf of the government. In every school I found the same presence of dedicated teachers, enthusiastic parents, supportive communities and happy, courteous and cooperative children. That is right across Victoria, regardless of the social and economic conditions. It is no accident. I particularly want to mention two schools which I visited recently. The first was Essex Heights Primary in Mount Waverley, an affluent leafy suburb in the east of Melbourne which is renowned for its service catering for children with special needs. The second was North Shore Primary in Corio, north of Geelong, in one of the most socially and economically disadvantaged areas of Victoria, where every student arguably comes from a family with special needs. Instead, all the students are fully engaged thanks to the innovative efforts of the principal, Mr Steve Durkin, and the teachers, who let the children set the daily school agenda whereby they take on responsibility and maintain interest in learning. As a parent, I would be proud to claim any of the children at these schools as my own. In the nine years since 1996, the Howard government increased school education spending by 93 per cent. This is an unsung success. It is also money well spent because it is spent in partnership with the Australian people.

In the past six years, I also attended some 80 Green Corps project launches and graduations. The Green Corps Young Australians for the Environment program is an outstanding initiative by the Howard govern-
ment. I have spoken about its success before in this chamber and had better not repeat myself except to again pay tribute to the young people who volunteered to work for the betterment of our natural environment and also for the betterment of themselves through personal development. I also pay tribute to their team leaders, who provide all the important guidance and support to them during their six-month course. I know many senators on both sides of the chamber are aware of the success of this program and many give their wholehearted support to these young people.

Last week I attended my last Green Corps graduation in Geelong at a project that turned a piece of wasteland adjacent to a disability service support facility into a skilfully developed landscape garden with wheelchair access to enable the occupants of the centre to take advantage of it. As part of the ceremony, I was given a certificate of appreciation. I think this certificate should not have been given just to me but should be shared with all my colleagues here regardless of politics, because I know they are all interested in young Australians and the Australian environment. I have other things to say about our environment and our other achievements but, given the time, I will not. I hope that I have the opportunity to continue on another day. I seek leave to table the certificate.

Leave granted.

Women’s Suffrage

Senator MOORE (Queensland) (11.10 pm)—I would like to begin by acknowledging the work done by Senator Tchen and what a pleasure it has been to be his neighbour for the last three years since I came into this place. We will miss you, Senator Tchen.

As I have spoken about on a number of occasions in this place, this year is the centenary of the right of women to vote in Queensland at the state level. Throughout this year, we have been celebrating and encouraging people to celebrate this great milestone, because it is a wonderful achievement. Through this process, we have been hoping to raise awareness of the history of our state, and in particular the history of the women of this state. What has been exposed by the degree of effort and research this year is that there is an appalling lack of clear history of what has gone on, particularly with regard to women in Queensland. This year we are encouraging the community to look at their own history, seek out the history of their own families, particularly the women of their families, and link that in to the value and the absolute honour of the right to vote and participate in our democratic practice.

Throughout the state libraries we have been calling upon communities to develop their own histories by having the people of those areas, particularly the children but not limited to any age at all, go back and research their own families and have a look at exactly what the women were doing on that day in January 1905 when the women of Queensland went to the various polling places across the state and voted in their own right for the first time. This was despite many years of opposition by politicians of all flavours but only one gender, who were calling into question the right, knowledge and ability of women to access the vote. There were some appalling statements made in the Queensland parliament, but they were not just in Queensland. When we look at the right of women to vote, we see that these kinds of appalling statements are made across the world.

I encourage anyone who is listening or anyone who would be looking at our history to have a look and see what kind of issues were raised in those debates and debunk them now and in history, as did the women and their supporters who had the chance to
vote in the debate leading up to this access in 1905. Their supporters were the men who supported women's right to vote in democracy. I encourage people to debunk those arguments and say now, as then, that women want the vote, want to participate in democracy and want to be in places like this.

