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

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http://parlinfo.aph.gov.au

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.

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<td>DARWIN</td>
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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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<tr>
<th>Senator</th>
<th>State or Territory</th>
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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
HOWARD MINISTRY

Prime Minister
Minister for Transport and Regional Services and
Deputy Prime Minister
Treasurer
Minister for Trade
Minister for Defence and Leader of the Govern-
ment in the Senate
Minister for Foreign Affairs
Minister for Health and Ageing and Leader of the
House
Attorney-General
Minister for Finance and Administration, Deputy
Leader of the Government in the Senate and
Vice-President of the Executive Council
Minister for Agriculture, Fisheries and Forestry
Minister for Immigration and Multicultural and
Indigenous Affairs and Minister Assisting the
Prime Minister for Indigenous Affairs
Minister for Education, Science and Training
Minister for Family and Community Services and
Minister Assisting the Prime Minister for
Women’s Issues
Minister for Industry, Tourism and Resources
Minister for Employment and Workplace Rela-
tions and Minister Assisting the Prime Minister
for the Public Service
Minister for Communications, Information Tech-
ology and the Arts
Minister for the Environment and Heritage

The Hon. John Winston Howard MP
The Hon. John Duncan Anderson MP
The Hon. Peter Howard Costello MP
The Hon. Mark Anthony James Vaile MP
Senator the Hon. Robert Murray Hill
The Hon. Alexander John Gosse Downer MP
The Hon. Anthony John Abbott MP
The Hon. Philip Maxwell Ruddock MP
Senator the Hon. Nicholas Hugh Minchin
The Hon. Warren Errol Truss MP
Senator the Hon. Amanda Eloise Vanstone
The Hon. Dr Brendan John Nelson MP
Senator the Hon. Kay Christine Lesley Patterson
The Hon. Ian Elgin Macfarlane MP
The Hon. Kevin James Andrews MP
Senator the Hon. Helen Lloyd Coonan
Senator the Hon. Ian Gordon Campbell

(The above ministers constitute the cabinet)
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<tr>
<td>Minister for Justice and Customs and Manager of Government Business in the Senate</td>
<td>Senator the Hon. Christopher Martin Ellison</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>
</tr>
<tr>
<td>Minister for Human Services</td>
<td>The Hon. Joseph Benedict Hockey MP</td>
</tr>
<tr>
<td>Minister for Citizenship and Multicultural Affairs and Deputy Leader of the House</td>
<td>The Hon. Peter John McGauran MP</td>
</tr>
<tr>
<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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<tr>
<td>Minister for Vocational and Technical Education and Minister Assisting the Prime Minister</td>
<td>The Hon. Gary Douglas Hardgrave MP</td>
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<tr>
<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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<tr>
<td>Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence</td>
<td>The Hon. De-Anne Margaret Kelly MP</td>
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<tr>
<td>Minister for Workforce Participation</td>
<td>The Hon. Peter Craig Dutton MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Finance and Administration</td>
<td>The Hon. Dr Sharman Nancy Stone MP</td>
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<td>Parliamentary Secretary to the Minister for Industry, Tourism and Resources</td>
<td>The Hon. Warren George Entsch MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Health and Ageing</td>
<td>The Hon. Christopher Maurice Pyne MP</td>
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<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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<tr>
<td>Parliamentary Secretary to the Prime Minister</td>
<td>The Hon. Gary Roy Nairn MP</td>
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<tr>
<td>Parliamentary Secretary to the Treasurer</td>
<td>The Hon. Christopher John Pearce MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Transport and Regional Services</td>
<td>The Hon. John Kenneth Cobb MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for the Environment and Heritage</td>
<td>The Hon. Gregory Andrew Hunt MP</td>
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<tr>
<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 Training</td>
<td>The Hon. Patrick Francis Farmer MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry</td>
<td>Senator the Hon. Richard Mansell Colbeck</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 Information Technology
Senator Stephen Michael Conroy

Shadow Minister for Health and Manager of Opposition 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 International Security
Kevin Michael Rudd MP

Shadow Minister for Defence and Homeland Security
Robert Bruce McClelland MP

Shadow Minister for Trade
The Hon. Simon Findlay Crean MP

Shadow Minister for Primary Industries, Resources 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 Indigenous 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 Community, Shadow Minister for Youth and Early Childhood Education and Shadow Minister Assisting 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 MINISTRY—continued

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

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

Higher Education
To the Honourable Speaker and Members of the Senate in Parliament Assembled

This petition of members of the University of New South Wales College of Fine Arts community expresses the concern regarding the devastating effects the Abolition of Compulsory Up-Front Student Union Fees bill 2005 will have on our university campus.

This petition draws the attention of the Senate to the effects the passage of this legislation will have, including:

- undermining the ability of COFA Students’ Association to provide invaluable support and services to students, as determined by students.

Among the services that will be lost under this legislation are the following:

- Provision of an off-campus student run gallery
- Provision of a low price on-campus arts supplies store
- Provision of student representation within the university and the wider community
- Provision of help and advice for students with academic problems
- Provision of a forum and structure in which students can make a meaningful and practical contribution to their university experience
- Provision of assistance in making the move from arts student to practitioner

Your petitioners therefore ask that the Senate to categorically reject the Higher Education Support Amendment (Abolition of Compulsory Up-Front Student Union Fees) bill 2005.

by Senator Nettle (from 451 citizens).

Petition received.

NOTICES

Presentation

Senator Patterson to move on the next day of sitting:

That the second reading of the Superannuation Laws Amendment (Abolition of Surcharge) Bill 2005 be restored to the Notice Paper and be made an order of the day for a later hour.

Senator Brown to move on the next day of sitting:

That the Senate calls on the Government of the United States of America to immediately return Australian citizen, Mr David Hicks, to Australia.

Senator Brown to move on the next day of sitting:

That the Senate—
(a) notes that Japan plans to increase its scientific whaling program; and
(b) calls on the Australian Government to send a surveillance vessel to monitor the whale slaughter in Antarctic waters.

BUSINESS

Rearrangement

Senator Patterson (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues) (9.32 am)—by leave—I move:

That on Thursday, 23 June 2005:
(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
(b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) shall 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
the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below and any messages from the House of Representatives:

- Migration Amendment (Detention Arrangements) Bill 2005
- Tax Laws Amendment (2005 Measures No. 1) Bill 2005
- Tax Laws Amendment (2005 Measures No. 2) Bill 2005
- Criminal Code Amendment (Suicide Related Material Offences) Bill 2005
- Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2005
- Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005
- Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005
- Shortfall Interest Charge (Imposition) Bill 2005
- Superannuation Bill 2005
- Superannuation (Consequential Amendments) Bill 2005
- Family Law Amendment Bill 2005
- Appropriation (Parliamentary Departments) Bill (No. 1) 2005-2006
- Appropriation Bill (No. 1) 2005-2006
- Appropriation Bill (No. 2) 2005-2006
- Appropriation Bill (No. 5) 2004-2005
- Appropriation Bill (No. 6) 2004-2005.

Question agreed to.

COMMITTEES

Procedure Committee
Reference

Senator MARSHALL (Victoria) (9.32 am)—I move:

That the following proposed amendments to the standing orders be referred to the Procedure Committee for inquiry and report:

1. That standing order 74(5) be amended by omitting “and does not” and substituting “or if a question taken on notice during a hearing of a legislation committee considering estimates remains unanswered 30 days after the day set for answering the question, and a minister does not”.

2. That standing order 164 be amended by adding:

“(3) If a minister does not comply with an order for the production of documents, directed to the minister, within 30 days after the date specified for compliance with the order, and does not, within that period, provide to the Senate an explanation of why the order has not been complied with which the Senate resolves is satisfactory:

(a) at the conclusion of question time on each and any day after that period, a senator may ask the relevant minister for such an explanation; and

(b) the senator may, at the conclusion of the explanation, move without notice—That the Senate take note of the explanation; or

(c) in the event that the minister does not provide an explanation, the senator may, without notice, move a motion in relation to the minister’s failure to provide either an answer or an explanation.”.

Question agreed to.

Foreign Affairs, Defence and Trade References Committee

Reference

Senator GREIG (Western Australia) (9.33 am)—I move:

That the Senate—

(a) recalls that on 2 December 2002 and 7 December 2004 it referred a proposed agreement between Australia and the United States of America (US), pursuant to which Australia would agree not to surrender US nationals to the International
Criminal Court without the consent of the US (the proposed agreement) to the Joint Standing Committee on Treaties for inquiry and report, and that this reference was reiterated on 30 August 2004;

(b) notes that, despite the clear will of the Senate, the Joint Standing Committee on Treaties continues to refuse to commence any inquiry until such time as the proposed agreement has been finalised;

(c) further notes that:

(i) the Government has indicated that its negotiations with the US for the proposed agreement are ongoing and that a model agreement has been circulated,

(ii) the US has entered into at least 95 such agreements with other nation states, and

(iii) there is widespread evidence regarding these agreements, including various legal opinions;

(d) expresses the view that, given the significance of such an agreement, it is desirable for the Parliament to consider its implications before it is negotiated to completion, rather than after; and

(e) refers the proposed agreement to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 30 October 2005, with particular reference to the following matters:

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

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

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

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

Question negatived.

PALMER REPORT

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

That there be laid on the table by the Minister for Immigration and Multicultural and Indigenous Affairs a copy of the final report, including findings and recommendations, by Mr Mick Palmer into the Ms Cornelia Rau matter, no later than 3 calendar days after the Minister receives the report and if the Senate is not sitting at that time, the report be presented to the President in accordance with standing order 166.

Question agreed to.

NORTHERN TERRITORY ELECTION

Senator CROSSIN (Northern Territory) (9.34 am)—by leave—I move the motion as amended:

That the Senate—

(a) notes the outcome of the election in the Northern Territory on Saturday, 18 June 2005, being a landslide victory to the Australian Labor Party (ALP) with a swing of at least 12 per cent;

(b) acknowledges the election of another two Indigenous people to an Australian Parliament, Ms Alison Anderson and Ms Barbara McCarthy;

(c) notes the comments from Senator Scullion that this was a ‘political tsunami’ for the Country Liberal Party; and

(d) congratulates Chief Minister Clare Martin and the ALP on being re-elected for another term.

Question agreed to.
COMMITTEES

Employment, Workplace Relations and Education References Committee

Reference

Senator BARTLETT (Queensland) (9.35 am)—At the request of Senator Murray, I move:

That the following matter be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 31 October 2005:

Whether the objectives of various forms of industrial agreement-making, including Australian Workplace Agreements, are being met and whether the agreement-making system, including proposed federal government changes, meets the social and economic needs of all Australians, with particular reference to:

(a) the scope and coverage of agreements, including the extent to which employees are covered by non-comprehensive agreements;

(b) the capacity for employers and employees to choose the form of agreement-making which best suits their needs;

(c) the parties’ ability to genuinely bargain, focusing on groups such as women, youth and casual employees;

(d) the social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities;

(e) the capacity of the agreement to contribute to productivity improvements, efficiency, competitiveness, flexibility, fairness and growing living standards; and

(f) Australia’s international obligations.

Question agreed to.

TRANSPARENT ADVERTISING AND NOTIFICATION OF PREGNANCY COUNSELLING SERVICES BILL 2005

First Reading

Senator STOTT DESPOJA (South Australia) (9.36 am)—I move:

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.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (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 STOTT DESPOJA (South Australia) (9.36 am)—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—

The Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005 seeks to prohibit misleading and deceptive advertising and notification of pregnancy counselling services; promote transparency and full choice in the notification and advertising of pregnancy counselling services; improve public health; and minimise the difficulties associated with obtaining advice to deal with unplanned pregnancy.

Although the Trade Practices Act outlaws “conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services”, most pregnancy counselling services are not subject to the Trade Practices Act because they usually do not charge for the information and other services they provide and are thus not considered to be engaging in trade or commerce.

This bill essentially makes pregnancy counselling services subject to the same laws regarding misleading advertising as organisations which are engaged in trade or commerce.

I have been campaigning for greater transparency in the advertising and notification of pregnancy counselling services since last year, when concerns about the way one pregnancy counselling...
service. Pregnancy Counselling Australia, was listed in the White Pages was first brought to my attention. Those who contacted my office at the time were concerned that the way Pregnancy Counselling Australia was listed in the White Pages gave the impression it was an impartial or “non-directive” pregnancy counselling service, yet in fact it is run by a pro-life organisation, and does not refer for terminations.

I raised this issue in the Senate in August last year, and subsequently wrote to Sensis—the company which publishes and distributes the White Pages—urging it to remove Pregnancy Counselling Australia from the emergency and community help pages of the White Pages, and replace it with a non-directive pregnancy counselling service. I also urged Sensis to engage in corrective advertising to advise the public of the true nature of the service Pregnancy Counselling Australia provides.

Sensis responded to my letter by writing that, following concerns raised in 2003, it had, in conjunction with Pregnancy Counselling Australia from the emergency and community help pages of the White Pages, and replace it with a non-directive pregnancy counselling service. I also urged Sensis to engage in corrective advertising to advise the public of the true nature of the service Pregnancy Counselling Australia provides.

Sensis went on to explain that Pregnancy Counselling Australia complies with its rules for listing in the 24 hour Service and Community Help sections of the White Pages, which include that the “content of the listing must not misrepresent the nature of the service provided”. In other words, Sensis believes the listing is as clear as it needs to be, and does not need to be altered—let alone removed. However, Birthline, the group behind this service, is not mentioned in the listing, nor is the fact that Pregnancy Counselling Australia does not provide referrals for terminations.

Sensis’ response, and my increasing awareness of a number of other pregnancy counselling services which like Pregnancy Counselling Australia, do not refer for terminations yet do not mention this in their advertising and notification material, has encouraged me to continue to push for greater transparency in this area, to ensure women are able to make informed choices about who they contact for information when they are deciding whether they can continue with a pregnancy, are seeking support in continuing their pregnancy, or have decided to have an abortion. Specifically, my Bill does the following.

Firstly, it prohibits pregnancy counselling services from printing, publishing, distributing, displaying or broadcasting (or causing, permitting or authorising to be printed, published, distributed, displayed or broadcast) any advertising material that is misleading or deceptive as to the services it provides, or any notification of its services that is misleading or deceptive as to the nature of the services it provides.

Secondly, it requires that advertising and notifications by pregnancy counselling services which do not refer for terminations to include a statement that “This service does not provide referrals for terminations of pregnancy” or a like statement.

Breaching either of these conditions would result in a penalty.

Thirdly, my bill would ensure that telephone directories such as the White Pages can only include non-directive pregnancy counselling services in their 24 hour health and help call pages of these directories.

In my Bill, ‘non-directive pregnancy counselling service’ refers to a service that offers counselling, information services, referrals and support on all three pregnancy options (raising the child, adoption, and termination) and will provide referrals to termination services where requested.

I would have liked this clause to be able to read that the directories must list a non-directive pregnancy counselling service in these pages, but unfortunately, due to a lack of Federal Government funding, there are currently no national 24 hour pro-choice pregnancy counselling services.

In fact, there are only two dedicated pro-choice pregnancy counselling services in Australia—Children by Choice in Queensland, and the Bessie Smyth Foundation in NSW. Neither receive any Commonwealth funding.

On the other hand, the Government allocates over $240,000 each year to the Australian Federation of Pregnancy Support Services (AFPSS) for
pregnancy counselling services (the AFPSS is linked to pro-life organisations and does not refer for terminations).

The next clause of the bill would ensure that where a participating State receives financial assistance from the Commonwealth for making payments to pregnancy counselling services and the service is found to have engaged in misleading or deceptive conduct, or has not met the notification requirement of the Act, financial assistance is not payable until the service has ceased to engage in the misleading or deceptive conduct or has met the notification requirements.

This bill also makes Commonwealth-funded pregnancy counselling services ineligible to receive a grant of financial assistance unless it first discloses whether it is a pregnancy counselling service which does not provide referrals for terminations of pregnancy, or a non-directive pregnancy counselling service.

Additional reporting requirements contained in the bill include that the Minister must report annually on the amount of each payment to each State and each service provider, the name of each service provider receiving the payment, and whether each service provider is a pregnancy counselling service which does not provide referrals for terminations of pregnancy, or a non-directive pregnancy counselling service.

I commend the bill to the Senate.

Senator STOTT DESPOJA—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

CIVIL AVIATION LEGISLATION AMENDMENT (MUTUAL RECOGNITION WITH NEW ZEALAND) BILL 2005

BROADCASTING LEGISLATION AMENDMENT BILL (No. 1) 2005

ARTS LEGISLATION AMENDMENT (MARITIME MUSEUM AND FILM, TELEVISION AND RADIO SCHOOL) BILL 2005

ACTS INTERPRETATION AMENDMENT (LEGISLATIVE INSTRUMENTS) BILL 2005

First Reading

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues) (9.37 am)—I move:

That the following bills be introduced:

A Bill for an Act to amend the law relating to the security of maritime transport and offshore facilities, and for related purposes.

A Bill for an Act to amend maritime legislation, and for related purposes;

A Bill for an Act to amend legislation relating to higher education, and for related purposes;

A Bill for an Act to amend the law relating to aviation, and for related purposes;

A Bill for an Act to amend the law relating to broadcasting, and for related purposes;

A Bill for an Act to amend the law relating to the arts, and for related purposes; and

A Bill for an Act to amend the Acts Interpretation Act 1901, and for related purposes.

Question agreed to.

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues) (9.37 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 PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues) (9.38 am)—I table the explanatory memoranda relating to the bills and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

MARITIME TRANSPORT AND OFFSHORE FACILITIES SECURITY AMENDMENT (MARITIME SECURITY GUARDS AND OTHER MEASURES) BILL 2005

The Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill amends the Maritime Transport Security Act 2003 (the Act). Please be advised that the Act will change its title on passage and the Royal Assent of the Maritime Transport Security Amendment Bill 2005 which was introduced into the House of Representatives on 25 May 2005 and is expected to have passed both Houses of Parliament by the end of the current sittings of Parliament. The new title of the Act will be the Maritime Transport and Offshore Facilities Security Act 2003.

The bill being introduced today will strengthen Australia’s maritime security by enhancing the capacity of ports and other maritime industry participants to deter and deal with unauthorised incursions into maritime security zones. Under the Act maritime security zones are established in security regulated ports or on board security regulated ships to prevent unauthorised access to areas requiring additional security measures. Maritime industry participants are required to monitor and control access to these zones, and strict liability offences apply under the Maritime Transport Security Regulations 2003 (the Regulations) to persons entering without authorisation.

Maritime security guards are deployed by maritime industry participants as part of their preventive security arrangements. In the course of his or her duties, a maritime security guard might detect a person who has entered a maritime security zone unlawfully. Under the Act, guards have the power to restrain an unauthorised person, and detain the person until a law enforcement officer—usually a State or Territory police officer—arrives. However, maritime security guards do not have the power to request identification from the person, ask the person why he or she is in the zone, or request that the person move-on if it has been established that the person has breached the provisions concerning access to zones. Nor do maritime security guards have the power to remove occupied or unoccupied vehicles or vessels found without authorisation in zones. In these circumstances, they would have to call the police to arrange removal. This is not always a quick and convenient solution to effect the removal of a potential threat from a maritime security zone.

Following a comprehensive review of Australia’s maritime security policy settings conducted by the Secretaries’ Committee on National Security last year, the Australian Government decided to enhance the powers of maritime security guards under the Act through provision of limited move-on powers. These new powers are contained in Schedule 1 of the bill, as well as some powers incidental to the implementation of the move-on powers.

Under the new powers a maritime security guard may request that a person found within a maritime security zone provide identification and reason for being in the zone. When confronting the person the guard will be required to identify himself or herself, advise the person of his or her authority to request information, and tell the person that non-compliance is an offence under the Act. These safeguards are intended to provide a balance between the coercive nature of the move-on powers and the rights of individuals.

If a maritime security guard has established that a person is in the zone without authority, then the guard can request that the person leave the zone. The previously mentioned safeguards apply in
these circumstances as well. If a person fails to comply, the maritime security guard may remove the person from the zone, but may not in the process use greater force, or subject the person to greater indignity, than is necessary.

Schedule 1 provides that a maritime security guard may remove, or cause to be removed, a vehicle or vessel found in a zone without authorisation. These provisions apply to occupied or unoccupied vehicles or vessels. There is a statutory obligation not to cause unreasonable damage to the vehicle or vessel being removed, and a requirement to notify the owner of the removal. Expenses incurred for the removal, relocation and storage may be claimed from the owner of the vehicle or vessel.

These powers acknowledge a key difference between airports and ports. Where persons can be prevented from unauthorised access to airports through traditional access control arrangements, such as fences and monitored gates, ports are, by their very nature, open on at least one side—the waterside. Providing maritime security guards with the means to request that waterside intruders move-on or else face removal and potential fines for non-compliance will address this natural weakness in port security.

It is expected that these new powers will complement the extensive waterside protection arrangements already in place, and enhance their deterrent effect. Of course, they will not eliminate the need for State or Territory police forces to respond to an incident or threat when called. But they will provide ports with an immediate response capability, and an ability to promptly deal with nuisance incursions into zones without having to call upon police resources.

Schedule 2 of the bill provides for a number of miscellaneous amendments to the Act which clarifies meaning, including an amendment which provides that a higher security level relevant to specified waters can be given to a regulated Australian ship.

The Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005 will strengthen Australia’s maritime security arrangements, providing for better security for our ports, port facilities and ships against the scourge of international terrorism, and enhancing the protection of both Australia’s maritime transport sector, and the Australian community.

MARITIME LEGISLATION AMENDMENT BILL 2005

The Maritime Legislation Amendment Bill 2005 makes a number of small but, in some cases, quite significant changes to four Acts, particularly to the Navigation Act. While I do not intend to mention all the amendments contained in this bill, I will make specific reference to a few of them.

A review of the level of penalties imposed by the Lighthouses Act and the Navigation Act has shown that many of the penalties contained in those Acts have little or no deterrent effect as they have not been revised for a considerable period of time. The bill will increase penalties to a more appropriate level.

For example, the current maximum penalty in the Lighthouses Act for damaging a marine navigational aid is only $220. The consequences of such damage may be an accident, such as the grounding of a ship which is relying on that aid for its navigation. This in turn may result in major environmental damage and possible loss of life. The bill will provide for a more appropriate and graduated series of offences for damaging a marine navigational aid. If the damage is the result of deliberate conduct, the maximum penalty will be imprisonment for ten years; if the damage is the result of reckless conduct, the maximum penalty will be imprisonment for seven years; if the damage is the result of negligent conduct, the maximum penalty will be a fine of $22,000. A similar approach of providing a graduated series of penalties for each particular offence has been adopted throughout the bill.

Military forces around the world now routinely operate some ships on a charter basis, rather than owning the ships. Such ships are not operated any differently to ships that belong to the military forces. An example is the Incat-owned vessel, HMAS Jervis Bay, which was chartered by the Royal Australian Navy and used to ferry people and goods between Australia and East Timor during the East Timor crisis.
Military ships traditionally are not subject to the laws applying to merchant ships. This is recognised in the Navigation Act which exempts ships belonging to the Defence Force of Australia or to foreign military forces from its application. To recognise modern chartering arrangements, the bill will extend the exemption provision to apply not only to ships belonging to military forces but also to ships operated by military forces.

Ship pilots provide a very important function in advising on the navigation of ships in areas where navigation is hazardous. The bill contains a number of amendments relating to pilotage.

Section 186D of the Navigation Act currently provides for the making of regulations relating to pilotage. That regulation-making power is being extended to pilotage providers, that is, the persons or organisations who assign a pilot to a ship. The sorts of matters that may be covered by regulations include the duties of pilotage providers.

The Great Barrier Reef Marine Park Act has requirements for compulsory pilotage in northern areas of the waters of the Great Barrier Reef. There are no requirements for compulsory pilotage in the Navigation Act. The regulation-making power in section 186D is to be further extended to allow regulations to be made declaring areas where pilotage is compulsory.

The master of a ship remains responsible for the ship at all times, even while a pilot is on board or the ship is subject to vessel traffic management arrangements, such as vessel traffic control within a port or other directions from another person not on board the ship.

Amendments to section 410B of the Navigation Act are intended to remove any doubt that, where a ship is subject to compulsory pilotage under an Australian law, the owner and master of the ship are responsible for any loss or damage caused by the ship. The pilot and the pilotage provider are immune from any civil claims for loss or damages that may arise.

This amendment will not mean that pilots will not take due care while they are working as pilots. The amendments do not provide any immunity from prosecution under criminal law. Further, in order to perform the duties of a coastal pilot, a person must be licensed by the Australian Maritime Safety Authority. A pilot’s licence may be cancelled, suspended or restricted in a number of circumstances, including if a pilot has demonstrated incompetence or misconduct relating to the performance of his or her duties as a pilot. A pilot who does not perform his or her duties in a competent manner therefore places his or her means of livelihood at risk.

As well as clarifying the immunity for pilots, the bill inserts a new section 411 into the Navigation Act to specifically provide that the master of a ship is not relieved from responsibility for the conduct and navigation of a ship by reason only of the ship being subject to vessel traffic management arrangements.

Where certain conditions are met, an unlicensed ship may be granted a continuing voyage permit to engage in trade between Australian ports. Section 286(4) of the Navigation Act provides that such a permit may be cancelled by the Minister, but the Minister must have given the master, owner or agent of the ship at least six months’ notice of his or intention to cancel the permit.

This provision is being amended to allow a continuing voyage permit to be cancelled in a much shorter time period if the Minister considers that such cancellation is in the public interest. The permit holder will be given an opportunity to show cause why the permit should not be cancelled and will be able to apply to the Administrative Appeals Tribunal for the review of a decision to cancel a permit.

While abuse of alcohol or other drugs on ships is not a significant problem, it is important that there be provision to detect any such abuse as even one crew member of a ship being unable to perform his or her duties may have catastrophic results. The Navigation Act already provides for breath testing to determine blood alcohol content but, because of inconsistency in the use of terms within the Act, the necessary associated regulations to determine precisely how breath testing is to occur have not been able to be made. This bill will ensure that terminology is consistent.

The Navigation Act is also being amended to allow for the taking of mouth swabs to enable testing for the presence of drugs.
The last amendment which I will mention is an amendment to the Protection of the Sea (Prevention of Pollution from Ships) Act which will require Australian chemical tankers to prepare and carry a Marine Pollution Emergency Plan for Noxious Liquid Substances. Carriage of such a plan on board a chemical tanker will provide a ready reference for the crew in case of a pollution incident involving hazardous liquids.

The requirement to carry a Marine Pollution Emergency Plan for Noxious Liquid Substances is in accordance with the International Convention for the Prevention of Pollution from Ships. Ships are already required to carry similar plans setting out procedures in cases of pollution by oil and the management of shipboard waste.

This bill continues the Government’s efforts to enhance Australia’s shipping safety and pollution prevention regimes.

HIGHER EDUCATION LEGISLATION AMENDMENT (2005 MEASURES No. 3) BILL 2005

Before I introduce the specific measures in this bill I’d like to recap some of our achievements in higher education reform to date.

The Australian Government’s priorities for higher education are to ensure that universities continue to diversify and that teaching and research are fostered whilst addressing stakeholder needs. We want an internationally competitive higher education system with our best universities in the top tier of world rankings.

Laying the foundation for this is an increase in public investment in the sector of around $11 billion over 10 years from 2005 to 2014. The Australian Government is providing record numbers of opportunities for students with almost 410,000 student places being provided in 2005.

This package of higher education reforms now being implemented provides Australian higher education institutions with additional resources to equip them to face international challenges. Underpinning the reforms are the key principles of sustainability, quality, equity, diversity, choice and consistency.

The reforms are enabling universities and students to make informed choices, supported by new co-financing arrangements, increased funding, subsidised loans and scholarships. In particular, the approval of new higher education providers has given students more diverse choices for study.

The reforms have provided greater scope for diversity within the higher education system through initiatives such as partial fee deregulation; access to some Commonwealth support for a greater range of higher education institutions; and performance and incentive based funding to encourage universities to differentiate their missions and to achieve reform in areas of learning and teaching, equity, workplace productivity, and collaboration.

This bill builds on these achievements.

This bill now before us contains measures which will enhance the legislative framework under which Australia’s higher education system now operates.

In particular the bill will strengthen the accountability arrangements already in place under the Higher Education Support Act 2003, so that the Australian Government and Australian students can be assured that all higher education providers have structures and procedures in place which are fair, transparent and accountable.

The bill will clarify the fairness requirements in the Act to ensure that higher education providers’ selection procedures are based on merit in the providers’ ‘reasonable view’. This amendment reflects the Australian Government’s policy that all higher education providers, public and private, must have open, fair and transparent selection procedures in relation to students.

The bill will provide for ministerial discretion to require an audit to be conducted on the operation of non-Table A providers to determine their adherence to the financial viability, fairness, compliance and contribution and fee requirements of the Act. It is envisaged that such compliance audits would be conducted on an ‘as required’ basis, rather than a regular or cyclical basis.

The bill will also clarify the requirements that need to be satisfied before a person is taken to be a Commonwealth supported student.
These measures are designed to make certain that students are properly informed and protected about decisions made by higher education providers which affect them.

The bill will also make some minor technical revisions to the Higher Education Support Act 2003 including amending it to reflect the new business name of Open Learning Australia: Open Universities Australia, clarifying that the guidelines for ‘incidental fees’ and fees in respect of overseas students are to be specified in the Higher Education Provider Guidelines rather than the Commonwealth Grant Scheme Guidelines, and clarifying the definition of Student Load as it relates to a bridging course for overseas-trained professionals.

The bill also amends the Australian National University Act 1991 to repeal an obsolete heading. Full details of the measures in the bill are contained in the explanatory memorandum circulated to honourable Senators.

I commend the bill to the Senate.

CIVIL AVIATION LEGISLATION AMENDMENT (MUTUAL RECOGNITION WITH NEW ZEALAND) BILL 2005

The Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005 (the bill) amends the Civil Aviation Act 1988 to put into effect an historic joint Australian and New Zealand commitment to mutually recognise each other’s aviation-related safety certification.

The bill has been developed in close consultation with New Zealand. New Zealand’s corresponding legislation was introduced and passed by their Parliament in March last year.

This bill and its associated regulations represent the first step in mutual recognition of aviation safety certificates between Australia and New Zealand. The bill permits the mutual recognition of Air Operators Certificates (AOCs) for operation of aircraft of more than 30 seats or 15,000kg, as issued by the Civil Aviation Safety Authority (CASA) in Australia and the Civil Aviation Authority of New Zealand (CAANZ).

Extension of mutual recognition of certificates beyond AOCs for the operation of large aircraft will be effected through amendments to legislation. This follows the recommendation made by the Rural and Regional Affairs and Transport Legislation Committee in June 2004.

This provides for a safe and measured introduction of the initiative that can gradually be extended, as both countries consider appropriate. This also provides Parliament with a level of transparency that is fitting to such an important initiative.

AOCs permit a person or organisation to conduct commercial activities and are issued only if the aviation safety regulator is satisfied about the matters specified in the legislation.

On that basis, under the new mutual recognition arrangements, CASA will be able to approve an AOC for an Australian operator that will authorise operations in both Australia and New Zealand and will be accepted for use by New Zealand authorities. This particular AOC will be termed an Australian AOC with ANZA privileges, where ANZA means Australia and New Zealand Aviation.

The aviation authority that issues the AOC with ANZA privileges will be the one to regulate its use by the operator, whether its operations are in Australia or New Zealand. This means that Australian operators opting to hold an AOC with ANZA privileges issued by CASA will be subject to regulatory oversight by CASA even when operating in New Zealand, and vice versa.

It is important to note, however, that although the operator will be overseen by the authority that issued the AOC, it will also be required to comply with the general laws and rules of the air applicable to operations in the country in which they are operating. For example, New Zealand operators conducting passenger services in Australia using an AOC with ANZA privileges issued by the Civil Aviation Authority of New Zealand, will have to comply with Australian laws with respect to the environment, curfew, aviation security and carrier’s liability.

The New Zealand legislation has a similar provision in relation to the ability of the Civil Aviation Authority of New Zealand to issue an AOC with ANZA privileges to New Zealand operators that
wish to operate in Australia as well as New Zealand.

There are three important aspects of this proposal. The first and most important, is that there will be no effect on the safety of aircraft operations in either Australia or New Zealand. The second is that mutual recognition is expected to reduce administrative costs of airlines, because they will no longer have to hold and comply with dual certification issued in both countries. This in turn will remove a barrier to airlines taking up commercial opportunities available under trans-Tasman air services arrangements. The third is the fact that this initiative is a major step forward in the integration of the trans-Tasman aviation market and marks an historic development in the aviation relationship between Australia and New Zealand.

With regard to safety, consideration has been given to the issue of whether safety would be compromised by the adoption of mutual recognition. It has been concluded that it will not, because it has been recognised and accepted that Australia and New Zealand have aviation safety standards that are each consistent with the International Civil Aviation Organisation standards for airline operations using large capacity aircraft.

It is also important to note that mutual recognition is not about harmonisation of Australian and New Zealand safety standards. Australia and New Zealand recognise that there are differences between our two systems, including in particular standards, but these can be accepted, as it is the overall safety outcome achieved by each system that is being recognised.

Notwithstanding this, by way of added guarantee, further measures have been built into this bill to ensure that safety is maintained at current high levels. One example is a provision that ensures that the regulator most effectively able to monitor the activities of the operator will be the one to issue the AOC with ANZA privileges. In nearly all cases this will, of course, be the operator’s home regulator as determined by a number of set criteria.

Another provision allows a regulator to issue a temporary stop notice to an operator holding an AOC with ANZA privileges issued by the other regulator, who is normally responsible for regulating the safety of its operations. Temporary stop notices would only be issued if the safety regulator considered there was a serious risk to flying safety. The provision builds in a strong safeguard that may never be needed but is nevertheless available to both regulators. The temporary stop notice will be in force for a maximum period of seven days, during which time the regulator that issued the AOC will consider what action should be taken in relation to the operator in question.

Strong communication and cooperation between CASA and the Civil Aviation Authority of New Zealand will underpin mutual recognition and are provided for by the provisions of this bill. Indeed mutual recognition has only been possible because of the joint understanding and commitment of the two regulatory agencies to continued safe practice.

An advantage of mutual recognition is the fact that operators will be able to use both Australian and New Zealand registered aircraft, regardless of which authority provides their AOC with ANZA privileges, providing the aircraft is included on the certificate. This will allow airlines to cross-utilise their aircraft and will provide increased flexibility for their operation.

These efficiencies are likely to have flow on savings to the wider community, through the airlines concerned, either by reduced fares or through greater choice as a result of competition.

Mutual recognition arrangements will, however, remain optional. An operator will therefore have the flexibility to continue to hold two separate AOCs if they wish.

This said, operators who do opt for an AOC with ANZA privileges from its home regulator will not be able to hold an AOC issued by the other. This is because it is important that all parties understand what AOC is in force and which regulator is ensuring compliance with it.

Mutual recognition is an undertaking by both Governments that arose as a result of the Open Skies Air Services Agreement between Australia and New Zealand.

The Open Skies Agreement was itself an important step in the further development of closer economic relations with New Zealand, intended to
promote competition and build upon the principles contained in the Australia-New Zealand Single Aviation Market arrangements.

When the Open Skies Agreement was negotiated in November 2000, the overall value of the Australia-New Zealand Single Aviation Market was estimated at $6.8 billion (NZ$8.7 billion). Mutual recognition will create opportunities for our airlines that will add further value to the relationship between our two countries.

It will help to ensure that the benefits of the integration of our two aviation markets continue, making it easier for Australian and New Zealand airlines to operate services in both countries, to integrate their fleets and achieve operating efficiencies.

Australia is committed to the implementation of this important initiative.

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BROADCASTING LEGISLATION AMENDMENT BILL (No. 1) 2005

The Broadcasting Legislation Amendment Bill (No 1) 2005 amends the Broadcasting Services Act 1992 (BSA) and the Radiocommunications Act 1992 (Radcoms Act) to provide a framework for the conversion of commercial television broadcasting services in regional and remote areas of Western Australia from analogue to digital.

Significantly, the provisions will allow the commercial licensees in regional and remote WA, WIN and Prime, to provide a new, third digital service for people living outside Perth, alongside their two current services. For the first time, regional Western Australians will be able to enjoy a level of television services similar to those currently enjoyed by viewers in Perth.

The BSA currently does not specify detailed measures for the introduction of digital television services in remote areas. This was in recognition of the need to give consideration to the special circumstances of remote areas. The Australian Communications and Media Authority (ACMA), which will be established on 1 July, merging the Australian Communications Authority with the Australian Broadcasting Authority, is required to make a legislative instrument—a Commercial Television Conversion Scheme—to set out the terms of that conversion process.

In addition, section 38B of the BSA allows commercial broadcasters in licence areas with only two commercial licences to jointly (or one broadcaster individually) elect to provide a third, digital-only service. Where they elect to do so jointly, they must provide each of the digital versions of their analogue services, and the new joint service, on a separate television channel, and provide high definition television (HDTV) programs.

Items 1 to 8 of Schedule 1 to the bill contain amendments to the BSA that define the circumstances where remote area licensees can elect to provide a section 38B service. Remote area licensees who have elected to provide jointly a section 38B service will be able to multichannel the three commercial digital services on a single radiofrequency channel, with exemption from HDTV quotas. Similarly, if the section 38B service is provided by only one of the two licensees, that licensee will be able to multichannel the digital version of their analogue service, and the section 38B service on a single digital channel.

This represents a significant saving for the licensees concerned. Instead of having to establish and maintain two or three sets of digital transmission infrastructure, with capacity for HDTV, they will be able to establish only one, shared set of infrastructure, without the additional cost of investing in HDTV equipment.

Items 9 to 11 of Schedule 1 to the bill contain corresponding amendments to the Radcoms Act relating to the transmitter licences that authorise the operation of those transmitters.

Passage of this legislation will enable the ACMA to proceed to develop the Commercial Television Conversion Scheme for Western Australian regional and remote areas, allowing digital broadcasting to commence in these areas and the new service to be provided.

The digital television conversion model which would be enabled by passage of the bill represents a balance between public interest considerations and the special circumstances of remote area commercial television broadcasters. These broadcasters face significant cost pressures due to the wide geographic area they service, and the sparse population. Delivery of HDTV to all viewers in this market would be a very significant cost to broadcasters. Viewers will benefit from the new
third digital service, delivering a substantially increased range of information and entertainment. Nevertheless, the bill makes specific provision for remote commercial broadcasters to change their digital transmission arrangements in the future to provide HDTV services, if they choose to do so. This model also achieves significant cost savings in respect of the public purse because funding assistance to the broadcasters under the Government’s Regional Equalisation Plan is reduced, corresponding with the reduced digital conversion costs to broadcasters.

ARTS LEGISLATION AMENDMENT (MARITIME MUSEUM AND FILM, TELEVISION AND RADIO SCHOOL) BILL 2005

The Arts Legislation Amendment (Maritime Museum and Film, Television and Radio School) Bill 2005 (the bill) provides flexibility for certain functions of the Australian National Maritime Museum and the Australian Film, Television and Radio School.

The Australian Film, Television and Radio School is the nation’s flagship training institution for our film and broadcasting industry practitioners. The School provides high quality, up-to-date training for emerging and established film and broadcasting industry professionals.

The proposed amendments will afford the School and its Council an appropriate level of discretion in determining how the School’s curriculum can best serve the film and broadcasting industries, practitioners and students.

The film and broadcasting industries are operating in a dynamic and rapidly changing environment. The proposed amendments to the Australian Film, Television and Radio School Act 1973 will also ensure the School is able to respond to the needs of industry promptly and effectively.

Currently, the School can only award degrees, diplomas and certificates provided by the regulations. This requires that regulations be made and/or revoked each time a new course is offered or an old course withdrawn.

The process is time consuming and cumbersome. The process does not allow the School to rapidly respond to the needs of the film and broadcasting industries, practitioners and students.

The effect of the proposed amendments will be that the School would, for example, be able to offer new courses and then award relevant degrees, diplomas or certificates as the School believes is appropriate. This will ensure that the approval process is faster and more streamlined.

For the Australian National Maritime Museum, whose responsibility it is to manage and care for the national maritime collection, the proposed minor amendments have the potential to provide greater flexibility in how museum entry charges can be fixed, and also to clarify the Museum’s power to fix charges for entry to special exhibitions and events.

The present arrangements have led to a lack of flexibility and clarity in relation to fixing entry charges at the Museum.

At present, the Governor-General may make regulations fixing charges for entering the Museum’s premises. The Act also provides that the Museum can fix charges for entry to special exhibitions and events, in addition to those charges fixed by the Governor-General.

The proposed amendments would allow the Governor-General to delegate the power to fix entry charges. If that power was delegated to the Museum, it would be able to identify and vary charges for different premises and special exhibitions and events in a more responsive fashion, without the need for amendments to the Australian National Maritime Museum Regulations 1991.

The proposed amendments would also have the effect of bringing the arrangements for Australian National Maritime Museum into line with those for other national institutions in the arts portfolio such as the National Museum of Australia.

These proposed minor amendments would provide greater flexibility and clarity of process for both of these cultural agencies. They would provide each agency with the ability to respond to public and industry demand in a flexible and timely way, allowing them to best meet their objectives to enrich our cultural landscape.
ACTS INTERPRETATION AMENDMENT (LEGISLATIVE INSTRUMENTS) BILL 2005

The main purpose of this bill is to insert a new interpretive provision, section 15AE, into the Acts Interpretation Act 1901.

New section 15AE will explain what is meant when a provision of a law provides for the making of an instrument which is described as being a legislative instrument and what is meant when a provision of a law provides for the making of an instrument which is described as not being a legislative instrument. New section 15AE was requested by the Office of Parliamentary Counsel and will make clear that wherever the term 'legislative instrument' appears in legislation, it has a particular meaning.

The amendments operate from the commencement of the legislative instruments legislation (1 January 2005) and have no adverse effects. Including the new provision of 'legislative instrument' in the Acts Interpretation Act will preclude the need to define the term every time it is used in legislation. The new definition has no substantive effect, as it is a definitional section and thus a shortening device.