That is the kind of argument we are raising with the people across Queensland now. We are encouraging people to go out and look at what they and their families were doing 100 years ago. This has stimulated much excitement and activity. As Senator Tchen was just discussing in his contribution, I have also been working with some schools and seeing the way that the knowledge and the excitement grows when you have the opportunity to work with these kids. When you sit down and talk with them, you see that these kids come from such amazingly mixed backgrounds. In some areas, like the places in the Lockyer Valley that I visited, sometimes there are people who have lived in the same regions for six or seven generations.

Through some extremely dedicated teachers, we have been able to have the young people look at how our archive system works, checking with the archives to find out exactly where polling places were located in 1905, finding out where their post offices were and finding out what was done at that time to encourage people to vote. We have been able to link that knowledge to the system that we have now, so we are achieving such wonderful involvement and engagement in our system. We have been able to say, ‘This is the excitement that was had in 1905 when, for the first time, women could go along with their partners or with their children and access the vote themselves.’

We then contrast that experience with what is happening today. Last year in Queensland we were blessed with elections at three levels, so already the young people are familiar with the way the political system works and the fact that there are local, state and federal elections. We draw out the similarities and differences between those areas. That encourages involvement and encourages questioning. Hopefully, through the State Archives process and through the state libraries, we will be able to build up local knowledge in history.

We are asking families to create their own local mementos, to put together something concrete to celebrate what happened. We are saying: ‘Try and find out who the women in your family were who were voting in 1905. Find out their names. Find out where they lived and their age.’ I am not sure whether we will ever find out how they voted, because the same privacy applied then as does now. I am still wondering how we ever find out exactly how people voted, because to this day no-one has ever asked me about my vote—I suppose they think they know the way that I vote. We are just trying to find out where people actually fit in the process.

We are trying to look at local things out of the community—pieces of clothing, pieces of furniture, small artefacts that were around. Some kids have found things like old gloves or vases and hopefully they will be able to gather them together and mark them and say, ‘This represents what happened in my community in 1905. My great-great-great-grandmother actually voted for the first time then.’ That makes people feel part of the whole process and makes our system feel alive.

Linked into this is also an amazing experience for me, which is learning about the wonderful work of the various historical societies that are sprinkled all across our com-
munity. These societies are made up completely of volunteers, who share my passion for local history and keep alive the flame of local involvement in places like Toowoomba, Senator Santoro. As that is my hometown, I felt the least I could do was name it again tonight after your contribution last evening. I was honoured to be invited by the Toowoomba Historical Society to come and talk with them about the centenary of suffrage. It was quite confronting to go back to my town and be welcomed by the Toowoomba Historical Society in their beautiful small building in the heart of Queens Park, which is the central area in Toowoomba, and talk with them about what was happening in Toowoomba in 1905. It was a very vibrant, important community then, as it is now.

Emma Miller is a woman I have spoken about before in this place. She was a strong Labor woman who in 1905 had fought for the right to vote for women as well as for various things to do with working conditions. She was also a peace activist. During World War I, during those horrific debates in Queensland and the rest of Australia about conscription, Emma continued her activity and went to Toowoomba and made her last speech in Queens Park, talking about the need for world peace, in 1917. We are hoping in Toowoomba to mark the place where Emma made that last speech. It was not the only time she spoke in Toowoomba at all. Toowoomba was a regular place for her to go and talk to communities about various ideas of political activism. As I say to people, it is really quite easy for people like me to travel to places and talk to people when we have the advantage of modern transport and modern communications. I am still amazed when I think about the way that that woman had to travel. There was no such thing as a microphone to help your voice. There was no way to control crowds—and she drew crowds.

On the occasion of that last speech that she gave, in the open in Toowoomba—it was in January so it was probably quite warm, not like Toowoomba can get in the cold—people gathered to hear this woman speak. She was already in her late 70s. The records show that she was not a great speaker, but what she had to say was great. She lived to see women get the right to vote. She lived to see women in Queensland get the right to stand for election. It is still a great shame that women like Emma were never actually elected into whatever parliament they would have liked to be in. But they saw women get that opportunity and, by their political and social activism, they provided a legacy for women across all generations to follow, showing that we can be active, we can be part of the community, we can achieve things, and we can communicate quite freely with people across all levels and enjoy the experience.