The bill also makes a number of consequential amendments to provisions in Part XI of the Acts Interpretation Act. The provisions in that part were inserted by the Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003 to preserve the operation of the Acts Interpretation Act in relation to non-legislative instruments. The provisions in Part XI have parallel provisions in the Legislative Instruments Act in relation to legislative instruments.

The proposed consequential amendments to these provisions of the Acts Interpretation Act are drafting changes only in consequence of the insertion of new section 15AE and make no substantive changes to the Acts Interpretation Act.

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

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

COMPULSORY STUDENT FEES

Senator NETTLE (New South Wales) (9.39 am)—I move:

That the Senate—

(a) notes:

(i) that the students at Monash University Clayton Campus are due to boycott classes at the commencement of the second academic semester on 18 July 2005 in protest at the Government’s intention to abolish compulsory student association fees,

(ii) the staff at Monash University Clayton Campus support the students’ decision to boycott classes, and

(iii) this action is just one of numerous acts of protest being organised on campuses around Australia in order to demonstrate the depth of concern students and university staff feel at the threatened loss of democratic control of student services on campus that will result from the Government’s moves to abolish compulsory student association fees;

(b) congratulates Monash University students on their willingness to sacrifice their study time to defend their ability to collectively and democratically organise and preserve student services; and

(c) calls on the Government to:

(i) recognise the community-wide benefits that well-resourced student associations deliver in promoting campus democracy,

(ii) recognise the demonstrated inability of ‘market forces’ to provide the appropriate range of services students need when they need them, and

(iii) abandon plans to abolish compulsory student association fees.

Question agreed to.
BUSINESS

Consideration of Legislation

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues) (9.39 am)—I move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Migration Amendment (Detention Arrangements) Bill 2005, allowing it to be considered during this period of sittings.

Question agreed to.

COMMITTEES

Community Affairs References Committee Report

Senator COOK (Western Australia) (9.40 am)—On behalf of the Chair of the Community Affairs References Committee, Senator Marshall, I present the report of the Community Affairs References Committee entitled The cancer journey: informing choice, together with the Hansard record of proceedings and submissions received by the committee.

Ordered that the report be printed.

Senator COOK—I move:

That the Senate take note of the report.

I seek leave to incorporate Senator Marshall’s tabling statement in Hansard.

Leave granted.

The statement read as follows—

This report, entitled The Cancer Journey: Informing Choice, is the result of an inquiry established in February 2005 by Senator Peter Cook into services and treatment options for persons with cancer.

The Committee received over 100 submissions from a range of groups and individuals. The Committee especially thanks the cancer patients and their families who provided submissions and gave very moving testimonies of their personal cancer journeys. The Committee has given voice to these people in the report and hopes that it has done justice to their stories.

This is a unanimous report. It is the Committee’s hope that the recommendations will be a guide for government and non-government institutions to improve cancer treatment and services in Australia for all cancer patients regardless of where they live.

Australia can feel justifiably proud of its internationally recognised achievements in the areas of decreased mortality and increased survival for people with cancer. However, despite our achievements and advances in treatment, there are inequalities in the system and not all Australians have access to best practice cancer care. This is true even in some outer metropolitan areas but particularly for rural and Indigenous Australians.

We want to assist all cancer patients to receive best practice care. Cancer is perhaps unique in that it usually requires a whole range of different services to treat it. For example, patients may need to see not only surgeons but also radiographers, oncologists, pathologists and other allied services.

One of the key messages from cancer patients was that their care had been fragmented and disorganised. The Committee heard from witnesses that multidisciplinary care is best practice and provides the cancer patient with a team approach which agrees on a precise diagnosis and a treatment plan and includes a designated care coordinator. Patients experiencing multidisciplinary care report greater satisfaction with services, less personal distress and improved outcomes.

To improve coordination of care along the care continuum, the Committee recommended that multidisciplinary care be widely promoted through a range of measures including: multidisciplinary cancer centre demonstration projects, enhancing current Medicare Benefit Schedule arrangements to support participation in multidisciplinary meetings and including multidisciplinary care as part of any system of accreditation of cancer services.

Care coordinators play a vital role to reduce fragmentation of care and improve the provision of information. The Committee recommended that all State and Territory governments that have
not yet done so, establish designated care co-
dinator positions to help cancer patients navigate
their way through treatment and provide support
and access to appropriate information. The Com-
mittee recognised the success of the breast cancer
nurse model and recommended State and Territo-
ries undertake recruitment drives for skilled
health professionals such as retired nurses to help
fill these positions.

Another key message from cancer patients was
the lack of information from the very start of their
cancer journey. Along with the shock of the diag-
nosis, there are a myriad of questions to be an-
swered, the health system to navigate, choices to
be made regarding specialists and treatments, and
unfamiliar medical terms to learn.

To make more information available to the cancer
patient, their families, care coordinators and
health professionals, the Committee recom-
mended that Cancer Australia provide access to
authoritative, evidence-based information on ser-
vices, treatment options, government and non-
government assistance and links to appropriate
support groups.

To provide more information to physicians and
patients at the time of diagnosis and to assist
making decisions regarding treatment, it is impor-
tant to link referral pathways to services which
are accredited and physicians who have appropri-
ate credentials. The Committee has recommended
that Cancer Australia work with the Clinical
Oncological Society of Australia and the Cancer
Council of Australia in developing and introduce
accreditation and credentialing systems.

Cancer patients also stressed to the Committee
that life goes on regardless of cancer and some-
times the emotional and practical issues they face
can be just as challenging as the physical ones.
Many stressed the lack of support available and
the Committee has recommended that psychosoc-
ial care be given equal priority with other as-
pects of care and be fully integrated with both
diagnosis and treatment, including the referral to
appropriate support services where necessary.

To address a major concern for regional cancer
patients, the Committee has called on State and
Territories to adopt and implement a consistent
approach to travel and accommodation benefits
which should be indexed or reviewed annually.

To improve the survival rates for Indigenous Aus-
tralians, we have recommended that Cancer Aus-
tralia, in consultation with Aboriginal and Torres
Strait Islander people and the States and Territo-
ries, auspice work to improve access to cancer
screening, diagnosis and treatment for Indigenous
people that is culturally appropriate.

Cancer patients are increasingly better informed
and many want to be active participants in their
treatment plans. Complementary therapies was
another area highlighted by patients where there
is a significant need for greater information. They
referred to the negative attitude taken by many
medical professionals at attempts by patients to
help themselves and investigate complementary
therapies.

The Committee heard that the reasons behind the
growth in complementary therapies include:
greater individual attention from practitioners,
holistic values, dissatisfaction with medical out-
comes, a desire for improved health, increased
access to health information as well as a growth
in research based evidence supporting their effec-
tiveness.

There is substantial research literature and grow-
ing understanding by patients that some of these
therapies can enhance quality of life such as
meditation, acupuncture, massage therapy, sup-
port groups and relaxation. There is also emerg-
ing evidence that some therapies can not only
enhance but may contribute to life extension.

In the USA and Europe, the benefits of comple-
mentary therapies have been acknowledged and
are being actively introduced into the conven-
tional health sector as part of integrative medi-
cine. Integrative medicine combines the best of
both worlds, the scientific aspects of conventional
medicine with the scientific aspects of comple-
mentary medicine.

To support informed choice and attitudinal
change in Australia, the Committee has recom-
mended steps to provide greater access to infor-
mation on complementary therapies, increase
knowledge of their potential benefits and increase
Australian complementary therapy research.

With increasing numbers of people, including
cancer patients, accessing complementary thera-
pies, the Committee has recommended that Can-
The Committee considers that complementary therapy organisations need to speak with a more influential and unified voice and has recommended that the complementary therapy organisations form a national body to enable its members to discuss issues such as regulation, research, collaboration and cancer initiatives at the Commonwealth, State and Territory levels.

The increasing numbers of people being diagnosed with cancer and living longer with cancer will place pressure on the national health budget and present challenges to the delivery of optimal cancer care services in Australia. We hope this report will contribute to the development of a national, evidence-driven, consumer-focused approach to cancer care, involving greater coordination of the cancer patient’s journey and greater provision of support.

I commend the report to the Senate and I look forward to a positive response from the government.

Finally, I would like to place on record my thanks to all members of the Committee for their empathy and cooperation throughout the hearings and through the compilation of the report and recommendations in the short timeframe available. I also thank the staff of the Community Affairs secretariat who were ably assisted in this inquiry by Lyn Beverley, Ian Kemp and Clive Deverall.

Senator COOK—The Chairman of the Community Affairs References Committee, Senator Gavin Marshall, and the committee have asked me to table this report. I thank them sincerely for the opportunity to do so. I recognise in the gallery members of the committee secretariat. The committee secretariat served us well. This report had a tough deadline and a tight scheduling of hearings. At all times we were conscious of the importance of the subject—cancer—and the need to do a thorough job. I believe we achieved that. Without the help of Mr Elton Humphery and his staff, especially Ms Lyn Beverley and Mr Ian Kemp, it would not have been possible. In particular, I am grateful to my own staff member Mr Clive Deverall for the help he provided. I believe we all owe a debt of gratitude to them.

When I moved the terms of reference for this inquiry in the Senate, I had just come through a traumatic and frustrating period in my life. I had been diagnosed with secondary melanomas and undergone extensive surgery, only to be given a dismal prognosis. Fortunately for me, a lot of good friends came to my aid and helped me, together with outstanding doctors at the Sydney Melanoma Clinic, later at Sir Charles Gairdner Hospital and many others, to develop a strategy to improve the odds.

When I was diagnosed I knew nothing about the disease. Initially it was a frightening and frustrating experience. With little or no knowledge I had to make life-critical decisions in an urgent time frame. Faced with that immense task it is very easy to despair and give up. What I needed was a rational evaluation of all the options—information on diet, exercise, emotional wellbeing and guidance on what was snake oil and what held promise among the alternative treatments. Most of all I needed advice on the various conventional therapies available. Eventually I found my way through to a treatment strategy that has given me confidence. In all that I have learnt, I have learnt that there is no such thing as a silver bullet here—no single, one solution—and that the answer, if there is one, lies in integrating a number of treatments, or sequencing them in a way to make sure that one treatment does not negate or
block another. The other insight I gained is that, as a patient, I had to take responsibility for my own healing.

As I said, I was fortunate to have good friends who referred me to the leading researchers and clinics in all the capital cities of Australia and overseas. Indeed, it was because of these referrals that I came across a congressional inquiry into cancer treatments conducted in Washington some 15 years ago. A book published about it gave me the confidence to assess all of the options, both conventional and complementary, before making a choice on an integrated regime. That American inquiry is now some 15 years old. We have the chance in Australia to replicate and update that very worthwhile work. In fact, we have, I believe, a duty to do it. Cancer patients should not be left to the luck of the draw or to serendipity in order to have their disease treated in the most effective way.

In moving for this inquiry I recognised that the options I eventually chose may not be appropriate to everyone facing cancer. But I believed that the Senate could help others navigate their way through the maze to find the treatment regime which best suited them. An inquiry could survey the field, consider the options, and point to possible solutions; importantly, it could do this by standing in the shoes of cancer patients and hopefully make sense of the system on their behalf.

Too many individuals and families in Australia suffer from cancer or experience its effects at first hand. On current statistics, one in three Australians will have to deal with cancer before the age of 75, and cancer has now, unfortunately, supplanted heart disease as the biggest single killer of Australians. Some families cope well, survive their treatment and carry on with their lives. But there are far more who do not cope, do not survive, and become grim statistics—the technical classification is ‘cancer mortality’. And there are those who achieve remission but live the rest of their lives struggling with the disease.

Our report looks at the experience of cancer patients who have survived what many call their ‘cancer journey’—from the impact at the time of diagnosis through sometimes lengthy cycles of treatment. Others gain full remission or cure, or the knowledge that their cancer cannot be cured and they cope with maintenance therapy until they die—often of something else. One thing we do know is that more people in Australia are getting cancer, in all its forms, and that the incidence is going to increase as our population ages. I hope that our report, which quotes all the statistics, will help people who are currently being treated and significantly improve the outlook for those who are diagnosed in the future.

Australia has a good record, by any international comparison, in terms of its cancer treatment results or ‘survival’, as it is technically described, but we believe it has the opportunity to do better. However, all the statistics of incidence and survival mask the real, everyday problems that cancer patients face on their individual journeys. All the statistics can never describe the psychological trauma at the time of diagnosis; the financial impact on families as they lose income; the nausea, vomiting and fatigue that so many patients experience as side effects; and the burden that has to be carried by their carers.

During the inquiry we heard details of how patients adjusted their lives and tried, together with their carers, to cope with the progression of their disease and its treatment. It was very evident to all of us on the committee that cancer treatment services in Australia could and should be improved. The system by which patients are managed after their diagnosis and how they are referred is
not a scientific or medical issue; it is a health management issue. We received powerful evidence during the inquiry that the present system of referral can be erratic and poorly managed. It often works against the best interests of the patient. The best illustration of how it should be done is from the breast cancer treatment sector, which, since the early 1990s, has been overhauled and brought into line with the modern approach of multidisciplinary care.

Multidisciplinary care is identified by the committee as vital to improving the treatment of cancer in Australia. Multidisciplinary care is teamwork where the different medical disciplines or experts, assisted by allied health professionals, are involved in the treatment program. This includes the psychosocial support of the patient. Multidisciplinary care has been well demonstrated nationally and internationally. It allows GPs to refer their patients to the best-qualified and best-equipped centres which specialise in the treatment of specific cancers. Components of multidisciplinary care, all of which are described in the report, support the patient and their carer throughout the cancer journey.

Included as part of integrated multidisciplinary care is a care coordinator, who guides the patient through their cancer journey. The care coordinator can be a nurse or other trained health or allied health professional who works in the multidisciplinary team and plays a major part in organising the patient’s treatment program. Keeping the patient informed and discussing the options available, as well as supporting the patient emotionally, is part of the role of the care coordinator. The National Breast Cancer Centre has already demonstrated the effectiveness of breast care nurses in the multidisciplinary approach to the treatment of breast cancer. It has been established that a care coordinator is not only of great comfort to a patient and their carers but also helps to ensure the most efficient use of professional time.

Part of the pedigree for multidisciplinary care is a national accreditation system that rates the clinic or hospital and a credentialing process that assesses and rates the clinicians who work there. The committee was unanimous that multidisciplinary care must be available for the treatment of all cancers. The systematic introduction of multidisciplinary care in Australia will also improve treatment services in rural and remote regions of our country, including culturally appropriate services for Indigenous Australians. It is also important that, when cancer patients are treated, we know how they were treated and the outcome of the treatment is measured and recorded. This is an important part of data collection and multidisciplinary care. Data collected should also include information on the patient’s quality of life.

Another method of improving treatment standards, in addition to multidisciplinary care, is clinical trials—which also feature positively in the report. Clinical trials help to introduce new treatment techniques, including new drugs, into the Australian treatment protocols which keep Australia up to date internationally. Dramatic improvements have been achieved as a result of clinical trials, especially for treatment of cancer in children.

Several recommendations in the report relate to complementary therapies, or CTs. Complementary therapies are used by over 60 per cent of cancer patients being treated in Australia, yet they are provided, in most cases, outside the Australian health system with few medical rebates. Australians spend upwards of $1 billion per annum on these forms of treatment.

From evidence presented to the inquiry, it was clear that there is a great divide between conventional medicine and complementary therapy including alternative medicine. Col-
laboration appears to be virtually non-existent. So we have this strange situation in this country where there are thousands of cancer patients being treated in our hospitals and at the same time a majority of these same patients are using complementary therapies and alternative products without any exchange of information between the two systems. Some witnesses at our inquiry spoke about how in their case their specialists derided their inquiries about specific complementary therapies, or of the ignorance of many doctors about them. There is a void when it comes to the public having access to authoritative, accurate and up-to-date information.

In contrast, the committee heard evidence from overseas witnesses, who included representatives from the famous centre in New York, the Memorial Sloan-Kettering Cancer Centre; the Macmillan Cancer Relief centre in the United Kingdom; Mount Vernon Cancer Centre in London; and the Lance Armstrong Foundation. All the representatives told the committee about their use and endorsement of complementary therapies including herbal medicine and acupuncture, which were described as ‘an integrative part of mainstream cancer treatment’.

Integrative medicine is now a standard course of study in most American university medical schools. Australian witnesses representing this sector emphasised how nutritional medicine and techniques such as massage, meditation, sequential muscle relaxation and aromatherapy helped cancer patients having conventional treatment cope better with the side effects of their treatment as well as improving their outcomes. Complementary therapies also help patients who are in remission after successful conventional treatment to maintain good health.

It is the committee’s view that Australia is, in comparison with Europe and the USA, behind in the use of complementary therapies. It is clear from the evidence provided that respected scientific journals have published positive results relating to the use of complementary therapies. It also appears that Australian patients are already voting with their chequebooks by their widespread use of complementary therapies. Consequently the committee recommended that the government should publish authoritative, up-to-date information and, in addition, that complementary therapies should be incorporated within multidisciplinary cancer care.

Professor Jane Maher, an overseas expert witness from the Mount Vernon Cancer Centre, recommended that Australia needed to find champions from the conventional medical sector who, like her, would be prepared to foster the use of complementary therapies and alternative medicines in their clinics as well as to encourage more research. The committee recommended that the NHMRC convene an expert working group to identify research needs which must involve representatives from the complementary therapy sector.

I believe this has been an extremely useful inquiry conducted by this Senate committee. Yesterday I delivered my valedictory speech, but now that this is an addendum to what I have done in my 22 years in this chamber I must say this may well be the most important inquiry I have sat on. I would like to thank the chairman of the committee, Senator Gavin Marshall; the deputy chair, Senator Sue Knowles; and the other members of the committee for the work they have put into what I regard as being a vital and important inquiry.

I hope these findings not only reflect the evidence, as I am sure they do, but also receive a sympathetic and understanding ear in government as we try and work our way through improving on the already first-class
treatment that this country provides to cancer patients. There are some other steps we can take, and this report recommends them. I think it does so sensibly, and I commend it to the chamber.

Senator LEES (South Australia) (9.56 am)—I would like to begin by paying tribute to Senator Cook for his courage and determination at a time when he could be excused for moving on and not putting such energy and effort into something when he is facing a very personal challenge. I would also like to pay tribute to the committee, and this will be for the last time. The community affairs committee is a fabulous committee. I pay tribute to Elton and his team.

For me, this inquiry was quite a moving experience. I think the essence of it was about empowering people who find that they have cancer. One of the big gaps in Australia is the lack of access to alternatives—to complementary therapies—or even finding out about what the alternatives are. As we looked overseas and had overseas evidence by phone linkage we saw that, particularly in the US and also in Europe, they are so much further ahead than we are. We also looked at the breast cancer model in Australia. We saw there the breast cancer nurse and the contact that is made with the woman within the first few days—someone else who has had the experience gets in touch. There is a process then of explaining alternatives, and we are not talking about going on a diet instead of chemotherapy; we are talking about the other things that can be done to help the cancer sufferer and their family through what is a very daunting experience. This is about action. This is about looking at what we do now and better coordinating the excellent services that are available in our hospitals with what people want and, indeed, as Senator Cook has said, what people are paying for out of their own pockets, because the holistic approach is simply missing in Australia.

For me, one of the specific issues we need to deal with urgently is that of adolescents. There is a gap between excellent childhood cancer services and adult services, which tend to be focused cancer by cancer. As I said, the breast cancer model is the one that we should be moving across into all the various sorts of cancers. But somehow the teenagers seem to be slipping through. They do not want to go into cancer wards in the big hospitals. A lot of the adult services are quite daunting for them. So I make an appeal to the government on this to look at firstly making sure that this battle between what is conventional and what is complementary stops, that doctors are supported through the process of understanding that if you empower someone with a chronic illness—if they actually feel better—they will get better. It is very much a part of the process, and this is not going to cost a lot of money.

I only have three minutes to speak on this, and in my last couple of seconds I want to stress that we are not talking about huge input from the budget. We are talking about reorganising what we have got, focusing it on the individual and understanding that anyone with a chronic illness needs to have firstly a real understanding of what they are facing but then some real alternatives and to feel in control of themselves. (Time expired)

Senator KNOWLES (Western Australia) (9.59 am)—This cancer inquiry has been particularly significant for all affected by cancer, both today and tomorrow. I congratulate Senator Cook on taking the initiative to initiate this inquiry. It was a very significant inquiry and it was, in many cases, a very alarming inquiry. The things that have been revealed to this inquiry are certainly food for thought for governments all around Australia and also for medical practitioners. It is very disturbing to see that there is so little communication between various levels of the medical profession where they could aid
cancer patients right from the moment of diagnosis all the way through their journey.

Senator Cook well and truly needs to be congratulated for, as Senator Lees said, taking on an inquiry with quite an arduous hearing schedule when clearly it would have been very easy for him to sit at home with his slippers on—so congratulations, Senator Cook. I also will take this opportunity, Senator Cook, to wish you well in your future journey and also for your retirement. I do not want to use much time; in fact, I would like to allocate what time I have left over, when I have concluded my comments, to my colleague Senator Humphries. As everyone knows, Senator Humphries is the future; I am about to be the past. So I think it is important that Senator Humphries has considerably more time.

I would like to make special mention of Senator Marshall’s chairmanship of this inquiry. I think his chairmanship has been absolutely superb. There were a lot of people who were very emotional and very affected by the evidence that they were giving. Thank you, Senator Marshall, for your care, patience and tolerance and the compassion that you showed in your chairmanship. I also, again, would like to thank our wonderful secretariat for the work they have done on this. But I would also like to have the indulgence for a moment of the Senate because I did forget to thank two very significant groups of people in my valedictory speech. One is Hansard: bless your souls, you have managed to get down all the words over 21 years and make sense of them at times. I would also like to thank the library. Both have been wonderful resources over the time. But, as I said, I wish to leave my extra time to Senator Humphries. Congratulations again to Senator Cook and the committee on an excellent report that I hope will see great benefits extended to those who are diagnosed today and deal with it tomorrow.

**Senator HUMPHRIES (Australian Capital Territory) (10.02 am)**—I was privileged to be part of this fascinating inquiry. I feel that a real contribution has been made to public policy in Australia by virtue of that inquiry having been conducted. Like other members, I commend Senator Cook for the opportunity he created, by virtue of his own experience, to throw the spotlight of the Senate onto this important issue. I think it has produced some value in public policy terms.

As senators have already heard, this problem is a significant problem for an increasing number of Australians. Between 1991 and 2001 there was a 36 per cent increase in the diagnoses of cancer in this country—a frightening statistic. In recent years, it has led to the calculation that half a million potential years of life are lost each year to Australians by virtue of this insidious set of diseases. It is important to note that, although there are certainly improved survival rates for a number of cancers, in fact for the majority of cancers, across Australia in recent years because of improved technology and medicines, the fact remains that all too many Australians each year are finding that diagnosis suddenly placed in front of them. Steps need to be taken to ensure that they are better supported through the process of the cancer experience, the cancer journey.

It is true to say that overall the quality of cancer services in this country is quite good. We have survival rates which are quite high by world standards, and it is important for us not to lose sight of that. Indeed, what this report focuses on is not so much recommending massive new amounts of money to be spent on cancer research or cancer services per se—although, of course, more money would be welcome and would go a long way—but rather looking at ways in which we can improve the delivery of service to Australians by looking at the range of services available in Australia, the informa-
tion available to Australians who are diagnosed with cancer, particularly the way in which we integrate conventional cancer services with what are variously called complementary therapies and other things for people who find themselves in that position.

An important recommendation from this report is the one that suggests that, with so many information pathways available to Australians affected by cancer, it is extremely important that we begin to channel and tailor packages appropriate to people who are diagnosed with cancer. There is a huge amount of information for people in these circumstances. In fact, there is much information which is probably unhelpful or inaccurate. There is much very useful information provided by clinical outlets, government and semi-government agencies, research bodies and so forth. But, for those freshly diagnosed with cancer, we found evidence that there were too often confusing portals into that information and a lack of a clear set of principles and explanations of clinical pathways available to them. The opportunity created by Cancer Australia’s formation to bring this all together is very significant. I think it is most important that this report be taken up by that new body to establish a very clear set of principles for how information is provided to those newly diagnosed.

I want to touch on the issue of complementary therapies. My view during the course of this inquiry about those therapies swung around quite dramatically. I was sceptical about the value of such therapies but have come to the view that they are extremely important for the emotional and spiritual wellbeing of cancer patients. The fact that so many cancer patients in this country turn to them, often sidestepping clinical advice available to them from their GP or specialist, is evidence of the important place that they occupy in the cancer scene by offering hope to people who otherwise might be told by conventional medicine that they have little or no hope.

It is important that we provide a pathway for people who are diagnosed with cancer to access accurate information about complementary medicines. I particularly commend to the Senate the recommendations that provide for the NHMRC to establish a funding stream dedicated to research into complementary medicines, and not because I think it is likely to bring a large number of alternative therapies in from the cold and somehow make them acceptable to mainstream medicine overnight. That may happen over time but it is not likely to happen anytime soon. But it is important for people to know where they stand with those medicines, to know what implications they have in connection with conventional medicine. Many complementary therapies are beneficial, as I have said. In an emotional and spiritual sense they support patients with a diagnosis of cancer. They give them a sense of being empowered, as Senator Lees said, in the circumstances of their condition. But some therapies have the potential to be harmful to a conventional medicine regime. We can overcome that problem if we focus on the interface between the two areas.

Another important recommendation to support that position is that there should be a peak body of some sort, a forum or committee of complementary therapies and providers in this country, so that they are able to deal on more equal terms with the conventional medical hierarchy. We all know that there is something of an art form to writing a good application, and probably no more so than when it comes to seeking large numbers of dollars for research. But very often we have heard that some of those therapies are not in a position to put together suitable and acceptable funding applications, and we need to give them a pathway to ensure that they do...
not slip outside the mainstream merely because they do not conform to those conventions. I remind the Senate that therapies like acupuncture, for example, were long regarded as quackery but now occupy a very respectable place within conventional medical procedures. Other alternatives deserve to be considered as the evidence comes forward that they are in fact efficacious.

I also believe it is important that we focus on the recommendations about a multidisciplinary approach towards cancer. It is clear that patients do not have a single, one-dimensional set of needs. They are not focused just on the physical presence of a cancer in some particular part of their body. There are a range of problems—psychosocial problems, for example—which absolutely must be addressed as part of a comprehensive approach towards the treatment of a person with cancer. With a greater focus in conventional medical education on how those sorts of multidisciplinary approaches could be achieved, as well as some reorganisation of funding mechanisms to ensure that, I believe we will give much more hope and much more satisfactory experiences to people diagnosed with cancer.

There is also a recommendation in the report that we should encourage doctors to focus on communication techniques. That is obviously achieved partly through medical education as well. It has been disturbing throughout this inquiry that we have heard of so many cases of poor bedside manner used by doctors who come to offer services to their patients. That very clearly is a matter for improvement. I seek leave to continue my remarks. (Time expired)

Leave granted; debate adjourned.

Community Affairs References Committee Report

Senator MARSHALL (Victoria) (10.11 am)—I present the report of the Community Affairs References Committee entitled Quality and equity in aged care, together with the Hansard record of proceedings and submissions received by the committee.

Ordered that the report be printed.

Senator MARSHALL—I move:

That the Senate take note of the report.

Given the time constraints that we are labouring under at this time in the session, I will seek leave to incorporate my tabling speech in a moment. I will just take one minute to pay tribute to my committee colleagues. This was quite a difficult report. It was potentially quite a politically divisive report. I want to congratulate my committee colleagues for working very hard to get to a position where it was a unanimous report, because we all acknowledge that unanimous reports are the reports that are really going to significantly contribute to improving public policy in these areas. To all my committee colleagues: I thank you for your hard work and your dedication to getting us to the position we are in today. I also want to thank the Community Affairs References Committee staff—Christine McDonald, Peter Short, Leonie Peake, Ingrid Zappe and Elton Humphery—for their excellent work in this regard. I seek leave to incorporate my tabling speech.

Leave granted.

The incorporated speech read as follows—

The terms of reference for this inquiry called on the Committee to address a number of issues facing the aged care sector. However, from early on in the inquiry process, the major emphasis became the plight of young people placed in aged care facilities.

Across Australia, there are over 6,000 people aged under 65 years living in aged care facilities. This number includes a nine year old child. This is unacceptable in most instances. Most aged care facilities do not meet the needs of young people:
they are unable to provide opportunities to interact with the community; to socialise with family and friends; and often the facilities do not support the complex health, rehabilitation and equipment needs of the young people for whom they care.

Young people are placed in aged care facilities because there are simply no other options: there are no adequate supported accommodation options in the community; and the level of services do not allow for young people to remain in their own home or with family.

However, placing young people in aged care facilities need not be the only alternative for those suffering from the debilitating effects of an acquired brain injury or degenerative disease such as multiple sclerosis, motor neurone disease or Huntington’s Disease.

In Western Australia, the Young People in Nursing Homes project has seen over 90 young people move to alternative accommodation. The Committee also visited facilities in Victoria and Western Australia which provide specialised accommodation facilities and successfully support young people to maintain a fulfilling life. Services are provided which support psycho-social and complex health needs. These facilities are the result of significant work by stakeholders and governments. Funding has been provided by both the Commonwealth and State Governments. In the case of the MS Society’s Carnegie House in Melbourne, funding was provided through the Commonwealth’s Innovative Pool.

It is this point which the Committee wishes to emphasise: that in order to move young people out of aged care facilities, cooperation and collaboration at all levels of government and all stakeholders is required. It has recommended that all jurisdictions work cooperatively to provide alternative accommodation for young people who are currently accommodated in aged care facilities.

The Committee acknowledges that the Council of Australian Governments has identified helping young people with disabilities in aged care facilities as one way to improve the Australian health system. Senior Officials are to report to COAG by December this year on ways to improve the health system. The Committee has recommended that the Senior Officials clarify the roles and responsibilities of all jurisdictions in relation to young people in aged care facilities and that it support a range of accommodation options based on individual need.

The Committee recognises that, in rare instances, young people may choose to remain in an aged care facility. In this event, the Committee recommends that all jurisdictions work cooperatively to reach agreement on ways to provide adequate facilities and services for these young people.

A further area of need is assistance to ageing carers. The Committee acknowledges the initiatives already in place to assist ageing carers with succession planning and respite care. The Committee recommends that priority be given to the Working Party established in November 2004 so that further ways to assist older carers can be identified.

The Committee’s report also includes an examination of aged care workforce issues. Like many inquiries before it, the Committee found that workforce shortages are impacting on the aged care sector. There are shortages at all levels: nursing staff, personal carers and medical and allied health professionals.

The problems within the aged care workforce are not new. While the Commonwealth and States and Territories have instituted a number of initiatives to address the nursing shortage, the Committee considers that more needs to be done; in particular, to increase the number of undergraduate nursing places and to assist additional enrolled nurses to complete medication management training. The scope of the new National Aged Care Workforce Strategy needs to be expanded to address the workforce needs of the whole aged care sector and mechanisms to address wage parity for nurses and personal care workers require further consideration.

The Committee has also made recommendations for the funding of the care of the frail elderly with special needs such as dementia and mental illness and as a result of long-term disability and homelessness.

The report also examines the effectiveness of the Aged Care Standards and Accreditation Agency in assessing and monitoring the care of residents in aged care facilities. While the standards of care are generally adequate, the Committee believes
that the Agency needs to improve the monitoring of standards in homes especially through increased use of unannounced ‘spot checks’ of facilities. The report also found that the quality of care could be improved through the development of a benchmark of care which ensures that the level and skills mix of staffing in facilities is sufficient to deliver the care required and a review of the Accreditation Standards to improve their effectiveness. The Committee also made recommendations to improve the Complaints Resolution Scheme so that the Scheme is more responsive to people lodging complaints. The issue of excessive documentation and the need to reduce the paperwork burden on staff to enable them to concentrate on their primary task of delivering care was also addressed.

The report highlights the importance of community care programs. While current programs provide valuable services to older people, significant reform is required to achieve a system that better responds to the needs of consumers, care workers and service providers. The report found that the current system is not providing adequate levels of service; services are fragmented and they are often difficult to access.

The report also reviews the care arrangements for the transition of the elderly from acute hospital settings to aged care settings or back to the community. The Committee found that while a number of initiatives have been undertaken at the Commonwealth and State levels towards improving current arrangements, there is a need for a more coordinated approach between different levels of government. The Committee recommends ways to improve coordination in the development and implementation of transitional care programs and to improve discharge planning from acute hospital settings and in geriatric assessment.

Senator McLUCAS (Queensland) (10.13 am)—As Senator Marshall has said, this is a very important report. In the spirit of the Community Affairs References Committee, it is a unanimous report. I was quite concerned earlier this week when Senator Hill was asked a question about why reports had not been responded to within the three-month time frame and in his answer he said that most of the reports from references to committees of this Senate have been political in nature. I can assure Senator Hill that many of the members of the community affairs committee would find that answer quite offensive.

As with many reports of that committee, we have worked very hard to make sure this is a unanimous report. In doing that, compromises have had to be made. But it is the view of our committee that, if we are truly going to change policies that may be ineffective, poorly targeted or simply not working, it is important that we come to a sense of unanimity, and we have done that yet again. This report contains 51 important recommendations that, I say to the government, cannot be fobbed off and need to be looked at closely, and we will expect a response to this unanimous report within the three-month time frame.

The terms of reference of the committee were quite defined. The first term of reference went to the question of the work force, not only in residential aged care but also in community care. Evidence to the committee painted a fairly concerning picture, especially in residential aged care. Two statistics are identified that I think need to be brought to the attention of the Senate. Between 1995-96 and 1999-2000, the number of employees in residential aged care declined while the number of people being cared for increased. I think that is of concern to all of us who have people that we care for living in residential aged care.

Between 1996 and 2001 the share of direct care provided by registered and enrolled nurses declined in both nursing homes and accommodation for the aged while the use of personal carers increased significantly. This is not a reflection on the use of personal carers. They are a well trained and extremely
important part of the delivery of aged care, especially in residential aged care. But the balance, in my view, has shifted too far.

Many care recipients and their families and many providers of residential aged care express concern about the ability to attract nursing professionals into residential aged care. They gave a number of reasons why that was difficult. They alerted us to a considerable lack of wage parity between the acute care sector and the residential aged care sector, and inadequate staffing levels. When you get to a certain level and nurses are not able to be employed on a full-time or permanent part-time basis, it is incredibly difficult to attract anyone to work in a residential aged care facility. They alerted us to the inappropriate skills mix and the workload pressure, including the enormous amount of paperwork that needs to be complied with to operate a residential aged care facility. If we were able to reduce some of that paperwork and there was a recommendation to that effect, it is the view of providers that we would be able to attract more nursing professionals into residential aged care. They also alerted us to increased stress levels and an inability to deliver quality care.

Professor Hogan brought down his report some time ago. He recommended that this year, 2005, the government should allocate 1,000 new nursing places to start addressing the undersupply of nurses in residential aged care. The government has allocated 400 in this budget but we recommend that that shortfall be addressed and we encourage the government to truly look at the potential crisis that is appearing in the work force in residential aged care.

Another important recommendation in the report is that the National Aged Care Workforce Strategy be broadened to include the work force issues in community care. I think many of us often simply focus on residential aged care because it has a physical location. We forget that most of the care provided in Australia by a long way is provided through community care in people’s homes and it is quietly happening in the community. We forget that that is where the bulk of the care is. We have suggested that the government look at the National Aged Care Workforce Strategy and broaden it to ensure that issues around the work force in community care are being dealt with, particularly in rural and remote areas, in Indigenous communities and with groups of people whose first language is not English.

Another reference to the committee was to look at the quality assurance system. Residents and their families need to have confidence that the level and quality of care that is being received by their loved ones is at the level that they expect. The government established the Aged Care Standards and Accreditation Agency to deliver that policy goal, but it is the view of the committee that it is time to refocus on whether that strategy has been successful. There are 11 recommendations that go to the issue of the accreditation agency. We heard strong evidence that there was not consistency in the assessment processes—that an activity happening in one residential aged care facility might be assessed as appropriate while in a different residential aged care facility it would be assessed as not being appropriate. Our committee believes that we have to have consistency in assessment so that confidence can be maintained.

One of the recommendations by Professor Hogan was that, for community members to make an assessment of the quality of a residential aged care facility, a star rating be established. In my view that is far too glib an assessment tool to be able to make real assessments of the attributes of a facility. We have made a recommendation of a more comprehensive but easily understood report
card style—although that word did not appear in the end—piece of information that people would truly understand so they could make an informed choice about the appropriateness of the care that was being provided.

The agency currently has a role in assessment as well as training. Providers identified that there is an inherent conflict between those two roles, but the committee does recognise that the agency is in an ideal position to be able to collect information about best practice and about things that are happening well in residential aged care. I need to put on the record that most residential aged care facilities provide excellent quality care—that needs to be understood. It is the odd maverick, underfunded, poorly managed operator that needs to be focused on. There are not that many of them, but they have to be monitored. We recognise that there is an actual or potential conflict between these two operations of the agency and we have recommended that the agency consider removing the training component from their role.

One of the expected outcomes that the agency has to assess is adequate staffing levels. Witnesses who appeared before the committee—providers, workers in the industry and consumers—expressed concern about that expected outcome being arbitrary and not applied consistently. We have made a recommendation in the report that the agency develop a benchmark of care that will give some surety and assurance to residents, potential residents and their families about the level of staffing and what they can expect if a loved one becomes a resident of an aged care facility. This is an important recommendation that I believe will be welcomed by the community, those people who work in residential aged care and the providers of residential aged care themselves.

A very important part of this report is contained in chapter 4. One of the terms of reference that we dealt with was to look at the reality of young people who live in nursing homes. This is an issue that has been hidden in our community for many years. I pay tribute to the very small but extremely effective group of advocates right across the country that have quietly tried to get this issue on the agenda. They have succeeded. They have got the attention of the Community Affairs References Committee, to the point where we were strongly unanimous about how we deal with the 6,000 people under the age of 65 who live in residential aged care. Many of those people are living in residential aged care because that is the only option they have.

Bronwyn Morkham, from the organisation spearheading the raising of this issue, said that it is appropriate for some people to live in residential aged care. But it is the view of the committee that for every one of those people an assessment should be done to determine whether or not it is appropriate for them to live there. We have set out a blueprint so that the states, territories and Commonwealth can work together to ensure that appropriate housing and support services are provided for people who have MS or who have spinal injuries—people who are young and are living in a place for older Australians that is quite inappropriate for them. I strongly commend these recommendations to the government. We need change and real action to ensure that these people are appropriately accommodated. I pay tribute to the secretariat and all colleagues on the committee.

Senator KNOWLES (Western Australia) (10.26 am)—I will speak briefly on this report of the Community Affairs References Committee. Aged care is always going to be a controversial issue. I want to place on record as a member of the government my commendation for what the government has done to dramatically increase funding for
this vital sector. As Senator McLucas has just said, the most controversial issue raised in this inquiry was that of young people in nursing homes. The fact that the states have ignored their responsibilities according to the Commonwealth State Territory Disability Agreement is nothing short of a disgrace and I certainly hope that they lift their game on this vital issue. I acknowledge that the Prime Minister has put this important matter before COAG and I hope that this very serious area of public policy will be addressed in a much more positive way.

I too am delighted that this is a unanimous report. It is quite unusual. I mentioned in my valedictory speech yesterday how unusual unanimous reports are. I commend Senator Marshall on his chairmanship of this committee and all of my colleagues, because we all had to give and take. That has resulted in a very good and positive report that is very clearly directed. I also wish to place on record my thanks to my personal staff member who helped Senator Humphries and me deal with this very complex issue and meet very short deadlines. I do not normally have someone working as closely with me on a report as I did on this occasion but it has been invaluable. I wish to hand over to Senator Humphries for the reason I mentioned with regard to the report of the committee on cancer. In closing, as a longstanding member of the Community Affairs References Committee I wish the committee the very best for all of their future endeavours. This is a very important area of social policy and I wish you all well.

Senator HUMPHRIES (Australian Capital Territory) (10.28 am)—This has been a major and eye-opening inquiry by the Community Affairs References Committee. I am grateful for the opportunity to again have had the chance to take part in an inquiry of such significance. It is obvious, with burgeoning numbers of Australians who are reaching retirement age and becoming infirm, that issues to do with aged accommodation and services are going to be increasingly complex and important for bodies such as this chamber to deal with. The sheer pressure of that problem will occupy a very large amount of administrative time and money into the future. It is important that we set parameters for that process to succeed in overcoming problems associated with this sector.

It is important to note that the background to this report was a very significant infusion of additional dollars into the aged care sector in the last few years. In the last nine or 10 years, in fact, the amount that the Australian government has spent on providing services to older Australians, particularly in residential settings, has doubled. Of course, the population of Australians over the age of 65 has not doubled in that time. So this has represented a major exercise in starting to properly address an issue that, frankly, was not addressed adequately in the past.

There have been huge changes in the funding regime for aged care facilities, in the extent to which we expect standards to be maintained in those facilities—the establishment of the accreditation agency is a very important part of that process—and in the focus on particular problems within the nursing home setting, particularly dealing with the rising incidence of dementia. I pay tribute to successive ministers but particularly Minister Julie Bishop for the commitment that she has made to fund additional services in this area and to ensure that the sector is well enough resourced to be able to deal with much larger numbers of people coming through the doors of facilities and nursing homes in Australia, and has the capacity to provide better, high-quality services at the same time.
Last year’s budget made some very significant changes with respect to the resourcing of aged care in Australia and provided a funding boost in a range of areas. The conditional adjustment payment of $878 million was a very important step towards addressing the long-term problem of aged care facilities in this country not having the necessary resources to meet the increasing acuity of care required for their residents. I am very pleased that that has gone a very long way towards addressing issues such as the lack of wage parity between nurses in aged care settings and those in the acute care sector.