With the help of the Toowoomba Historical Society, I hope we will be able to achieve some kind of permanent memento for Emma. We have the support of the mayor, Di Thorley, who has encouraged this kind of activity in her city. But I think the real message is for people across Queensland, male and female, to find their own way to celebrate the centenary of suffrage. It is important and it is our celebration.

Domestic Violence

Senator BARTLETT (Queensland) (11.20 pm)—Last year in August I spoke in the adjournment debate in this place about the issue of animal welfare and the link between violence towards animals and violence towards and mistreatment of humans. In that speech I spoke about the need for the issue to be taken seriously. I spoke about the visit to Australia of the US psychologist, Professor Frank Ascione, who has done a lot of research over a long period of time highlight-
ing the clear links between violence towards animals and violence towards humans, the clear link between domestic violence towards spouses and children and violence towards animals in the same home and the fact that children and young people who are cruel towards animals are far more likely to subsequently be involved in crimes of serious violence, whether to people in their family or to others in the community.

I say that to emphasise that responding to violence and abuse towards animals in the community is more than just that natural feeling of revulsion we get when we see stories of people being cruel towards kittens or dogs. It is actually far more important than that because such violence is a real indicator of a wider problem. There is an opportunity to identify potential problems and existing problems much earlier, prevent future harm, treat offenders earlier and identify and assist people who may need to escape violent situations.

One of the hurdles, amongst many that I identified in my speech last year, was the barrier for predominantly women and women with children wanting to flee violent domestic situations but having pets and not being able to take the pets with them to the shelter. They want to take the pets because often they are the one example, particularly in a child’s life, of unconditional love and leaving the pet behind would be adding extra trauma. The reality is that the pet is quite likely to be mistreated if it is left behind, and so people will not leave an animal behind and will continue to face the violence, even though they can escape it.

Again, Professor Ascione spoke about this issue and that this was undoubtedly identified as a major barrier to women and children being able to leave violent domestic situations. He identified that the lack of opportunities for people to be able to leave their pets in a shelter while they sorted out their own domestic situation was a clear barrier. For that reason, I am very pleased to have seen in my own state of Queensland just last month a very innovative partnership launched between the RSPCA and dvconnect—Domestic and Family Violence Service Queensland—that provides counsellors and assistance for women and children who are wanting to escape from violent situations and get into a refuge.

This is not just an innovative partnership and initiative; it is incredibly important. It sets a very important benchmark and precedent that can be built on by other groups around the country. To my knowledge it is the first time in Australia that a statewide domestic violence crisis service has offered that service to women and their pets. It links up with the RSPCA, who have found a lot of foster carers who will look after the animals whilst the women and their children are in the shelter waiting for more stable accommodation. It is the only program of its type in Queensland. It is the first formal partnership between a statewide animal welfare service and a statewide domestic violence crisis service in Australia.

I know there have been other informal attempts here and there to do things, and they continue to operate and have operated with the RSPCA in Queensland in the past. I understand a program is operating in New South Wales at a local level between the St George hospital social work department and the RSPCA. This sort of partnership at a state level in Queensland is a very significant initiative, and it raises hopes for that to be built on. It is a six-month trial, and the plea I make tonight is to make sure that the trial becomes a permanent reality in Queensland, whether through funding from the state government and other bodies or through community support. The trial is being assessed to see how it works. No doubt, aspects of it will
be reviewed and different ways will be found for it to operate better. I have absolutely no doubt that the evidence will show that the service provides an invaluable, potentially life-saving opportunity for people to escape violent domestic situations.

I understand that even since it was set up a few weeks ago it has already been able to facilitate the safe refuge of several women who would not have been able to get refuge had they not been able to access care for their pets through this program. So it is already helping people and, while an assessment of that six-month trial may find ways in which it can operate more effectively, I think it is absolutely critical that this service be built upon. I urge other states and the federal government to facilitate the expansion of this type of program. I think it is absolutely critical, so my plea to state governments, political leaders and community leaders is to ensure that this trial is provided with ongoing funding.