There was considerable debate before the committee about the extent to which the conditional adjustment payment and associated funding boosts by the Commonwealth might deliver a capacity to provide for wage parity in Australia. I note the views of the Australian Nursing Federation, which felt that the payments were sufficient to enable providers to meet that wage expectation but that there were mechanisms lacking to ensure that providers actually spent that additional money on urgent and high priorities such as addressing wage disparity. I believe the evidence is that a great step can be taken in the direction of ensuring that we can attract and retain large numbers of high-quality nurses within that sector. I believe that the steps the government has taken will facilitate that occurring.

In my remarks today, I want to focus on the position of young people in nursing homes in Australia. I do not think it is too much of an exaggeration to describe the existence of large numbers of younger Australians in nursing homes in this country as a national disgrace. The committee was told that there were 6,000 people below the age of 65 in nursing homes and approximately 1,000 of those are below the age of 50. There is a lack of data on the exact conditions and disabilities that affect those people, but there is powerful evidence that many of them, perhaps an overwhelming majority, have a high level of cognitive awareness of their surroundings and are placed in completely inappropriate settings, where they are surrounded by people who are much older than them. These younger people consequently suffer from a lack of appropriate interaction with people their own age—with their peers. The step of removing them from that setting, where that is appropriate and where that is their desire, is a priority this committee strongly recommends. I believe that this issue must be addressed as a matter of public policy in this country, as a consequence of this report as much as anything else.

The committee did disagree to some extent on the question of where the onus for fixing that problem might lie. There was evidence, for example, about the benefits available to providers around this country through the aged care innovative pool funding, which is designed to offer the opportunity for an incentive payment or assistance in the cost of establishing alternative accommodation for younger disabled people outside of nursing homes. The committee were also informed that that pool, despite being provided by the federal government, was little used. In fact, we visited the only facility in Australia that at this stage has been funded from the pool—namely, the multiple sclerosis home at Carnegie in Melbourne, which was a great home to visit. The residents, who had only recently moved in at the time the committee arrived there, were delighted about their new accommodation option. What is disturbing is that the pool has not funded other facilities elsewhere in Australia when the need for such facilities is, frankly, acute.

I have no hesitation in urging state governments in this country to take a much higher profile on addressing these problems, accessing funding arrangements such as the innovative pool and moving those young
people out of those nursing home facilities. It is simply unacceptable that so many should remain in those settings. Alternative options are already well demonstrated in this country and they must be taken up.

I think it is important to comment—and Senator McLucas has made this comment—that, as far as nursing homes in this country are concerned, a high standard has already been met. Most aged care facilities in this country offer an excellent standard of care, and this report should not be interpreted as an overall indictment or blot on the record of those homes. However, it is also important to acknowledge that, with the huge pressures on nursing homes in this country by virtue of the large number of people who will be seeking accommodation there in the future, we need to ensure that standards are higher and that facilities are of an appropriate standard and level. It is also important to acknowledge that out-of-nursing-home aged care, such as that available through the HACC program, needs continued additional funding. The committee recommends that that continue to be supported by both state and federal governments.

I commend the staff of the committee for once again doing an outstanding job. It is no trade secret, so I confess that a very significant part of the work that goes into such reports is done by the staff. They always astonish us with the excellence of their contributions, and I thank them for what they have done on this report as on many others. I particularly want to thank Senator Sue Knowles for her contribution to this committee over many years. She has made an outstanding contribution in my time, and I know that contribution goes back long before my period on the committee. I seek leave to continue my remarks later.

Leave granted.
lia. Although there was a national summit on young people in nursing homes in 2002 and a national conference in 2003, both of which have drawn national attention to this situation, there are still squabbles between the state and federal governments about making the changes needed to provide the sort of community based accommodation and support services that these young people deserve.

This inquiry heard from many of these young people, their families and their carers, and from groups who have taken to their hearts the cry of these young people that something needs to be done. Almost half of the 240 submissions to the inquiry focused solely on the needs of young people in this situation and many more included detailed comments on the issue. These submissions not only focused on young Australians who are already living in residential aged care because there are no alternatives but also drew attention to the many thousands more across Australia who are at risk of placement in residential aged care—that is, they are still, in almost every circumstance, living at home. Those young people are cared for by family members who are struggling with limited support, and it will take very little to tip those young people into aged care facilities, which in most cases they try very hard to avoid. Whether currently in an aged care facility or at risk of going into one, those young people all have one thing in common: a desire to live in accommodation of their choice with the rehabilitation and support they need to have lives worth living and futures worth having.

This inquiry heard about the many factors that contribute to young people with disabilities ending up in this situation and the actions that need to be taken. We heard about the need for reform of the personal injury insurance arrangements—something the Democrats have often called for. We heard about failings in the aged care and disability acts and the way in which the Commonwealth-state disability agreement allows young people with catastrophic injuries or degenerative disorders that require high levels of care to fall between the cracks. We heard about poor assessment processes and lack of flexibility but, most of all, we heard about the territorial disputes.

I thank members of the committee for the agreement they reached that this is no longer an acceptable response to this longstanding problem. It is not good enough to simply point the finger and say that this is someone else’s problem. It is time that all levels of government and all sectors came together to find achievable and sustainable solutions. It is a human rights issue as much as anything else. I endorse the focus that this report has on the need for a cooperative and urgent response. We recognise that there is some good work happening at both the state and federal levels and we saw some very good examples of what can be done. But much more needs to be done, and done quickly. That is why in this report we have said that no more young people should be moved into residential aged care facilities because of a lack of options. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUDGET
Consideration by Legislation Committees
Additional Information

Senator EGGLESTON (Western Australia) (10.44 am)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, Senator Heffernan, I present additional information received by the committee relating to hearings on the 2004-05 additional and budget estimates, being five volumes and two letters.
COMMITTEES
Publications Committee
Report
Senator EGGLESTON (Western Australia) (10.45 am)—On behalf of Senator Watson and the Publications Committee, I present the fourth report of the Publications Committee.

Ordered that the report be adopted.

Regulations and Ordinances Committee
Report
Senator TCHEN (Victoria) (10.45 am)—I present the 112th report of the Standing Committee on Regulations and Ordinances entitled 40th Parliament report.

Ordered that the report be printed.

I move:
That the Senate take note of the report.

I seek leave to incorporate a brief statement into Hansard.

Leave granted.

The statement read as follows—
The Report focuses on the Committee’s usual concerns with rights and liberties and parliamentary propriety. But rather than talk about those, I thought I would mention three comparatively unusual matters that the Committee got involved in during the period.

The first was the Committee’s inquiry into the Legislative Instruments Bill. The Committee scrutinised that Bill as thoroughly as it scrutinises delegated legislation. It heard from a number of academics and practitioners. It received submissions from both the Clerk of the Senate and the Clerk of the House of Representatives—and they were in broad agreement—I can’t think of too many Senate inquiries that can claim that. And most of the Committee’s suggested amendments were adopted by the Government. As a result, a Bill which we had been waiting nine years to see enacted finally became law and changed the way delegated legislation is made available.

A second issue that troubled the Committee was the provision of legal advice. We often ask for copies of legal advice from Ministers and they rarely turn us down. The advice is not used in a political way, but simply to confirm that actions taken had a legal basis. We have had a few difficulties in recent times and it has made the Committee’s scrutiny role more difficult.

Finally, the Committee was troubled by inconsistent penalty provisions in delegated legislation. It seems you are likely to get a higher penalty for failing to keep records than for building a building that obstructs airport operations. You get the same penalty for smoking in a public place as you do for making a false statement in an affidavit or declaration. I note that, not long ago, the Scrutiny of Bills Committee was similarly concerned about penalty provisions in primary legislation. The inconsistencies seem to arise because there has been a failure to keep penalty provisions up to date. It is an area that needs reviewing.

I thank all Committee members for their work during the Parliament and the generous and cooperative manner they bring with them which makes my task such an easy one. On their behalf, and of course also personally, I thank Professor Stephen Bottomley—our legal adviser—whose tireless efforts help us to make sure that nothing important slips under the radar.

Finally, I must put on record our appreciation of the excellent way the Committee Secretariat, so ably led by James Warmerhoven, has facilitated the Committee during the year, as it had always done in the past. It has been a real privilege and pleasure to be chair of this venerable institution of the Senate.

Senator TCHEN—I take the opportunity to say to Hansard that I hope they will take this as appropriate compensation for all the speeches I have made with inadequate notes!

Senator BARTLETT (Queensland) (10.46 am)—I will speak briefly, as I know we have a lot to get through today. As I am sure Senator Tchen would agree—as would you, Madam Acting Deputy President Moore—the Regulations and Ordinances Committee is an important committee. It deserves noting in this chamber when it presents these reports to ensure that their impor-
tance does not go unnoted and they are not just swept aside along with all the other multitudes of reports that get tabled. I start by thanking Senator Tchen—as we did this morning, but it is nonetheless appropriate to do so on the record—for his work as chair of that committee and acknowledging the effective matter in which he carried out that task. He is finishing up his term in a week’s time and is therefore finishing up as chair of the committee. It is an appropriate final act for him in the role of chair to table this report.

The report is worth perusing, despite what some might believe to be its fairly arcane content. I think the Regulations and Ordinances Committee is the Senate’s oldest committee. It has been going for a very long period of time. It is a non-partisan committee. It covers all the regulations—the many, many disallowable instruments—that are now tabled in this chamber. It is pretty much the only group that looks at all of those. I must confess that, as a member of that committee, I do not actually read all of them myself—we have somebody else who does that for us and brings dangerous or potentially concerning aspects to our attention—but it is an important mechanism of scrutiny. Despite all the concerns I have expressed about potential dangers to Senate scrutiny of government actions and how that might change when the government takes control of the Senate, I am pretty confident this committee will survive. It has survived for many decades now. I will speak to the report again in a bit more detail when we come back in August.

This is a key area in which there has been massive expansion in the activities of the executive: delegated legislation that is not debated in this chamber and that is not even tabled in the full sense of the word—that is, it is not produced in this chamber; there is just a list tabled each day of the names of all the different instruments. It continues to be important that there is a committee that does scrutinise all of them for their adequacy, to make sure that they meet all the legal requirements and they do not breach any important basic principles. I think those aspects of this report are important.

The one aspect of the report that I want to emphasise is that the committee very rarely actually disallows an instrument. It simply has the power to do so if the relevant government minister does not adequately respond to and address the committee’s concerns. It is a very long time since it has actually disallowed an instrument, but the very fact that it can and is willing to serves to be a very effective check on the activities of the government. It is a bit like the dog that does not bark or the executioner’s axe that does not fall, but the ministers all know that it can.

Nonetheless, there is an aspect that is worryling and that does need to be highlighted—not just hidden in the report but outed in this chamber. That aspect is that sometimes the committee agrees not to proceed with disallowances on the basis of ministerial undertakings that they will fix up the problems that have been identified. It may not totally shock senators to know that those undertakings are not always followed through on promptly or even necessarily at all. That is unacceptable. The committee does operate constructively and very cooperatively, but the lack of follow-through on those undertakings is a trend that cannot be allowed to grow. Certainly, it is something that does need flagging and does need continued scrutiny, particularly when we move into government control of this chamber.

I recommend this report to people who care about parliamentary scrutiny. I am sure there are still one or two around. With that, I would also like to thank in particular the committee secretariat, who do a lot of the work—let us face it: all of the work, except
for what the chair does—and who really keep it ticking over. They do that very efficiently and effectively. I take the opportunity to say thanks to them as well. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Corporations and Financial Services Committee

Report

Senator CHAPMAN (South Australia) (10.51 am)—I present the report of the Parliamentary Joint Committee on Corporations and Financial Services entitled Property Investment—safe as houses?, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CHAPMAN—I move:

That the Senate take note of the report.

One of the unfortunate features of the recent property boom was the large number of consumers who became victims of unscrupulous property marketeers. Some estimates suggest up to 100,000 Australians may have lost money to these spruikers. This report proposes a series of regulatory and other changes designed to make life more difficult for property spruikers and to protect consumers from becoming their victims. The problem is that many Australians, perhaps as a result of their direct experience of home ownership, feel that investing in bricks and mortar is easier and safer than investing in other asset classes. Unfortunately, many consumers have learnt that investment in property is a complex matter and involves considerable risk. The amounts involved are usually large, with significant entry and exit costs. While some of the new financing options such as utilising equity in the family home seem attractive, they are also risky.

The committee found that, although there is an emerging group of professionals who focus on assisting consumers to buy investment property, the property investment advice profession is much less well organised and developed than other areas of investment advice such as stockbroking or financial planning. Property spruikers often entice consumers with the offer of a free introductory seminar, the main purpose of which is to encourage people to enrol in expensive courses to learn the real secrets, so-called, of property investing. Credit facilities are offered to assist people to enrol. During the courses, participants are introduced to specific property opportunities and financing can be arranged. Independent valuations are discouraged and commissions and relationships are rarely disclosed.

In reality, these courses offer no advice beyond that which is already freely available. There are no secrets of the wealthy property millionaires. There is no quick and easy path to riches. Instead, there are property spruikers who make this claim in order to feed off the need of the economically marginal and desperate or the ambitions of those willing to invest thousands of dollars to secure a better life for themselves and their children.

Unfortunately, identifying the problem in this case is far less difficult than identifying the solution. We know the get-rich-quick spruikers are out there. Open any weekend paper and they jump out at you. The committee considered how we could stop them. The simplest and most effective way to stop spruikers in their tracks is to include property for investment as a new asset class under the existing financial services reform provisions in the Corporations Act. That would immediately result in a comprehensive licensing, conduct and disclosure regime. It would mean that investors in property would receive the same level of protection and the same quality of advice as investors in any other class of asset.
It seems ridiculous that an investor investing $1,000 in a term deposit, thereby putting their money into cash as one asset class, gets greater protection by the law than an investor who spends $1 million on a substantial property investment, thereby putting their money into property as another asset class. Therefore, it would mean also that professionals giving advice as to the future financial returns of an investment in real property would have to undergo training and licensing requirements that are equally as rigorous as their counterparts in the financial planning industry.

The question of federal and state responsibilities was considered by the committee. It recognised that, in the past, the government and the parliament have both specifically excluded property from coverage under the Corporations Act. We continue to support the reasons for this. The states and territories should clearly continue to be responsible for real property law and transactions within their jurisdictions. State and territory law should provide for the registration and conveyance of those properties. State and territory law should regulate real estate agents who bring buyers and sellers together. How then do we bring property investment advice under the umbrella of the Corporations Act without intruding on the jurisdictions of state and territory governments?

The committee considers that the key issue is the definition of property investment advice. In this report, property investment advice is defined only to include information about the future. A real estate agent who provides information about the current value of a property or its past rental rates, vacancy rates and capital returns is not providing property investment advice; he or she is merely selling a property. However, as soon as that advice strays into predictions about the future relating to future income from the investment or future capital values or capital gain, it becomes property advice. The recipient of that advice is entitled to protection.

The committee has also recommended a number of exemptions to the proposed new regulations, specifically: advice given during a university course or similar approved training course; advice given by an accountant, solicitor or valuer in the course of their professional activities; or fair comment in the mass media, where the comment is not made in the course of soliciting customers for any good or service. All of these measures combine to do two things: they will support the development of a genuine, legitimate property investment advice industry and simultaneously erect barriers to spruikers, preventing them from participating in the market.

In addition, the committee has recommended several measures specifically designed to hit spruikers when they begin to operate. We recommend that the courts should be able to compel spruikers to issue refunds to their victims, whether those victims are parties to legal action or not. We recommend the Treasurer look into providing the ACCC with cease and desist powers to stop spruikers before they begin. We recommend mandatory disclosure of property valuations by lending institutions. We recommend targeted advertising by ASIC to assist consumers to identify and avoid property spruikers.

The committee is aware that no regulatory scheme, without being tyrannical in nature, can completely shut down the use of deceit and manipulation in commercial practice. While the committee is confident that the proposed regulatory regime will make life much more difficult for spruikers, it is inevitable that some unscrupulous operators will surface from time to time. Even with the new regulatory regime in place, consumers will need to remain alert, look to their own inter-
ests and approach anything which looks too good to be true with a healthy scepticism.

I conclude by thanking the members of the committee from all parties and from both houses of parliament. This is a unanimous report and its final form accommodates specific requests from both Labor and the Democrats. Members and senators from all sides of politics have set aside their political differences for this inquiry and focused on the task of protecting investors. I think the report is more powerful and authoritative as a result. In thanking committee members for their input, I also thank the committee secretariat, especially committee secretary Anthony Marinac and researcher Alex Olah, as well as the other staff and my personal staff member, Catherine Ellis. They have all worked tirelessly on this inquiry and provided intelligent advice regarding our report.

I am aware, as I said earlier, that the thinking in the government has been that these matters should be left entirely in the hands of the states. The evidence gathered and the findings of this inquiry show clearly that this is no longer satisfactory. The aspect relating to property spruikers must be brought under federal jurisdiction in the way that I have outlined in these remarks and which is provided for in more detail in this report. Therefore, I strongly commend the report to the Senate and, in particular, to the government. The title of this report poses the rhetorical question: Property investment—safe as houses? Of course, no investment is safe as houses, but the risks involved in investing in property should be the normal risks associated with the free play of the market. The risk should not be one of being fleeced by a sharp operator with glittering promises and an eye for a fast buck.

Senator LUDWIG (Queensland) (11.00 am)—I take note of the report and seek leave to continue my remarks later.

Leave granted; debate adjourned.

Native Title and the Aboriginal and Torres Strait Islander Land Account Committee Report

Senator EGGLESTON (Western Australia) (11.00 am)—On behalf of the Chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account, I present a report on the annual reports of the National Native Title Tribunal 2003-04, the Indigenous Land Corporation 2003-04 and the Aboriginal and Torres Strait Islander Land Account 2003-04, together with the Hansard record of proceedings.

Ordered that the report be printed.

Senator EGGLESTON—I seek leave to move a motion in relation to the report.

Leave granted.

Senator EGGLESTON—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Employment, Workplace Relations and Education References Committee Report

Senator CROSSIN (Northern Territory) (11.01 am)—I present the report of the Senate Employment, Workplace Relations and Education References Committee entitled Student income support, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator CROSSIN—I seek leave to move a motion in relation to the report.

Leave granted.

Senator CROSSIN—I move:

That the Senate take note of the report.

This report is the culmination of an inquiry that was established to examine current
measures for student income support, with particular reference to the adequacy of Youth Allowance, Austudy and Abstudy and their effect on students and their families. This inquiry is long overdue. It is an area of public policy that has suffered from neglect. The committee was reminded that it had been well over 10 years since this area of public policy had been examined, inquired into and reported on. So the committee was concerned that the student income support system has not been reviewed by government, as I said, in more than a decade. In fact, 1992 was the last time this parliament examined issues surrounding student income support.

The inquiry found that the drift in policy has been an important factor contributing to the financial hardship experienced by increasing numbers of students. The student profile in 2005 is remarkably different from that of a decade ago but, as we found out during our proceedings, the student income support system has not kept pace with this change. The committee heard repeatedly during the inquiry that income support payments are between 30 and 50 per cent below the poverty line, causing extreme financial hardship for many students. The income support payment has fallen way behind the cost of living, and the spiralling cost of accommodation has hit students particularly hard. The committee also heard that students are engaging less with the life at university and their studies, and the need to work is a major contributing factor to this.

In fact, it was quite significant the number of times we heard that, due to the changing nature of universities and the policy trend of this government to put more of the cost onto students—and because income support is so poor and inadequate—more and more students were having to turn to part-time work to supplement their income. This led of course to students either turning more to online access for their tutorial and lecture notes or attending university for fewer hours in order to, as one student put it to us, ‘just eat from day to day’. The need to work far outweighed what they wanted to do, which was study.

It is in this context that the committee heard repeatedly how over the past decade the Department of Family and Community Services and Centrelink have become more concerned with program efficiency than with policy effectiveness. Missing from government policy is a clear sense of what the purpose of the income support system is and how its performance and effectiveness are measured. It is as if student income support has fallen, as we found, down a policy black hole.

The committee was struck by the consistency and force of the evidence presented to it by student bodies, university administrators and other key stakeholders in the higher education sector. The submissions and evidence at public hearings amounted to a collective plea for the government to acknowledge the financial plight of students, that current income support measures are woefully inadequate and that fundamental systemic change is urgently needed.

I want to take this opportunity in presenting the report to pay credit to student unions and organisations—not only those we heard from in Melbourne and Adelaide but also those we heard from right around the nation. The National Union of Students, the NUS, constantly champion the plight of students and seek to improve their existence while they undertake studies. I also want to pay tribute to the Australian Vice-Chancellors Committee. There are of course, from time to time, examples of where the Australian Vice-Chancellors Committee do some outstanding work. We heard from a lot of people who relied very significantly on the work done by the AVCC in their report Paying their way.
To some extent perhaps the data in it is a little bit out of date but I think that the Paying their way report the AVCC did some years ago laid a solid groundwork which was a springboard for discussion and ideas for this committee. It is important to note that vice-chancellors around this country do have concerns for their students, as all teachers and academics do. Everybody is there to get the best out of their students. The AVCC and the vice-chancellors are no different in that regard. When they hear stories and collect evidence about the hardship faced by their students they join forces with their students to try to improve the students’ existence and their very lot in life as they pursue their studies. So I do want to pay tribute to not only the NUS but also the AVCC for the work that they have done in this area.

The committee accepts that students and their representative bodies have struggled to have their voices heard and their worsening financial situation accepted as a public policy issue, to no avail. It is the committee’s hope that this inquiry not only will raise the profile of student financial hardship and of student poverty but will help alleviate student income support and put it back on the national policy agenda.

While raising awareness of student financial hardship is important, the committee’s examination of Youth Allowance, Austudy and Abstudy has led it to believe that more immediate steps can be taken to assist students. The committee was struck by the harshness of the eligibility criteria relating to the age of independence, which we know has been raised to 25, the parental income test threshold, which is chronically low in this day and age, and the ineligibility of Austudy recipients, whether studying full time or part time, to access rent assistance. These are issues that need addressing right now. The committee found that various anomalies and inconsistencies with the eligibility criteria penalise students who are most in need of financial assistance and that students from households with low to modest incomes, students from regional and remote areas and Indigenous students are often hardest hit by rules which appear to lack any clear policy rationale.

The major change in the profile of students over the past decade is the increasing proportion of students who need to supplement their income support payment with paid employment. Students are working longer hours than ever before, mainly in part-time employment, to meet this shortfall. Some students are working over 20 hours a week on top of their studies. An increasing number resort to the so-called black economy. They take whatever cash-in-hand jobs they can to avoid Centrelink’s stringent personal income threshold test. The committee heard evidence of students being exposed to product testing by unscrupulous companies and even resorting to prostitution at times. This is totally unacceptable in modern day Australia, which has on its agenda a motto of trying to improve the academic outcome and the skilling needs of this country.

The committee found that working longer hours not only has a detrimental effect on students’ academic results; it also has an economic effect because it delays course completion and the entry of skilled young people into the work force. The committee concluded that the relationship between paid employment and study is one of the most important policy challenges facing the higher education sector and this government. As a consequence, it recommends that the government conduct regular surveys of student finances and work patterns and that DEST examine the costs and benefits associated with a new comprehensive student income support payment, which would provide financial assistance to students for the duration of the course.
I want to emphasise that the government and the Democrat senators have signed up to the majority report—and we have heard a lot of comments this morning about the benefits of a unanimous report—because they accept many of the key findings. The Democrats—I know my colleague Senator Stott Despoja will speak about this—have signed up to all but one of the recommendations. It is significant, and it ought to be noted, that the government senators agree with over half of the majority report’s 15 recommendations. The four significant recommendations that the government have agreed to are there in the report for all to see.

Before I conclude this morning I do want to say that we tabled the report on Indigenous education last night. This is the third report that this committee has tabled this week. I want to now pay tribute to the staff on that committee—to John and David, and to Dijana, Ruth and Tim—for the outstanding professionalism with which they conduct committee hearings as we travel around this country, for the high quality of the reports and the advice that they provide to the committee, and for the timely way in which they can turn around comments and editorial requirements of the report. I commend the report to the Senate. (Time expired)

Senator STOTT DESPOJA (South Australia) (11.12 am)—I am very pleased to see the tabling today of this report by the Employment, Workplace Relations and Education References Committee. I commend Senator Crossin for her apt summation—her very good expression of what this report is about—and her explanation of the various recommendations contained therein. I would also like to pay tribute to her work as chair of this references committee. As a subcommittee, the three of us—Senator Troeth, Senator Crossin and myself—I believe worked well together. I am sorry that there was not greater participation in this inquiry. I recognise that senators have constraints on their time but this was an important inquiry and I am very pleased with the report that has been tabled today.

I am very proud to have initiated this inquiry—the first of its kind as a Senate inquiry—to look solely at the issue of student income support and I thank the Senate for the support in seeing this inquiry conducted. As we recall, it was interrupted somewhat by an election but that did not seem to dampen the interest in and enthusiasm for an inquiry of this kind. As honourable senators may be aware, more than 140 submissions were received. We heard evidence in different cities around Australia, including Melbourne, my home city of Adelaide and, of course, Canberra.

Existing student income support arrangements mean that many students are forced to survive on below poverty level benefits. As the chair of the committee has pointed out, this is having a huge and detrimental impact on their lives generally but in particular on their academic and personal lives. From the evidence reported, there is no such thing today as a full-time student. Even though students are enrolled as full-time students and may be studying the equivalent of full time, they are usually involved in employment to sustain them through their studies. As shown in the Paying their way report, in evidence presented to the inquiry, and as has been elaborated on by Senator Crossin, we see that students are not giving the kind of attention to their studies that they need to, because they have got to work to survive. This is not a true investment in the human capital of this nation, and this is not a true investment in education and research. What we should be doing, clearly, is overhauling some of the student income support arrangements in this nation with a very strong view to ensuring that our current and next generation of graduates are not debt-laden, dropping out of
studies or resorting to other measures to support themselves through their studies.

In recent years, we have seen a drastic increase in the age of independence, an increasingly restrictive parental income test and—related to debt—increased HECS fees. As well, full-fee places will take effect from 2006. About a week after the Senate supported the reference to the education committee, the Prime Minister admitted on radio that he did not know what the ETSS was—the Educational Textbook Subsidy Scheme. He was interviewed on ABC radio 891 on 18 March 2004. In response to a caller’s question about the ETSS, the Prime Minister said, ‘I am not aware of what you are referring to. I am sorry. You may have caught me without something that I should know, but I am not aware of what you are referring to.’ This to me was indicative of the government’s approach to student issues generally but specifically—

Senator Ian Macdonald—Don’t be so ridiculous. The Prime Minister knows more about more issues than you will ever know.

Senator STOTT DESPOJA—I will take that interjection. The Prime Minister had discussed this issue in meetings—private and otherwise—not only with me but with other Democrat senators. It was in the midst of the lead-up to the abolition of that scheme. Then again, it would not surprise me that a lot of senators in this place are aware of many issues but not the issues that impact severely on students. These issues are given low priority: student income support, impact of HECS, impact of full-fee courses and, indeed, the abolition of a scheme like the ETSS. No wonder people were talking about this issue. It meant not only the abolition of a worthy scheme but also a potential increase of 10 per cent in textbook charges from 1 July last year. Through the inquiry, we heard evidence from students that this was having a real impact on their lives and a real impact on their wallets.

The committee received many submissions and heard a lot of evidence, but overwhelmingly the evidence pointed to the same conclusion—that is, a general inadequacy of income support payments in Australia, not only in terms of the amount available but in terms of the eligibility for those payments. There was shocking evidence presented to the committee, and Senator Crossin has referred to some of it. That included students involved in the sex industry—perhaps not a new story but certainly one that is of perennial concern. We also heard, particularly in Adelaide and reinforced by witnesses in other places, of students being ‘guinea pigs’ for medical tests. I am sure that some people in this chamber who have been to university and other places of study will remember the posted advertisements that would say, ‘Come and be involved in this sleep deprivation study’ or what have you. That is one thing. But we have seen a marked increase in not only that kind of advertising but also the number of students who are resorting to those kinds of medical testing ‘jobs’, if you like, in order to get a little money on the side. Cash-in-hand payment in the hospitality industry is another thing we heard about. All of these issues are not new but they are certainly pronounced. In the inquiry we heard of the increasing number of students who are finding it ever more difficult to make do on the amount of money that they receive through income support—even if it was supplemented through employment.

I am pleased, as is Senator Crossin and, I hope, other senators, that the committee has reached consensus on half of the recommendations. I thank the government for their support for an independent review of the performance and effectiveness of the student income support system. That is welcome. As Senator Crossin said, the Democrats agreed
with nearly every recommendation, although I have put very strongly my concerns about any resurrection of the Student Financial Supplement Scheme—not because I do not think that students who were already on that scheme before its abolition should not have been grandfathered; they should have been. I moved amendments in this place to protect those students who were reliant upon that scheme. But this scheme that Labor introduced was not one of the best ones, I am afraid. It was one that involved, effectively, interest repayments for students and they were onerous. So I do not think that is the preferred model for the resurrection of some kind of student loan scheme.

In terms of a review of income support, I think that is the crucial measure, but it is not enough for us to keep reviewing. We need to get some action in terms of these recommendations. In terms of a review, however, a review of that nature has not been conducted since the Chapman review back in 1992. For those of us who have been involved in debates about that review and, before that, the Price review in the House of Representatives and followed those reviews very closely for most of our working and student lives, we know just how important it is that we have this comprehensive review as recommended by the committee.

Given the government’s support for that type of review, I hope that the government’s response to this report will be speedy. Again, as Senator Crossin has said, this report and the consensual, in most cases, recommendations underline the value of the committee system. I pay tribute to the staff—John, Di jana and David—for all of their efforts, and to all of the witnesses as well. There were many acronyms involved: NTEU, CAPA, NUS and the AVCC—the Australian Vice-Chancellors Committee, as Senator Crossin pointed out—the Australian Campus Union Managers Association, the Student Financial Advisers Network and ACOSS, just to name a few. Thank you for your expert and at all times professional evidence. We appreciate that.

The recommendations about which I feel most strongly include rent assistance being made available to Austudy recipients; ideally, lowering the age of independence to 18—hopefully we can do that quickly; and not treating scholarships as income for the purposes of taxation. I have a private member’s bill to deal with the latter, and I am about to launch a campaign to deal with the former. (Time expired)

Senator TROETH (Victoria) (11.22 am)—I wish to speak very briefly on this report. I did not become a member of the committee until the deliberations of the committee were well advanced, but it is certainly an interesting subject. Having had children of my own go through the university system, it is something I am very interested in. I simply want to point out that, although the government has agreed with many of the recommendations of the report and heard the evidence, there is a changing profile of students today. Many students want to combine work with study. Women, especially those upgrading their qualifications, need to keep their job going at the same time as doing further study. There is much more availability of part-time work than there ever was before, particularly in the hospitality and tourism areas, which students can take advantage of to supplement their income, and many of them enjoy that. Many students also believe that work prepares them very well for life after study, and they want to get started in a work environment.

Let’s face it: students by definition are not rich. Many accept that student life is a station on the way through to a professional career. They are prepared to have not much money while they are doing it, but ultimately they
will get to a professional career. There is no doubt that many students live a very difficult life, especially those from regional and rural areas. Through the experiences of my children, at least two of whom completed university doing part-time work, with little or no assistance from their parents, I know that many students do manage to combine work and study for their time at university. Nevertheless, as you will gather from our agreement with some of the recommendations, I do think the system needs a review. It has not had one since 1992, and I would like to see that happen. We need better data on student incomes and we need it made available publicly. But not all of the system needs changing. Some of the changes that my government have brought in have streamlined this system for the better, and I agree with the work that we have done on it. There is more work to be done, but I think the work of the committee has made a valuable contribution towards achieving that aim.

Question agreed to.

TAX LAWS AMENDMENT (2005 MEASURES No. 1) BILL 2005
Report of Economics Legislation Committee
Senator McGauran (Victoria) (11.25 am)—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present the report of the committee on the provisions of the Tax Laws Amendment (2005 Measures No. 1) Bill 2005 together with the Hansard record of proceedings and documents presented to the committee.
Ordered that the report be printed.

COMMITIES
Membership

The Acting Deputy President (Senator Moore)—The President has received a letter from a party leader seeking variations to the membership of certain committees.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.26 am)—by leave—I move:
That senators be discharged from and appointed to committees as follows:

Environment, Communications, Information Technology and the Arts References Committee—
Discharged—Senator Cherry
Appointed—Senator Bartlett
Rural and Regional Affairs and Transport References Committee—
Discharged—Senator Ridgeway
Appointed—Senator Murray.

Question agreed to.

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL 2005
Returned from the House of Representatives
Message received from the House of Representatives returning the bill without amendment.

FAMILY LAW AMENDMENT BILL 2005
Consideration of House of Representatives Message
Message received from the House of Representatives acquainting the Senate that the House has agreed to the bill with amendments and requesting the concurrence of the Senate in the amendments made by the House.
Ordered that consideration of the message in Committee of the Whole be made an order of the day for a later hour.
MIGRATION AMENDMENT (DETENTION ARRANGEMENTS) BILL 2005

First Reading

Bill received from the House of Representatives.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.27 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 IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (11.27 am)—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—

On 17 June the Prime Minister announced a number of changes the Government is making to migration law and the handling of people in immigration detention.

The broad framework of the Government’s approach is unaltered. It is essential that we continue to have an orderly and well managed migration and visa system. The government remains committed to its existing policy of mandatory detention, our strong position on border protection, including excision, the maintenance of offshore processing and in the unlikely event of it being needed in the future—the policy of turning boats around.

These changes also represent the responsiveness of this Government in taking opportunities to see that our existing detention policy is administered with greater flexibility, greater fairness and in a more timely manner. The Government is committed to ensuring that the impact of detention on individuals is, where possible, softened.

These changes build on the reforms to immigration detention arrangements that the Government has introduced in the past several years. For example, the introduction of residential housing projects has provided more home-like living conditions for mothers and children. Some children have been accommodated in the community with the assistance of community organisations and State welfare authorities. The new Removal Pending Bridging visa allows for the release, with support benefits, of detainees where the Minister believes it not reasonably practicable to achieve removal in the short term, and the detainee is likely to cooperate with removal from Australia, once that becomes practicable.

These new changes do not alter the broad framework of immigration detention, but will allow greater flexibility, fairness and timeliness in the administration of matters affecting persons in immigration detention and provide for greater scrutiny by the Ombudsman of the operation of the detention powers.

The Migration Amendment (Detention Arrangements) Bill 2005 implements the most pressing of these changes, which will enable greater flexibility in how families with minor children can be detained, and also enable the release of persons from detention by the grant of a visa, such as the Removal Pending Bridging Visa. The amendments in the bill will:

- Incorporate into the Migration Act a statement that ‘the Parliament affirms as a principle that a minor shall only be detained as a measure of last resort.’ This principle relates to the holding of children in detention centres. Where detention of a minor is required under the Act, it should, when and wherever possible, take place in the community, under a residence determination.
- Provide an additional non-compellable power for the Minister to specify alternative arrangements for a person’s detention and conditions to apply to that person. This will enable the detention of families with children, in particular, to take place in the community with conditions being set to meet their individual circumstances.
• Provide an additional non-compellable power for the Minister to grant a visa to a person who is in immigration detention, including a Removal Pending Bridging visa.

• Require the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to report to the Commonwealth Ombudsman when a person has been detained for two years or more, or for periods that total at least two years, and every six months thereafter that the person is in detention. The Ombudsman will then assess the appropriateness of the person’s detention arrangements and make any recommendations the Ombudsman considers appropriate to the Minister.

The Prime Minister also announced that in future all primary protection visa applications will be decided by DIMIA within three months of the receipt of the application. This emphasis on timely decisions does not mean that the quality of the decisions being made by DIMIA will be compromised. On the contrary, DIMIA officers will continue to be obliged to make fair decisions in a manner that does not entail a great deal of uncertainty for asylum seekers.

Likewise, reviews by the Refugee Review Tribunal (RRT) will occur within three months of the Tribunal receiving an application. Periodic reports of cases where these time limits have not been met will be made to the Minister, who will table these reports in the Parliament. This will provide additional assurance that applications for review are dealt with in a timely manner.

These time limits will be included in amendments to be brought forward during the forthcoming Spring Sittings. In the meantime, instructions have been given to both DIMIA and the RRT to administratively implement these time limits immediately and provide periodic reports to the Minister.

It is noted in this regard that elements of processing time are not within DIMIA’s or the RRT’s control, for example security checking processes, provision of information from the applicant and the timeliness of information from other governments. That information will need to be addressed in any reports that are provided to the Minister. Failure to meet time limits will give rise to a report to the Minister but will not give rise to a right to the issuing of a visa or release from detention. To the extent required, priority for processing will be given to those in detention.

The Minister’s new non-compellable powers will allow families with minor children who are currently in immigration detention centres and Residential Housing Projects to be placed in community detention arrangements. Generally this will occur where primary processing has been completed and where removal from Australia is not underway. It should be recognised that before community detention can start, suitable arrangements will need to be made for the families currently in detention. Depending on the circumstances, this could take four to six weeks.

The amendments empower the Minister to make a determination, termed “a residence determination”, if the Minister considers this is in the public interest. The residence determination has the effect of allowing one or more specified persons to reside at a specified place without that person being required to be in the company of and restrained by an officer or authorised person, or being held by, or on behalf of, an officer in secured arrangements. Under these arrangements, detainees would be free to move about in the community without being accompanied or restrained by an officer under the Act. The only restraint on a person to whom the Minister’s determination applies would be that he or she complies with the conditions specified in that determination.

The ‘specified place’ would be a predetermined residential address. Accommodation could include (but is not limited to) a residence provided by a non-government organisation, the home of a supporter, a hospital or clinic, or the family’s current community address. The purpose of this amendment is to enable the detention of families with children to take place in the community under conditions that can meet their individual circumstances. It is envisaged that the specified premises would have minimal direct supervision, unless the Minister believes that the conditions should provide otherwise.

Conditions appropriate to each family’s individual circumstances would need to be considered and appropriate arrangements made for detention.
in the community in each case. Making these arrangements could take some time during which the family will be in traditional forms of detention. Where this occurs families, including fathers, would be placed, wherever possible, in a Residential Housing Project nearest the city of their prior residence, rather than in a detention centre. Where the Minister makes a determination for alternative detention, arrangements would be made for a family to be placed in the community as quickly as possible.

The Government’s intention is that these amendments will be used to ensure that the best interests of minor children are taken into account and that any alternatives to detaining these children in detention centres are carefully considered in administering the relevant provisions of the Act. Where detention of a minor is required under the Act, it is the Government’s intention that detention should be under the new alternative arrangements wherever and as soon as possible, rather than in detention centres.

The Government intends that where primary assessment of visa applications is being completed, or community detention conditions have been breached and a residence determination has been revoked, or removal of the person is imminent, families, including fathers, will be housed, wherever possible in a Residential Housing Project rather than an immigration detention centre.

Instructions to DIMIA staff regarding the detention of families, and guidelines related to the exercise to the Minister’s new powers, are being prepared as a matter of urgency. These instructions and guidelines will be publicly available and will be consistent with the principles that I have just outlined.

Immigration matters are already subject to considerable scrutiny, including by the Commonwealth Ombudsman. The Ombudsman maintains close oversight of DIMIA operations, including by quarterly report to DIMIA and periodic visits to detention facilities. The Ombudsman’s Annual Report notes that the Ombudsman finalised 908 complaints about DIMIA in 2003-04, identifying 76 instances of defective administration; significantly more investigations did not identify any defect and over 500 complaint issues did not lead to investigation by the Ombudsman. The defect rate—8.4% of all complaints—is a rate that compares reasonably with most other Australian Government agencies.

This bill gives the Commonwealth Ombudsman a specific role in reviewing the cases of persons who have been in immigration detention for two years or more, or for periods that total at least two years. This role is consistent with the Ombudsman’s existing powers, but is to be formalised in a new Part 8C of the Migration Act. These changes will ensure regular reporting of long term detention cases to the Ombudsman by DIMIA and the tabling in Parliament of the Ombudsman’s statements related to the Ombudsman’s assessments of, and recommendations related to, the appropriateness of the detention arrangements of persons covered by DIMIA reports. The Ombudsman’s recommendations could include, but are not limited to, recommending the continued detention of the person, recommending another form of detention that is more appropriate to the person—such as a residence determination, or recommending the release of the person into the community on a visa.

No recommendation by the Ombudsman will in any way bind the Minister.

In summary, the amendments made by this bill allow greater flexibility in tailoring detention arrangements that are appropriate to individual circumstances, or where appropriate, allowing release from detention. They also provide for formal independent monitoring of long term detainees by the Commonwealth Ombudsman. These changes represent a significant milestone in the development of migration law in Australia.

I commend the bill to the Senate.

Senator LUDWIG (Queensland) (11.28 am)—I rise to speak on the Migration Amendment (Detention Arrangements) Bill 2005. This week we saw one of those rare occasions when the Prime Minister got it right, conceding that changes to the detention system were long overdue. The Labor Party agrees wholeheartedly: change is long, long overdue, because we are still waiting for effective pol-
icy change to overhaul a system that is chronically failing, just as we are still waiting for a royal commission into a scandal of mismanagement and confusion where the cost is paid in human suffering. We need changes that will reassure Australians that a citizen of our country will never again be wrongfully deported, that an Australian resident will never again be wrongfully locked up in a detention centre—not cosmetic changes driven by the Prime Minister’s political agenda and the continued cover-up of a struggling minister and a department that does not seem to answer to anyone.

Let us be clear: the changes proposed today are the cynical outcome of a series of crisis meetings between the Prime Minister and the dissidents in his own ranks. They are a quick fix forced on a Prime Minister desperate to avoid at any cost the public humiliation of backbench rebels voting down government policy. Now that the Prime Minister has defused his backbench revolt with this quick-fix deal, a Senate inquiry into the whole immigration scandal is essential. How else will the Australian people ever know the true story behind the bungling and incompetency that has become the trademark of the Minister for Immigration and Multicultural and Indigenous Affairs and the department under this government? This is why Labor rejected a Senate inquiry: we were reluctant to pursue a twin-track approach with two inquiries running in tandem. We now know this government has no intention of treating this issue with the gravity it deserves. The fact is demonstrated by the cynical way in which the selected release of Mr Palmer’s findings was delayed until after the parliament was scheduled to rise.

Labor is strong and we will go where Liberals fear to tread. We have established an inquiry with adequate powers and support. It is now the duty and responsibility of the Senate to investigate the catastrophic systemic failure within DIMIA presided over by not only Senator Vanstone but also Mr Ruddick. Systemic failure demands a major response. Consider the magnitude of the misconduct we are talking about. The government knew for two whole years that they had illegally deported an Australian citizen, Vivian Solon, and no action was taken to fix this and bring her home. Nothing was done to ensure her wellbeing, and it still continues.

Senator LUDWIG—Yes, Mr Beattie. By comparison Mr Howard is weak. It is a terrible weakness for a man not to be able to admit when he is wrong. It is an even weaker man who seeks to hide and cover up his mistakes. I am proud to say that, over the last couple of months, on this issue alone, Mr Kim Beazley has demonstrated his strength. There were no late dinners and backward-forward dithering from Mr Beazley on this political issue. Unlike the Liberals, Kim Beazley and Labor are strong on immigration policy. We have consistently called for strong judicial powers to identify and stop the rot.

Initially, Labor hoped the government would come to its senses and give Mr Palmer the power he needed to conduct a proper investigation. This is why Labor rejected a Senate inquiry: we were reluctant to pursue a twin-track approach with two inquiries running in tandem. We now know this government has no intention of treating this issue with the gravity it deserves. The fact is demonstrated by the cynical way in which the selected release of Mr Palmer’s findings was delayed until after the parliament was scheduled to rise.

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This minister did nothing while an Australian resident, Cornelia Rau, was wrongfully detained at Baxter, denied essential medical treatment and only identified through the media interest. How does the Howard government explain its treatment of an unidentified Australian citizen who was locked up for three days despite having an Australian driver's licence and a Medicare card and offering to produce his passport as evidence of his identity? What about the Afghani national, wrongfully detained for 20 months for an unspecified reason, whose case led to a confidential out-of-court settlement? We do not hear the government talk about those issues or an apology from them about those issues.

Remember the complete confusion surrounding baby Michael Tran after his birth last month in a Perth hospital to Vietnamese parents who had been detained on Christmas Island for two years? The Prime Minister firmly told parliament that Michael would not be returned to Christmas Island at the same time Senator Vanstone and her officials were still insisting he would be sent back—ineptitude, confusion and blunder. Just look at the miserable record of this government on immigration. This is how the minister’s department’s performance in Senate estimates on 25 May 2005. She said:

I want to make it clear that you can make changes to policy, processes and legislation, but these will be of little benefit without cultural change. In DIMIA, I envisage this cultural change will include greater customer focus, timeliness, openness to complaints and appropriate mechanisms to identify problem areas.

She went on:

To achieve this, the culture of the department must recognise that complaints are an opportunity to review, change, improve performance and do things better. We must look at complaints as an opportunity.

There we have it, straight from the minister’s mouth—the urgent need for ‘cultural change’. And Mr Farmer’s embarrassing admission sums it up:

... we profoundly regret what has happened in some cases. We are intensely conscious that our day-to-day business affects people, it affects their lives, and it is 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.

Then, to top it all off, we have Senator Vanstone’s forlorn plea for ideas from her department. ‘Please,’ she says in her memo, ‘if you have an idea, give it a run by pressing the reply button. If you have more than one idea, don’t be shy. Send them all.’ That is what she sent around in her department. It would almost be comical if it were not for the human misery, uncertainty and suffering wreaked by the maladministration by this government.

Let us be in no doubt as to the source of the problem culture: it is the culture of this coalition government. What a disgrace it is that, under the Howard government, a department with such a fine tradition of nation building has been reduced to these levels by this minister and her predecessor. This is the agency that perhaps did more than any other to change Australia for the better since just after World War II, yet many migrants, even of that era, now uncomfortably joke about having to carry their passports lest they be bundled away. How sad it is when even long-term Australian citizens cannot feel safe in their own home.

The need for a Senate inquiry to cover the Migration Act is made even more urgent by the government’s apparent disregard for the law when it comes to DIMIA. DIMIA’s lawyers appear to have completely ignored the decisions in Goldie, which was a full Federal Court decision, VHAF, with a single judge,
backed up by the other full Federal Court decision of VFAD, that a person cannot be kept in detention for any significant amount of time merely on suspicion.

In these decisions, the Federal Court made it clear that the onus was on DIMIA to justify continued detention, not the other way round. In VHAF in 2002 DIMIA argued:

... the effect of s 189 is twofold. Not only is there a power, and a duty, to take a person into detention if an officer knows or reasonably suspects that a person is an unlawful non-citizen, but there is also a power, and a duty, to keep that person in detention until the reasonable suspicion has been allayed.

Justice Gray in VHAF flatly rejected this interpretation of the Migration Act, stating:

... s 189 of the Migration Act provides no authority for the continued detention of a lawful non-citizen.

Further, the full Federal Court, in VFAD in 2003, specifically endorsed Justice Gray’s position that section 189 of the Migration Act did not authorise continued detention of a person merely suspected of being unlawful.

This was in 2002-03. Yet in 2005 the minister and senior officials were still saying, in Senate estimates, that the law requires them to keep a person in detention until their suspicion is dispelled. DIMIA’s official guidance has not been updated either, as far as I am aware—unless it has been done in the last day or two. It is negligent for the minister to leave this guidance unamended for three years in the hope that the High Court may overturn the Federal Court’s interpretation. I suspect that DIMIA, through the minister, is still holding onto this view, irrespective of what the full Federal Court has said. I suspect that she will try to run it up to the High Court still, without understanding that this is the law that should be applied now.

Every DIMIA employee should know this: the minister has left you potentially operating without a sound legal basis for you to do your job. It is a truism that 99.99 per cent of the officers in Immigration are diligent and dedicated officers who try their best in circumstances where the driving policy is just plain bad. This is not about criticising departmental officers; that is the easy road to travel. This is about ensuring that the minister takes full personal responsibility for how this department has behaved. The Howard government’s negligence may expose you personally to legal action. That is the potential result of continuing along this direction in which the minister has driven.

In its formal guidance on detention procedures, the government warns staff that a person detained under the Migration Act:

... may seek compensation from the Department and, in extreme cases, from the officer concerned if the exercise of the detention power was, in any respect, unlawful.

That is from the DIMIA Migration Series Instruction (MSI) 234, paragraph 7.7. It is incumbent upon the minister to ensure the MSI is up to date and in accordance with the current law, irrespective of what she thinks the law should be or what she wants to argue in the High Court it should be.

Under this government, the department has been, in my view, operating outside what the current decisions reflect. That is why this matter requires a full public inquiry with judicial powers, but not only in this part. You only have to have a look at the litany of cases where there has been a failure: not only with Cornelia Rau, not only with Vivian Solomon, not only with the Afghani I mentioned and not only with the 200-odd other cases which have been brought up, of which we do not know the full details as yet. Will we even find out the full details of those cases? There remains a question mark over how this government will provide information to committees and to estimates so that we can see the
complete litany of havoc and destruction it has wreaked on people in personal suffering and pain.

With the Howard ministry, we have entered an era of unprecedented arrogance and incompetence coupled with a blatant denial of responsibility and accountability. It is led by a Prime Minister who knowingly threw Mick Palmer a hospital pass when he gave him the task of investigating the detention of Cornelia Rau without the necessary power or support to do the job. On top of that, he saddled Mr Palmer with the additional 200 cases for investigation. It is highly unlikely that we or the Australian people will ever know what Mr Palmer found out. It is highly unlikely his report in full will ever be made public. So, instead of a real inquiry with real powers we have the Palmer inquiry, whose findings are unlikely to see the light of day, at least without the minister filtering the content first. Instead of effective policy change to overhaul a system that is chronically failing, we have cosmetic changes driven by the Prime Minister’s political agenda and the continued cover-up of a struggling minister and a department that does not seem to answer to anybody.

Let me demonstrate how far standards have slipped under the Liberals. Many of us on the Labor side recall the late Mick Young. Some of us may not. You also might remember him on the Liberal side. He was a Labor Customs minister who resigned for inadvertently neglecting to pay duty on a child’s teddy bear. Mick Young was a strong man and he copped it sweet. It was perhaps an oversight, an inconsequential matter in contrast to the magnitude of this disaster, but he demonstrated courage and integrity. Take this example, and ask yourselves this about Mr Howard: is this bloke really up to it? Would he have taken the same line or would he have sought to hold on? Take Senator Vanstone and apply the same test to her. Does Mr Howard in fact live in fear of his front-bench—of a challenge perhaps? Why is he so weak that he cannot, even in the face of such evidence as I have outlined, bear to face a minister and ask for her resignation? Instead, his dithering, in this bill, delivers even greater discretionary powers to a besieged and incompetent minister. It defies logic.

A department spinning out of control, rocked by scandal after scandal, without any scrutiny or check from a judicial review process, emerges unscathed. A minister, bogged in denial as crisis after crisis engulfs her, is given more discretion to decide individual cases. If the minister cannot see the right thing to do, I urge departing senators on the government side to support us. You have nothing to lose but regrets. This will be one of your last votes. Make it count and support the amendments that Labor will move in the committee stage of this bill. One would suspect the departing senators might have a twinge when they look at the wreck that this government and this minister have created in this portfolio.

Senator BARTLETT (Queensland) (11.45 am)—I speak on behalf the Democrats on the Migration Amendment (Detention Arrangements) Bill 2005, which deals with detention arrangements and a few other matters. It comes out of an agreement between the Prime Minister and some Liberal Party backbenchers announced very late on Friday afternoon last week. For starters, I think it is very poor process that we are debating and proposing to pass legislation implementing that less than one week later, particularly in an area of law which has already been shown to be hugely dysfunctional.

Be that as it may, that is the situation we are in. It is particularly unfortunate that we were not even given the opportunity to have a very quick committee examination of this legislation and to question officials from
DIMIA or the Department of the Prime Minister and Cabinet so they could answer the questions directly. Instead, in the committee stage of this debate we will have to ask questions of the minister, who will then no doubt turn to her left, ask the DIMIA officials sitting in the advisers box to answer them and then pass those answers on to us—no doubt with the political filter in place. It is an unsatisfactory process in what is already an undesirable situation.

The Senate is placed in a situation with this legislation that is often described as being between a rock and a hard place—or perhaps, to use a similar cliche, between the devil and the deep blue sea. There certainly is a lot that is already devilish in the Migration Act. The Democrats have major concerns about aspects of what is contained in this legislation, particularly with regard to its further expansion of unfettered power for the minister to exercise her discretion at her discretion. There is no scope for appeal or any meaningful oversight of how that power is used and no transparency about when it is used, when it is not used, why it is used sometimes and not other times, and why certain aspects of decisions are made.

There have already been comprehensive Senate committee inquiries into the ministerial discretion power that exists in the Migration Act in a range of areas. It is now sprinkled liberally through a huge number of sections of the Migration Act that the minister has discretion, and this will be just one more discretion to add to the list, with no scope for any proper scrutiny of how it is used and no check at all on the use of that power.

Yesterday I circulated a second reading amendment to the motion before the chamber. As I said, we are between a rock and a hard place. I am concerned about the process contained in this legislation. I think the further expansion of ministerial discretion is unwise, particularly given that so many problems have been identified with it. I draw the Senate’s attention specifically to the report by the Senate Select Committee on Ministerial Discretion in Migration Matters, which highlighted many significant problems with how ministerial discretion now operates. That report is not just from the point of view of a single approach to dealing with migration issues and migration policy; it goes to a broader issue of public policy and good administration of laws in an era that we have moved into in recent decades of proper oversight of decisions made by ministers and administrative officers of the Commonwealth. That report was tabled over year ago and as far as I know it has not been responded to by the government, although I may be wrong on that front.

A report was tabled nearly five years ago by the Senate Legal and Constitutional Affairs Committee into the onshore determination process for refugees that had a lot of unanimous recommendations, including some that went to the issue of ministerial discretion. The government’s response to most of those recommendations, including those in that area, was derisory, to put it politely. It is widely acknowledged that there are serious public policy and administration issues with how the power is used, even outside any view about immigration policy. This legislation gives yet another one of those discretionary powers to the minister, and I think that is undesirable. That is the rock.

The hard place of course is that, if we do hold this legislation up, the Senate will be accused of keeping people behind the razor wire and in detention centres longer than they otherwise would be, because the intent—reasonably clearly stated in the Prime Minister’s statement last Friday and also in the explanatory memorandum to this legislation—is that this new power will be used to get people out of razor wire surrounded de-
tention centres and into community detention or, in some cases, to give people a visa. I am certainly not going to be accused of getting in the way of people getting out of those detention situations. We are pretty much stuck either way, frankly. We can pass a law that implements a badly operating administrative principle or not pass it and be accused of keeping people in detention. Apparently this is the only pathway out for people, and I am certainly not going to stand in the way of them being able to take it.

I have circulated a second reading amendment on behalf of the Democrats to indicate our ongoing opposition to the principle still entrenched in the Migration Act: that people can be detained indefinitely without charge or trial until their visa determination is finished, and that whether they are let out is totally and only at the discretion of the minister, an untouchable discretion in a legal sense. That basic principle is one that I find offensive to our rule of law and to our democratic and legal system. It is one that I and the Democrats will continue to fight until it is removed, because it is objectionable at its core.

The Democrats’ second reading amendment indicates our opposition to temporary protection visas and our view that they should be abolished. They are clearly unsatisfactory, punitive and unnecessary. The amendment also indicates our view that people who are still detained on Nauru and Christmas Island should be brought to the Australian mainland. I note and welcome the news overnight that an extended family of nine people will be given visas to come to Australia from Nauru. I have met that family and I know they will be immensely relieved. It is appalling that they had to suffer for 3½ years to get a visa at the end. It is also appalling that they will get a temporary visa and will still have uncertainty about their future, will still be fearful and will be unable to rebuild their lives. But it is good that they will be out of there. I have also heard that, along with that family, two Iraqis have also been offered visas. If that is the case then that is also good.

It will bring the total number still detained on Nauru after 3½ years down to 34. I note the extra suffering of the smaller number of people left and the obvious absurdity of continuing to pay millions of dollars to keep this detention centre open to house such a small number of people. This legislation does not even touch the people on Nauru; neither did the Prime Minister’s statement. Somehow they are in some legal shadow land outside our reach. I note that the Joint Standing Committee on Migration sought the concurrence of the minister to visit that facility, which Australia has funded for 3½ years at a cost of millions of dollars. The minister said, ‘That is outside the powers of the Migration Act and outside your terms of reference.’ I do not believe that is true, because the committee’s terms of reference deal with annual reports and the department’s annual report quite clearly sets out its activities in Nauru. So why it is outside the committee’s terms of reference to examine that facility, which is funded at great cost to the taxpayer, is beyond me.

That is another example of the total paranoia about any sort of proper scrutiny. This is a government controlled committee. It is not one of these Senate committees that are supposed, according to the government’s latest propaganda, terrible and politicised. This is a government controlled committee, chaired I think by Don Randall, the member for Canning, who I do not think would be labelled as a bleeding heart, let them all out of detention type of guy. To so blithely brush aside a legitimate committee request to visit this facility and to continue the pretence that it is not a detention centre but a processing
centre is an example of the contempt this government has for any sort of scrutiny.

This legislation introduces a few components. It introduces a noncompellable or discretionary power for the minister to specify alternative arrangements for a person’s detention and to impose conditions to apply to that detention. In the committee stage of the debate I will ask the minister for more detail about what that will mean. The explanatory memorandum gives some outlines but I note that in this legislation there is yet another migration euphemism to add to all the rest. I have just mentioned how the detention centre on Nauru was called a processing centre and that the people there are not in detention but on special purpose visas that, until recently, required them to stay within the boundaries of the processing centre. The new noncompellable, untouchable power of the minister over a residence determination is also labelled in the explanatory memorandum as a ‘community detention arrangement’. This will be another one of those fabulous slippery terms that we have in the migration area. When the Prime Minister wants to sound hard line he will talk about maintaining mandatory detention and say that these people are still in detention under the act. When the government wants to sound soft it will talk about how these people have been let out into the community under a residence determination and that they are now free.

The fact is that the minister has untouchable and unfettered power to determine the conditions surrounding that person’s detention in the community. The act already gives the minister the power to have people out in the community under detention. I have met with people who are out in the community under detention arrangements. The conditions attached vary enormously. There is the example of some Vietnamese people who came from Christmas Island—the couple got publicity when they had a baby in detention a few weeks ago—and were in community detention in Perth. It was basically house arrest. They had guards with them 24 hours a day, they were not allowed to go out and no one was allowed to visit them. When I tried to visit them they had to be taken to the Perth detention centre and I had to visit them there.

The conditions can vary from what is basically house arrest all the way through to what is suggested in the explanatory memorandum. The types of conditions are expected to require the person to be present at the specified residence during specified hours and to report to Immigration officials at specified times. That may mean they only need to report in once a day, like a bail condition, or they may need to there 23½ hours a day. The types of conditions that could be included would not be limited. Detainees could be free to move about in the community without being accompanied or restrained by an officer under the act. That could allow them to have basically free movement in the community, apart from having to report in occasionally.

There is obviously a huge range and a clear expression of intent to go towards the softer end. But with that continual power hanging over you, you cooperate at all times. It is a totally unappealable and unlimited power to tighten restrictions or put you back behind the razor wire. Total power is maintained by the minister and the department, and there is a total lack of power for the person held in detention. That does pose ongoing issues in relation to people’s state of mind. It is not a visa. It does not give freedom in the community. It does not give work rights.

This bill, however, does give the minister new discretion to issue a visa to somebody in detention—any sort of visa. Again, it is a noncompellable power; she does not have to. She can if she wants to and she does not
have to give reasons beyond a totally vague ‘I believe it is in the public interest’. That is obviously, to use another of those fabulous euphemisms, what would be called ‘flexible’. It gives the minister great flexibility: she can do what she wants whenever she wants, unless she does not want to, in which case she does not have to and nobody can do anything about it.

It should be pointed out that, whilst this sounds great—the minister has the power to let anyone out of detention—the fact is that the minister already had the power to get people out of detention. There are a whole range of circumstances under existing regulations where people have been let out of detention on bridging visas if certain situations to do with health and other things apply. The minister’s powers are already sufficiently broad in my view to let her put people out in the community on a bridging visa if she feels like it. This just makes it even easier. You do not need to bother about suggesting they meet certain criteria; you just say, ‘I want to give you a visa. Here’s your visa. It’s in the public interest.’ That is flexible, but look at that principle of public policy administration and the problems that are already apparent when you have a minister who can hand these out when she feels like it and refuse to when she does not. Clearly, there is very much a risk of being subjected to the political climate of the day and a risk of perceptions of inconsistencies and favouritism.

The ministerial discretion inquiry that I mentioned before was set up because of very serious accusations about former immigration Minister Ruddock in the so-called cash for visas affair. There were huge headlines about allegations that he handed out visas under this discretionary power in return for favours. That is the risk of this provision; it opens up that perception enormously. We all know that nobody who works in the community on a regular basis or with people in the migration or refugee area knows why a certain case gets a visa but another one does not.

The whole basis of the big Migration Reform Act back in, I think, 1989 was to codify this so it was clear whether or not people met visa conditions, so people knew what the rules were. Back then we supported maintaining a residual discretionary power for the occasional hard case that is unforeseen, but that power has expanded hugely since then to be a catch-all opportunity, under a wide range of different circumstances and sections of the act, for the minister to hand out visas when it is felt to be necessary, with nobody having a clear idea why they are given to some and not to others.

When I was part of that ministerial discretion inquiry, I found no evidence to back up those very serious claims against Minister Ruddock. I should say that the front-page headlines making the accusations turned into very small statements buried in the body of the newspapers when he was cleared by the Australian Federal Police and by a majority of that Senate committee. I suppose that is the way of the world. It does not make it any less unsatisfactory. But it highlights the problems with these discretionary powers. I will ask some questions about that in the committee stage of the debate.

This bill also adds a statement to the act: The Parliament affirms as a principle that a minor shall only be detained as a measure of last resort. That is good. I am not sure what effect that has in law. It cannot hurt, that is for sure. The fact is that we are already a signatory to and have ratified the Convention on the Rights of the Child, which says children should only be detained as a last resort. We had almost a 1,000-page report from the Human Rights Commissioner on children in detention which was called A last resort for that very
reason. The government’s response then was: ‘Get stuffed’. It paid no attention to the recommendations of the report and rejected them as it has rejected, time after time, the findings and views of the Human Rights and Equal Opportunity Commission about this government’s breaches of conventions and thus our obligations under international law. The government said then: ‘Well, it is a last resort. We don’t accept that we’re breaching the Convention on the Rights of the Child.’ The government has consistently maintained that when it has detained children it has been as a last resort. That is farcical—we all know it is farcical—but that is what the government has maintained. So I am not sure what has changed by this statement going into the act. Nonetheless, it is a good thing.

The bill also provides scope for the Ombudsman to report automatically on the detention of anyone who is still there after two years. That is a good thing, but again it should be emphasised that the Ombudsman already has that power and has conducted many inquiries into immigration detention issues. This will make it automatic for every single person. It will catch all of the long-term detainees that are already in detention. But there is no compulsion, and I am not suggesting there should be, that the government follow the recommendations from the Ombudsman, and it should be emphasised that this has already happened a number of times in relation to immigration issues. This is a small step forward, with a very dubious principle attached. We are not going to oppose it. I do support the work of those Liberal Party members who have pushed this issue and I congratulate them, but anyone who thinks that this is the end of the issue and that it deals with all the problems is kidding themselves. I move the second reading amendment circulated earlier:

At the end of the motion add:

“but the Senate:

(a) while acknowledging that this bill may result in the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) deciding to release some people from detention, maintains its opposition to the principle of indefinite detention without charge and trial which remains in the Migration Act 1958; and

(b) believes that temporary protection visas should be abolished and that the detainees on Nauru and Christmas Island should be brought to Australia immediately”.

Senator Nettle (New South Wales) (12.05 pm)—The Migration Amendment (Detention Arrangements) Bill 2005 we are debating today deals with basic issues of justice and of human rights. It is about whether we want to be known as a welcoming or a cruel country when people flee their homes and ask for asylum in Australia. Politically, this bill is a compromise deal to stop an embarrassing split in government ranks. Backbenchers such as Petro Georgiou, Judi Moylan, Bruce Baird and Russell Broadbent could no longer bear witness to the barbaric policy of mandatory detention and remain silent. The member for Cook, Bruce Baird, said to the House last night, about the detention centres he had visited:

… they were more reminiscent of gulags than modern Australia.

He went on to say:

Once you have seen the injustice that occurs in those detention centres there is no turning back.

The Australian Greens believe that the detention of asylum seekers is unnecessary beyond initial security and health checks. Australia did not have mandatory detention before 1992 and the sky did not fall in. In fact, during the seventies and the eighties we managed the arrival of many thousands of people who came by boat from South-East Asia without any of the hysteria that this
government has whipped up. John Menadue, who was head of the immigration department from 1980 to 1993, said that the wave of boat people that occurred in the 1970s and 1980s was ‘dealt with sensibly and carefully with cool heads’. He went on to say:

We didn’t set about to victimise and punish defenceless people.

… … … …

We responded to the best instincts of Australians and, at the same time, we accepted into Australia refugees who have made an enormous contribution to this country.

On the Howard government’s treatment of refugees, John Menadue said:

Frankly, it’s pretty easy to attack people who are defenceless, vulnerable, like refugees and that’s what’s been happening and I think that is cowardly behaviour by anyone who attacks defenceless people.

The government manufactured the threat of boat people for the Liberal Party’s electoral advantage 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 it carries out through its system of mandatory detention. Earlier this week, the Prime Minister told the 7.30 Report:

... national interest is certainly served by this country continuing to have a firm mandatory detention policy, and whatever people may say about Nauru, we would never have stopped the flood of boats coming to this country if we had not amongst other things had offshore processing.

There was never a flood of boat people, and only a fervid imagination could think that a few thousand asylum seekers posed a threat. Around 4,000 asylum seekers arrived by boat during the peak of the arrivals. This number was dwarfed by our annual immigration intake, which is set at 120,000 for 2004-05. Most of the asylum seekers who arrived by boat have been found to be refugees. Indeed, most people rescued by the *Tampa* have been found to be refugees and many are now living in and contributing to the Australian community.

Mandatory detention is unnecessary for the administration of our immigration policy. Any policy that punishes innocent people for years on end, particularly one that punishes children, is fundamentally flawed and represents a failure of governance. I believe mandatory detention no longer has the support of the Australian public and should be abolished. But, unfortunately, we are not here today voting on the abolition of mandatory detention; we are voting on a compromise that will do some good for those in detention and on temporary protection visas but will do little to fundamentally change this abhorrent policy.

Petro Georgiou’s private member’s bills went a long way to reforming a rotten policy. They abolished temporary protection visas, brought immigration detention under judicial review and limited detention periods. The Greens will therefore be moving amendments to reinsert the changes in Petro Georgiou’s private member’s bill into the legislation we are debating today. The fundamental differences between this compromise and Petro Georgiou’s private member’s bills were that Mr Georgiou’s bills introduced judicial review of immigration detention whereas these bills concentrate power into the hands of a department shown to operate inhumanely and incompetently. Mr Georgiou’s bills implemented the systemic judicial review of detention by an outside authority with real powers to release people from detention; this bill simply gives virtually unaccountable, non-transparent and non-compellable powers to the minister to institute quick fixes for cases which embarrass the government.

Mr Georgiou’s bills legislated set time limits to detention in most circumstances;
this bill continues indefinite detention and relies on the minister to intervene to stop such an injustice. No Australian law should allow the indefinite detention of an innocent person. The Prime Minister assured us that the expanded ministerial discretion powers were:

... going to be exercised in a sensible manner and in a manner that is, I’m sure, not only sensible but also liberal.

The minister already has extensive powers to release people from detention under section 417 of the Migration Act, and yet individuals like Peter Qasim have been detained for seven years behind the razor wire and 137 people have spent more than three years in immigration detention centres. Every one of those long-term detainees is likely to have had at least one, if not many, applications for ministerial intervention. Ministerial intervention is not working. In the last financial year, only 655 out of 3,305 applications to the minister resulted in intervention—that is a rate of 20 per cent. As of 31 January in the current financial year, the minister had intervened in only 108 out of 1,944 applications—that is a five per cent intervention rate.

I have received complaints, as I am sure others have, from many asylum seekers, lawyers and refugee advocates about the inefficiency and lack of transparency of ministerial decision making. Their experience is of a process whereby an application disappears into the minister’s office and months later a letter comes back announcing a decision. The only reporting requirement is for the minister to table the decisions in parliament, and the documents tabled provide no information.

This bill increases the scope and the power of ministerial discretion but fails to improve the accountability, transparency or consistency with which the process is carried out. The wording of the tabling requirements in this bill is almost verbatim from the current Migration Act section 417 intervention power. Under this section, the only explanation that the minister gives each time she tables reports in the Senate is:

I took the view that the circumstances in this case justify its approval in the public interest as a reflection of Australia as a compassionate and humane society.

That is hardly informative. Because ministerial discretion is a non-compellable power there is no requirement or any accountability or transparency of decisions not to use the ministerial intervention powers. The massive expansion of the minister’s powers is an attempt to fix the chronic problems of mandatory detention without fundamentally altering the policy. Recently, we have seen a string of decisions to grant people visas as the adverse publicity has started to embarrass the government. While the Greens welcome the release of these people, it is difficult for them and others to understand why the government has suddenly accepted their refugee or humanitarian visa status after three, four or five years in detention.

To turn around boats and avoid Australia’s responsibilities under the refugee convention, this government, with the support of the opposition, excised parts of Australia from the migration zone. Now the minister, under the residence determinations power of this bill, can declare any place in Australia a place of immigration detention, because the government is unable to admit that mandatory detention is wrong. What should be legislated and what the Mr Georgiou’s bills proposed is to give those who should not be held in detention a bridging visa while their case is resolved. This bill permits the minister to decide who is released into community detention and what conditions are to be imposed.
What is missing from this compromise scheme? Nauru is missing, as are the 38 people still in detention in Nauru almost four years after the government dumped them there. This legislation does nothing for those on Nauru, as the Prime Minister told the 7.30 Report this week. Proper judicial review of immigration detention is also missing from this compromise bill. Mr Georgiou’s bills would have delivered judicial review and the ability to appeal immigration detention. State police forces are required to obtain judicial review in order to detain a person. ASIO is limited to holding people who are suspected of involvement in terrorist activities for a maximum of seven days. Yet the immigration department can indefinitely detain a person without any judicial review. This is against the basic principles of our legal system.

This bill gives the Ombudsman the power to investigate and assess claims of immigration detention after a period of two years—far longer than the 90-day limit without compulsory review that was proposed in Mr Georgiou’s bills. The Ombudsman has no power to compel the minister to make a decision; only the power to make recommendations. This government and the immigration department have a record of ignoring reports and recommendations from a wide range of organisations—organisations like the Office of the United Nations High Commissioner for Refugees, the Human Rights and Equal Opportunity Commission, expert psychiatrists, the federal Ombudsman himself and the government’s own appointed watchdog, the Immigration Detention Advisory Group.

On the issue of temporary protection visas, all we have in this deal is a promise from the Prime Minister to assess all TPV holders by 31 October and a nod and a wink that most will be granted permanent visas. There is no change to the policy, and those who are rejected or refugees who are granted TPVs in future will suffer the same discrimination and uncertainty that current TPV holders suffer now. Mr Georgiou’s bills recognised what the Greens and others have been saying for some time: temporary protection visas are an inhumane way to treat people who have been found to be genuine refugees. Those bills sought to abolish this visa class. This bill, however, continues legally sanctioned discrimination against people found to be genuine refugees by accepting the continued issuing of temporary protection visas and the uncertainty that comes with them.

Mr Georgiou’s bills granted permanent visas for people who could not be removed from Australia and who have spent three years in detention. It would have been a much better legislative change than the government’s other quick fix, the removal pending bridging visa. This visa leaves asylum seekers with the constant fear that they will be deported to the torture and persecution that they initially fled. I have been contacted in the last few days by Iranians who desperately need to leave detention for the state of their mental health but who are terrified of accepting the offer they have received from the government in case they are returned to the tyrannical regime in Iran that they fled.

One of the better aspects of this bill is the recognition, finally, that children should be held in detention only as a last resort. We welcome this long-overdue move, a year after the Human Rights and Equal Opportunity Commission report and deadline on this issue. The Greens hope that all children and their families will be released into the community and that the government recognises that their residential housing projects are not a valid alternative to detention and are not an appropriate environment for children. I have spoken at length in the past about these residential housing projects and the way in which they continue to incarcerate families in another form of prison. It is unnecessary,
cruel and unacceptable to keep children in detention, even if the detention is community detention, because they could be released on bridging visas while their family’s claim for asylum is assessed. Mr Georgiou’s bills established a legislated system to release children and families on bridging visas, but this bill fails to do so.

This bill does not address the need for cultural change that the minister and the head of the department have acknowledged that the department of immigration badly needs. Instead, it gives more power to the minister. A broad-ranging royal commission into the operations of the department of immigration and immigration detention centres is desperately needed. We need to be able to get to the bottom of what is going on and begin to clean it up. An inquiry into the operations of the immigration department needs to be public so that people can view and trust both the process of the inquiry and the decisions that are made out of the inquiry. The revelations that 201 wrongful detentions have been referred to the Palmer inquiry underline the need for a proper judicial inquiry that can compel witnesses to appear before it, unlike the difficulties the Palmer inquiry has experienced with people refusing to give evidence to it.

Although we believe the changes proposed in this legislation are flawed and do not go far enough, the Greens welcome this bill as a first step in abolishing a system that has harmed so many people and soiled the reputation of Australia as a just and compassionate nation. I believe this bill is only the beginning of more legislative changes we are to see to the government’s system of immigration detention. The Greens and thousands of other concerned Australians in the community will continue to advocate for change until this system of mandatory detention crumbles.

I foreshadow that the Greens will move a second reading amendment. It says that, at the end of the motion, we add that the Senate condemns the government for its failure to humanely and compassionately manage the claims of people seeking asylum in Australia. We condemn the government for presiding over an immigration detention regime that has in many cases mentally and physically damaged those detained. We condemn the government for allowing a culture of ‘fanatical zeal’ to thrive in the Department of Immigration and Multicultural and Indigenous Affairs—a culture that has resulted in numerous wrongful detentions and at least one wrongful deportation. We condemn the government for its failure to abide by the international conventions relating to the treatment of children. And we condemn the government for its refusal to take responsibility for the wrongful detention and deportation of Australian citizens and for its failure to monitor the status of failed asylum seekers deported from Australia to nations with established records of human rights abuses.

We call on the government to: issue permanent residency visas to all refugees currently residing in Australia on temporary protection visas; bring all the remaining detainees on Nauru to Australia and grant them permanent residency visas; close the immigration detention camps on Nauru and Manus Island; abolish the policy of unlimited mandatory detention of asylum seekers; return Australia to a system of processing asylum seekers in the community after standard security and health checks have been completed; permanently close the desert detention camps; and cease the policy of forced deportation of failed asylum seekers to nations with established records of human rights abuses.

Senator TROETH (Victoria) (12.22 pm)—I have great pleasure in supporting the Migration Amendment (Detention Arrange-
ments) Bill 2005, and I am very pleased that it will put into effect some key changes to the detention policy. For some time, I have been thinking about aspects of our detention policy—in particular, the plight of children in detention and the position of those adults who have been in detention for a long time, in some cases indefinitely. As a result of this legislation, parliament will affirm, as a principle, that a minor shall only be detained as a measure of last resort. When a child needs to be detained, that detention should take place, when and wherever possible, in the community. And, in instances where detainees have been held in detention for more than two years cumulatively, the department will now be required to report every six months to the Commonwealth Ombudsman, ensuring that all such cases are appropriately examined. This gives the Minister for Immigration and Multicultural and Indigenous Affairs more scope and the ability to place families and children in a less restrictive environment while their migration status is being resolved.

Time in detention will be minimised. A reporting time frame will be put on all those detained for two years or more. As well, all primary protection visa applications must be decided by the department, DIMIA, within three months of the receipt of the application. Reviews by the Refugee Review Tribunal must occur within three months of the tribunal receiving an application. Where those time limits are not met, a report will then be made to the minister, who will table those reports in parliament. For the Greens and some of the other minor parties to be now saying that these arrangements do not provide transparency, seems to me to be missing the point.

There is no doubt in my mind that community views have changed over time on these issues. There are strong concerns in the community about the detention of families, children and long-term detainees. The emails which have been received by me and other members of parliament concerned about these issues certainly indicate that the concern is across the board. I have heard not only from many of my friends, both present and past, but also from people whom I have not met. I thank them for their communication with me and the concern they have shown on this issue. I am very grateful that the government, especially the Prime Minister, has ultimately recognised that views in the community have changed and that government policy should change accordingly. This bill does not change our obligation as a government to ensure that all our citizens can live in a safe country—hopefully, free from terrorism—and in a strong quarantine environment. We maintain a strong mandatory system, but we can also be flexible and compassionate. That is what this bill sets out to do.

I especially recognise the work of my colleagues in the other place: Mrs Moylan, Mr Baird and Mr Broadbent, and especially the courageous and committed advocacy over a long period of time of my colleague Mr Georgiou, the member for Kooyong. These four members spent much of last week holding discussions with the Prime Minister. I am overjoyed that these discussions reached a very satisfactory conclusion. The Prime Minister and the four members in the other place have enhanced the formidable track record of the Howard government as a government that governs for everybody who lives in this country. I know that my Senate colleagues Senator Payne and Senator Humphries feel as I do.

At a political level, these bills are a demonstration of the government’s ability to recognise changing circumstances. At a personal level, these bills will change the outlook to one of hope for the families, children and long-term detainees who have been de-
tained up until now. As I said, I am personally delighted that these changes have occurred. At a national level, I firmly believe that these changes are a victory for transparency, fairness and compassion.

Senator KIRK (South Australia) (12.27 pm)—I rise to speak today about Australia’s system of immigration detention and, in particular, the legislation we have before us, namely the Migration Amendment (Detention Arrangements) Bill 2005. The bill we are considering here today was precipitated by the member for Kooyong, Mr Petro Georgiou. There is no question that his initiatives really did point government policy in the right direction. Mr Georgiou’s stance on this matter is welcomed by many of us, and in particular by those who, for many years, have been disturbed about the effect on detainees of Australia’s current cruel system of mandatory detention. Whereas Mr Georgiou and his colleagues are to be congratulated for their initiatives, we really have to ask: why did it take so long?

In 2002 and 2003, when Labor moved amendments in the House of Representatives and in the Senate which would have removed children and their families from detention, where were these so-called Liberal moderates? Where was Mr Georgiou? Why didn’t he vote in favour of Labor’s amendments at the time they were presented? Nevertheless, the recent initiatives of Mr Georgiou and his colleagues have led to the introduction of the bill that we are debating today. And there is no question that, if and when this legislation is passed, there will be some very significant changes introduced into our system of mandatory detention—changes that will be for the better.

Yesterday in the House of Representatives the government refused to support the amendments that Labor proposed to this legislation. I will discuss the nature of those amendments in a bit more detail later but, in short, what Labor’s amendments attempted to do was remove all children and their families from behind the razor wire. In addition, there were four other proposals that were aimed at implementing a humane immigration system as opposed to the punitive one that presently exists in this country.

In the House of Representatives, Labor moved amendments that would have helped to bring about a speedier, more transparent and fairer detention system. These amendments would have included, as I said, removing all children from behind the razor wire, establishing an independent inspector-general of detention to monitor conditions and resolve complaints, requiring the Ombudsman to report on people detained for more than 90 days and on a monthly basis thereafter, guaranteeing independent medical and media access to detention centres and, finally, giving certainty to TPV holders. I will go into more detail on those amendments towards the end of my speech.

Immigration detention and the way that we in Australia treat asylum seekers, particularly children, are issues that many of us in the Senate—in particular, those of us in the Labor Party—have spoken out about passionately for many years. Australia’s immigration detention system is an inhumane one. It is built on a foundation that lacks compassion and it is a system that is riddled with inconsistency, unnecessary bureaucracy and—there is no point in trying to say this politely—monumental stuff-ups. We have all seen this recently in the tragic example of Cornelia Rau, who of course we now know as the seriously mentally ill woman who was locked up in Baxter detention centre in my home state for months on end.

To this very tragic case, we now have to add the cases of Vivian Alvarez Solon; Peter Qasim, who I will mention again in a mo-
These are just some of the cases that have been brought to the public’s attention, but I think we all know that there are a number of other cases that we have not heard about. If these people have suffered to the extent they have, you can be sure that there are many others there who have not yet been identified.

We have to ask ourselves how we can possibly live in a country with an immigration system that keeps a three-year-old girl locked up from the day that she was born. The government did not seem to care about the fact that this young girl was not free to do the sorts of things that young children do. She was not free to run in the park or go to the beach. It is so sad to think that she passed every significant milestone in her young life—crawling, walking, her first words—within the walls of a prison-like existence in one of Australia’s detention centres.

We know that it was only when the media made an issue of Naomi’s deteriorating mental health, with reports of her refusing to talk and banging her head against the walls inside the Villawood detention centre, that the Minister for Immigration and Multicultural and Indigenous Affairs saw fit to move her and her mother into the community. We have to ask: why didn’t this happen a year or two ago, and why does it take the media’s focus on the plight of individuals such as this young child for the minister for immigration to actually realise that there is something terribly wrong with keeping children in detention?

Deteriorating mental health of detainees is another serious issue that this government has simply ignored or sought to sweep under the carpet. I mentioned earlier Peter Qasim, who has the dubious honour of being Australia’s longest serving detainee. Suffering suicidal depression, Mr Qasim was admitted to Glenside, an Adelaide psychiatric hospital, just a few weeks ago. According to a report in the Age newspaper, prior to this Mr Qasim had asked a friend to bring poison to the Baxter detention centre. Mr Qasim is 31 years old. It seems that he has been driven mad by a detention system which is well known to cause psychiatric illness in people who are otherwise quite healthy.

In recent months we know that prominent businessman Dick Smith has helped to focus the spotlight of media attention on Mr Qasim’s situation. What was the result of this increased publicity? On Monday this week, the minister, Senator Vanstone, invited Mr Qasim to apply for a new removal pending bridging visa, along with 49 other long-term detainees. I understand that Mr Qasim has taken up the invitation to apply for one of these visas. Again, this happened only as a consequence of media attention being focused upon the plight of Mr Qasim. It is only when that happens that the minister finds within herself some compassion and does something to assist individuals such as him. We know that there are many other examples of people, including those with limited English language skills, who innocently breach their visa conditions and find themselves locked up behind the razor wire by the minister for immigration.

In seeking a more humane system of immigration detention, some of Labor’s efforts have included the presentation in 2002 of our policy outlining a humane mandatory detention system, proposals by Labor in 2002 to change the Migration Act so that children could be removed from detention and the introduction in December 2003 of a private member’s bill to remove children from detention centres. What did the government do when these initiatives were brought into the parliament? Nothing. Where were the Liberal moderates—did they vote for these changes? No.
Labour have been trying to release children from detention for years. We have longstanding policies to do a number of things in order to make our system more humane and fair. We announced some time ago that under our policy we would process 90 per cent of people in detention within 90 days. We would have an independent review of all cases of detention beyond 90 days and we would give certainty to people on temporary protection visas.

Labour have several key concerns with the government's changes as contained in this bill. We think that it is unclear whether children and their families in community detention will continue to be under surveillance and monitoring. This is something that is not made clear in the legislation. The Prime Minister himself has admitted that indefinite detention will not cease. Further, the requirement that DIMIA submit a report every six months to the Ombudsman for any person in detention for two years or longer seems to us prolonged and drawn out. Finally, there is no certainty offered to TPV holders under the legislation.