I would like to touch on related issues, including the need for vets, for example, to be able to effectively report violence towards animals where they believe there is a serious prospect of that having happened. This is not just for police investigations and charges but for determining whether that could be a signal of violence in the home that others are not aware of and whether there needs to be follow-up profiling of perpetrators to help prevent future, more serious acts of violence towards people.

It is for this reason that I believe incidents of cruelty towards animals need to be dealt with more seriously. We have seen repeated incidents of cruelty towards animals in the last few weeks. A man in Blacktown in Sydney was charged with aggravated cruelty over attacking a kitten, twice running over it with a bicycle and then stoning it in a railway station. Another cat was allegedly beaten to death with a walking stick in Western Sydney. People would be aware of the various incidents through the media. There is continual frustration in the community that the penalties are not appropriate and not strong enough. It is not just a matter of stronger penalties and tougher crackdowns; it is a matter of dealing with the perpetrators and their acts in a wider sense. The evidence shows that they are far more likely to be engaged either now or in the future in greater acts of violence towards people.

I would like to put in a plug for a local Liberal member while I am here. Bill Stefaniak MLA, from the ACT assembly, has a private member’s bill seeking to increase penalties for acts of cruelty against animals to bring the ACT into line with other states. I support that and I urge the local Labor government to support it. The former Democrat in the assembly, Ros Dundas, was successful in getting an important amendment passed to legislation in the ACT that required a follow-up of individuals who were convicted of violence towards animals. Debates about clubbing cane toads with golf clubs might sound mildly amusing, but I think anything that encourages blase cruelty towards any animal, however ugly, has those dangerous links. I am not saying that everyone who uses a golf club on a cane toad is going to turn into an axe murderer, but I do say that any blase attitude towards cruelty to animals has a dangerous side for all of us, not just for animals.

Australian Defence Force

Senator SANTORO (Queensland) (11.30 pm)—One of the most interesting aspects of the Australian Defence Force Parliamentary Program is that it exposes parliamentarians to real-life conditions in the service environment. As a recent graduate of the 2005 program—I think, Mr President, I passed; I certainly was not drummed out—I am more than ever a fan of this particular work ex-
experience arrangement. It is a great scheme and taking part in it is a privilege and a pleasure—and also an education. Before you are qualified to experience at first hand the thoroughly professional work that our Defence Force personnel do—often under very trying conditions—let alone speak about these things, you need to gather some facts.

As I have mentioned in this place before, I was on board HMAS Anzac. Aboard that ship of the Royal Australian Navy I met nothing but absolutely first-class professionalism and skill in the performance of duties by the crew and a magnificent ethic of working together as a team. It was an absolute object lesson in teamwork. When I got back to Australia after my tour of duty, I set about looking into the service conditions and other aspects of life in the Navy—indeed in all three elements of the Defence Force. From these investigations I have drawn some conclusions about which I would like to inform the Senate.

As honourable senators know, my ADF familiarisation in the 2005 program was with the Royal Australian Navy. I spoke about that in a matters of public interest speech in May. But the comments I want to make tonight apply generally, I believe, throughout the three services. One of the major issues is that of retention, particularly retaining personnel who have served between eight and 12 years and who therefore form the critical pool of professional talent. From what I have learned, at that level and in that time frame, the services begin to lose both other ranks and officers they cannot afford to lose. They lose them because those seeking to leave feel they can no longer justify to themselves or to their families why they remain in the service.