As people have said here in the chamber today, Mr Georgiou and his colleagues are to be congratulated for their change of heart but, as we say, it is a change of heart that has come too late. Whilst the government's new policies that have been announced are undoubtedly a step in the right direction, we on this side believe that for many years people have been crying out for a more compassionate and humane system. In our view, this is too little, too late.

I now wish to flag some of the amendments that Labor intend to move. There is no question that Australia does need an orderly immigration system. We do not argue with that. It must be a system of integrity in which the Australian people will have confidence and trust. It must be built upon rigorous procedures and processes which protect our national interests and our national borders. But we also believe that we have to treat individuals fairly, with dignity and with civility, which they deserve. In order to do this, individuals must be dealt with in a speedy and efficient manner where decisions are based on fair procedures and are subject to appropriate review. Labour will be proposing amendments to this legislation that will have the effect of removing all children from behind the razor wire in detention centres. Regardless of their detention period, children under the age of 18, with their parents and their siblings, will be released unless it is determined by a judicial assessor that they pose a threat to security or are likely to abscond. How sensible is that: they should be released into the community unless they pose some kind of threat.

Under the legislation that we have before us today, the minister for immigration is given a non-compellable power in relation to children in detention and there is no obligation on the minister to administer the policy in a compassionate manner, which is of concern to many of us. Our amendments will establish an independent inspector-general of detention in order to meet the need for a clearly independent and formalised system of review. The inspector-general will be able to enter detention centres, community care settings and immigration processing facilities and will have the ability to receive and resolve individual complaints from detainees and to monitor conditions. In addition, the minister could direct the inspector-general to inquire into any detention issue and receive recommendations about it. I think this is a very good development—having an independent person, an inspector-general of detention, who oversees the whole system and is able to intervene and resolve individual complaints.
By contrast, the government’s bill does not provide in any systematic way for a fair and independent review of detention centres, community care facilities and the needs of long-term detainees. The introduction of an inspector-general, as Labor is proposing, would illustrate a true willingness on the part of government to operate a transparent and fair mandatory detention system.

In addition, Labor’s amendments will require the Ombudsman to report on every detainee whose application has not been determined after 90 days and, from then on, on a monthly basis. So after three months of detention, the Ombudsman will be required to make an inquiry as to why an application has not been determined. This will enable the Ombudsman to provide an independent review and report on these cases. Under our amendments, the Ombudsman’s recommendations will be made public and will be laid before the parliament. If the minister for immigration does not accept the recommendations then the minister will be required to provide an explanation to the parliament as to why the Ombudsman’s recommendations are not accepted. This is consistent with Labor’s policy of seeking to determine 90 per cent of claims within 90 days.

Under the government’s bill, the Ombudsman would intervene only in cases where a person has been in detention for two years or longer. We believe that this is an unnecessarily long period of time. Two years—24 months—is far too long for a person to be sitting there uncertain of their future.

In addition, Labor’s amendments will guarantee independent medical access by medical professionals to detention centres to assess and recommend treatment for detainees. It is very clear that this is something that is very much needed in the system. The tragic cases of Cornelia Rau and the others I have mentioned here today make it very clear that independent medical access to detention centres is necessary. The government’s proposals do not include taking into account the health of detainees. There is no provision in this bill for independent medical access by medical professionals to detention centres. It is only through independent medical consultations that we can ever prevent a repeat of cases such as that of Cornelia Rau.

Finally, Labor’s amendments will give some much-needed certainty to temporary protection visa holders. TPV holders who have been in the community longer than two years will be granted permanent protection if the ongoing protection of the refugee convention is required. In those cases where it is determined that protection is no longer required, permanent residency will be offered to TPV holders who pass a rigorous public interest test and who, of course, meet Australian migration program criteria. The government bill that is before us does speed up the processing time for TPV holders, but it does not provide any certainty for them.

There is no question that the bill that is before us today does improve a system of immigration detention that is fundamentally flawed. Other speakers have talked about the inquiries that have been launched into the immigration detention system. We look forward to receiving Mr Palmer’s report, and I also look forward, on a personal level, to participating in the inquiry that has been established by the Senate Legal and Constitutional Legislation Committee which will be looking into these issues more broadly.

This bill does bring about much-needed change, but it is not enough. Many other improvements to our system are needed. I congratulate Mr Georgiou for initiating these measures, but they are not enough. Only by the acceptance of Labor’s amendments to this bill are we going to see a system that is
humane, fair and the kind of system that we can be proud of in this country.

Question put:

That the amendment (Senator Bartlett’s) be agreed to.

The Senate divided. [12.50 pm]

(The Acting Deputy President—Senator C Moore)

Ayes………….. 9
Noes………….. 42
Majority………. 33

AYES

Allison, I.F. Bartlett, A.J.J. *
Brown, B.J. Cherry, J.C.
Greig, B. Murray, A.J.M.
Nettle, K. Ridgeway, A.D.
Stott Despoja, N.

NOES

Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Campbell, G.
Carr, K.J. Chapman, H.G.P.
Colbeck, R. Collins, J.M.A.
Conroy, S.M. Coonan, H.L.
Crossin, P.M. Denman, K.J.
Ellison, C.M. Ferris, J.M. *
Fierravanti-Wells, C. Fifield, M.P.
Forshaw, M.G. Heffernan, W.
Hogg, J.J. Humphries, G.
Hutchins, S.P. Lees, M.H.
Lightfoot, P.R. Ludwig, J.W.
Lundy, K.A. Macdonald, I.
Macdonald, J.A.L. Marshall, G.
McGauran, J.J.J. Lucas, J.E.
Moore, C. O’Brien, K.W.K.
Ray, R.F. Scullion, N.G.
Sherry, N.J. Stephens, U.
Tchen, T. Troeth, J.M.
Vanstone, A.E. Webber, R.

* denotes teller

Question negatived.

Senator NETTLE (New South Wales)

(12.53 pm)—On behalf of the Australian Greens, I move the second reading amendment standing in my name:

At the end of the motion add:

“but the Senate:

(a) condemns the Government for:

(i) its failure to humanely and compassionately manage the claims of people seeking asylum in Australia,

(ii) presiding over an immigration detention regime that has in many cases mentally and physically damaged those detained,

(iii) allowing a culture of ‘fanatical zeal’ to thrive in the Department of Immigration and Multicultural and Indigenous Affairs that has resulted in numerous wrongful detentions and at least one wrongful deportation,

(iv) its failure to abide by the international conventions relating to the treatment of children,

(v) its refusal to take responsibility for the wrongful detention and deportation of Australian citizens, and

(vi) its failure to monitor the status of failed asylum seekers deported from Australia to nations with established records of human rights abuses,

(b) calls on the Government to:

(i) issue permanent residency visas to all refugees currently residing in Australia on temporary protection visas,

(ii) bring all the remaining detainees on Nauru to Australia and grant them permanent residency visas,

(iii) close the immigration detention camps on Nauru and Manus Island,

(iv) abolish the policy of unlimited mandatory detention of asylum seekers,

(v) return Australia to a system of processing asylum seekers in the
community after standard security and health checks have been completed,
(vi) permanently close the desert detention camps, and
(vii) cease the policy of forced deportation of failed asylum seekers to nations with established records of human rights abuses”.

Question put.
The Senate divided. [12.55 pm]
(The Acting Deputy President—Senator C Moore)

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<th>AYES</th>
<th>9</th>
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<tr>
<td>Noes</td>
<td>35</td>
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<td>Majority</td>
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AYES
Allison, L.F. Bartlett, A.J.J. 
Brown, B.J. Cherry, J.C.
Greig, B. Murray, A.J.M.
Nettle, K. * Ridgeway, A.D.
Stott Despoja, N.

NOES
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Campbell, G.
Carr, K.J. Conroy, S.M.
Collins, J.M.A. Denman, K.J.
Crossin, P.M. Ferris, J.M. *
Ellison, C.M. Fifield, M.P.
Fierravanti-Wells, F. Heffernan, W.
Forshaw, M.G. Humphries, G.
Hogg, J.J. Ludwig, J.W.
Hutchins, S.P. Marshall, G.
Lundy, K.A. Moore, C.
McLucas, J.E. Scullion, N.G.
Sherry, N.J. Troeth, J.M.
Tchen, T. Webber, R.
Vanstone, A.E. Wong, P.

* denotes teller

Question negatived.
Original question agreed to.
Bill read a second time.
arrangements the department has with detention service providers.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.00 pm)—The answers to those questions are yes and yes.

Senator BARTLETT (Queensland) (1.00 pm)—Thank you. Can the minister give an indication of how the health service provisions would operate? I know there have been some people out in the community on community detention arrangements already of varying degrees of constraint. Will the health assistance provided to them be the same as has already been applied to others who have been in community detention? In the explanatory memorandum, at the start of page 3 at paragraph 7, it talks about the conditions that would be attached to these residence determinations. They are expected to be such as to require the person to be present at the specified residence during specified hours. I know your scope will be on an individual case basis, as you see appropriate, but can you give an indication of whether it is expected that there will be a large degree of freedom of movement throughout the community? It says that detainees could be free to move about in the community without being accompanied by an officer. Is that expected to be the general aim of some of these orders or are you still sorting it out? I am trying to get a sense of whether that will be the end of the spectrum where most of these are expected to be at, rather than a house arrest equivalent. If people are able to move around without being accompanied by an officer under the act, who will be deemed responsible for them in those situations, given that, as I understand from your answer to the previous question, they are technically still in a state of detention? If they are in the community without a detention officer accompanying them, who has responsibility for their actions in those periods of time?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.02 pm)—Thank you for the question. It is expected that the residence arrangements will be more flexible than what we have at the moment, otherwise we would not need to do this. What I mean by that is that we will be able to provide people who are beneficiaries of this more flexibility than is currently available under most of the community arrangements we have been able to make at this point. It is not envisaged that people who are the beneficiaries of these arrangements would be required to be under guard, for example. You might remember that was the situation with the Bakhtiyari family, where there were guards there. This might provide more flexibility, for example, for people in mental health care—for us not to require guards there as well. We could make those sorts of arrangements. We are looking for more flexibility and a more commonsense approach. We are able to do this because we have many fewer children in detention than, as I have said before, was the case years ago when Labor was in power. I think there is about half the number in detention as when I moved into this position. That is a function of a declining case load but also of this government’s commitment to try and get better arrangements for women and children especially.

So we are looking for more flexibility. I say that without looking at the specific cases, Senator Bartlett. All I am giving you now is an indication of what the government is thinking, and that is what you have asked for. Because it will be on a case-by-case basis, it is impossible to say without looking at each case. But you might have an arrangement where a family would live in a designated
place and the requirement would be that they would be there between, say, 9 pm and 7 am or 8 am and that they report a certain number of times a day. It might only be once a day or once a week to confirm that they are in fact still there. It will depend on each case.

It is often not understood—partly because we have not advertised this, and there are reasons for that—that a good portion of the families in detention have already had a number of chances. I hope you can accept, Senator Bartlett, that if I made a practice, with respect to each family that went into detention, of saying: ‘This is why they’re there. They told us they’d come on a tourist visa. When that tourist visa expires it is implicit in it that they’ve agreed to come for a limited period of time and will then go.’ If I then detailed how many bridging visas the family had had and had not complied with, I would be prepared to bet more than a Mars Bar—and I am not usually a better; usually it is a Mars Bar or a bottle of wine or something—

Senator Ludwig—A Diet Coke?

Senator VANSTONE—A Diet Coke, yes. I actually do not eat Mars bars. Okay, I would bet a crate of Diet Coke—an outlandish bet like that—that somebody would say, ‘There you go, vilifying the detainees.’ So, it is a problem, frankly, in this area. Privacy prevents me, in many cases, from revealing the very positive ministerial interventions I get to make, and the perception of vilification means that not enough information is out about the families that are in fact in detention. I can give you this assurance, Senator Bartlett—I will give you some details on it privately, if you want; if you choose to make it public, that is your business—that people have had one chance, that is, they have largely come to Australia on a valid visa. That means you accept your tourist visa that says that you are welcome here for three months. Then you just decide to thumb your nose at it and not go. Then you get a series of bridging visas. They are not what we call substantive visas; they are visas that enable you to make other arrangements. A number of these bridging visas would be on the express arrangement, agreed to by you, that you will in fact make arrangements to leave. And then you have not. So this is going to require care.

As the unlawful arrival case load diminishes—and it is, as you understand, rapidly diminishing because the boats have largely stopped coming—and therefore the proportion of the case load that is compliance increases, a higher proportion of the cases will be people who had a first chance to comply with their valid visa and numerous chances after that to comply with bridging visas and did not. So it will require care, but we do want to provide this extra opportunity of flexibility. Families who do not comply with that, regrettably, may find themselves in a housing project, which would be much preferable, as you know, to detention. So it is our intention—despite the fact that the compliance population is, as I say, largely people who have breached bridging visas—to provide this extra flexibility so that we can pursue whatever arrangements we need to pursue, which, for departure, might mean getting kids that are born here registered because their families have not registered them in the country of their citizenship.

It is also not largely understood that we only detain about 25 per cent of the compliance load that we come in contact with. If you consider it as a percentage of the women and children, it is only around seven per cent. So we already, as a matter of practice, do not aim to detain. If we can get other arrangements in place, we do. Many people who have breached either their original substantive visa or bridging visas, when it comes to the crunch and it looks like they
might be detained, say, ‘Okay; you got me,’ and they make arrangements to leave. So this is an addition to flexibility. The shortest answer I can give you is that we will be as flexible as we can but we need the flexibility because, as I say, a large portion of this population have already had a number of chances to show good faith and have failed to do so.

Senator BARTLETT (Queensland) (1.09 pm)—I thank the minister for that. Is it reasonable for the Senate to assume that giving passage to this bill will ensure that no child is detained in a detention centre—a main detention centre or a residential housing facility—and that families will be out in the community unless there is already evidence of problems such as you have suggested: breaches of conditions or breaches of visas? Clearly that is one of the driving assumptions behind the agreement announced by the Prime Minister and this legislation—that children will be out in the community. In the absence of clear breaches such as those you have outlined, can the Senate assume this legislation will mean that outcome?

I do not want to ask you a series of ‘How long is a piece of string?’ questions, but, acknowledging that each case has its individual circumstances, is there some ability to get an understanding of what might constitute a serious breach of the specified conditions of a residence determination? For example, would failing to report once at a specified time, or breaching a curfew type of arrangement, be sufficient to be a serious breach and likely to lead to withdrawal of the residence determination, or is there likely to be a set of stages?

Linking to that, the Prime Minister’s announcement stated that amendments to DIMIA instructions to staff regarding families in detention will be made and guidelines will be prepared for the exercise of the minister’s discretion—the discretion that I assume this legislation will give you. Have those guidelines been finished yet? I understand they will be public documents, but are they already operational or is it intended to wait until the guidelines are finished before some of these residence determinations are made? Or is the government confident enough to start making some of those? I am trying to get a number of questions out at a time here.

As the minister said herself, people have already been put in community detention. The government has talked for some time about more flexibility. My questions are: why are these amendments necessary, given you already have the power to put people in community detention under varying circumstances, and what is the extra part that is contained in this bill that is essential to enable you to give people community detention that is more easygoing?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.12 pm)—First of all I will indicate that the Prime Minister made the announcement a few weeks after we had started discussing this matter, had had quite lengthy party room discussions on it and, subsequent to that, had had numerous—too numerous to outline—meetings and telephone discussions about where we wanted to go. Then he made the announcement, which I think is a pretty clear indication of where the government want to go. What the government want to do is maintain strong border protection. We are very pleased that we have largely stopped people coming on boats. We hope that no more lives are lost by people taking a chance on those rickety, stinking, unsafe vessels to come in monsoon time, or at other times, and put their lives at risk. But, because we have been successful in that and we now have a
smaller case load, we believe we can and should soften the individual impact of that policy, and we will.

One test of the good faith of that is the amendments we have made to the removal pending bridging visa which were announced recently. A few days after that, the announcement was made that a further 50 people would be offered this visa. I can assure you, Senator Bartlett, that that takes quite a vigorous application of not only the minister’s mind but, prior to that, a number of people in the department—to get the files, to go through them and to vigorously relook at things, given the government’s stated intention. I think a further 50, after 17 had been released earlier, is an indication of the degree of strength and commitment behind this decision and this softening of the individual impact.

You asked: what if someone breaches a requirement of the residence arrangements once? I can think of a number of reasons that would be perfectly reasonable. Somebody might hear that one of their kids is unwell or had a sporting accident outside the times they should be wherever they are meant to be. I do not know about you but, if it were somebody I loved and cared for, I doubt that I would be hanging around ringing up and waiting for a departmental officer to give me approval to go to that person’s aid.

We will have to look at this on a case-by-case basis, bearing in mind that these are people who have already had chances. It is not the government’s expectation that people who first came to our attention would be detained. As I said, we will be as flexible as possible. I hope you are not arguing for a situation where we take no notice if someone in detention consistently and flagrantly ignores the agreement that has been made to give them this extra opportunity. I do not think anyone would expect that. I can assure you that it is the government’s and my intention to be very flexible and sensible in this matter. We will try in the first place to get the requirement to give maximum flexibility in the agreement. We will have to look into it. I would not say that, if there was one breach, that would be the end of it, but I certainly would not want to give you the impression that that means people could take no notice of the requirements and expect to get away with it.

As for the guidelines: no, they are not ready at this point. People are working on them at the same time that they are working on a number of other arrangements. We were able to make an announcement of 50 extra people because, as the change we wanted to make became clearer during our discussions, while some people were going on with those discussions and it was not finalised, other people were saying, ‘Okay—on the basis that that may and probably will happen, let’s start work on selecting the cases that we might want to look at.’ That could have been wasted work if the government had not proceeded down that path. We tried to have things running in tandem so that they would be done as quickly as they could be. That is the basis on which we are approaching the remainder of this.

The last part of your question was: what is the matter with the arrangements we have now? The arrangements we have now require someone to be specified for the purposes of the immigration act. There are community groups who find that uncomfortable and do not like it. We have tried on a number of occasions to get arrangements and it has been very difficult. I use the example of the Bakhtiyaris, as the Centacare people were not happy to be immigration officers. They said it was inconsistent with their charter as NGOs. That was awkward and inconvenient. It meant we had to have other people there. Either they did it for a short period of time or
would not do it at all, and the state government agreed to take over that aspect.

In the end, the state government wrote to me and indicated that they would not be able to comply with that further. That was not because they did not see it as appropriate for them to be designated in relation to the immigration act; it was because of consistent breaches of the requirements and the health and safety of their officers in relation to the behaviour of one of the Bakhtiyari boys. These things are difficult. The difference in this residence arrangement is that we will not have to have that sort of specification. It may well be that we find NGOs more willing to be participants in this given that it gives better opportunities to families.

I will get some legal advice for you as to the responsibility. I am not quite sure what you are getting at there. People obviously individually retain responsibility for their acts. If someone under one of these orders commits, for example, a criminal offence or an assault, they will still be responsible for that. I presume your question is more likely to go to: what if someone committed an assault on them? We will get some advice on that. It may mean that people will have to agree to make that choice and to have the same responsibility in relation to risks at large in the community.

The Commonwealth would obviously retain responsibility for those things that were clearly the Commonwealth’s responsibility. They would go to, for example, the safety and the amenity of the place of accommodation. If you put someone in a place with floorboards that were no good and they went through the floorboards, clearly the Commonwealth would have responsibility. You could give me some clearer examples, but I think I have highlighted for you the area that might need some further attention.

Senator BARTLETT (Queensland) (1.20 pm)—Thank you for that. That was part of what I was getting at—the general aspect of duty of care and the department’s overall responsibility, given that these people are still, as I understand it, under migration detention under the act. I was referring to the totality of those duty of care issues. To make clearer what I am doing, I am not proposing or suggesting anything in particular about what the government should or should not do. I made my views clear about the legislation and the reservations I have with it in my speech in the second reading debate. Given the rushed nature of the legislation and the fact that we were denied the opportunity to ask these sorts of questions outside this place, I think it is appropriate to do it in the Committee of the Whole. Hopefully this, rather than all the different assertions or suggestions that have been made, will help increase community understanding about how this will operate.

I think it is reasonably clear what may constitute a specified place where a person will be able to reside under a residence determination. I wanted to ascertain who would be responsible for the costs of those places. Would the department cover the rent or fully fund the running costs et cetera of houses in the community for the community organisations that may run them? Is it envisaged that the houses might be under the care of community organisations that have some history of this type of thing? If a decision is made to revoke a residence determination, is it the case that there is no right of appeal about that decision? Will the guidelines contain anything surrounding reasonable or any sort of notice about revocation depending on the circumstances?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Af-
My understanding of the housing issue is that we are looking at a variety of arrangements. When we were discussing this a number of possibilities were envisaged and I do not think the issue has been finally resolved. We are in the process of trying to move this forward quickly. For example, meetings have been held this week to discuss where the bureaucrats think they can take this matter, which I have not had full briefings on. It was envisaged that, for example, there might be a set of units or a number of houses bought by the government. They would be constantly available so that, if a family needed to be accommodated quickly, there would be a place. One determination could be made that would be a cover all for that particular time. If it were possible, that might be preferable to someone going firstly to a detention facility that hopefully had a housing project while arrangements were being made. That would take some time in some cases but we hope it would not be long.

There might be other arrangements in which work would be done by contract with NGOs who might own the facilities themselves and therefore, as a part of the contract rate, be paid a fee recognising that they had put the capital outlay into the homes. We have an arrangement with Hotham Mission in Victoria. They own the housing and we cover the arrangements. I had some correspondence arrive this morning from Hotham Mission. I have not yet had time to look at it; it is quite lengthy. I can say that I think they are hoping that a residence determination might be: ‘You will reside in the city of Melbourne.’ I will regard that as an ambit claim, if you do not mind me saying so, but we are very pleased to at least have the dialogue open and to be talking to them about what we can do. I think that covers all of the questions asked by Senator Bartlett.

Senator BARTLETT (Queensland) (1.25 pm)—Thank you. From the answer the minister just gave, and from a few of the previous ones, it is clear that some of these things are still being worked out. That is the situation that we face, but I wonder if we could get some indication of when it is expected that the first residence determinations are likely to be issued. Will the guidelines include any requirement for the minister to consult any person prior to making any decision to revoke or vary a residence determination—perhaps to verify information or those sorts of things? Will there be a requirement under the guidelines for a right of reply to answer allegations of breaches before it is cancelled?

I note that the minister is required to table information relating to these exercises of discretion. Is it expected that the guidelines would require the same level of detail of all other statements that are required to be tabled when discretion is exercised? In my view that is not very much detail, but are we looking at something fairly similar in length and detail? Is there any requirement that a similar report or tabling of information be provided when a decision is made to cancel a residency determination? Will a family subject to a residence determination still have the same rights to apply for a bridging visa et cetera that they currently would have if they were in a main detention centre?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.27 pm)—I can confirm that the family would not lose anything. This is all about families gaining, so there would be no loss in that respect. As to the guidelines, we will have to wait and see. I have not been involved in discussions with respect to them. I come back to the point, Senator, that this is about the government wanting to soften the
individual impact. I am sure some advisers will get some figures for me on the number of kids in detention at the moment and the number of bridging visas that those families have been subject to in order to make it clear that we are not talking about someone who has come to Australia, overstayed a visitor’s visa and been found some nine months later suddenly going into detention. That is not the scenario that we look at now, let alone the scenario we are considering here. We are looking for more flexibility.

We will have to wait and see what the guidelines say but there are always two sides to a story. Sometimes it is blatantly clear and, even though there might be another side, it will not have anything that will mitigate or overcome the wrong that has been perpetrated. On the other hand, there are circumstances where there would be. I outlined one of those earlier. If a parent had a kid who was at risk, or it was a sister or something like that, you might understand that someone was not there at the time they should have been because of this situation. Repeated situations like that might lead you to be a bit cynical. It is like the old story of how many grandmothers can die just before a person’s exams as an explanation for why they failed their exams and want their student visa extended. I see these regularly. One time it was that their grandmother died, another time they had a car accident a week before and another time someone was picking on them. You get a sense of when there is always an excuse but it does not mount up to be good enough. We will have a look at it.

As you understand, this area of government policy is already the most scrutinised area of government policy. The Ombudsman has complete access. People who want to make complaints to him already can and do. And I was pleased to see the Ombudsman recently indicate that, despite the fact that there were a higher number of allegations received by the Ombudsman in relation to my department than others, there is in fact a smaller percentage that are agreed to by the Ombudsman. That is a good sign. I think the number is just a function of the volume of the work that we deal with. I hope that has answered your question. I have given you as much information as I can at this point anyway.

Senator BARTLETT (Queensland) (1.30 pm)—I might ask one more question and then yield, if that is the expression, to somebody else. I think the minister may have answered this and I missed it; it is a question I asked before. In case she missed it while answering all the others, can she just confirm that, if a residence determination is cancelled, that is not an appealable decision. I also have some general questions about the proposed insertion into the act of the affirmation by this parliament that ‘a minor shall only be detained as a measure of last resort’. Part (2) of that is:

For the purposes of subsection (1), the reference to a minor being detained does not include a reference to a minor residing at a place in accordance with a residence determination.

Firstly, does that mean that when saying ‘detention is a measure of last resort’ we are not calling residence determinations ‘detention’ for the purposes of that principle? Secondly, more broadly, what is the legal effect of putting in this affirmation, given that the government has always asserted that children are already detained only as a last resort? It could be fair to say that is the view of the parliament, because the parliament—not with the Democrats’ support but with both the larger parties’ support—has passed legislation regularly requiring children to be detained. What does putting in this principle mean in a legal sense; what extra effect does it have?
Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.31 pm)—That is right. The government have never been of the view that it is ideal to have children in detention. We have never been of that view. You only have to look at what we have done to confirm that. As I indicated in this place only recently, the previous government, for example, never built residential housing projects—normal street like facilities. We have a number of them: we have one operational at the moment and we are building more. I had the opportunity to, as they say, turn the first sod at the one at Villawood the other day, and we expect that will be completed by March and operational by July next year, and the one in Perth, by December next year. So it has never been our intention to put children in detention. I think what we are doing is making that clear. People do get a degree of comfort from that being made clear in the act. As to the answer to your earlier question—well, you put it in two different ways, but it is right: it is a non-compellable power and therefore there is no appeal possible.

Senator NETTLE (New South Wales) (1.33 pm)—Was that yes to the first part of ‘yes, they can be for individuals’?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.34 pm)—Yes.

Senator NETTLE (New South Wales) (1.34 pm)—Are there any guidelines or criteria as to the basis on which you might make a decision to grant a residence determination for an individual?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.34 pm)—Because it is a non-compellable power, there will not be guidelines for the minister. We may look at developing guidelines for departmental officers to refer matters. But it is envisaged that, as the detention population declines, which it will continue to do because we have stopped the boats, the case load will continue to diminish, so it may be that all the cases would come directly rather than going through a filtering process. We have had to have guidelines and a filtering process on, for example, 417 interventions because there are unscrupulous migration agents who take a fee from someone for an intervention and put up the request with what must, by any plain reading, be clear knowledge that the request will be unsuccessful. I have had something to say about migration agents in this place recently. I personally have neither the time nor the slightest care for a migration agent who does that. The statistics on the percentage of cases that when taken to court—shifting away from the intervention power—are won by the immigration department are an indication of
the very poor advice that is being given to people.

I consistently read that the immigration department has been unfair. In very few cases do you find that it is an immigration department decision alone. This area is so reviewable that people have had the opportunity of a tribunal review and a judicial review of a range of decisions. The people we are talking about now are at the end of all that, so they have in a sense had their fair go. They have had their initial hearing, they have had their tribunal hearing and in many cases they have had judicial hearings, all of which have come out to be a no. During that time they have had bridging visas. Some of these people subsequently had bridging visas precisely because of the agreed arrangement that they will leave, and then they do not. So it is not envisaged that we would set up another bureaucratic process or another tier of levels that people could be dragged through. This is quite specifically to give the minister, through a non-compellable power, the capacity to deal with cases that on a commonsense and compassionate reading should result in a decision other than what the law would otherwise allow.

For example, there might be someone with some health issues where it would be perfectly obvious that the better thing to do was to rent somewhere near a health facility to which they needed to go regularly. This will give the minister the flexibility to do that. I know we are trying to not delay things, Mr Whip, but you invite me to make the point that I did make it clear and I have consistently said that there may need to be amendments to the act. I remember the hoo-ha at the time from some people opposite that it was not correct and that the minister had all the power that was required. I think we have made clear by this that the minister does not have that power. We are happy to give the minister the power which will cater to those individual cases.

It does not matter what law you have, there will be individual cases where you say, ‘Gee, that’s tough. That’s not what people really wanted.’ If you go to criminal law, for example, there are even cases—and it is catered for in criminal law—where something as vile as murder can be reduced to manslaughter because there are circumstances that we understand are different. As soon as you make a law there is someone who comes just within it but everyone wishes they came just outside it. That is what this power is designed to cater for.

Senator NETTLE (New South Wales) (1.38 pm)—You mentioned the instance of the department paying rent for someone where they would operate. How would access to health services operate? Is it envisaged that they would have Medicare access at any health service or would there be, as you just described in the last example, designated health services they could access and the Commonwealth would make the arrangements?

The other question is about how any allowances would operate. Would there be allowances for buying food? Would that be a Centrelink operation? Is there a standard payment people would receive through Centrelink? I would like an indication about what level of allowance might be available to cover living costs such as those that are not obviously covered by the department, like rent or health.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.39 pm)—If you are talking about residence determinations, these are people who we are looking at having the capacity to remove. Otherwise, if we do not have the
capacity to remove them, you would expect they would be on a removal pending bridging visa which would give them Medicare access. These people are not Australian citizens, not permanent residents. They are unlawfully in Australia and therefore do not have access to Medicare, so we will have to provide the health arrangements.

**Senator Nettle** (New South Wales) (1.40 pm)—Could you answer my other question about how allowances will be determined?

**Senator Vanstone** (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.40 pm)—That is not finalised, but it is not envisaged that it will be through Centrelink nor is it envisaged that it will necessarily be a standard payment. Circumstances are different. Individuals may vary.

**Senator Nettle** (New South Wales) (1.40 pm)—I have a couple of other questions on this issue. I think Senator Bartlett has asked about whether, where there is a breach, there is a process of notification of a breach. Do people get documentation that relates to the conditions? If there is any change of conditions, is there written or verbal notification about that?

**Senator Vanstone** (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.41 pm)—Sorry, I have just been talking through a technicality with my adviser. I want to draw your attention to page 8 of the bill, which is section 197AC(2). It says:

(a) a person covered by a residence determination is temporarily staying at a place other than the place specified in the determination; and

(b) the person is not breaching any condition specified in the determination by staying there;

then, for the purposes of subsection (1), the person is taken still to be residing at the place ...

Provided the determination is drafted appropriately, that will allow for flexibility in the sort of thing you are talking about. If we want to stay here till midday tomorrow or
midnight tomorrow night we can and we can go through a whole range of different examples. To everyone of them I will say, ‘We’ll be dealing with them on a case-by-case basis.’ Each family is going to be different. Some of them will have little babies that will not have parent and teacher nights. Others will have teenage boys that are the nightmare that teenage boys are whether they are Australian citizens, permanent residents or unlawful noncitizens. It is very much going to be on a case-by-case basis. All I can say to you is: look at the Prime Minister’s announcement. Look how quickly a further 50 people were granted the new visa. That will give you an indication of the government’s good faith in this area.

Senator NETTLE (New South Wales) (1.44 pm)—I have two last questions in this area. The first question relates to whether there is an intention to make any restrictions on the visitors that people can have while they are in a residence determination. The other is about the capacity they have to choose the place of determination. You described before that there might be a block of units decided on. But what capacity do they have to enter into any discussion about choosing the place of residence—which city, which unit et cetera?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.45 pm)—I think it is going to depend on capacity. We are talking about people who have breached their original substantive visas—that is, you come on a tourism visa, a business long stay visa or a spouse visa or whatever, your visa runs out or is cancelled, you decide just to stay and you get caught. You have a number of opportunities to get a bridging visa. You do not take those opportunities. You might have a bridging visa where you agree that you will make arrangements to go and then you do not. You must expect that eventually the country that you are unlawfully in will want to remove you. You, for example, would not expect to fly to the United States without letting them know you were coming. You certainly would not expect to be able to stay there—or in any other country, frankly—unless you had made arrangements to do so. I think that is understood internationally. Just as we do not expect people to drift in and out of our houses, we do not expect people to drift in and out of Australia at their choice.

 Nonetheless, we want to be as flexible as we possibly can, despite the fact that we are largely dealing with people who have had a number of chances and have not taken the opportunity to do the right thing vis-a-vis those chances. If you are putting a direct question to me—will they be able to choose where they stay?—the answer is no. It will depend on capacity. If there is choice within capacity, we have been flexible so far and we would continue to be.

Senator NETTLE (New South Wales) (1.46 pm)—The other question was: would there be any limits on visitors that they may have?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.46 pm)—I do not envisage that there would be limitations on visitors during normal hours. I would just put one rider on that. It has not even been considered but it does occur to me that, since the Commonwealth will have a degree of responsibility here, because people are under a residence determination, you may not want the place to be operating as a jive house between the hours of 11 pm and 5 am if there are children there. But, generally speaking, no.
Senator BROWN (Tasmania) (1.47 pm)—On behalf of the Australian Greens, I move amendment (1) on sheet 4625:

1. Page 3 (after line 2), after clause 3, insert:

4 MOU etc. relating to detention, refugee immigration etc. centres not to be made

(1) The Executive Government of the Commonwealth has no power to enter into any form of agreement, memorandum of understanding or arrangement, however expressed, relating to a detention, migration or refugee facility, however described or established, except as provided for by the Parliament.

(2) Where the Executive Government of the Commonwealth has entered into an agreement, memorandum of understanding or arrangement, however expressed, relating to a detention, migration or refugee facility, however described or established, prior to the commencement of this Act, that agreement, memorandum of understanding or arrangement ceases to have effect after 1 July 2005.

This amendment is effectively aimed at not allowing the detention centre on Nauru to remain open. It would effectively close that detention centre on the 30th of this month, when the current memorandum of understanding between the government of Australia and the government of Nauru lapses. We know that a new memorandum of understanding is being worked out, and I ask the minister if she would care to table either the existing or the oncoming memorandum of understanding so that the Senate can look at it.

This motion is an exercise of parliamentary power to effectively say that, if the government wants to enter into a new memorandum of understanding, it will need parliamentary approval. It will have to come to the parliament and get that. The executive prerogative to enter into the arrangements setting up the prison camp on Nauru are always subject, and have always been subject, to parliament. This amendment to the legislation says that if you are going to have further memorandums of understanding with Nauru or any other country to set up a detention centre and/or maintain it with a view to keeping detainees in it then that is a matter for the parliament to determine: put it before the parliament at some future time. In the meantime, the centre on Nauru will close by the end of this month.

This is a very important expression of parliamentary power. I hope the opposition will support it. There is still more than a score of people detained on Nauru. I ask the minister to outline the circumstances for those who have not been brought back to Australia and I ask whether the government is considering bringing the remaining internees on Nauru back to Australia in the near future. Could she give a description of how many detainees remain on Nauru, who they are and what their circumstances are?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.50 pm)—The question of the memorandum of understanding with Nauru is a government-to-government arrangement, in this instance in the province of the Department of Foreign Affairs and Trade. It is negotiated between the foreign ministers of both places. Any questions in relation to that really need to be directed to them, but I can do that. You may or may not be aware, Senator, that the last family from Nauru will be coming to Australia quite soon as a consequence of a visa that I granted them the other day. They are the last family there, so I think that was appropriate.

I will get you some information—I do not have it now—on the breakdown of the people in Nauru. You may not be aware, al-
though I would be surprised if you are not, that the facility is an open one. It is not properly described as a prison camp. The residents of the immigration facility there can come and go. I do not know whether you were aware of that, Senator—were you?

Senator Brown interjecting—

Senator VANSTONE—You were. I thought it was an odd choice of words to use in that context, given that they have that freedom. If I may, I have got some answers. I indicated earlier, I would get some information for the benefit of the Senate. As at 6 June this year, there were 58 children in immigration detention overall—that is not detention centres, that is overall. Of those, 39 children were granted 119 bridging visas between them. Those are children whose parents entered Australia lawfully. That is the predominant caseload now in detention—that is, people who have come lawfully, who have been given the chance to come to Australia and then have not gone back home. Of those 119 bridging visas, 37—that is probably one each and a couple had more—were on the basis of a stated intention to depart. I think that makes it clear that the people we are talking about already had the initial chance of a substantive visa and subsequent chances that have not been complied with.

Of those 39 children, 25 are currently in immigration detention facilities, and 20 children were granted 76 bridging visas, of which 29 were on the basis of a stated intention to depart. Of those 39 children, five children were born in Australia and therefore had never been granted bridging visas.

Senator LUDWIG (Queensland) (1.53 pm)—The Labor Party is not of a mind to support the Greens amendment, notwithstanding that the principle is one with which I think the Labor Party agrees. One of the difficulties in the process of dealing with this type of amendment—and I think the government has mentioned this—is that it is within the province of DFAT rather than the immigration department. Another issue goes to the more practical application of the amendment. The Greens are seeking to amend this bill with a negative power. We do not know whether that then allows an MOU to be done under another act or by agreement in any event. So, although it seems to be directed at an MOU in relation to this bill, the question is whether or not it can then operate, even if it is passed here, under other acts which do not relate to this bill but still have the same effect, or whether you can then enter into contracts if there is no definition of an MOU in the migration legislation, whether it is called a contract or an MOU.

The other obvious issue is whether it is the only MOU in operation or, by unintended consequences, there are other MOUs that might refer to refugee facilities, which might currently exist overseas, which might be of a beneficial nature. I am not aware of all the MOUs that DFAT or the Department of Immigration might effectively have in place. For those reasons—(a) an unintended consequence or (b) whether or not it could actually serve the purpose for which it was intended—the Labor Party is unable to agree with the amendment.

However, in terms of the principle, it is an issue that we can have a better look at during the examination of the migration legislation.
by the Senate references committee. The committee could flesh out some of those issues that I have highlighted now to see whether this is an effective way to deal with it. Of course there might be other more effective ways of dealing with the import of what the Greens are trying to achieve in this amendment. I can understand the principle that is embodied in it, but whether or not that would be effective is another question again.

Senator BROWN (Tasmania) (1.56 pm)—The Labor Party ought to come forward with an alternative, if there is a better one. I submit there is not. I submit this is a very clear and positive amendment which says, ‘The parliament is empowered over the executive to make the decision in this matter.’ There is another amendment which, if this one fails, I intend to move two amendments down the line. As question time is coming up fast, I will ask the minister some questions about Nauru. Is the government prepared to table the memorandum of understanding with Nauru, notwithstanding that the government of Nauru ought at all times to have been aware that this should be a matter for public scrutiny in Australia? I cannot think of any reason why it should not be, if there are reasons other than the usual hide that is shown by saying, ‘We’ve entered into an arrangement with another sovereign country.’ What you should do is enter into the arrangement saying, ‘We are going to make this public in Australia, so let’s sort that out from the outset.’ There is no excuse in just saying, ‘We just can’t produce it.’ It should be produced and this parliament should be looking at it.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (1.58 pm)—Thank you for the question. It is a difficult balance. We all understand, especially those of us who have been on the other side of the chamber, that the parliament’s job as a whole is to keep a check on the executive. That does not mean it is the parliament’s role to become the executive. In international dealings, it is sovereign state to sovereign state. It is sometimes difficult to accept that the parliament is not there to be the executive; it is there to keep a check on the executive. Senator Brown asked whether the government would table the memorandum. I will take that on notice and give it to the Minister for Foreign Affairs and Trade.

Progress reported.

QUESTIONS WITHOUT NOTICE

Economy: Foreign Debt

Senator SHERRY (2.00 pm)—My question is to Senator Minchin, the Minister representing the Treasurer. Is the minister aware that Australia sent $21 billion overseas over the last year to pay the interest on foreign debt? Is the minister further aware that $2 out of every $3 generated in the Australian economy is owed to foreigners? Does the minister agree with both the OECD and the IMF that spiralling foreign debt is a serious issue for Australia, even if it is driven by the private sector? Will the minister acknowledge that record foreign debt is a looming problem? What credible reasons can the government have for having done absolutely nothing about Australia’s foreign debt over the past nine years?

Senator MINCHIN—Senator Sherry is desperately trying to support the equally desperate campaign by the failed opposition leader, Mr Beazley, to get away from the debacle of the last five weeks. The likes of Senator Conroy convinced Mr Beazley to spend five weeks trying to stop Australians getting a tax cut on 1 July. We are grateful to the Senate and to the minor parties for agreeing that Australians should get a tax cut on 1 July, and we are still waiting to see if the
ALP is going to move a disallowance motion.

Having wasted those five weeks, the Labor Party now thinks that it can resurrect its position by running some sort of campaign on foreign debt over the winter recess. I regret to say that nobody will be listening. Nevertheless, I refer Senator Sherry to the answer I gave yesterday. None other than Mr Beazley indicated back in 1995 why the foreign debt question in Australia must be kept in perspective and must be considered on the basis of the ratio of government to private sector debt and, equally, the ratio of exports required to service the debt. On both measures, Australia is in a considerably better position than it was when Labor left office.

**Senator Conroy**—Do you know what the IMF stands for?

**Senator MINCHIN**—As I also said yesterday, the fact is that this is a country that will always rely on foreign funds to provide the requisite difference between our savings and our investment requirements. In Australia’s existence, there will probably always be that gap between savings and investment, which will need to be filled by foreign funds. One of the most important things for any government and, indeed, for an opposition is to ensure that Australia remains attractive to foreign investors so that we can continue to attract the foreign investment funds needed. Once those investments are made, there are obviously dividend earnings from those investments that do go overseas. For 200 years, Australia has needed that foreign investment, which must be serviced. Given that reality about Australia, what you have to ensure is that we continue to have as efficient and globally competitive an economy as we possible can to ensure that we can properly service the level of debt that we have.

**Senator Conroy**—So the IMF is just irrelevant?

**Senator MINCHIN**—I keep reminding the opposition that we are talking about private commercial transactions. The government have some 4.5 per cent of that, because we have gross debt out there. We have said that we will keep gross debt out there.

**Senator Conroy**—So you’re right and the IMF is wrong?

**Senator MINCHIN**—It is essentially a function of the private sector making commercial decisions to borrow, to invest in Australia, to develop this country and then service those borrowings by way of transactions internationally. We are satisfied that Australia’s capacity to service its position is very good. It is particularly assisted by the fact that we have taken the necessary measures on our part to eliminate government debt so that we are a net saver. That is the great difference between our period in government and what we had under the opposition. We are a net saver, and we have done that despite the opposition trying to stop us on every occasion. We have brought the government budget under control and fixed the problem that they created for us. To the extent that we have a current account deficit and foreign debt, it is a function of private sector transactions. The servicing ratio is 9.7 per cent, compared with 20 per cent under the Labor Party.

**Senator SHERRY**—Mr President, I ask a supplementary question. Isn’t it a fact, Minister, that Australia as a totality is not a net saver? Doesn’t your complacent attitude run contrary to the views expressed by both the OECD and the IMF, who are increasingly concerned about our record level of foreign debt? Is the minister aware that, with the current account deficit running at a record level of over seven per cent of GDP, which is far in excess of economic growth, foreign debt will continue to spiral upwards? Will the government finally admit that the bal-
looming foreign debt is a serious problem and do something about it before Australia pays the price through higher interest rates?

**Senator MINCHIN**—That is a nonsense to link it to interest rates. I quote a professor of economics, Professor Tony Makin, on this very subject of the extent to which, if any, there is an issue here. Professor Makin’s article, which was in the press recently, said:

On this basis, and given the sizeable fiscal surplus at present, Australia’s current account deficit is easily sustainable ...

He went on to say:

In the meantime, the high current account deficit remains the best measure of the extent to which foreigners are expressing confidence in the Australian economy. It will persist as long as that confidence is warranted.

We want to ensure that foreigners do remain confident in the Australian economy. That is why we want to reform Australia’s industrial relations system. We invite the ALP to get on board.

**The PRESIDENT**—Senator Conroy, in that first question and supplementary question, you interjected 15 times. I ask you to cease.

**Family Services: Family Payments**

**Senator KNOWLES** (2.06 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 how the Howard government’s strong economic management has provided benefits for families and senior Australians and provided further opportunities that will be available after 1 July? Is the minister aware of any alternatives that might be on the table?

**Senator PATTERSON**—I take this opportunity to thank Senator Knowles for her question and for her contribution to this place over the last 20 years. She has taken a very deep interest in these issues, health issues and many other issues. I wish her well in the future.

It was a very pertinent and important question because, from 1 July, Australian families will see more benefits from the Howard government’s strong economic management. Every Australian who pays income tax will get a tax cut. These are tax cuts that Labor has been trying to block. However, there is no move today to disallow the tax schedules, so all taxpayers will get a tax cut from 1 July. Thankfully for Australian families, the Labor Party’s campaign to stop these tax cuts looks set to fail.

These tax cuts will put incentive back into the taxation system, encourage growth and support the continuation of a strong economy—and a strong economy benefits all families. Another major change will be that, from 1 July, for the first time around five million workers will be free to choose their own superannuation fund. Despite Labor’s pointless efforts to block the abolition of the superannuation surcharge, it will be abolished from 1 July 2005. Removing the surcharge will significantly boost the incentives for around 600,000 Australians to contribute to superannuation and will improve their superannuation savings by $2.5 billion over the next four years.

In my portfolio, I am introducing new initiatives to give families real choices in how they balance their work and family responsibilities. From 1 July, secondary income earners who return to employment, including self-employment, after caring for a child will benefit from the new rules, which means that any income that they earn after they return to work will not affect the FTBB for the part of the year before they returned to work. In addition, from 1 July, as families lodge their income tax returns and their entitlement to FTB is reconciled, they will receive the on-
going benefit of the supplement of $600 per child—the $600 per child that we all remember Labor said was not real. I tell you what: when people put their tax returns in and start to get their FTB reconciled, they will find the benefits of that $600, and they will know again how real that $600 is. After 1 July, eligible families lodging income tax returns will also receive an increase in FTB part B. Due to the strong economic management of this government, we were able to bring the increase forward by six months and commence it from January this year. This means that families lodging their tax returns after 1 July will receive up to $150, paid as a lump sum.

Senator Conroy—Mr President, on a point of order: to assist you in your count, Senator Abetz has interjected three times, Senator Sandy Macdonald twice, Senator Kemp once and Senator Minchin once in the first three minutes of this answer. I just thought you might like to know.

The PRESIDENT—Their interjections are not noisy enough to come to my ears. You happen to sit a lot closer.

Senator PATTERSON—The Labor Party do not want to hear this news. They do not want to hear how families are benefiting. Senator Conroy just wants to interrupt. Senator Conroy needs to go and negotiate and deal with Senator Carr and have those issues resolved rather than interjecting and calling a pointless point of order. Families lodging their tax returns after 1 July will receive up to $150, paid as a lump sum. As I was saying before I was rudely interrupted, they ought to get their tax returns in as soon as possible so they see the benefit of the $600 per child benefit that we put there, which Labor said was not real.

From 1 July, there will also be increased help for older Australians moving to residential aged care. From 1 July, accommodation bonds paid by residents living in residential aged care will be exempt from the assets test while they are in care. Before 1 July, around 300,000 self-funded retirees holding a Commonwealth seniors health care card should have received the second $100 instalment which the Howard government committed to provide during the last election. So we deliver what we have promised. Families have seen significant improvements as a result of sound economic management, unlike under Labor, who had a policy which was going to penalise low-income families, and the more children they had the worse off they were going to be. Labor need to get down and try to concentrate, develop some policies and look something like an alternative government. At the moment, they look like a rabble.

**Economy: Performance**

Senator GEORGE CAMPBELL (2.11 pm)—My question is to Senator Minchin, the Minister representing the Treasurer. Is the minister aware that the latest GDP data shows that productivity, measured by output per worker employed, declined in each of the last four quarters to be 2.4 per cent lower in the March quarter than a year earlier? Isn’t this the most significant decline in Australian productivity for almost two decades? Is the minister further aware that, while productivity contributed more than half of GDP growth over the past 40 years, it has contributed nothing since September 2003? Minister, isn’t it the case that rising employment coupled with falling output provides compelling evidence of skills shortages and supply bottlenecks?

Senator MINCHIN—I welcome a question on productivity, because that is a critical policy area for Australia’s future, together with work force participation, and one that is a key focus for this government. We would very much welcome the opposition’s concen-
tration on the importance of improving Australia’s productivity and welcome any sensible suggestions they may have, because it is a very important issue for Australia. The facts in relation to labour productivity in Australia are that it has grown very strongly in recent years. Between 1995-96 and 2003-04, labour productivity grew at an annual average rate of three per cent, and the result is that goods and services that would have taken five hours of work to produce in 1995-96 can now be produced in four hours of work. That is quite a dramatic improvement, and that produces real wealth for Australians. Australia’s labour productivity growth was faster than the OECD average over that period and much faster than the Australian historical average over the past 30 years.

In contrast to that strong performance trend, labour productivity did fall by 2.4 per cent over the year to the March quarter 2005, and I think they are statistics that Senator George Campbell is referring to. The Treasury view is that that reflects continued strength in employment growth, which has been very strong, with record low unemployment despite the recent slowing in output growth. So inevitably there will be an impact. If you get strong employment growth but some fallback in the growth of output, you are going to have an effect on productivity per se as measured. Across the whole economy, the number of people employed increased by more than 320,000—or 3.4 per cent—over the year to the March quarter 2005, but output only grew by 1.9 per cent, so inevitably you will get that statistical outcome that Senator George Campbell seeks to identify. It does not imply that future average growth in labour productivity will be slower. Annual rates of productivity growth are volatile, cyclical and susceptible to revision. Average rates of productivity growth over a number of years provide a much better gauge.

Senator Campbell, in a wide-ranging question, threw in as well the old shibboleth from the Labor Party about bottlenecks, skills shortages et cetera. They are desperately grabbing onto things. It is the old headless chook thing: running around, the sky is going to be falling in, it is all gloom and doom. That is the trouble with being in opposition—I accept that. You have to run around trying to find all the bad news that you possibly can because there is nothing else that you can talk about. That is a real problem for the Labor Party.

In response to this proposition that there were issues relating to infrastructure and bottlenecks, the Labor Party, I hope, is aware that we engaged some very eminent Australians to conduct a very detailed inquiry—Brian Fisher, Henry Ergas and Max Moore-Wilton. They produced a very good report. I trust that Senator George Campbell and others on the other side have read that very good report. It identified the issues in relation to our export performance and the question of infrastructure bottlenecks. It identified most particularly the problem in relation to the heavy-handed regulation by state governments, coincidentally all held by the Labor Party, that are stifling our performance. So I hope that state Labor governments will read the report. I hope that the Labor senators will get their colleagues at the state level to read this very good report and do something about it.

Senator GEORGE CAMPBELL.—Mr President, I ask a supplementary question. Is it not the case that slowing GDP growth coupled with burgeoning foreign debt and falling trade deficits are evidence of growing and unsustainable imbalances in the economy? Aren’t the declines in productivity and ballooning foreign debt a direct consequence of
this government’s failure over the last nine years to invest in the economy’s future growth through skills development and infrastructure investment?

Senator MINCHIN—No, they are not. What they are evidence of is the critical need for an ongoing, rigorous program of economic reform. We have to continue the program of economic reform. We have given the credit to the Labor Party that they, with our support in the eighties, began the real program of reforming this country. We have continued that program of reform and, unfortunately for us, without the opposition’s support—unlike Labor; they had the then opposition’s support. We have had to do our reform program despite the Labor Party. So, Senator George Campbell, if you want the outcomes you desire, join with us in pursuing strong economic reform, lowering tariff barriers, reforming the labour market, reforming product markets and getting the regulatory environment right for electricity, gas and water—all those things that your Labor colleagues at the state level have responsibility for. Join with us in making this a great economy.

Immigration

Senator SCULLION (2.17 pm)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. Will the minister inform the Senate of the Howard government’s success in delivering the benefits of Australia’s skilled migration program to regional Australia? Is the minister aware of any alternative policies?

Senator VANSTONE—I thank Senator Scullion for the question. The government has made a commitment to share the benefits of skilled migration all around Australia and, in particular, in the regions. We have introduced a number of new visa categories aimed at helping regional employers and state and territory governments attract the skilled migrants that they need. Since 1996 about 55,000 visas have been granted under the state specific and regional migration categories. Some 17,500 visas have been issued so far this year alone. That accounts for about 22 per cent of the 2004-05 skills stream.

The increases are due to two things in particular: the commencement of the skilled independent regional visa in July last year and the anticipated 46 per cent increase in the number of visas granted this year under the Regional Sponsored Migration Scheme. That scheme has the characteristics of being both employer sponsored and targeted to regional Australia and has assisted Australia’s regions in filling a range of skill capacities. I thought it might be helpful if the Senate understood just how specifically targeted some of these skills are.

Kalgoorlie, for example, has gained a specialist mining engineer from Northern Ireland who, believe it or not, chose to come to Australia because he was attracted by pictures of the Australian desert in a series of tourism magazines. That has allowed that mining company to progress.

Mount Isa has got a British doctor. I say ‘British doctor’ because he is working for the Royal Flying Doctor Service. I thought it might please my monarchist colleague, Senator Minchin, on the last day of this sitting to point out that, despite my being a republican, my department was bringing out doctors from the United Kingdom to work in the Royal Flying Doctor Service. If you are in Mount Isa, or anywhere near there, you would be pleased to have this man because on a daily basis his work ranges from running clinics in outlying Aboriginal communities to emergencies and car crashes and stockmen who are injured by falling off their horses.
Hobart has a power systems engineer from New Zealand. And boys, she is not a boy. She has helped Tasmania connect to the electricity grid on time. Because they could not get the right engineers in Australia to do this job, we have brought a woman in from New Zealand and she has assisted in this task and is very pleased to be here. Brighton, in my state of South Australia, now has another veterinarian. Now why did he decide to come here? He came here in 1998, I think, on a working holiday. He worked for seven months, decided he loved it, got the opportunity to be sponsored here and now there is another vet in Brighton. Pet lovers will understand that when your pet is not well you want a vet and you want one quickly. I had that experience recently and you are glad that they are there.

Launceston has a registered nurse from South Africa working in the emergency area where none of us ever want to be. But, believe me, if you go to the emergency area you will be glad of our regional sponsored migration initiatives because there is an extra nurse there because of it. In the Barossa Valley there is a skilled hairdresser, Mr President. I do not expect you to understand the detail of this, but a skilled hairdresser is not just someone who cuts hair. Some people go to their hairdresser to get their hair curled, and they might say she is a ‘perm’ resident. But actually that is not what she is. She has a specialty in straightening hair. I thought that Senator Natasha Stott Despoja would be interested to know that in the Barossa Valley there is now someone with cutting and straightening skill experience. (Time expired)

Senator SCULLION—Mr President, I ask a supplementary question. Would the minister further advise the Senate if, when developing these excellent migration programs, the government considered any alternative policies?

Senator VANSTONE—We are always looking at alternatives in the immigration department. We are a ‘move ahead’ department always looking at alternatives. But I can assure you, Mr President, in relation to this area—

Opposition senators interjecting—

The PRESIDENT—Order! There is too much noise in the chamber.

Senator VANSTONE—I can understand people opposite yelling, because they were never as successful as this. But I can assure you, Mr President, that a survey conducted in 2004 described the fact that 91 per cent of employees who were recruited under this scheme were still living and working in regional Australia, and the unemployment rate for people who come in on this scheme is 0.2 per cent. If that is not a gold star for the immigration department I do not know what is. A recent report on international movements of skilled migrants by Dr Bob Birrell has indicated that Australia is attracting increasing numbers of skilled migrants despite intense international competition. Skilled migrants coming to Australia are equivalent to 30 per cent of the increase in skilled jobs in Australia. We are attracting the skills that are needed and there was in fact a net skills gain. (Time expired)

Superannuation

Senator SHERRY (2.23 pm)—My question is to Senator Abetz, the Minister representing the Minister for Small Business and Tourism. Why has the Liberal government imposed a major, new and costly red-tape burden on small business with its new superannuation choice regime? Does not the new regime impose some 34 complex paperwork steps on business, including five million forms to be handed out to existing employees and over one million each year thereafter, with records to be kept for inspection by the tax office for five years and payments to be
made to multiple superannuation funds, with thousands of different funds that can be changed every 12 months? How does the government respond to the Australian Chamber of Commerce and Industry’s statement yesterday that they are ‘not enthusiastic about the extra cost to be absorbed by business’? Why has a Liberal government imposed a major new cost burden on Australian small business?

Senator ABETZ—There are a number of issues that I would raise. First of all, we as a government did not introduce superannuation choice for any reason other than to benefit employees—to benefit employees that allegedly those on the opposition benches represent. Now they are coming out opposing the benefits that will flow to the workers and employees, pretending to champion the cause of small business. Can I simply remind Senator Sherry that even his own current leader, Mr Beazley, was on 6PR not that long ago saying:

We as a Labor Party have never sought to pretend that we champion the cause of small business.

So, if Mr Beazley does not pretend to, goodness gracious, why does Senator Sherry pretend to support small business?

The choice of superannuation fund legislation will become effective from 1 July, and it is long overdue. It will rightly give employees responsibility for their own retirement planning and the choice of fund into which their compulsory contributions are made. The government appreciates the key role employers play in the superannuation system and will be making every effort to minimise their workload in implementing and applying the choice of fund requirements.

The tax office has commenced a comprehensive education campaign to ensure that employers and employees are aware of their obligations, and $19.7 million over two years has been allocated for that purpose. In designing this legislation the Australian government has been careful to balance the need to give employees choice while keeping employer costs to a minimum—a very good balance and one that is especially supported by the workers of Australia. The government has ensured that its proposal for administering choice of fund has been made available for public comment and consultation. Choice of fund will benefit the community, including small business operators, by opening up genuine competition in the superannuation industry. That is something that Senator Sherry of course does not want, because he would hate the union funds to be challenged by workers making a choice and a decision that they might be better served elsewhere than in the union dominated funds.

One of the key objectives in the final make-up of the choice of fund legislation was to ensure that employers would not have to bear any legal risk from having to provide advice or guidance to employees, which is why we now have absolute employee choice. The tax office’s choice of superannuation employer guide specifies the information that employers can provide plus the fact that financial advice can only be provided by those licensed by the Australian Securities and Investments Commission. From time to time government will make decisions that are for the benefit of the overall population. Superannuation choice is something that we as a government have supported. It is of great benefit to all those workers who can avail themselves of that choice to make a decision for their long-term and retirement future, and that is something that the workers have overwhelmingly supported. We on this side make no apology for saying that we support choice. Those on the other side do not. And when the people of Australia have had a choice in recent times they have decided for
us, as opposed to Senator Sherry and his—

(Time expired)

Senator SHERRY—Mr President, I ask a supplementary question. Why must small business employers who are not licensed financial planners, if they genuinely give advice to their own employees who seek it, face a penalty of two years in jail and/or a $22,000 fine? Why is a Liberal government imposing a massive new red-tape burden as well as draconian penalties on business?

Senator ABETZ—It would be a funny thing if Senator Sherry, by implication of his question, is asserting that Labor would have a policy whereby if an employer was to misdirect and misguide a worker they should not face a penalty. That is Labor’s position, as indicated by Senator Sherry’s question. We make no apologies: we are about protecting the workers. Senator Sherry, by his question, says, ‘If an employee is led incorrectly down the garden path by an employer then the employer should bear no responsibility in that regard and the employee should suffer all the consequences.’ Is it any wonder that the workers of Australia more and more see the Howard government as the champion of the workers?

University Fees

Senator BARTLETT (2.31 pm)—My question is addressed to the Minister representing the Minister for Education, Science and Training, Senator Vanstone. I refer the minister to reports that opposition to the government’s legislation prohibiting compulsory student services fees on university campuses has been expressed by two incoming National Party senators, at National Party conferences in three states, by Country Liberal Party Senator Nigel Scullion and former Liberal Party federal treasurer David Clark. Whilst I acknowledge that the workers of Australia more and more see the Howard government as the champion of the workers, will the minister at least listen to those concerns expressed by her own coalition partners and agree to amend this ideologically driven and damaging legislation?

Senator VANSTONE—Shouldn’t we all think every day how lucky we are to live in a country where you can have free and independent thoughts and especially to be in the Liberal-National parties where, if you have a different view, you can put it? That is not always the case, as you well know Mr President, somewhere else in this chamber. With respect, Senator Bartlett, you might have asked this question on a day when I was on leave, because I am one of the people who studied part time and got sick to death of paying union fees that gave me absolutely zip. I went out of my way once to try to use services after hours so that I could get something for my money. I am a believer that, if people want a service, they will pay for it and I think there is very good support for that. Universities get a very good deal, students in Australia get a very good deal and—

Opposition senators interjecting—

Senator VANSTONE—I see there is a bit of interjection opposite. I understand not everybody agrees, but the facts of the matter are that that is the view of the government. You make the point, Senator, that you do not think this government listens to other people. I do not think that is a fair criticism. Plenty of people get listened to. What we do not do is give a higher hearing necessarily to our own people than to other people. All Australians are entitled to put a view before the government of the day and have that view considered on its merits. You invite me to make the reflection that, after 1 July, when this side of the chamber will have the majority in this place, some people think that that is somehow undemocratic. I think I heard
one senator referring to this as a sort of elected dictatorship. I have been reflecting on that and on whether Australia is in safer hands and whether you get a better Senate because you have one person having the balance of power to say what happens in Australia or whether you have people who have the discipline of one of the major parties and, frankly, I choose the latter view.

Senator BARTLETT—Mr President, I ask a supplementary question. Following on from the minister’s concerns about her ability to access services on campuses already, can she guarantee that, following the passage of this legislation, there will not be a loss of services that are currently available to students on university campuses as a consequence? And, given her appropriate celebration of the value of free and independent thought on her side of the chamber—a value which the Democrats share—is that an indication that there is an opportunity for free and independent votes to reflect the free and independent thoughts of all of the backbench senators on her side of the chamber?

Senator VANSTONE—I am not entirely sure that that was a supplementary question, but I will take it as one in any event. We have very vigorous debates in our party room, and I do not think there is anybody who has an ego big enough—let me not reflect too long on that—to be elected as an Independent. It is a good job I am saying this in the early part of the day. Most of us in this place recognise that we come here by virtue of whatever skills we have, but combined with the endorsement of our parties. I think, with respect, even Democrat senators would acknowledge that as well. Look at the Greens. Senator Brown did not get in because he was Senator Brown; he got in because everyone thought he was interested in the environment and not all the other things that are in the Greens’ policy. With respect, I think you have gone a bit wide of the mark in your supplementary question.

Job Network

Senator WONG (2.35 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations and the Minister for Workforce Participation. I refer the minister to the Auditor-General’s report into the oversight of Job Network services to job seekers. Isn’t it the case that the report exposes serious and fundamental flaws in the Howard government’s management of Job Network? Is the minister aware that the Auditor-General found that the Department of Employment and Workplace Relations was failing to ensure that Job Network members are meeting their contractual obligations? How does the government respond to the Auditor-General’s finding that the assessment of job seeker needs rarely met contractual obligations and that only 61 per cent of contacts that should have been scheduled between Job Network members and disadvantaged job seekers were actually scheduled? Given these flaws, how can parents and people with a disability have any confidence in Job Network in helping them meet their welfare to work obligations?

Senator ABETZ—Let us put this question into some context. Under the Australian Labor Party, we had the Commonwealth Employment Service—an absolutely disastrous organisation. It did not deliver for the unemployed and the Australian people suffered with one million people on the social scrap heap of unemployment. We came to government and introduced the Job Network. We have been able to achieve, at 75 per cent less cost to taxpayers, the wonderful results of the Job Network. I remind the Senate that in the 12 months to the end of April 2005 Job Network members and job placement organisations placed nearly 657,800 job seekers
into a job—a new annual record. That is the
history and the context.

If the Auditor-General had gone through
the Commonwealth Employment Service he
may well have found that all the processes
were in place but there were no outcomes.
Can Job Network improve? Of course, like
all of us, it can always improve its perform-
one.

Senator Watson interjecting—

Senator ABETZ—As Senator Watson in-
terjects, in a very disorderly but very correct
manner, it is getting better all the time. He is
right on the money. Since the audit was un-
tertaken—

Opposition senators interjecting—

The PRESIDENT—Order!

Senator ABETZ—I do not know why the
mention of Senator Watson’s name should
cause so much consternation on the other
side. Since the audit was undertaken, DEWR
continues to improve contract management
practices, ensuring that all Job Network
members are being risk assessed and moni-
tored on an ongoing basis. This ensures the
contractual requirements in relation to mini-
mum contact are being met, as well as ensur-
ing a high level of quality in the services
being delivered.

I stress that the best quality service is ser-
vice that gets someone a job—something
which Job Network has clearly been able to
achieve. Job Network will continue to de-
iver more opportunities to more Australians.
The recently announced budget measures
will create even more opportunities for the
long-term unemployed, as well as parents
and people with a disability, with more
places and targeted services such as Wage
Assist and employment preparation. This
government is doing something about unem-
ployment through Job Network. That is why
the unemployment rate is now down to an
historic low of 5.1 per cent.

Senator WONG—I remind the minister
that very long-term unemployment has in-
creased by 60 per cent in five years. I ask a
supplementary question, Mr President. Is the
minister aware that in addition to the Audi-
tor-General’s criticisms comes this week’s
report from the OECD, which described the
Job Network as ‘costly and cumbersome’,
with Job Network members reporting that
they spend 30 to 40 per cent of their time on
tasks like filling in forms simply to achieve a
higher star rating? Does the minister think
this time would be better spent providing
service to struggling job seekers? Don’t these
reports show that the Howard government’s
employment services are a shambles, just
like the so-called Welfare to Work scheme?

Senator ABETZ—I invite Senator Wong,
during the parliamentary break that we are
about to enjoy, to talk to just one of the
657,800 job seekers who has gained a job
because of Job Network.

Senator WONG—I rise on a point of order.
The question was about the OECD report. I
ask the minister to return to the question. His
answer is entirely irrelevant to the point of
the question. I know he does not want to talk
about what the OECD says, but that was the
nature of the question.

Senators interjecting—

The PRESIDENT—Order! I cannot hear
what Senator Wong is saying because of the
noise.

Senator ABETZ—The honourable Sena-
tor cannot put in a cheap shot at the begin-
ing of a supplementary question and then
ask me not to respond to it. If she wants to
lead with her chin then she has got to expect
that there might be a response.

The PRESIDENT—Senator, I remind
you of the question.
**Senator ABETZ**—As I said to the honourable senator before: during the parliamentary break she should take the opportunity to speak to just one of the 657,800 job seekers who got a job—a new annual record which shows how well it is proceeding.

**PET Scanners**

**Senator HARRADINE** (2.42 pm)—My question is addressed to Senator Patterson, the Minister representing the Minister for Health and Ageing. The Commonwealth government funds eight positron emission tomography—or PET—scanners in mainland states. PET scanners are a diagnostic tool for a range of cancers and Alzheimer’s disease and provide better information than other tests. But there are no scanners in Tasmania, and hundreds of patients have to travel to Melbourne for the test. How long must Tasmanians wait until they have easy access to the modern medical care available in mainland cities?

**Senator PATTERSON**—We would expect nothing less from Senator Harradine than a question about Tasmania for his last question. He has been a great advocate for Tasmania and he is pressuring us on Tasmanian interests right to the very end. The Australian government currently funds eight PET facilities and is providing $7.3 million over four years to fund a further PET facility at Westmead hospital. One basis—not the only one—for the location of a PET machine is population.

Currently, an application for a positron emission tomography scanner is being assessed by the Medical Services Advisory Committee for its clinical usefulness in a variety of indications. All of the currently funded sites are providing data for the evaluation. The evaluation of the various indications will be completed over 2006 and early 2007 and will give us better information about the clinical value of PET. The government is encouraging that the review be completed as soon as possible. With the benefit of that review, the Australian government will make decisions on the Medicare future of PET. It is a very expensive but clearly outstanding technology, with a number of subsidised machines and related funding arrangements based on the evaluation results and expert advice.

I just want to add, for Senator Harradine’s benefit, that there is no impediment to state governments providing funding for PET services for public patients if they wish. For example, the Royal Brisbane Hospital and the Brisbane Mater hospitals are installing PET scanners which are funded by the Queensland government. There is also a PET machine available for public patients at the Mater hospital in Newcastle in New South Wales. In relation to Tasmania, the current arrangement is that access to PET is through the machines available in Melbourne. In recognising the difficulty in getting across to these machines, the Tasmanian government subsidises the travel of Tasmanians to those facilities under its patient access scheme.

While not anticipating decisions, I can say to Senator Harradine that, as with the recent MRI licence round, geographical and regional considerations can be expected to be taken into account when the government makes a decision about the location of PET machines.

**Senator HARRADINE**—Mr President, I ask a supplementary question. When is it expected that the review will be finalised?

**Senator PATTERSON**—It is a very new technology in terms of medical technologies and there is, as I said, a review being undertaken of all the currently funded Commonwealth PET machines. We believe that review will be due to be completed over 2006-07. I believe Minister Abbott is encouraging the Medical Services Advisory Committee,
MSAC, to complete that review as quickly as they possibly can.

**Telecommunications: Rural and Regional Australia**

Senator CONROY (2.45 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer the minister to comments made by senior National Party figures, including Mr John Anderson, reported on the weekend that the Page report on rural telecommunications deserves serious consideration from the government. Given that it has been three months since the Page report was released, has the minister directed her department to consider the recommendations of the report? Can the minister confirm comments by her department at a Senate committee this week that she has not directed the department to give the Page report any consideration and that, in the words of the department, the report has had ‘no direct impact on their work’? Has the government become so arrogant that it will not even listen to its coalition partners?

Senator COONAN—I thank Senator Conroy for the question. The recommendations raised in the Page report will obviously be considered in the context of all of the issues that the government is looking at with respect to the proposed privatisation of Telstra. I am certainly committed to ensuring that, in the consideration of the competition regulatory regime, matters that have been dealt with in the Page report can be taken into account.

The Page report is not in fact a government report—it is not something that was commissioned by the government. The weight that the Page report has is as an exercise undertaken by an independent think tank—that is, the National Party’s independent think tank—and one that deserves consideration on its merits. So whilst it is not a government report, clearly it has been received by me and given to the department and it will be considered in relation to the matters that come before them. But the government will not be formally responding in the normal way it would have had this been a government report.

With the development of new technologies and services, it is important to continue to monitor and adjust the regulatory regime to ensure the settings remain effective for encouraging investment and innovation. To that extent, the government has sought a wide range of views. That is one of the reasons why the government has sought submissions in response to its regulatory review. The competition issues paper has attracted a number of submissions and is currently under consideration in terms of what the government will announce as the settings going forward for the competition regime. So it is certainly not correct to say that the Page report has either been ignored or had absolutely no impact on the government’s thinking. Clearly it is important to have a look at a number of the recommendations that have been made in the context of the report.

In considering other strategic options to promote the development of new high-capacity networks, it is very important for the government to maintain a technology-neutral approach so that you can get the very best outcomes from all the options that have been provided—the very best response in terms of the competition regime. So calls, for example, to scrap the existing copper network may be premature, with the imminent move to the ADSL 2 protocol, which will obviously deliver broadcast quality broadband services and of course appears likely to meet consumer demand. So there are a number of issues that we will take into account, including recommendations that have been made in the Page report. It is appropriate that we do so in that context and that we do not
respond to it as a government report, because that is not the status it has.

But I think it is a bit rich for Senator Conroy to be criticising the government for its attitude to the Page report. He is failing miserably in dealing with his own responsibilities, let alone in criticising the government for its responsibilities. I think the advice that Senator Conroy got some time ago to go and get some work experience is exactly what he should take up—(Time expired)

Senator CONROY—Mr President, I ask a supplementary question. Has Senator Boswell made any representations to the minister advocating the contents of the Page report? Is this another example of Senator Boswell making his case, being rejected out of hand by the government and then rolling over to be a coalition player? Has the minister for communications ever given consideration to Senator Boswell’s comments on any issue, or is he, in the words of senator elect Barnaby Joyce, “a lost cause who runs around like a puppy dog, panting that ”we get things done because I’m friends with John Howard“”?

The PRESIDENT—Minister, there may have been a supplementary question there, if you wish to answer it.

Senator COONAN—Thank you, Mr President. I really doubt whether that was in order. Senator Ray obviously thinks Senator Conroy is a real dill, and I think people on this side of the chamber agree with him—and that question simply proves the point.

Sport: Drug Testing

Senator TCHEN (2.52 pm)—Mr President, thank you for giving me the opportunity, along with Senator Knowles and Senator Harradine, to ask a last question in this place. I am particularly pleased that my question goes to a fellow Victorian, the excellent Minister for the Arts and Sport, Senator Kemp. Will the minister outline to the Senate the progress being made by Australia in the global effort to stamp out drugs in sport? Are there any recent efforts by the Howard government to strengthen its anti-doping regime? Further, is the minister aware of any alternative policies?

Senator KEMP—I thank my colleague Senator Bin Tchen for giving me the honour of answering his last question. I say to Senator Tchen: it has been a great pleasure to serve with you in this chamber. I have no doubt, unlike the Labor Party, that the friendship that we have will continue.

Opposition senators interjecting—

The PRESIDENT—Order! This is a serious question and the answer should be allowed to be heard in peace.

Senator KEMP—Senator Tchen has asked a very important question on drugs. Let me state very clearly that this government has a zero tolerance policy when it comes to doping in sport and is committed to delivering a policy that is tough on drugs but fair. Australia has a proud history of success in the sporting arena without the use of illegal and performance enhancing drugs. The Australian government is committed to protecting and enhancing this reputation by leading the international fight against drugs in sport through action at home and in various international forums, including, of course, the World Anti-Doping Agency.

Today, I am pleased to announce the government’s next major initiative in our continuing fight against drugs in sport. We will establish the Australian sports anti-doping authority, ASADA, to be up and running hopefully in the new year. ASADA will incorporate the current functions of the Australian Sports Drug Agency, better known as ASDA, and add new functions for the investigation of doping allegations and the presentation of cases at hearings. ASADA will ensure that Australian sportsmen and sportswomen are treated fairly and consistently...
across sports. It will balance the protection of athletes’ rights and civil liberties against the need for effective and robust investigations and hearings. The establishment of ASADA is the result of a lot of careful analysis and consultation with sporting bodies. Both ASDA and the Australian Sports Commission have played a very important role in Australia’s fight against doping in sport.

The establishment of ASADA is a world first. Nowhere in the world, I understand, is there a statutory body which fully integrates all antidoping functions—from rule setting and implementation to investigation and prosecution. This will, for the first time, establish an independent body for the investigation of doping allegations with appropriate protection for those who provide evidence and other information. ASADA will, among other things, conduct drug testing and educate athletes, investigate allegations of antidoping violations and report findings, and present cases at hearings. ASADA will have a high degree of transparency and public reporting. Athletes, coaches, administrators and the public have the right to know that doping allegations are being properly addressed. I will be seeking to introduce legislation during the next sitting period with a view to finalising arrangements early in the new year.

In taking this decision, the government has committed almost $6 million in additional funds, bringing the total commitment to antidoping policy to nearly $50 million over four years. This investment in antidoping is essential. There is no doubt that doping remains the biggest threat to the integrity of sport. There is absolutely no room for complacency in this area. This is a red-letter day for Australian sport. The establishment of ASADA will provide Australian sport with an antidoping regime second to none.

Iraq

Senator BOLKUS (2.57 pm)—My question is to Senator Hill, the Minister for Defence and the Leader of the Government in the Senate. Is the minister aware that, on 27 May this year, senior Republican Senator Chuck Hagel, a member of the US Senate Committee on Foreign Relations, said of Iraq:

Things aren’t getting better; they’re getting worse.

Does the minister share Senator Hagel’s assessment?

Senator HILL—I think the removal of Saddam Hussein in itself was a wonderful thing for the Iraqi people. When you look back on the hundreds of thousands of innocent Iraqi lives that were lost due to the abuses of Saddam Hussein, to be rid of him is a good thing for the future of the country and for all Iraqi people. In terms of building the new Iraq, I think considerable progress has been made as well. We saw the unambiguous wish of the Iraqi people for a new direction demonstrated through their courageous attendance at polling booths in January of this year. We have seen the establishment of the transitional government. We are now seeing the process of constitutional drafting.

To pick up a point made yesterday by Kofi Annan, the Secretary-General of the UN, it is pleasing to see now the level of Sunni participation within that constitutional drafting process. We remain hopeful that it will be completed on time in August. It will then be put before the Iraqi people. They will have the opportunity, as in other democracies, of voting for their own future. Subject to the passing of that constitution, they will have an opportunity to again vote for an assembly and ultimately, through that, a government. So in terms of the political process, I think
good progress is being made, and that should be recognised.

In terms of building the security capacity of the country, the army is now up to about 70,000, growing to 90,000. They have taken over part responsibility for security, or part of Baghdad for security, and are doing well. They are leading in operations. They were even able to save Mr Wood, which I think all Australians applauded. They are now doing much better in terms of their own security. They are making good progress in that regard.

In relation to the economy and infrastructure, many thousands of new jobs have been created, which is a good thing. But certainly there has not been the progress in infrastructure and essential services that we would like, because of the insurgency. In terms of education and health care there have been great improvements as well. Children have been inoculated. Kids are now able to go to school.

Senator Bolkus—Mr President, on a point of order: in nine years of questioning the minister has never given me a direct answer, but I did ask him a specific question and I would like him to get to it.

The PRESIDENT—Minister, I would remind you of the question.

Senator HILL—I appreciate that, in his last question, Senator Bolkus has given me the opportunity to tell the Senate that the courageous Iraqi people are making good progress in building their new nation—despite the cost of the insurgency and despite the efforts of the jihadists. Despite those efforts, the courageous Iraqi people are building a new nation, giving themselves the opportunity for freedom and for better living standards for themselves, their children and their grandchildren. I am one of the Australians who think they should be applauded for that, supported in what they are doing, and certainly the government that I represent is very proud of what they have achieved.

Senator BOLKUS—Mr President, I ask a supplementary question. I ask the minister: does he then say that Senator Hagel is wrong? As an occupying power and continuing member of the multinational force in Iraq, will the minister now inform the Senate how many foreign and Iraqi military personnel casualties have occurred as a result of armed conflict in Iraq since the conclusion of formal hostilities more than two years ago, in April 2003? Can the minister also inform the Senate how many Iraqi civilian casualties there have been since the end of formal hostilities?

Senator HILL—It is true that many innocent Iraqis have been killed by those in the insurgency and by those jihadists who are prepared to kill and maim innocent people to further a political objective. I obviously abhor that. I do not know the full extent of casualties. I know that, on behalf of the coalition forces, every effort is made to avoid and minimise civilian casualties. On the other side, however, we know that every effort is made to maximise civilian casualties in order to make political gain. As Senator Bolkus departs, I urge him to urge his colleagues to understand and support those who are working for peace, freedom and stability in Iraq and giving the Iraqi people a fair go for the future. If the Labor Party finally adopts that position, it will stand in much better stead.

Mr Ahmed Aziz Rafiq

Senator NETTLE (3.03 pm)—My question is to the Minister representing the Minister for Foreign Affairs, Senator Hill. Can the minister explain what the government is doing to ensure the release of another Australian man who is currently detained in Iraq, Mr Ahmed Aziz Rafiq? How long will Mr Rafiq continue to be detained by the Ameri-
cans without charge or trial? What is the government doing to ensure that he has access to a lawyer? Why does he continue to languish in Camp Bucca in southern Iraq 15 months after his detainment?

Senator HILL—I have not seen a recent brief on the matter. I know that he was detained, and there are obviously concerns about his activities in Iraq. I know that we have sought to provide consular services to him. But in relation to how that matter is progressing and whether we have any recent input as to whether he is to be brought to trial or what is his intended future, I will have to seek further advice from the Minister for Foreign Affairs.

Senator NETTLE—Mr President, I ask a supplementary question. Could you inform the Senate when Mr Rafiq was last visited by a consular official? I understand he was visited in August 2004, and I want to know whether it is correct that he has not been visited since then, which would be 11 months. In answer to a question that I placed on notice about consular visits to Mr Rafiq, the answer was that they were limited because of security risks associated with internal travel in Iraq. Could you answer: is it the job of the Australian security attachment based in Baghdad to ensure that consular officials are able to perform their duties to assist Australian citizens like Mr Rafiq?

Senator HILL—We accept a consular responsibility towards any Australian overseas in trouble, and I clearly put him within that category. I know that we have made a number of representations to the United States in relation to him. I do not know when he was last visited by a consular official. I said that I would take that on notice and get an answer. When we all come back in August, I will be able to provide the honourable senator with further detail on that important matter. Mr President, I ask that further questions be placed on the Notice Paper.

QUESTIONS WITHOUT NOTICE:
ADDITIONAL ANSWERS

Credit Card Security

Senator MINCHIN (South Australia—Minister for Finance and Administration) (3.05 pm)—Senator Lundy asked me some questions yesterday in relation to credit card fraud and I promised I would get some answers for her. I seek leave to incorporate those answers in Hansard.

Leave granted.

The answers read as follows—

Senator Lundy asked me questions in relation to the following four matters on 22 June 2005:

1. Was the government informed six months ago that Australians were exposed to potential card fraud?
2. Why was no consumer alert issued by government six months ago?
3. Will the banks be permitted to charge customers for obtaining statements for purpose of checking if they have been defrauded?
4. Are customers responsible for identifying fraudulent transactions before they can be reimbursed?

The Treasurer has provided the following answers to Senator Lundy's question:

1. Relevant Ministers have made it clear that they only became aware of the credit card security breach in the United States earlier this week when it was reported in the press.
2. It is understood that suspicious transactions, later determined to be associated with the US breach, were first reported in December 2004. Visa International has advised that it was not until May 2005 that there was formal recognition of the extent of the problem. MasterCard and Visa were instructed by the US authorities not to make any public announcements regarding the situation until investigations were carried out by the Federal Bureau of Investigations (FBI). The FBI declared the matter a crime scene on 1 June 2005. It was not until
the end of the week commencing 13 June (Thursday/Friday) that the FBI advised that MasterCard and Visa could speak publicly.

ANZ, NAB, the Commonwealth Bank (CBA) and Westpac have been monitoring the situation and progressively contacting affected customers to cancel and replace accounts where there have been suspicious transactions.

(3) The Australian Bankers Association has had discussions with the banks on this issue and as of 23 June 2005 the majority of banks have responded stating affected customers will be able to obtain statements free of charge, including the major banks.

(4) Australian banks have sophisticated fraud detection systems in place to identify suspicious transactions. The banks have been alerting customers where suspicious transactions have been detected and cards have been reissued.

However, the Government encourages all credit card users to review their statements on a regular basis and report any suspicious transactions to their financial institution. In particular, Australian banks are urging credit card customers who have travelled to the US or used their cards to buy goods from a US-based online merchant, to check their statements and report any unauthorised transactions to their financial institution.

Australian consumers will not be liable for any resulting unauthorised transactions. The Electronic Funds Transfer Code of Conduct, administered by the Australian Securities and Investment Commission (ASIC), protects account holders from liability in respect of unauthorised transactions where they have not contributed to the loss.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS
Economy: Foreign Debt
Job Network

Senator SHERRY (Tasmania) (3.06 pm)—I move:

That the Senate take note of the answers given by the Minister for Finance and Administration (Senator Minchin) and the Special Minister of State (Senator Abetz) to questions without notice asked by Senators Sherry, George Campbell and Wong today.

I want to make some comments about the non-response from Senator Minchin, the Minister for Finance and Administration and the Minister representing the Treasurer, about the issue that Labor has raised on a number of occasions concerning the ballooning, dramatically increasing national debt of Australia and the increasing current account deficit—the difference between exports and imports.