Most of these people enjoy the ADF, so it is not something within the ADF or an individual service that is causing them to re-evaluate their careers. But this, of course, means that their particular service also can offer nothing to make them change their minds. Perhaps in an age of what might be called mobile careers 10 years is a good stretch in any particular field. This is less of a problem in civilian fields of employment than it is in the ADF—and, for that matter, defence forces throughout the Western democracies—because conditions obviously are quite different. In the armed services, people are not free to chop and change at will and are subject to disciplinary codes that would make ordinary mortals blanch. They have made a commitment far beyond the commitments made by people who work in civilian occupations. They have signed on for long periods of time in a service that will almost inevitably take them away from their families. It also means that, as families, they move more frequently, and not necessarily of their own volition, than other Australian families. For this reason, it was pleasing to see during the week the announcement by one of my very good friends in the other place, the Parliamentary Secretary to the Minister for Defence, the member for Petrie, of a new $300 million three-year contract that has been signed to provide an enhanced removal and storage service for the ADF and defence civilian personnel.

This is one practical measure that may assist defence families in meeting the heavy obligations that service in one of our armed forces imposes on families as much as on the service member. In that regard, the Navy is the service in which lengthy separation from family is all but ubiquitous, given that naval personnel serve on ships that sail away for months at a time. Navy initiatives, such as satellite TV aboard ships, email and internet access at sea and increased sea-going allowances, all help to ease the burden on our sailors and improve living conditions. But there is only so much that any of the three defence services can do themselves to compensate
for the inevitable disadvantage and to become more family friendly.

Separation from family and isolation from community life is the norm, to a greater or lesser extent, throughout the ADF. ADF people sign on for conditions that sometimes place them in harm’s way—on our behalf and in our defence. I believe that, in the minds of most Australians, that sacrifice deserves additional reward. And, in my mind, what deserves close attention is the need for programs that prepare long-term Defence Force personnel for ultimate transition to civilian life later in their careers than the 30-something that is often the cut-off today for a career change that includes the prospect of substantial promotion later. We are not talking in terms of after eight years, 10 years or even 12 years in the service—that is when these people are most useful and the point from which promotion to senior rank becomes possible. We need to examine retention programs that will encourage the 30-somethings to stay in rather than get out by examining what additional benefits and assistance could be provided to encourage them to think of leaving at 40-plus instead.

One area that warrants examination in this context is superannuation, since this generally becomes accessible at an age far beyond the normal service retirement age. I do not advance the options I am going to canvass here in any way as a prescription. I simply raise them as matters that it might be valuable to examine in terms of winning the battle to retain people in the ADF. These options include conditions of service that persuade defence personnel in middle ranks that it is better to stay in the service than to depart for a civilian job; family-friendly initiatives that would need to be delivered from outside the defence budget, on a whole-of-government basis; travel concessions, such as some variant of the discount Forces Railcard in Britain; access to frequent flyer points for service travel that, as in private employment, provides benefits that can be applied to family travel; and measures that would make it cost-effective for service personnel to invite their families to meals in their messes—in other words, a scheme that charged meals at service personnel prices. None of these initiatives is particularly spectacular in terms of cost or impact, but each of them would say: we think you are doing a great job. There are other measures that could be applied. Let us take salary sacrificing for mortgages as one example. Nurses are recognised as working in the public interest and, as a result, can salary sacrifice against their mortgages. ADF personnel are not recognised as such for tax purposes.

Surely ADF personnel are working in the public interest. Our Defence Force does us proud. We depend on the dedicated personnel in the Navy, Army and Air Force to defend us and, increasingly, to contribute to great national aims such as the mammoth efforts put into the Indian Ocean tsunami relief and reconstruction task. As we know from the tragic example of the Sea King crash on the Indonesian island of Nias, that work, civil relief, is also accompanied by significant risk. Because of their conditions of service, our ADF personnel warrant our close attention and unstinting support. Having had the privilege of seeing at first hand how one of the services works, the Navy—and let me repeat that it works magnificently well—I intend to take a close interest in conditions of service and other aspects of Defence Force life.