As a matter of fact, the current account deficit—that is export-import deficit—has reached a record of 7.2 per cent of economic production, gross domestic product, in the March quarter and net foreign debt has more than doubled since 1996 to some $425 billion in the March quarter. Two out of every three dollars generated in the economy each year are now owed to foreigners. That is an astounding figure: two out of every three economic dollars are now owed to foreigners. And there is some $21 billion that flowed out of the economy over the last year to meet just the interest payments on foreign debt.

The minister’s non-answers today reflected a complacency and an arrogance about what is a serious economic problem. Presumably the minister’s logic is that it does not matter how big the debt gets—it could double again and we do not need to worry about it. That is the minister’s contention. The Liberal government has been very complacent and has been showing signs of arrogance about this serious problem. It is pretending that in fact there is not a problem, and we have seen that again today.

The government has falsely claimed that the debt service ratio has fallen sharply, when it has barely changed. It has fallen from 11 per cent to 10 per cent. The government is ignoring the fact that the debt service
ratio has barely improved despite low global interest rates, record high commodity prices and a strong US dollar—favourable circumstances in terms of exports versus imports—and yet the current account is at the worst level we have ever seen. It is arguing that debt is not Australian debt—it is not government debt; it is private debt, therefore it is not relevant. That is absurd! This is Australian national debt. The response the minister puts has been dismissed by the OECD. It does matter that it is Australian national debt. At the end of the day the government is not just responsible for government debt; it also has an important role to play in setting positive policy to reduce our foreign debt—the country’s debt. The government boasts about its economic credentials while ignoring warnings from Standard and Poor’s—they are a leading economic ratings agency—that Australia’s credit ratings and interest rates are at risk as a result of this ballooning national debt and current account deficit.

The minister likes to quote a number of sources to defend the government’s complacency and arrogance. When the current Treasurer was in opposition, foreign debt was at half the level that it is currently at. When in opposition, the current Treasurer, Mr Costello—the Darth Vader of the Liberal Party—claimed that the foreign debt levels posed a serious threat to mortgage interest rates, and he cited numerous experts in support of his argument. One of those was Professor Tom Valentine, the Dean of Commerce at the University of Western Sydney, who said:

Of course the debt has an impact ...

This causes higher mortgage rates.

I’m amazed there is even debate about this issue.

He quoted Mr Chris Caton, who said:

It’s quite clear that the current-account deficit at 6 per cent—this is when it was six per cent; it is now over seven per cent—of GDP [gross domestic product] has an impact on long-term rates ...

He also quoted Professor McKibbin, who said:

Any country that has a large debt tends to pay a premium over the risk-free range.

That is a reference to interest rates. Given that monthly mortgage payments of Australians are already close to historically high levels, the government cannot possibly justify its ongoing complacent and arrogant attitude to what is a serious problem that grows worse and worse—hundreds of millions of dollars worse in national debt each week. Something has to be done about this. First of all it needs a recognition from this government that there is a serious problem here that grows worse and worse each week. (Time expired)

Senator BRANDIS (Queensland) (3.11 pm)—It is disappointing to me that Senator Sherry does not seem to understand the difference between, and the different economic consequences of, sovereign debt and non-sovereign debt. One of the most striking differences between the economic position of this country today after nine years of Peter Costello’s stewardship in the Treasury and the economic position of Australia after 13 years of Labor government is that sovereign debt—debt owed by the Australian government or Australian governments overseas—has been reduced to virtually nil. Today sovereign debt constitutes only 3.2 per cent of all Australian foreign debt. The debt is held by the private sector.

Senator Sherry asserts: ‘Well, this could have a significant influence on mortgage interests rates.’ Not so, Senator Sherry. When a government is heavily indebted, heavily burdened by sovereign debt, when the net government debt comprising foreign borrow-
ings and domestic borrowings is high, then the government has to go into the market to borrow to support that debt, and that is what drives interest rates up. But that is a consequence of there being an inflation of sovereign debt. There is virtually no sovereign debt owed by Australia today. Certainly the debt position bears no comparison to the situation after 13 year of Labor government.

Standard and Poor’s, the respected ratings agency on which Senator Sherry relies, reaffirmed in the report that they published in February that Australia enjoyed the highest rating that that organisation can give: a AAA rating. Do you know what happened in the 13 years that Labor was in government? The same ratings agency, Standard and Poor’s, downgraded Australia’s sovereign debt rating three times: from AAA to AAA-, then to AA, then to AA-. And you might ask yourself, Mr Deputy President, when was the last time Australia’s sovereign rating had been downgraded so severely by the international markets? It is no surprise that you have to go back to the previous period of Labor government, when Mr Whitlam was the Prime Minister and Dr Cairns and Mr Crean were the treasurers, because then too Australia’s creditworthiness in the eyes of the international markets and the world was downgraded.

That is the undulating pattern. Under coalition governments, running strong economic policies and strong budget surpluses, Australia has historically enjoyed the best international credit rating in the world, AAA. That was the case throughout the sixties. Along comes the Whitlam Labor government and, for the first time in memory, in the 1970s Australia’s debt serviceability, its international credit rating, was downgraded. Along comes the coalition and our creditworthiness rating was restored. Then, after 13 years of Labor government, we are downgraded again and again and a third time by the international markets while Labor governments clock up a $96 billion deficit, much of it borrowed from overseas.

Along comes the Howard-Costello government in 1996 and all but a few billion dollars now of that $96 billion has been paid off and Australia’s international credit rating, by the very agency that Senator Sherry relies on, Standard and Poor’s, goes up to the highest international rating, AAA. That is the real story of debt. It is not a tale of two cities; it is a tale of two parties: the Labor Party that left this country debt ridden and the Liberal-National Party coalition that has restored its economic fortunes, a fact acknowledged by the ratings agencies and the international markets.

Senator WONG (South Australia) (3.16 pm)—I rise to speak on the motion of Senator Sherry. At the outset perhaps we should talk about what this government has presided over in its term of government when it comes to locking in the drivers of our future productivity growth so our standards of living and prosperity can be maintained. We have a government that has presided over a massive skills shortage in this country, a government that has turned away from TAFE about 270,000 Australians over their period in government. And now we have a skills shortage. They say: ‘We’ve got a skills shortage. What are we going to do?’ Instead of training young Australians first and training young Australians now, what is their response? Their response is some technical colleges, where we will not see any new apprentices graduating for a number of years, and to bring in skilled migrants, as if that is the only solution.

The fact is this government has been complacent in terms of investing in the skills of the Australian work force, which is one of the foundations of our future economic prosperity. But I want to particularly talk today
about one aspect of that failure to invest in skills and in services which ensure people can get into the work force with proper job skills, and that is the Job Network. Senator Abetz was asked some questions today, which again he failed to answer. It is unfortunate that, when he does not know an answer, he does not do the right thing and take the question on notice. Instead, he engages in a harangue of the opposition rather than answering some important questions. There were two relevant issues raised in question time today. One was a report by the Auditor-General into the government’s oversight of the Job Network services. That report showed that, under these arrangements, there is a very substantial failure of Job Network providers to meet their contractual obligations. These are services for which the government is paying, for which taxpayers are paying. Because of the cumbersome and inefficient management system that this government is presiding over, we are seeing taxpayers paying for services that job seekers are not obtaining.

I will say at the outset that I am not critical of all Job Network providers in this. The vast majority of Job Network providers do a good job. The vast majority of them try and do the right thing by the people who they are supposed to provide services to. They are lumbered with a system which has been described by the OECD as costly and cumbersome. They are lumbered with a system under this government which is more about form filling and getting up people’s star ratings than about delivering practical services on the ground. There is an important issue which was raised today, which the government has failed to answer, about ensuring that contracts which governments enter into are performed adequately and that the systems in place enable the contracted providers to provide the services efficiently and in accordance with the contractual obligations.

The Auditor-General has found, for example, that in relation to disadvantaged job seekers only 61 per cent of the contacts between the Job Network provider and the disadvantaged jobseeker that were supposed to be scheduled were actually scheduled. If you were in the private sector and you have a 61 per cent compliance rate, I think you would probably be out of business pretty early. But this government is presiding over a system where that is occurring. It is occurring for a range of reasons, most of which are associated with how cumbersome and inefficient the management of the Job Network is under this government. The assessment of job seekers’ needs—a very important aspect of ensuring that you can identify skills deficits, work out what training they need and where they need some additional assistance—was very limited and appeared not to meet all the contractual obligations that were required.

On top of this Auditor-General report, we then have the OECD report that was released this week. Not only did it describe the Job Network as costly and cumbersome, but it reported the fact that Job Network members report they spend 30 to 40 per cent of their time on tasks such as filling in forms simply to achieve a higher star rating. This is the Job Network that the government says is its primary vehicle for delivering employment services to sole parents, low-income partnered parents and disabled people entering the work force under their so-called Welfare to Work reforms. This is the Job Network that the government says is its primary delivery mechanism for services. This is where sole parents and people with a disability have to go. Finally, it is extraordinary that, given the requirements that will be placed on people with a disability—(Time expired)

Senator CHAPMAN (South Australia) (3.21 pm)—What we saw in question time today, reinforced in this debate by Senator Sherry, was a typical Labor tactic, and that is
to attempt to assert that there is a problem where in fact none exists. Senator Sherry made the false postulation that there is a problem with Australia’s foreign debt. Even if for the sake of this exercise we accept that false proposition, what do we hear from Labor apart from that? Is there one possible solution suggested by Labor to the problem raised in that false proposition? Of course not. This simply reinforces that Labor is a policy-free zone. It has remained a policy-free zone now for more than nine years and it continues to be one. What that really reinforces is that in reality there is no problem at all as far as the level of foreign debt is concerned.

The fact is that, as Senator Brandis said a few moments ago, over the life of this government the massive debt for which the government has responsibility—that is, the government debt, government borrowings—has reduced from $96 billion to $23 billion currently, and by next year it will be down to $6 billion. That is a tremendous record on the part of the Howard government, the Prime Minister and the Treasurer, who have implemented policies that will see that debt reduced by some $90 billion. It was the greatest level of government debt ever inherited by a government. Indeed, under Labor, it was the greatest government debt ever produced by a government, and it was inherited by this government. Over the life of this government it will soon have been reduced by some $90 billion, back to a more than sustainable level.

That is why, since this government came to office in 1996, on three occasions the Standard and Poor’s rating agency has upgraded Australia’s rating, so that it now stands at AAA, the highest rating that is applied by Standard and Poor’s to rate countries in terms of their credit situation. As I said, the rating has been upgraded three times since 1996 as a direct result of the policies of this government and the government’s success in reducing that massive inherited debt. That is in direct contrast to what happened under the Hawke-Keating Labor government when, between 1986 and 1989, Australia’s credit rating was downgraded three times, from the AAA that applied when Labor came to office down to AA-. The rating agency, in its report when it upgraded Australia’s credit rating, said:

Government finances are strong and the ratings on Australia remain underpinned by robust government finances which continue to strengthen.

That is the situation as far as that portion of debt for which the government has direct responsibility is concerned.

The foreign debt which is emerging of course is private sector debt—an area of debt which is not the government’s responsibility and over which it has no control. It is debt created by the decisions of private individuals as to their own spending and investing habits. What we need to recognise is that, even in that situation, the level of assets which Australian individuals hold compared with their level of debt is massive. For every dollar of debt in Australian households, they hold $2 of financial assets and more than $6 in total assets. So the level of debt is covered six times by the level of assets held by Australian households. That is because, under the sound policies of this government, the nominal wealth of households has increased by about 11 per cent for each and every year this government has been in office. That compares to growth of only six per cent—about half that rate—during the last eight years of the previous Labor government.

We now find ourselves in a situation where household net nominal wealth is $4.3 billion, more than double the level of about $1.74 billion when this government came to office. But do not rely on my words; hear what Professor Tony Makin, Professor of
Economics at Griffith University and a man who well understands debt—he worked with the IMF in 2003-04—said:

... given the sizeable fiscal surplus at present, Australia's current account deficit—
that is, level of debt—is easily sustainable …

He also said:

... the high current account deficit remains the best measure of the extent to which foreigners are expressing confidence in the Australian economy.

(Time expired)

Senator GEORGE CAMPBELL (New South Wales) (3.26 pm)—I also seek to take note of answers by Senators Minchin and Abetz during question time today. It is important to note that the responses that we got from both those ministers to the questions asked in respect of foreign debt and in respect of skills training in this country were both tired and predictable—just like the arrogant Howard government itself. This is a government that has no economic plan for the future. It has no plan for an innovative industry policy. It has no industry policy. It does not have a strategy about developing Australia's manufacturing base. It does not have a policy about promoting innovative manufacturing industries capable of competing in the global marketplace.

If you look at what has occurred since the transition from the Hawke-Keating years to the Howard years, you will see there has been a very significant decline in the export of elaborately transformed manufactures, from about 18 per cent to about 3.4 per cent. More worrying is that, on top of that, we are now starting to see the flow of manufacturing jobs out of this country to elsewhere around the globe. In fact, what the Howard government has managed to do is translate our industry strategy from one of exporting elaborately transformed manufactured goods to actually exporting manufacturing jobs—a terrific strategy indeed, a really innovative strategy from the Howard government!

It seems—and it is obvious from the two speeches we have heard from the other side—that the Treasurer has issued to every member of the government an economic cheat sheet of myopic facts and half-truths that can be trotted out to dull any criticism of their shoddy record. And what a record it is. They have been asleep at the wheel in terms of the Australian economy for the past nine years.

I want to deal with the issue of debt. We have heard Senator Chapman say, 'Foreign debt is no longer an issue; we are dealing with it.' We have heard Senator Minchin say, 'We have to separate public debt from private debt; we have to distinguish between the two.' I did not hear the Prime Minister or the Treasurer in 1995 arguing that there was a distinction between public debt and private debt. I did not see anything on the debt truck that said, 'This half of the debt truck is public debt, that half is private debt and you only have to worry about the front half.' It was all lumped in together. The argument by both John Howard and Peter Costello in 1995 was about the totality of our foreign debt and the impact that that was having on the Australian economy. What has happened to that foreign debt? It has grown to an extent where it is now $427.7 billion—$20,000 for every man, woman and child in this country.

At the same time, despite what Senator Chapman says, we have seen household savings slump to where they are now in the negative. We owe more money in this country per head of population than we are earning. That situation has escalated and grown under the Howard government’s management of the economy. We are also seeing Australian industry struggle to compete in the marketplace. Why? Because it cannot get the skilled workers that it requires to retain
and build its productivity. That is why productivity is in decline. *(Time expired)*

Question agreed to.

**University Fees**

Senator BARTLETT (Queensland) (3.31 pm)—I move:

That the Senate take note of the answer given by the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to a question without notice asked by Senator Bartlett today relating to compulsory university fees.

We all know we are moving into a very different set-up in this Senate. Come 1 July the government is going to have a majority in this chamber and therefore a majority in both chambers and total control of the parliament. The minister quite happily celebrated that fact, not surprisingly, in her response. I think the issue that my question went to—the government’s proposals to outlaw compulsory fees for student services on university campuses—will be a very important early test of whether or not the Senate will still have some independence and will still act in a way that considers the public policy and real-world impacts of legislation rather than engages in political toing-and-froing.

My question made a point of drawing attention to The Nationals senators’ public statements by of concern about and opposition to the government’s proposal. We can all have a bit of fun pointing out potential disunity in the coalition. But, putting that to one side, it is a serious issue and it is not just a matter of trying to exploit a little bit of discomfort amongst the coalition. I congratulate those members who have expressed concern publicly and privately, including Senator Scullion, who is here in the chamber, and other incoming senators of The Nationals. Concern has been expressed about this at National Party state conferences in my own state of Queensland, in New South Wales and in Victoria. But the test is not expressing concern about it; the test is what this chamber passes into law.

Speaking as a Queenslander, I have genuine concerns about the impact of the government’s proposed legislation on the services available to students on university campuses, particularly in regional areas. It will be bad enough for universities like the one I attended, the University of Queensland, and those in Brisbane. But it will be worse for campuses in regional areas, where there are fewer other services and the university campus can be, as it is in Rockhampton with Central Queensland University, one of the biggest employers in that town. Some of the services provided are key to the educational experience.

We are not talking about party political clubs and all that stuff; we are talking about legal assistance and assistance for students if they fail a subject or run into trouble with the university. The university cannot possibly provide those sorts of services because students need independent assistance. These days if you run into trouble with a lecturer, have problems with sexual harassment or just have major differences of opinion and you are at risk of failing a subject, it can cost you an enormous amount of money in extra fees. It can have a massive impact on your opportunity to finish your degree if your Austudy assistance runs out. Those sorts of services are crucial.

Not just The Nationals senators but most of the Liberal Party senators know that the little bit the government wants to get at, which is the party political activity of student unions in some campuses—not all, by any means—is quite easy to address without this scorched earth, ideologically driven, extremist nonsense that has been put forward. Senator Brett Mason, also from my home state of Queensland, was quoted in the *Sydney Morning Herald* talking about this issue and the
attitude towards legislation from Liberal MPs. The article reads:

While saying “revenge might be a little strong”, he said Liberal MPs viewed passing the bill unamended as a way of “evening the score” against their political opponents from universities of the 1970s and ‘80s.

For God’s sake, what kind of criteria are we using to determine the law here?

The DEPUTY PRESIDENT—Senator Bartlett, I think you should withdraw that. I have drawn it to the attention of people before and asked them not to use that statement.

Senator BARTLETT—For goodness sake! Golly gosh and goodness! I withdraw that other statement. It is extraordinary. That is not the criteria you should use in determining laws that will affect students of today. Have your little evening of the score some other way—not by passing laws that are going to directly affect students and communities, particularly regional communities, in my and Senator Mason’s state. If we cannot have a mature approach to criteria for passing law in this place then we really are going to be in serious trouble once we get to 1 July. When a few ideologically obsessed people in cabinet decide something, everybody else will fall into line because they have to, and everybody will bear the consequences. This will be a big test. It is certainly something I will be pushing in my own state of Queensland, as will be Democrats around the country. If they cannot at least modify this then we are big trouble. (Time expired)

Question agreed to.

AUSTRALIAN LABOR PARTY
Office Holders

Senator GEORGE CAMPBELL (New South Wales) (3.37 pm)—by leave—I wish to inform the Senate that Senator Linda Kirk has been elected as the new Deputy Whip. She will replace Senator Geoff Buckland as of 1 July 2005.

LEADER OF THE NATIONALS,
DEPUTY PRIME MINISTER AND
MINISTER FOR TRANSPORT AND
REGIONAL SERVICES

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (3.37 pm)—by leave—I am grateful for the opportunity to make some remarks about the resignation of the Hon. John Anderson from the leadership of the federal parliamentary National Party. I make these remarks on behalf of my colleagues, the Liberals, the Leader of the Government in the Senate, Senator Hill, and, in particular, Senators Sandy Macdonald, Julian McGauran and Nigel Scullion.

Of all the valedictories given this week in the Senate, none is as sad for me as the one I give now, in farewelling John Anderson as the leader of the federal parliamentary National Party. The Deputy Prime Minister has just announced his resignation as National Party leader in the other place, and I believe it is very important that this chamber also marks his contribution to the nation as Deputy Prime Minister, cabinet minister and Nationals leader.

John Anderson has been the member for Gwydir since 1989. It is almost six years ago that he was elected Leader of The Nationals and Deputy Prime Minister. I became his parliamentary secretary then and often witnessed his anguish over his ability to do justice to the position of leader of the party. I hope he realises now that his concern was entirely misplaced. He has served some 13 years as a coalition frontbencher, including nine years as a cabinet minister, with portfolios of primary industry, transport and regional services. John Anderson has been a strong parliamentary performer. Despite his professed lack of affinity with adversarial politics, we need people like him in our
houses of parliament—young, decent, hard-working and self-sacrificing people. We need them not because their lifetime ambition is to be here but because their ambition for their country is greater than their personal ambition.

At one stage One Nation threatened not only The Nationals but also this parliament. We came so very close to having the League of Rights hold the balance of power in the Senate, because they were piggybacking in on One Nation. One Nation was totally compromised. That is one of the major reasons why The Nationals are so important to a stable democracy. Other reasons are that we give a voice to decentralised Australia, small business and Australians with socially conservative values. John Anderson has been truly faithful to this constituency.

The National Party are a drought-resistant political party. When we are threatened with extinction, the strongest come to the fore and keep the party going until the rain comes. John Anderson has done that. The Nationals, under his leadership, have achieved more than under any other leader at any other time. He has achieved reform of the nation’s roads, rail and water—the big ticket items that have been put into the too-hard basket by previous governments. Crucially for the nation, John Anderson has provided stability of government through an effective coalition with the Liberals. He has made family values count by living them himself.

When John Anderson became leader, I told him he would either be the greatest leader the National Party ever had or the last. We are going to have an election of another leader today. Politics has been difficult for John Anderson, but it always is when you come here to make a difference and not just to go with the flow. John Anderson has earned the nation’s respect during his time in office as Deputy Prime Minister, and that is no easy matter in Australia. As hardy as a farmer, ministerial leather has never won him. That has been both a strength and a burden. The Andersons will move on to the next stage of life. We are sad to see them go from centre stage.

The political rains are now falling at last. Our Senate numbers have never before been so valuable. We are getting young blood to rejuvenate the party and to take it forward, delivering for rural Australia, small business and those with socially conservative values. The last decade has been difficult for the party and for rural Australia. The legacy of John Anderson will continue to unfold in the long term with the implications of water, road and other reforms. The Nationals in the Senate salute him and so do the Liberals.

COMMITTEES

Membership

The DEPUTY PRESIDENT—The President has received letters from party leaders seeking variations to the membership of certain committees.

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

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

Economics References Committee—
Discharged—Senator Ridgeway
Appointed—
Senator Murray
Substitute member: Senator Allison to replace Senator Murray for matters relating to the Resources portfolio

Finance and Public Administration References Committee—
Discharged—Senator Ridgeway
Appointed—

CHAMBER
Senator Murray
Substitute member: Senator Bartlett
to replace Senator Murray for the committee’s inquiry into the Gallipoli Peninsula

**Foreign Affairs, Defence and Trade References Committee**—
Discharged—Senator Ridgeway
Appointed—
Senator Stott Despoja
Substitute member: Senator Bartlett
to replace Senator Stott Despoja for the committee’s inquiries into the duties of Australian personnel in Iraq and the Chen Yonglin and Vivian Solon cases

**Legal and Constitutional Legislation Committee**—
Discharged—Senator Greig
Appointed—
Senator Bartlett
Substitute member: Senator Stott Despoja
to replace Senator Stott Despoja for matters relating to the Attorney-General’s portfolio

**Legal and Constitutional References Committee**—
Discharged: Senator Greig
Appointed: Senator Bartlett.

(2) That senators be discharged from and appointed to committees, with effect from 1 July 2005, as follows:

**Australian Crime Commission—Joint Statutory Committee**—
Discharged: Senator Hutchins
Appointed: Senators Ludwig and Polley

**Community Affairs Legislation Committee**—
Appointed—
Senators Adams and Polley
Participating members: Senators Bartlett, McEwen and Wong

**Community Affairs References Committee**—
Discharged—Senators Hutchins and Marshall
Appointed—
Senators Adams, Allison, McLucas and Polley
Participating members: Senators Bartlett, Lundy and Wong

**Corporations and Financial Services—Joint Statutory Committee**—
Discharged—Senator Lundy
Appointed—Senator Sherry

**Economics Legislation Committee**—
Appointed—Participating member: Senator Bartlett

**Economics References Committee**—
Appointed—Participating members: Senators Bartlett

**Employment, Workplace Relations and Education Legislation Committee**—
Discharged—Senator Wong
Appointed—
Senator George Campbell
Participating members: Senators McEwen and Wong

**Employment, Workplace Relations and Education References Committee**—
Discharged—Senators Crossin and Kirk
Appointed—
Senators George Campbell, McEwen and Marshall
Participating member: Senator Lundy

**Environment, Communications, Information Technology and the Arts Legislation Committee**—
Discharged—Senators Bartlett and Conroy
Appointed—
Senators Brown, Ronaldson and Wortley
Participating members: Senators Bartlett, Forshaw and Webber
Environment, Communications, Information Technology and the Arts References Committee—
   Discharged—Senator Bishop
   Appointed—
   Senators Ronaldson and Wortley
   Participating members: Senators Forshaw, Moore and Webber

Finance and Public Administration Legislation Committee—
   Discharged—Senators George Campbell and Heffernan
   Appointed—
   Senators Stephens and Fifield
   Participating member: Senator Bartlett and Crossin

Finance and Public Administration References Committee—
   Discharged—Senators George Campbell and Heffernan
   Appointed—
   Senators Stephens and Fifield
   Participating members: Senators Bartlett and Crossin

Foreign Affairs, Defence and Trade—
   Joint Standing Committee—
   Discharged—Senator Lundy
   Appointed—Senators George Campbell, Moore and Webber

Foreign Affairs, Defence and Trade Legislation Committee—
   Appointed—Participating member: Senator Webber

Foreign Affairs, Defence and Trade References Committee—
   Appointed—Participating members: Senators Bishop, Lundy, Marshall and Webber

Legal and Constitutional Legislation Committee—
   Appointed—Senator Crossin

Legal and Constitutional References Committee—
   Appointed—
   Senators Crossin and Ludwig
   Participating member: Senator Lundy

Library—Standing Committee—
   Discharged—Senators Kirk and Stephens
   Appointed—Senators Polley, McEwen and Trood

Migration—Joint Standing Committee—
   Appointed—Senator Parry

Native Title and the Aboriginal and Torres Strait Islander Land Account—Joint
   Statutory Committee—
   Appointed—Senator Siewert

Privileges—Standing Committee—
   Appointed—Senator Ronaldson

Public Works—Joint Statutory Committee—
   Discharged—Senator Forshaw
   Appointed—Senator Wortley

Publications—Standing Committee—
   Discharged—Senators Hutchins, Kirk and Moore
   Appointed—Senators Polley, Sterle and Wortley

Regulations and Ordinances—Standing Committee—
   Discharged—Senators Marshall and Moore
   Appointed—Senators Sterle, Watson and Wortley

Rural and Regional Affairs and Transport Legislation Committee—
   Discharged—Senator Stephens
   Appointed—
   Senators McEwen, Milne and Sterle
   Participating members: Senators Bartlett, Crossin and Stephens
Rural and Regional Affairs and Transport References Committee—
Discharged—Senator Stephens
Appointed—
Senators McEwen and Sterle
Participating members: Senators Bartlett, Lundy and Stephens

Scrutiny of Bills—Standing Committee—
Discharged—Senator Marshall
Appointed—Senator McEwen

Senators’ Interests—Standing Committee—
Appointed—Senator McEwen

Treaties—Joint Standing Committee—
Discharged—Senators Stephens.
Appointed—Senators Sterle, Trood and Wortley.

Question agreed to.

PARLIAMENTARY RETIRING ALLOWANCES TRUST

The DEPUTY PRESIDENT—Order! The President has received a letter from the Leader of the Opposition in the Senate nominating Senator Faulkner to be a member of the Parliamentary Retiring Allowances Trust.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.44 pm)—by leave—I move:

That, in accordance with the provisions of the Parliamentary Contributory Superannuation Act 1948, the Senate appoint Senator Faulkner as a trustee to serve on the Parliamentary Retiring Allowances Trust on and from 1 July 2005, consequent on the retirement of Senator Cook.

Question agreed to.

COMMITTEES

Reports: Government Response

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

The report read as follows—

PRESIDENT’S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS AS AT 23 JUNE 2005

PREFACE

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

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

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Selection of Bills, Privileges, Procedure, Publications, Regulations and Ordinances, Senators’ Interests and Scrutiny of Bills. However, such reports will be included if they require a response. Government responses to reports
of the Public Works Committee are normally reflected in motions in the House of Representatives for the approval of works after the relevant report has been presented and considered. Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and subsequently tabled by, the committee. Agencies responding to administrative recommendations are required to provide an executive minute within 6 months of the tabling of a report. The committee monitors the provision of such responses.

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

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

* See document tabled in the Senate on 23 June 2005, entitled Government Responses to Parliamentary Committee Reports–Response to the schedule tabled by the President of the Senate on 9 December 2004, for Government interim/final response.

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

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AUDITOR-GENERAL’S REPORTS

Report No. 55 of 2004-05

The DEPUTY PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 55 of 2004-05—Performance Audit—Workforce Planning.

DELEGATION REPORTS

Parliamentary Delegation to Russian Federation and the Italian Republic

The DEPUTY PRESIDENT (3.45 pm)—I present the report of the Australian parliamentary delegation to the Russian Federation and the Italian Republic, which took place from 17 April to 1 May 2005.

COMMITTEES

Reports: Government Response

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.45 pm)—I present the government’s response to the President’s report of 9 December 2004 on outstanding government responses to parliamentary committee reports, and I seek leave to incorporate the document in Hansard.

Leave granted.

The document read as follows—

GOVERNMENT RESPONSES TO PARLIAMENTARY COMMITTEE REPORTS RESPONSE TO THE SCHEDULE TABLED BY THE PRESIDENT OF THE SENATE ON 9 DECEMBER 2004

Circulated by the Leader of the Government in the Senate
Senator the Hon Robert Hill
23 June 2005

A CERTAIN MARITIME INCIDENT (Select)

A certain maritime incident

A response may be considered in due course.
ASIO, ASIS AND DSD (Joint, Statutory)
Private review of agency security arrangements
Tabling of the response is expected to occur shortly.

AUSTRALIAN CRIME COMMISSION
(Joint, Statutory)
Cybercrime
The response is currently being considered by the Government and is expected to be tabled in the near future. Due to the scope of Committee’s recommendations, extensive consultation across Government departments and agencies was required. This process, and the Federal Election in October 2004, delayed Government consideration of the response.
Inquiry into the trafficking of women for sexual servitude
The response has required significant consultation between Australian Government agencies. That process was interrupted by the Federal Election and associated caretaker period. It is expected that the response will be tabled in the near future.

COMMUNITY AFFAIRS REFERENCES
The patient profession: time for action—Report on nursing
The response is being finalised. It is anticipated that it will be tabled shortly.
A hand up not a hand out: Renewing the fight against poverty—Report on poverty and financial hardship
A draft response to this report has been substantially prepared and being updated to reflect the important reforms announced by the Government on Welfare to Work and Workplace Relations as these have a major bearing on the issues considered by the Committee.
Hepatitis C and the blood supply in Australia
The response was presented out of sitting on 4 April 2005 and tabled on 11 May 2005.
Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children.
Intergovernmental discussions coordinated by the Community and Disability Services Ministers’ Conferences are expected to conclude in July 2005. Following that, an interdepartmental working group will finalise the response.

COMMUNITY AFFAIRS LEGISLATION
Tobacco advertising prohibition
The report is being considered and a response will be tabled in due course.

CORPORATIONS AND SECURITIES (Joint Statutory)
Report on aspects of the regulation of proprietary companies

CORPORATIONS AND FINANCIAL SERVICES (Joint Statutory)
Report on the regulations and ASIC policy statements made under the Financial Services Reform Act 2001
The Government has responded in part to this report through changes to the Corporations Regulations and public proposals to make further refinements to the regulation of financial services. A combined response to this report and other reports by the Committee on certain financial services regulations taking into account this ongoing policy development will be tabled in due course.
Review of the Managed Investments Act 1998
The Government is considering the recommendations in the context of recent corporate governance law reform and a response will be tabled in due course.
Inquiry into Regulation 7.1.29 in Corporations Amendment Regulations 2003 (No. 3), Statutory Rules 2003 No. 85
The Government has responded in part to this report through changes to the Corporations Regulations. A combined response to this report and other reports by the Committee on certain financial services regulations taking into account these policy responses will be tabled in due course.
Money matters in the bush: Inquiry into the level of banking and financial services in rural, regional and remote areas of Australia
The response is being finalised and is to be tabled as soon as possible.
Report on the ATM fee structure
The response is to be combined with that for ‘Money Matters in the Bush’ (see above) and will be tabled as soon as possible.

Corporations Amendment Regulations 2003 (Batch 6); Draft Regulations: Corporations Amendment Regulations 2003/04 (Batch 7); and Draft Regulations: Corporations amendment Regulations 2004 (Batch 8)

The Government has responded in part to this report through changes to the Corporations Regulations and public proposals to make further refinements to the regulation of financial services. A combined response to this report and other reports by the Committee on certain financial services regulations taking into account these ongoing policy responses will be tabled in due course.

Corporations Amendment Regulations 7.1.29A, 7.1.35A and 7.1.40(h)

The Government has responded in part to this report through changes to the Corporations Regulations. A combined response to this report and other reports by the Committee on certain financial services regulations taking into account these ongoing policy responses will be tabled in due course.

CLERP (Audit Reform and Corporate Disclosure) Bill 2003: Part 1: Enforcement, executive remuneration, continuous disclosure, shareholder participation and related matters

The response was tabled on 10 March 2005.


The response was tabled on 10 March 2005.

Corporate insolvency laws—A stocktake

On 22 March 2005, the Parliamentary Secretary to the Treasurer, the Hon Chris Pearce MP, announced that the Government would address the recommendations of the report in the context of developing an integrated set of proposals to improve the operation of Australia’s insolvency laws.

The set of proposals will also include responses to issues raised by the James Hardie Special Commission of Inquiry and recent reports of the Corporations and Markets Advisory Committee in its reports on voluntary administration, corporate groups and the rehabilitation of large and complex enterprises.

The Government expects to release proposals for consultation with stakeholders by the end of 2005.

ECONOMICS REFERENCES

Report on the operation of the Australian Taxation Office

The response is being updated and expected to be tabled in due course.

Inquiry into mass marketed tax effective schemes and investor protection—Interim report

The response is being updated and expected to be tabled in due course.

Inquiry into mass marketed tax effective schemes and investor protection—Second report: A recommended resolution and settlement

The response is being updated and expected to be tabled in due course.

Inquiry into mass marketed tax effective schemes and investor protection—Final report

The response is being updated and expected to be tabled in due course.

A review of public liability and professional indemnity insurance

The response was tabled on 10 March 2005.

Structure and distributive effects of the Australian taxation system

The response was presented out of sitting on 27 April 2005 and tabled on 11 May 2005.

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES

Bridging the skills divide

A revised response is currently being prepared to take account of the recent COAG outcomes. The response will be finalised as soon as possible.

Beyond Cole: The future of the construction industry: confrontation or co-operation?

A response is under consideration and will be tabled shortly.

Commonwealth funding for schools

The response was tabled on 16 June 2005.

Office of the Chief Scientist

The response will be finalised as soon as possible.
The value of water: Inquiry into Australia’s urban water management
A response has been drafted and will be tabled in due course.
Regulating the Range, Jabiluka, Beverley and Honeymoon uranium mines
An extensive consultation process has commenced. It is unlikely that a draft response will be ready before the second half of 2005.
The Australian telecommunications network
The government is considering its response.
Competition in broadband services
The government is considering its response.
Turning back the tide—the invasive species challenge: Report on the regulation, control and management of invasive species and the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002
Consultations are ongoing. A response will be tabled in due course.
Recruitment and training in the Australian Public Service
The response was tabled on 10 March 2005.
Staff employed under the Members of Parliament (Staff) Act 1984
A response is being prepared and will be tabled as soon as possible.
Administrative review of veteran and military compensation and income support
The response was tabled on 16 June 2005.
Near neighbours—good neighbours: An inquiry into Australia’s relationship with Indonesia
All relevant portfolios have now updated their input and a consolidated response will be finalised as soon as possible.
Inquiry into Australia’s Maritime Strategy
The response is being finalised and will be tabled as soon as possible.
Inquiry into human rights and good governance education in the Asia Pacific region
A response to the report’s recommendations has been developed and is currently being cleared with portfolios affected by the recommendations.
Australia’s engagement with the World Trade Organisation
The response is being prepared and will be finalised as soon as possible.
Review of the Defence annual report 2002-03
The response was tabled on 16 June 2005.
Arrangements for the tabling of this response are being made and will be finalised as soon as possible.
Voting on trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement
The response is being finalised and will be tabled as soon as possible.
A Pacific engaged: Australia’s relations with Papua New Guinea and the island states of the south-west Pacific
The response is being finalised and will be tabled as soon as possible.
Taking stock: Current health preparation arrangements for the deployment of Australian Defence Forces overseas
The response is being finalised and will be tabled as soon as possible.
INFORMATION TECHNOLOGIES (Select)
In the public interest: Monitoring Australia’s media
The government is currently preparing a response that will consider the report in the context of a number of subsequent reports, including the review of the private sector provisions of the Privacy Act 1988 which raises similar issues.

LEGAL AND CONSTITUTIONAL REFERENCES
Reconciliation: Off track
The government is considering its response.
State Elections (One Vote, One Value) Bill 2001 [2002]
The State Elections (One Vote, One Value) Bill 2001 [2004] lapsed upon the prorogation of the Parliament on 31 August 2004 and was discharged from the Senate Notice Paper on 15 November 2004. The legislation was restored to the Senate Notice Paper on 17 November 2004. The government will consider a response to the Committee’s report when the legislation is debated in the Senate and does not propose to respond further.
Legal aid and access to justice
It is expected that the response will be tabled shortly.
The road to a republic
The response is being considered and will be tabled in due course.
MEDICARE (Senate Select)
Medicare—healthcare or welfare? and
Second report: Medicare Plus: the future for Medicare?
A combined response to both of these reports is being finalised and is expected to be tabled in the near future.
MIGRATION (Joint, Standing)
2003 To make a contribution: Review of skilled labour migration programs 2004
The response has been finalised and will be tabled shortly.

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

NATIONAL CAPITAL AND EXTERNAL TERRITORIES (Joint, Standing)
Norfolk Island electoral matters
Consultation on the response for this report is underway.
Quis custodiet ipsos custodes? Inquiry into governance on Norfolk Island
A response is being prepared and will be tabled in due course.
A national capital, a place to live: Inquiry into the role of the National Capital Authority.
The response was tabled on 16 June 2005.
Norfolk Island: Review of the annual reports of the Department of Transport and Regional Services and the Department of the Environment and Heritage
The response was tabled in the House of Representatives on 23 June 2005.
Indian Ocean territories: Review of the annual reports of the Department of Transport and Regional Services and the Department of Environment and Heritage
A draft response is with portfolio Ministers for comment.
Difficult choices: Inquiry into the role of the National Capital Authority in determining the extent of redevelopment of the Pierces Creek Settlement in the ACT
A response is being prepared and will be tabled as soon as possible.

NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND (Joint Statutory)
Second interim report for the s.206 inquiry: Indigenous land use agreements
It is anticipated that the response will be tabled shortly.
Effectiveness of the National Native Title Tribunal in fulfilment of the Committee’s duties pursu-
ant to subparagraph 206(d)(i) of the Native Title Act 1998
It is anticipated that the response will be tabled shortly.

PUBLIC ACCOUNTS AND AUDIT (Joint Statutory)
Corporate governance and accountability arrangements for Commonwealth Government business enterprises, December 1999 (Report No. 372)
The government is considering its response to outstanding recommendations and a response will be tabled in due course.
Review of independent auditing by registered company auditors (Report No. 391)
The response was tabled on 10 March 2005.
Response given by way of Executive Minutes.
Inquiry into the management and integrity of electronic information in the Commonwealth (Report No. 399)
An Executive Minute in response to the report was provided to the Committee Chair on 8 February 2005.
Review of Aviation Security in Australia (Report No. 400)
The JCPAA Secretariat received the Executive Minute on 21 January 2005.
Response given by way of Executive Minutes.

RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION
An appropriate level of protection? The importation of salmon products: A case study of the administration of Australian quarantine and the impact of international trade arrangements
The response is being coordinated with relevant portfolios and will be tabled in due course.
Biosecurity Australia’s import risk analysis for pig meat
On 27 May 2005, the Federal Court of Australia upheld a legal challenge against decisions by Australia’s Director of Quarantine in May 2004 allowing the importation of pig meat. The Court is yet to determine Orders that detail the effect of this decision. The decision and its implications are being considered. It is not considered appropriate to provide a response to the Senate Committee report until the legal processes have been completed.
Provisions of the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003
The Minister responded to this report by writing to the Chair of the Committee, Senator Heffernan on 17 March 2005.
In his letter, the Minister accepted the recommendations of the majority report. The formal response to the report will be tabled when the legislation is re-introduced in the Senate, incorporating those recommendations.
Administration of the AusSAR in relation to the search for the Margaret J
No action required following consideration of inquiry report.

RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES
Rural water use
A draft response is currently under consideration. The response will be tabled in due course.
Australian forest plantations: A review of Plantations for Australia: The 2020 vision
The response required amendment following the announcement in the 10 May 2005 Budget of the extension of the taxation 12-month rule until 2008 and as a result of the announcement by the Prime Minister on 13 May 2005 of the Tasmanian Community Forest Agreement. The revised response to the report has been circulated to relevant portfolios and will be tabled in due course.

SCRAFTON EVIDENCE (Select)
Report
The Government has rejected the Committee’s findings and no formal response is required.

SCRUTINY OF BILLS (Senate Standing)
Third report of 2004: The quality of explanatory memoranda accompanying bills
A response is being prepared and will be tabled in due course.
SUPERANNUATION AND FINANCIAL SERVICES (Senate Select)
Report on early access to superannuation benefits
The response is under consideration and will be tabled in due course.

SUPERANNUATION (Senate Select)
Planning for retirement
The response is under consideration and will be tabled in due course.
Superannuation and standards of living in retirement—Report on the adequacy of tax arrangements for superannuation and related policy
The response was tabled on 10 February 2005.

TREATIES (Joint, Standing)
The response was tabled on 16 June 2005.
The Australia-United States Free Trade Agreement (61st Report)
Legislation has been passed giving effect to the Free Trade Agreement. No further response is required.
Treaties tabled on 30 March 2004 (62nd Report)
A response is not required.