**Senate adjourned at 11.38 pm**

**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:
Defence Act—Determinations under section 58H—Defence Force Remuneration Tribunal Determinations Nos—
Product Rulings—
Addendum—PR 2005/25.
Superannuation Contributions Determinations SCD 2005/1-SCD 2005/5.
Superannuation Guarantee Determination SGD 2005/1.
Superannuation Industry (Supervision) Act, Superannuation Contributions Tax (Assessment and Collection) Act and Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act—Lodgment of returns and statements for the year ended 30 June 2005 [F2005L01543]*.
* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Kanella Aged Care Home
(Question No. 31)

Senator Allison asked the Minister representing the Minister for Ageing, upon notice, on 16 November 2004:
(1) What monitoring has taken place of the Kanella Aged Care Home since the audit report of February 2004, which found non-compliance with 14 expected outcomes.
(2) Which of these non-compliant outcomes has been made compliant.
(3) What monitoring took place between the audit report of 2003 and the subsequent decision to accredit this aged care home, and the 2004 audit.
(4) Why were the non-compliant outcomes not identified before February 2004.

Senator Patterson—The Minister for Ageing has provided the following answer to the honourable senator’s question:
(1) Since the Aged Care Standards and Accreditation Agency identified serious risk to residents during a review audit in February 2004, the agency conducted visits at Kanella Aged Care Facility twice per week from 19 February 2004 until the serious risk was addressed (11 March 2004). A further seven support contact visits have been conducted by the agency since then. The agency also conducted a site audit from 6-7 July 2004. The department has made ten visits to the home since February 2004 to monitor the situation and held two meetings with the approved provider to discuss necessary improvements.
(2) All of the non-compliance that was identified at the home by the review audit in February 2004, was rectified by 18 June 2004.
(3) There were two visits conducted by the Aged Care Standards and Accreditation Agency to the home between the accreditation audit in April 2003 and the review audit in February 2004. The agency conducted a support contact on 23 October 2003 and placed the home on a timetable for improvement in relation to the non-compliant expected outcomes to expire on 31 December 2003. The agency then conducted a support contact on 27 January 2004 to determine if the home had addressed the areas of non-compliance.
(4) The audit for accreditation in April 2003 undertaken by the agency found that the home did not comply with three expected outcomes. Ongoing monitoring of the home by the agency in regard to the three non-compliant outcomes identified care failures by the approved provider, and the agency decided to undertake a review audit. The review audit identified the total of 14 non-compliant expected outcomes. The provider has since resolved all care failures and is fully compliant.

Aged Care
(Question No. 36)

Senator Allison asked the Minister representing the Minister for Ageing, upon notice, on 16 November 2004:
(1) Does the data provided to the Aged and Community Services Association survey of December 2003 in the Australian Capital Territory and New South Wales show that: (a) an estimated 8 800 people have their names on nursing home (high care) waiting lists and 11 800 on hostel (low care)
(1) (a) to (d) It is understood that the survey is based on responses from a number of aged care facilities. The Department of Health and Ageing does not maintain data on waiting lists for entry into aged care and is not in a position to comment on the data reported in the survey.

(2) and (3) The department does not maintain data on waiting lists for entry to aged care.

(4) As at 31 December 2004, there were 5,735 non-operational (provisionally allocated or offline) residential places in New South Wales, 5,037 in Victoria, 1,917 in Queensland, 1,553 in Western Australia, 789 in South Australia, 334 in Tasmania, 239 in the ACT and 50 in the Northern Territory. These figures include flexible care places attributed as residential care.

About 70% of the delays in making aged care places operational are due to delays in gaining planning approval and land availability from state, territory or local governments. The Australian Government is consulting with state, territory and local governments on ways to reduce these delays.

Priority in new allocations of places is given to providers who are able to bring places into operation in a short timeframe.

(5) See answers to Questions (2) and (3).

(6) The department does not have information about the location of people who have been assessed for eligibility for aged care unless they have subsequently entered permanent care in a mainstream Australian Government funded aged care place.

**Senator Patterson**—The Minister for Ageing has provided the following answer to the honourable senator’s question:

(1) (a) to (d) It is understood that the survey is based on responses from a number of aged care facilities. The Department of Health and Ageing does not maintain data on waiting lists for entry into aged care and is not in a position to comment on the data reported in the survey.

(2) and (3) The department does not maintain data on waiting lists for entry to aged care.

(4) As at 31 December 2004, there were 5,735 non-operational (provisionally allocated or offline) residential places in New South Wales, 5,037 in Victoria, 1,917 in Queensland, 1,553 in Western Australia, 789 in South Australia, 334 in Tasmania, 239 in the ACT and 50 in the Northern Territory. These figures include flexible care places attributed as residential care.

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Priority in new allocations of places is given to providers who are able to bring places into operation in a short timeframe.

(5) See answers to Questions (2) and (3).

(6) The department does not have information about the location of people who have been assessed for eligibility for aged care unless they have subsequently entered permanent care in a mainstream Australian Government funded aged care place.

**Health and Ageing: Consultants**

(Question No. 610)

**Senator Chris Evans** asked the Minister representing the Minister for Ageing, upon notice, on 4 May 2005:

With reference to the department and/or its agencies:

(1) For each financial year from 2000-01 to 2004-05 to date: (a) how many consultants were engaged by the department and/or its agencies to conduct surveys of community attitudes to departmental programs and what was the total cost; and (b) for each consultancy: (i) what was the cost, (ii) who was the consultant, and (iii) was this consultant selected by tender; if so, was the tender select or open; if not, why not.

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**QUESTIONS ON NOTICE**
(2) Were any of the surveys released publicly; if so, in each case, when was the material released; if not, in each case, what was the basis for not releasing the material publicly.

Senator Patterson—The Minister for Ageing has provided the following answer to the honourable senator’s question:

The Minister for Health and Ageing is providing a detailed response in relation to the portfolio as a whole.

There were no consultants engaged by the department or its agencies concerned with the areas of responsibility of the Minister for Ageing that conducted surveys of community attitudes towards departmental programs.

Live Sheep Exports
(Question No. 901)

Senator Bartlett asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 10 May 2005:

(1) Has the Government ascertained conclusively the cause of the rejection of live sheep on the Cormo Express in 2003; if so, is the Government prepared to make this information public.

(2) If the Government has not been able to ascertain the cause of the rejection of live sheep on the Cormo Express by the Saudi Government, how can the Government place confidence in the current memorandum of understanding being negotiated by the Minister for Agriculture, Fisheries and Forestry to re-open the trade.

(3) With Meat and Livestock Australia reporting a 75 per cent increase in frozen lamb exports to Saudi Arabia in 2004 whilst the live trade has been suspended, why is the Government not focussing all efforts on increasing the carcass trade further, rather than re-opening live trade with a country that has rejected Australian live shipments on at least 12 occasions in the past 16 years.

(4) During Australian Quarantine and Inspection Service (AQIS) investigations into possible breaches of the Australian Meat and Live-stock Industry (Export of Live-stock to Saudi Arabia) Order 2003 which prohibits Australian exporters from assisting in the importation of sheep into Saudi Arabia, did Australian exporters refuse to co-operate with the AQIS investigation.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) The only reason given by Saudi Arabia for the rejection of the consignment of sheep on the Cormo Express in August 2003 was that the consignment displayed unacceptable levels of scabby mouth when inspected by quarantine officials. This information was made available to the public on 28 August 2003 in a joint press release by the Minister for Trade and the Minister for Agriculture, Fisheries and Forestry.

(2) A Memorandum of Understanding (MoU) between the Australian Government and the Kingdom of Saudi Arabia was signed at ministerial level on 4 May 2005. The MoU outlines the conditions under which the trade will occur and includes assurances that livestock will be unloaded into a quarantine facility within 36 hours of arrival in the port if a problem is suspected with the animals.

(3) The livestock export industry was valued at approximately $0.7 billion in 2004 and provides a valuable and viable alternative market for Australian sheep and cattle producers. While the exports of lamb to Saudi Arabia increased by 1670 tonnes in 2004, exports of mutton fell by 2338 tonnes.

(4) No.