DOCUMENTS
Tabling
Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.46 pm)—I table the following government documents:
Parliamentarians’ travel paid by the Department of Finance and Administration for the period July to December 2004
Former parliamentarians’ travel paid by the Department of Finance and Administration for the period July to December 2004
Parliamentarians’ overseas travel reports for the period 25 May to 31 December 2004
Expenditure on travel by former Governors-General paid by the Department of Prime Minister and Cabinet for the period 1 January to 30 June 2004
Expenditure on travel by former Governors-General paid by the Department of Prime Minister and Cabinet for the period 1 July to 31 December 2004

ENVIRONMENT GROUPS
TASMANIAN PULP MILL
Returns to Order
Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.46 pm)—by leave—I have two responses to returns to order and two statements to make. The first 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 21 June 2005, and it relates to correspondence concerning deductible gift recipient status for environment groups. The minister wishes to inform the Senate that he considers this request to be an unwarranted diversion of resources away from the government’s key role of protecting the environment. The minister would like to inform the Senate that the routine process for assessing an application from an environment group for deductible gift recipient status requires input from the proponent and relevant ministers. Once a decision has been made, this is duly conveyed to the applicant in question.

The second statement again relates to an order of the Senate following a motion from Senator Brown. The order relates to correspondence between the Prime Minister, his office and his department, from July 2002 to the present, with Gunns Ltd regarding their proposal for a pulp mill in Tasmania. The Prime Minister takes seriously any request from the Senate for the production of documents that will assist in its role as a house of
review. However, he is not prepared to divert the resources of his office to searching all office records for the preceding three years to identify any potentially relevant correspondence.

Senator BROWN (Tasmania) (3.48 pm)—by leave—I move:

That the Senate take note of the statement and the statement made earlier today.

This is a sign of things to come, Mr Deputy President. Here is the government refusing to give perfectly warranted material to the Senate—not to this senator but to the Senate. An order has been issued by the Senate for documents that relate, firstly, to deductible gift recipient status for environment groups and, amongst other things, correspondence between the Assistant Treasurer, the tax office and the Institute of Public Affairs, which has no doubt been gunning for environment groups. The correspondence involved and the pressure brought by the government in that should be transparent. It should be open. It should be debatable. It should not be something that the minister is ashamed of. It certainly should not be something that allows the minister in a fickle, offhand and quite rude fashion to say to the Senate, 'I am not going to comply.'

Secondly, when it comes to the Prime Minister’s office, he was simply asked to release correspondence over the last three years between his office and Gunns which relates to a pulp mill. It is a very confined, very specific and much warranted request for information by the Senate, but the Prime Minister has turned it down. This is the government showing its hubris not just towards this house of review, which depends upon information to be able to review what the government is doing, but also towards the Australian public, who want this place to be informed, want this place to be able to dissect what the government is doing and know full well that that cannot be done in the absence of information being supplied by the government, as requested by the Senate.

Two requests via the Greens—but with the power of the Senate behind them—to the Prime Minister and the Minister for the Environment and Heritage being turned down might be seen as a bit of political failure by the Prime Minister and the minister respectively. But, when one looks at the Notice Paper, one sees more than a dozen such requests for information on a whole range of issues covering a range of portfolios, from pretty well all parties involved, being ignored in that the government has not responded to them. If you look at page 27 of the Notice Paper, you will see orders for the production of documents still current from previous parliaments, going back to the start of this administration. There are 68 requests for information from this government that have been ignored.

This is a government that represses information, wants to keep the Australian people and their parliament in the dark and does not understand—or maybe it does understand—that the currency of democracy is information. It is so insecure about its ability to present itself in a robust debate that it has to hide information from the parliament and the people of Australia. This will catch up with the government. The absence of information does not make the progress of affairs under this government any better. It simply shows a government which has become arrogant and lost its regard for democracy and the parliament in this country.

The problem is that it is likely to do that even more so after 1 July. I think it is going to fall in a heap when it tries to do so. One of the things that is going to happen after 1 July with requests like this is that every single member of the government is going to be in the position to ensure that at least the request...
goes forward and to put pressure on the government to see it is complied with. Every single member of the Senate on the government side is going to be empowered in a way they have not been this last decade. Every single member of the government and the weakest member of the government can become the most powerful person in this place by simply taking a 10-metre walk across the floor.

If the government thinks that it can obfuscate in the Senate by turning down 68 warranted requests for information that would allow for a better debate and a better basis of judgment by the parliament and the Australian people when it gets a majority in this place—a sort of the first order—it ought to think again. Nevertheless, ultimately one must have faith in the people of Australia and, insofar as this government thumbs its nose at proper democratic forms and its right to keep informed the people who voted it in, it is headed for a downfall.

Question agreed to.

COMMITTEES

Employment, Workplace Relations and Education References Committee

Corrigendum

Senator SCULLION (Northern Territory) (3.54 pm)—On behalf of the Chair of the Employment, Workplace Relations and Education References Committee, I present a corrigendum on the report of the committee on Indigenous education funding.

Ordered that the document be printed.

Corporations and Financial Services Committee

Erratum

Senator SCULLION (Northern Territory) (3.54 pm)—On behalf of the chair of the Parliamentary Joint Committee on Corporations and Financial Services, I present an erratum on the report of the committee on property investment.

Ordered that the document be printed.

National Capital and External Territories Committee

Report

Senator LIGHTFOOT (Western Australia) (3.54 pm)—I present the report of the Joint Standing Committee on the National Capital and External Territories entitled Antarctica: Australia’s Pristine Frontier: report on the adequacy of funding for Australia’s Antarctic Program. I seek leave to move a motion in relation to the report.

Leave granted.

Senator LIGHTFOOT—I move:

That the Senate take note of the report.

I seek leave to incorporate my speech in Hansard and to continue my remarks later.

Leave granted.

The speech read as follows—

On behalf of the Joint Standing Committee on the National Capital and External Territories, I have pleasure in presenting the Committee’s 1st report for 2005, entitled Antarctica: Australia’s Pristine Frontier—Report on the adequacy of funding for Australia’s Antarctic Program. I am pleased to advise the Senate that this is a unanimous report making five recommendations.

The work for this report was undertaken as part of a general monitoring of Australia’s external territories by the Committee and was based on a review of the annual reports of the Department of the Environment and Heritage.

At the outset of the review, the Committee sought a briefing from the Australian Antarctic Division as the lead agency for Australia’s Antarctic Program.

That briefing provided a fascinating insight into the positive nature and scale of the work being carried out by Australian researchers in Antarctica.

From that briefing, it became clear that the critical issue confronting Australia’s Antarctic Pro-
gram was whether the Antarctic Division was receiving adequate funding to achieve the Government’s stated goals for the frozen continent.

The issue of the adequacy of funding for Australia’s Antarctic Program therefore became the focal point of the Committee’s inquiry.

The inquiry lapsed with the dissolution of the 40th Parliament, but, was recommenced by the new committee in the 41st Parliament.

The Government’s goals for advancing the nation’s interests in the Antarctic reflect Australia’s status as a major player in Antarctic affairs. The goals are:

- to maintain the Antarctic Treaty System and enhance Australia’s influence within the System;
- to protect the Antarctic environment;
- to understand the role of Antarctica in the global climate system; and
- to undertake scientific work of practical, economic and national significance.

Meeting these goals, and consolidating Australia’s leading reputation in Antarctica, requires substantial financial support. Operating in such an unpredictable, hostile environment is an expensive exercise, but continuing participation is critical if Australia is to preserve its sovereignty over its Australian Antarctic Territory.

During the inquiry, the Committee heard of the fundamental need to establish an inter-continental air link between Tasmania and the Australian Antarctic Territory.

It was suggested that an air link would attract a wider spectrum of researchers to the continent. Currently, researchers are largely reliant on the research and resupply vessel *Aurora Australis* which means that a significant amount of scientists’ time is spent at sea.

Obviously, the Committee was pleased to learn of the commitment in the 2005-06 Budget to fund an inter-continental air link from Hobart to Antarctica. The air link will complement the air service between Australia’s bases on the continent which became operational last summer and will bring Australia into line with other major stakeholders in the Antarctic that already have air transport capacity.

However, in the Committee’s view, the introduction of the air link does not diminish the need for additional funding to be invested in Australia’s Antarctic Program.

The Australian Antarctic Division has continued to develop new initiatives in spite of a generally static budget by implementing a range of innovative cost-saving measures. Yet the evidence the Committee received to its inquiry suggested the Division now has exhausted all avenues for creating meaningful savings.

Australia’s contribution to Antarctic science is considered world-leading by scientific peers and the Committee believes that the efforts of our researchers should receive greater domestic recognition, particularly given that much of the science being undertaken has implications for the region as well as global relevance.

Mr President, I would like to express, on behalf of the Committee, our gratitude to all those who participated in the inquiry and to the staff of the Secretariat. I thank my Committee colleagues for their cooperative and substantial contribution throughout the course of the inquiry and reporting process.

Mr President, on behalf of the Committee I commend the Report to the Senate.

**Australian Crime Commission Committee Report**

**Senator SCULLION** (Northern Territory) (3.55 pm)—On behalf of the Chair of the Parliamentary Joint Committee on the Australian Crime Commission I present the report on the examination of the annual report for 2003-04 of the Australian Crime Commission, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**Senator SCULLION**—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in *Hansard* and to continue my remarks later.

Leave granted.
The report read as follows—
The ACC Annual Report was presented out of session on 21 December 2004, and tabled in both Houses on 8 February 2005, in accordance with section 61 of the Australian Crime Commission Act 2002.

The duties of the Parliamentary Joint Committee on the Australian Crime Commission are prescribed under section 55 of the Australian Crime Commission Act 2002. These duties include examining each annual report on the ACC and reporting to the Parliament on any matter appearing in, or arising out of, any such annual report.

In the course of its scrutiny of the ACC Report, the Committee held a hearing in Canberra on 17 March, and also wrote to a number of individuals and organisations, inviting them to comment on the Annual Report. The Committee received seven submissions, as well as a number of letters that expressed satisfaction with the operation of the ACC.

Mr President, this year’s ACC Annual Report is significant in that its reporting period covers the first full year of the Commission’s operation. It gives the Committee, the Parliament, and the electorate an opportunity to evaluate the progress of the ACC towards its stated objective of ‘reducing incidence and impact of serious and organised criminal activity’.

The Committee draws the Chamber’s attention to a number of recommendations made in the report which are designed to provide more public information about the ACC’s operations. They include a recommendation that the ACC consider the release of public versions of key research, including a declassified version of the informative ‘Picture of Criminality’.

The Committee has also recommended that the ACC review the legal and administrative arrangements governing information on its intelligence networks and brief the Committee on the results.

To make some of the performance indicators more informative for the Committee, the Parliament and the community, the Committee has included recommendation 4: continued refinement of the performance measures, including an explanation of the significance of quantitative and qualitative indicators. Recommendation 5 also concerns performance indicators—the committee has recommended that those performance indicators relating to criminal intelligence operations include (subject to reasonable security considerations) how priority is given to matters submitted to the ACC Board for consideration.

In making these recommendations, the Committee is acutely aware of the necessarily confidential nature of the work of the ACC, and that there is a fine line to be drawn between the information which must be kept confidential for operational reasons, and that which can be released for general use. However, the Committee considers that the recommendations made in this report will not compromise the ACC in any way, and will provide a greater general understanding of the work and the achievements of the Commission.

In conducting the evaluation of the Annual Report, the Committee acknowledges the assistance of the Chairman of the ACC Board, Commissioner Mick Keelty, and the CEO, Mr Alastair Milroy, and officers of the ACC. Throughout out the reporting period, the ACC has provided considerable assistance to the Committee through written reports and briefings, as well as through verbal presentations.

The Commission’s willingness to assist the Committee has been of great assistance, and has contributed to a transparent and co-operative relationship.

The Committee would like to acknowledge the considerable assistance of Professor John MacMillan, the Commonwealth Ombudsman, and his staff.

I also take this opportunity to thank the Secretariat staff for their consistent support to the Committee.

Finally, I take this opportunity to inform the Senate that, following discussions with the Minister for Justice, Senator Ellison, the Committee has agreed to conduct the statutory evaluation of the operation of the ACC Act pursuant to Section 61 of the ACC Act. This inquiry and will be calling for submissions in the near future and will be an excellent opportunity to examine the adequacy of the Act to provide a practical working framework.
for the ACC in a criminal environment which is not only national, but transnational in character.

**Legal and Constitutional References Committee**

Senator BOLKUS (South Australia) (3.56 pm)—I present the report of the Legal and Constitutional References Committee entitled The real Big Brother: inquiry into the Privacy Act 1988, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator BOLKUS—I seek leave to move a motion in relation to the report.

Leave granted.

Senator BOLKUS—I move:

That the Senate take note of the report.

I am pleased to present this report today, the report of Senate Legal and Constitutional References Committee entitled The real Big Brother: inquiry into the Privacy Act 1988. The report is a result of an inquiry lasting over six months, during which the committee received evidence on a wide range of issues relating to the Privacy Act of 1988. The committee received submissions from nearly 50 individuals, organisations and government departments. The committee examined the overall effectiveness and appropriateness of the act as a means by which to protect the privacy of Australians. In particular, the committee was asked to consider, amongst other things, the capacity of the current legislative regime to respond to new and emerging technologies, the effectiveness of the extension of the privacy scheme to the private sector, and the resourcing and powers of the Office of the Privacy Commissioner.

The committee heard that the Privacy Act is not proving to be an effective or appropriate mechanism to protect the privacy of Australians. The committee found that a combination of factors are undermining the Privacy Act, including lack of consistency, the challenges of emerging technologies, the numbers of exemptions under the act and the lack of resourcing of the Office of the Privacy Commissioner. The committee was greatly concerned to hear of the significant level of fragmentation and inconsistency in privacy regulation across this country. The inconsistency occurs across Commonwealth legislation, between Commonwealth, state and territory legislation, and between the public and private sectors. The committee has found that this inconsistency is one of the key factors undermining the objectives of the act and is adversely impacting on government business and, most importantly, the protection of Australians’ privacy.

In addition, the committee received much evidence to show that the Privacy Act is simply not keeping pace with the privacy challenges posed by new and emerging technologies—technologies such as smart cards, biometric data, genetic testing and radio frequency identification devices. The committee also found that the numerous exemptions under the act are also undermining the act’s operation and contributing to problems of inconsistency. The committee discovered that these problems are being compounded by a lack of adequate resourcing for the Office of the Privacy Commissioner.

The committee has also acknowledged the significant concerns raised in respect of credit reporting, a regime established under part 3A of the Privacy Act. The committee rejected any move to introduce positive credit reporting in Australia. In the committee’s view this would merely magnify the problems associated with the accuracy and integrity of the current credit reporting system. The privacy and security risks associated with the existence of a large private sector database or databases containing detailed
information on millions of people are of major concern to the committee.

This committee’s report closely follows the release of a review of the private sector provisions of the act by the Office of the Federal Privacy Commissioner. Although the committee supported many of the recommendations made in that review, the committee disagreed with the review’s conclusion that the private sector provisions are working well. Further, the committee was concerned that the terms of reference of that review were quite limited. Not only was the Privacy Commissioner’s review restricted to the private sector provisions of the act but key issues such as employee records were excluded from the review. The committee therefore found that it would be not only appropriate but necessary for a comprehensive and wide-ranging review of privacy regulation in Australia to be undertaken by an independent body with appropriate technical expertise such as the Australian Law Reform Commission.

To ensure that Australians’ privacy is appropriately and effectively protected in the 21st century, some of the key recommendations that the committee has made in this report are: that the ALRC undertake the review I just mentioned; that the Law Reform Commission consider the privacy implications of new and emerging technologies with a view to ensuring that these technologies are subject to the appropriate privacy regulation; that the government, as a matter of urgency, respond to and implement the report by the Australian Law Reform Commission and the National Health and Medical Research Council on the protection of human genetic information and do so as a high priority; that the numerous exemptions under the act be reconsidered, including the removal of the small business exemption; that employee records be protected under the Privacy Act; and, further, that official funding be allocated to the Office of the Privacy Commissioner to enable it to more efficiently and effectively fulfil its mandate and to ensure genuine and systemic improvements to its operation, both now and into the future. I urge the government to heed these recommendations and to establish a much-needed review by the ALRC as soon as possible.

In closing, I thank all those people who took time to make submissions and to give sometimes quite technical evidence to the committee. For me, this has been a good committee to work on. It has been resourced by very skilled and skilful people. In saying that, I would like to recognise in this instance the work of Owen Walsh, Sophie Power, Julie Dennett and the other secretarial staff. It has also been a good committee to work with in that there is a spirit of bipartisanship that permeates the committee. I would like to thank the deputy chair, Senator Marise Payne—who unfortunately is not here with us today—for her work and cooperation on this report and other reports over recent years. I also thank other senators who participated in this particular inquiry: Senators Mason and Scullion, who were critical, and Senator Stott Despoja, Senator Ludwig, Senator Kirk and Senator Buckland. I commend this report to the Senate and particularly commend it to the government.

Senator STOTT DESPOJA (South Australia) (4.02 pm)—I support the comments by the chair and congratulate him on his final Senate committee report in this place. I also endorse his remarks about the secretariat. I commend this report to the Senate. I am proud to have initiated, on behalf of the Democrats, this inquiry into the adequacy of the Privacy Act. Some of the evidence and the findings are deeply disturbing and vindicate, I believe, the reference in the first place.

I begin my comments with the observation that one of the fundamental principles of
privacy protection is consent. In other words, information about a person should not be collected or used without that person’s consent. Yet, as credit reporting agency Baycorp told the committee, the concept of consent has now become virtually meaningless for the average Australian with a car, telephone, bank account and basic utilities. I wonder if Australians are really aware of the myriad ways in which their personal information is being used and the extent to which their everyday lives are now subject to surveillance.

Just recently we read of an extraordinary decision by the Federal Privacy Commissioner, who found that doctors who sell their patients’ records to pharmaceutical marketing companies without the patients’ consent are not in breach of the Privacy Act. The commissioner’s decision was based on her assessment that the information had been de-identified. Yet just last year her office warned that so-called de-identified information could in fact potentially be traced back to individuals. As we all know, the doctor-patient relationship and the confidentiality that applies to that relationship is viewed by many as sacred. People visit their doctors when they are sick, when they are vulnerable, and they do not expect the details of their illnesses to be made available—certainly not to marketing firms. This is a clear case of doctors profiting from and exploiting the medical information of their patients. It is not about furthering scientific research; that is a very different matter. One of the most serious concerns arising from the decision is that, if patients cannot be guaranteed that their health records will be kept confidential, you can envisage a situation where patients may not visit the doctor, out of fear.

There is also the Australian Bureau of Statistics proposal to link sensitive information from the census, including income level and religious persuasion, with other personal information obtained from births and deaths registers and disease registers. The Australian Privacy Foundation has argued that this process will require the ABS to retain the names and addresses of respondents for around a year. Even after the names and addresses have been removed, this information will be so detailed that it could be possibly traced back.

On another front, the introduction of the Medicare smartcard, which will be used in conjunction with the new HealthConnect system, raises more privacy concerns. The committee was warned that one of the risks associated with the Medicare smartcard was the potential for function creep—in other words, the possibility that the card could eventually be used for a range of additional purposes. The warning could not have been more accurate, given the announcement that cabinet has recently approved Minister Hockey’s proposal to expand the use of the Medicare smartcard by linking it to other government services, including welfare services. The minister’s objective is to develop a card which operates as ‘one set of keys to open a number of doors to a range of government services and benefits’.

But perhaps the most pressing privacy concern—certainly one that I have—is that there is no national protection for highly sensitive genetic information about Australians. The unique predictive quality of this information makes it enormously valuable to insurance companies and prospective employers—and even to AFL football clubs, as we have read this week. There have been reported cases, as I have put on record before, about genetic discrimination in Australia. As many in this chamber will be aware, I have been going on about this issue for a long time, since before I introduced the private senator’s bill in relation to genetic privacy and nondiscrimination in 1998. I certainly welcomed the ALRC inquiry report, Essen-
ally yours, into the issue of genetic privacy in Australia. I hoped that it would be a catalyst for the government to respond, but two and a bit years later we are still waiting for a response. I strongly endorse the recommendations contained in this report today.

Finally, it would be remiss of me not to say that politicians unfortunately are among the very worst violators of personal privacy in the Australian community, as I have outlined in my additional comments on this report. When the private sector provisions were debated in this chamber, the government and the opposition decided that there would be no obligation on politicians to respect the privacy of Australians in the same way that we expect private companies to do so. There is little doubt that the primary reason behind the reluctance to support the amendments that I moved at that time was the fact that it would impede the operation of sensitive voter databases—Feedback, in the case of the coalition; and Electrac, in the case of the Australian Labor Party.

The practical operation of these databases has been described in detail in journals and I have included some of that research in my additional remarks. Starting with the basic information from the electoral roll and the phone book, these databases are supplemented with sensitive information about the political views of constituents, obtained when constituents contact their local member, ring talkback radio, write a letter or whatever. Further information is gathered by telephone polling conducted by so-called independent organisations which can fail to disclose that the polling has been commissioned by a political party. Mr Acting Deputy President, don’t get me wrong; if politicians in this place are saying, ‘Oh my gosh, this is an attack on our databases,’ it is not. It is about consent. It is about people having the right to know what information is collected about them, stored about them, used with or without their consent and having the ability to change that information to make sure it is correct. I think the principle of privacy protection in this land is about consent and that is not a feature that applies to us as politicians, unfortunately. We are exempt from the operations of this act and that needs to be urgently reviewed. I know that there are colleagues on both sides who have expressed their agreement with me on this point. I just hope our political parties agree on this point. I think democracy would be better served if we were subject to the same provisions that we expect the private sector to be subjected to.

We should be able to send an email to a friend on the other side of the world without fearing that it is going to be read by someone else. We need to be able to honestly relay symptoms to our doctors without the risk that this information might end up in the database of a marketing firm. If our everyday lives are becoming more inhibited because of a lack of privacy, we have to wonder really whether new technologies are being used in a way that best serves us and our community. Australia’s privacy laws are in need of a major overhaul, whether we like it or not, not just a review. That is a very important part of this inquiry’s recommendations. Privacy laws need more than that; they need an overhaul. The whole concept of privacy protection in this country has changed since the Privacy Act was introduced. I think we need to harness the potential for technology to enhance our privacy protection, rather than eliminate it altogether.

In closing, these issues are urgent and that is why I wanted this inquiry up and running. I thank the Senate for giving the committee the opportunity to hold this inquiry. As is being shown increasingly by media reports, we are witnessing an unprecedented assault on our privacy rights in this country, and I do not think we can continue to wait around for
months while governments respond. I hope that the government will respond to this report and its recommendations with alacrity. I certainly hope I will finally see a response to the ALRC report, Essentially yours. When I asked the minister in this place on, I think, 11 May, when I was going to get a response and when the government was going to present its response, he said, ‘Shortly.’ I figure ‘shortly’ should be by now, so I would like to see that whole-of-government report sooner than shortly, perhaps immediately.

I would like to endorse the comments of the chair of the committee in relation to the secretariat, but I would like to add a final mention, if I may, about the hard work of Jo Pride from my office with the Democrats who, after 1 July, will no longer be working with us. Her work has been exemplary in bringing about this inquiry, on the issue of privacy generally and on Attorney-General’s and foreign affairs issues. I will miss her and her extraordinary skills very much. In another report I spoke to this morning, I omitted to thank the wonderful Peter Vanderaa who, also after 1 July, will no longer be serving on the Democrats’ staff. I will miss his skills, his humour, his hard work and efforts. With that indulgence, I certainly endorse the report before the Senate.

Question agreed to.

TRUST BANK

Senator MURPHY (Tasmania) (4.12 pm)—I seek leave to incorporate a speech that I was going to make during the matters of public interest debate yesterday, but of course we did not have such a debate yesterday. I seek leave to incorporate the speech and one document in Hansard and also to table eight other documents.

Leave not granted.

(Quorum formed)
wanting to have a reassessment made as to whether they should be offered further a TPV, further permanent protection or otherwise. That is what that agreement relates to. The last family to come off Nauru have not come on a TPV; they have come on a humanitarian visa—nonetheless temporary, but they have come from Nauru, and that is a separate area. The agreement does not relate to them.

Senator NETTLE (New South Wales) (4.17 pm)—For the people this relates to who are on TPVs and who have currently got applications in for permanent residency, when was the cut-off date? If somebody put in an application tomorrow, for example, for permanent residency and they were on a TPV, when would the cut-off date be for those decisions to be expedited by 31 October—if I understand your previous answer correctly?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.17 pm)—It is the applications on hand—this is my understanding—at the date, but the agreement is also that other applications, fresh ones, will be dealt with within the three months.

Senator BROWN (Tasmania) (4.17 pm)—This amendment seeks to disallow a further memorandum of understanding which would enable the Commonwealth government, without the permission of parliament, to keep the internment camp and detainee operation functioning on Nauru. It is a very important prerogative of the parliament to do this. I ask the minister if she would be good enough to tell me whether she has got more information about the potential for long-stay or removal or bringing to Australia the remaining detainees on Nauru, including, for example, Muhammad Faisal, Mohammed Sagar and other members of the community.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.18 pm)—I will check the Hansard, Senator. As I understood it, what I said I would get you was an indication of what the case load was there, not an indication of whether they would be likely to come to Australia. I have asked for that information about who is now there, once this last family leaves. There is not an expectation that they will come to Australia. It may subsequently be decided that they are refugees, because, as you know, we have reassessed that case load a number of times and, if the situation for any of those families changes, they get a reassessment. This is not something that happens in most countries, but we have agreed that they do not just get one bite at the cherry. If circumstances change, we will reassess the case load, and we have already done that. I do not preclude that happening again should further circumstances change.

Senator BROWN (Tasmania) (4.19 pm)—Can the minister give an assurance that the intelligence assessment by ASIO of the remaining detainees in no way affects the application for visas by the people on Nauru or elsewhere, including Christmas Island?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.20 pm)—I will answer what I think is the case but I will put a proviso on it to check. The way in which the process normally works is that someone is considered according to the UNHCR criteria as to whether or not they are a refugee. It is at that point that, if they are considered a refugee, health and character and, if appropriate, se-
curity checks are made. The people on Nauru at the moment are not considered to be refugees, so that would not apply. But if there is any variation to that I will come back to you.

Senator Brown (Tasmania) (4.21 pm)—I would be pleased if you would do that, Minister, because my information is that security checks have been done on a number of people on Nauru—and quite extensive and repeated security checks, at that. I do not mean by DIMIA; I mean by ASIO. So, while I do not want to enter into the specifics of that any more than you would, I would like to have your inclination that that would not be the case confirmed, or to have the air cleared on the matter.

Senator Vanstone (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.21 pm)—I would be happy to do that. Often things we understand to be the case turn out not to be the case. You had recent experience of that when you rang my office asserting quite strongly that the government was delaying consideration of Mr Chen’s protection visa claim and that the interview should be held much sooner, purporting, by virtue of making the call, to know his circumstances and to know that he wanted it dealt with sooner.

I suppose it was a matter of some embarrassment for you to realise that Mr Chen was not in fact ready to do his interview that week through the people who were acting for him, which did not include you, and that you had, as I understand it, no authority to ring and purport to speak to the government as if you knew what he wanted. But as a consequence of your phone call, we checked with the people who were in fact acting for him and found that they did not want the interview that week; they wanted it postponed. So you might like to explain to the parliament how you came to that misunderstanding as to your own capacity to ring on Mr Chen’s behalf.

Senator Brown (Tasmania) (4.22 pm)—Minister, I am so pleased you invited me to do so because it all comes down to an abject failure by you to carry out your responsibility with regard to a diplomat who had defected in this country. One would have thought, amongst many other things, including security analysis, that you would have ensured that a person in Mr Chen’s position would have had legal advice. But you did not. Instead, you or your officers were busy contacting the Chinese authorities without Mr Chen’s authority. It was therefore left to the Greens to do your job. The Greens, in your absence and because of your failure, set about getting Mr Chen legal advice.

In the wake of that legal advice, no doubt there was a request to take more time in the consideration, and I salute the advisers for that. But no thanks to you, Minister. Might I add, no thanks to you regarding the government’s failure to give asylum to Mr Chen. Your fellow minister the Minister for Foreign Affairs, Mr Downer, seems very frail indeed about putting in writing his turning down of at least two requests for asylum—that is, political or territorial asylum. At first he denied he had even had this, but he was again found wanting when the evidence was produced that he had had it in the clearest terms. So if you want to debate that issue—which I do not think is quite germane to the matter at hand—I would be very willing to do just that, but that would open up a whole array of failures by you and your government. I would counsel you to get back to Nauru.

Senator Vanstone (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.24 pm)—I would like to thank the
senator for his contribution. I am of course in possession of knowledge that I assume the senator is not in relation to this matter. Mr Chen has not been denied a protection visa. His claim is being considered. I note that Senator Brown declined my invitation to explain to the Senate why he rang my office with the air of agitation that he often has about him—I do not say he was in an agitated state; it is the air of agitation that he often has about him—alleging that Mr Chen should be interviewed very soon when in fact that was not the advice from the people who were properly appointed to represent Mr Chen. In other words, he had no business making that phone call. The absence of comment about that gives me the answer.

Senator BROWN (Tasmania) (4.25 pm)—Let us be quite specific about it. I rang the minister’s office on the Saturday night—

Senator Vanstone—No. That is not the phone call I am talking about.

Senator BROWN—That is the one I am talking about. I rang the minister’s office to urge that he get protection and asylum. The minister’s office informed me that it was not her responsibility; it was the responsibility of the Minister for Foreign Affairs. When I rang his office, it became vice versa. We had Spenlow and Jorkins at work. But the minister had done nothing. As I said earlier, it was left to the Greens to do the government’s job and get the legal advice, which led to the situation the minister is talking about. As I said earlier, I think the minister is in a whole realm of failed responsibility here and she would do well to get back to answering the questions I asked her about the security checking of people on Nauru or Christmas Island who have not had an answer to their request for visas.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.27 pm)—Senator, I have answered your question to the best of my ability. I have told you I will get further information. If I am wrong, I will say so. I note that that is the third opportunity you have had to indicate your explanation for ringing us after the Saturday phone call, which, as I recall, related to questions of Mr Chen’s personal safety. You were referred to the Attorney-General’s office and given the number of the Attorney-General’s chief of staff. I am not referring to that phone call; I am referring to the other phone call. I note your third opportunity to clear up the matter as to why you were giving advice inconsistent with his legal advice, but I will let that pass. I stand by my advice to you that I have given you the best answer I can and I will get further information for you if it stands to be corrected.

Senator BROWN (Tasmania) (4.27 pm)—I just want to make it clear to the minister, with her smartypants diversion from the questions I was asking her, that it is my right as a senator to request action from her office in a way that I think is reasonable to aid and assist somebody else in getting delayed access to action from her and her officers. She may not understand the analysis of that but that is unfortunate for the minister. I stand by my actions. If she does not see some strategic value in those actions, that is her problem, not mine.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.28 pm)—That is right; I do fail to see the strategic value. A senator has, of course, the right—every senator does; actually, every member of the public does—to ring ministers or public authorities when they believe something ought to be done. Everyone has that right. My point goes to whether a senator is discharging their duty
properly when they make such a call and when they put a proposition which is inconsistent with the legal advice that the person whom they are allegedly ringing on behalf of has been given.

Senator NETTLE (New South Wales) (4.29 pm)—I want to go back to the answer that the minister gave in relation to TPVs. If I understood correctly, she was saying that people who make applications for permanent residency who are currently on TPVs will have that processed within three months. Is that a guarantee whenever a person who is on a TPV makes an application for permanent residency? If somebody is currently on a three-year temporary protection visa and they have got two years to go, my understanding is that they would not normally be able to apply for permanent residency until that had expired. When you were talking about people who have not put in applications yet but, if they did put in applications, they would be assessed within three months, is that only for people whose TPV has expired? If somebody had two years to go, could they put in an application now for permanent residency and have it dealt with in three months? I do not understand why you are saying there are some people in that instance who have their application for permanent residency dealt with in three months. Or do you mean that anyone who is on a TPV and puts in an application for permanent residency will have it dealt with in three months? You used the word ‘some’ and it seemed to be a qualifier. I did not understand who you might be saying would have that opportunity and who would not have that opportunity.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.30 pm)—Let me see if I can help you by putting this in perspective. There are people whose TPV, temporary protection visa, has expired. They have put in applications, as they are entitled to do, to have their matter reconsidered to see if they can get either permanent protection or—in the case of some people who have been through other countries of primary protection and, incidentally, have been able to seek that protection; that is an important point to make—further temporary protection. The on-hand cases are expected to be completed by the end of October. There will be some people who have got current TPVs that have not yet expired and probably because of the time run of the visa are not yet in a position to make that subsequent application. When they make that subsequent application, the expectation is that that will be dealt with, in the primary instance, within three months and similarly by the RRT if they are unhappy with the primary decision.

Senator NETTLE (New South Wales) (4.31 pm)—I think I understood that, but I will just check. You said there are some people whose TPV has not yet expired, and if they put in an application it will be dealt with in three months. I do not understand why you are saying there are some people in that instance who have their application for permanent residency dealt with in three months. Or do you mean that anyone who is on a TPV and puts in an application for permanent residency will have it dealt with in three months? You used the word ‘some’ and it seemed to be a qualifier. I did not understand who you might be saying would have that opportunity and who would not have that opportunity.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.32 pm)—People who are on a temporary protection visa and are not yet able to put in the application for further protection will come to a point where they are able, because of the timing, to put in that application. Because of the agreement, we expect that protection visa claims—not permanent residence claims—would be dealt with in three months. One example that I can think of would be Mr Sisalem, who was the last man on Manus Island. I notice that his cat, which was apparently brought here by some
charity group, has now ticked off. It would not be the only partnership that has broken up once they got where they wanted to be. Mr Sisalem has not had three years on his visa, so he is not yet in a position to make a further application. When he does it will be dealt with within three months.

Senator NETTLE (New South Wales) (4.33 pm)—I have one more question about Nauru. Minister, I heard some speculation on ABC radio this morning from Marion Le, a migration agent, about the possibility of an announcement being made about the people currently on Nauru being brought to Australia. Can you provide us with any more information in relation to that or comment on that speculation?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.34 pm)—Ms Le is a migration agent. She acts very vigorously on behalf of her clients. She, understandably, as every migration agent does, relies on advice given to her by her clients. She does not work in my office, she does not have inside information, and I have not the slightest clue what she was talking about.

Question put:

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

The committee divided. [4.38 pm]

(The Chairman—Senator JJ Hogg)

Ayes.......... 8
Noes.......... 44
Majority....... 36

AYES
Allison, L.F.  Bartlett, A.J.J. *
Brown, B.J.  Cherry, J.C.
Murray, A.J.M.  Nettle, K.
Ridgeway, A.D.  Stott Despoja, N.

NOES
Barnett, G.  Bishop, T.M.
Boswell, R.L.D.  Brandis, G.H.
Buckland, G.  Campbell, G.
Carr, K.J.  Chapman, H.G.P.
Colbeck, R.  Collins, J.M.A.
Cooman, H.L.  Crossin, P.M.
Denman, K.J.  Eggleston, A.
Faulkner, J.P.  Ferris, J.M. *
Fierravanti-Wells, C.  Fifield, M.P.
Forshaw, M.G.  Hogg, J.J.
Humphries, G.  Hutchins, S.P.
Johnston, D.  Kirk, L.
Knowles, S.C.  Lightfoot, P.R.
Ludwig, J.W.  Lundy, K.A.
Macdonald, I.  Macdonald, J.A.L.
Marshall, G.  McLucas, J.E.
Moore, C.  Murphy, S.M.
Santoro, S.  Scullion, N.G.
Sherry, N.J.  Stephens, U.
Tchen, T.  Troeth, J.M.
Vanstone, A.E.  Watson, J.O.W.
Webber, R.  Wong, P.

* denotes teller

Question negatived.

Senator NETTLE (New South Wales) (4.43 pm)—Before the next Australian Greens amendment is moved, I want to continue to seek to understand the issue of how long people’s applications for TPVs will take and see if I have got it right. Every time I think I have got it right, then I do not think I do, so I will try again. Is the minister saying that when people who are currently on TPVs put in an application for a protection visa—not a permanent residency visa—regardless of when that application is made, the government is guaranteeing that it will take three months to make a primary determination on that subsequent protection visa?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.44 pm)—Yes, that is the expressed aim in the act, that is the target, and that is what we intend to do for the first decision
and then three months for the RRT if they get a no. They will not go to the RRT if they get a yes.

Senator Nettle (New South Wales) (4.44 pm)—Thank you, Minister. I understood that to be in the agreement that the Prime Minister announced, but I was unclear as to where that was in the act. So could you point out where in the act it shows that the intention is to make that within three months?

Senator Vanstone (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (4.44 pm)—It is not in the act. It is in a bill that will come forward in August.

Senator Brown (Tasmania) (4.45 pm)—I move Greens amendment (1) on sheet 4619:

(1) Schedule 1, item 1, page 4 (line 9), at the end of subsection 4AA(1), add “and that before a decision is taken to detain a minor, or to continue to hold a minor child in detention, the best interests of the minor must be taken into account and any alternatives to detention considered”.

This is an amendment to ensure that operations like those on Nauru do not exclude people from their rights to Australian law. That is effectively what it does. We have had that debate in this place before on the specific legislation that was designed to cut such people out of their access to Australian law, but I think that should be tested again. It is unfair and it denies refugee seekers their right under international law to be adequately heard in the country which has control of their destiny.

The Temporary Chairman—I confirm that we are dealing with Greens amendment (1) on sheet 4619.

Senator Nettle (New South Wales) (4.47 pm)—This amendment deals with the issue of children in detention. As with all of the Australian Greens’ amendments, we are seeking at this committee stage of the debate to move amendments that have previously been put forward by the member for Koorong, Mr Georgiou. We are moving those amendments that seek to give effect to his private member’s bill rather than moving amendments that represent the Australian Greens’ position on immigration detention. I moved a second reading amendment which outlined the Australian Greens’ policy on immigration detention, which is the abolition of mandatory detention, the ending of forced deportations, the closing of immigration detention centres in Australia and overseas, the abolition of temporary protection visas and returning to a system where people live in the community whilst their claims for asylum are assessed.

That amendment was not supported by the Senate, so now I am moving a series of amendments which all relate to the private member’s bills of Mr Georgiou. They are a series of amendments and a proposal seeking to bring more compassion and humanity to the treatment of asylum seekers. They have previously enjoyed the support of not only the Greens and the Democrats but, I understand, to some degree the Labor Party and also members of the Liberal-National coalition. That is the series of amendments that I will be moving on behalf of the Australian Greens. Our intention is to allow a debate in the parliament about Mr Georgiou’s bill and his position on the way mandatory detention should be oriented. I should say that it was his position before he reached an agreement with the Prime Minister last Friday. That is the intention and that is what this series of amendments does.

The first amendment relates to the section at the beginning of the act which says:
... the Parliament affirms as a principle that a minor child shall be detained only as a measure of last resort ... We talked about this previously and the minister said that it was being put there not for a legal reason but to provide some comfort for people and the assurance that that was the position of the government. We know it is a position that the Human Rights and Equal Opportunity Commission called on the Australian government to take over a year ago. We have passed that deadline, but now we have seen the government move in this direction.

In the original bill that Mr Georgiou put forward, the sentence about only detaining a minor as a measure of last resort continued on. The continuation of that sentence was ‘and that before a decision is taken to detain a minor child, or to continue to hold a minor child in detention, the best interests of the minor child must be taken into account and any alternatives to detention considered’. This Australian Greens’ amendment inserts the second half of the sentence that Mr Georgiou had in his private member’s bill into this act that the government is putting forward. I cannot understand, if the government is accepting a position whereby they only detain people as a last resort—something that HREOC have been calling for them to do for a year—why they are not equally prepared to say that they will therefore ensure that they take the consideration of the children at the first instance to be the determining factor when making a decision about whether they should be detained or how they should be detained.

That is why we are moving it: Mr Georgiou put it forward and the second half of that sentence has been dropped off. I will be interested in hearing from the government as to whether this is an indication that they do not want to make decisions about detention on the basis of the child’s best interests. Does that create legal difficulties for them if they receive an opinion from an expert psychiatrist, for example, saying it is in the best interests of the child that they not be detained? Does that create difficulties for the government? Is that why the second half of the sentence has been dropped out? I do not understand why. We are moving it again to put it in there. If the government would like to explain why the second half of that sentence has been dropped off, it would be greatly enlightening for all of us.

The TEMPORARY CHAIRMAN (Senator Brandis)—Senator Nettle, it appears to us at the table that the next two Greens amendments are part of the same package of amendments. Would you like to move them as well as the amendment that is currently before the chair?

Senator NETTLE—I was going to move amendments (1) and (2) separately, then seek leave to move amendments (3) to (8) together and then move amendment (9) separately.

The TEMPORARY CHAIRMAN—You do not want to move the next two amendments cognately with the amendment currently before the chair, in other words.

Senator NETTLE—No, because this one relates to children and the next one relates to Nauru.

Senator LUDWIG (Queensland) (4.53 pm)—That was a valiant attempt to try to get those together, and I applaud the chair for the effort. I will speak generally first. Senator Nettle, it seems to be your intention to move amendments which were part of Mr Georgiou’s private member’s bills in the other house and which then had different names. The bills never got to the House, as I understand it, though, and were not tabled there. The proper iteration of that is to say that they were draft proposals by Mr Georgiou that might or might not have been tabled in par-
liament, depending on what Mr Georgiou was intending to do. What eventually did happen was that Mr Georgiou and Mr Howard came up with an agreement, which is reflected in the bill that we have before us now.

In relation to the concepts that were included in the Georgiou bills—for want of a better name—the Labor Party has proposed a number of amendments to give effect to our position, a position that we think is better than both Georgiou and the government’s position on these issues. I think it is quite clearly known that getting all children out of detention and out from behind razor wire is one of the main issues that we have been pursuing for some time. Mr Laurie Ferguson, the shadow minister for immigration and the federal member for Reid, has been progressing issues such as removing all children from behind razor wire; establishing an independent inspector-general of detention centres to monitor conditions; requiring the Ombudsman to report on people detained for more than 90 days and on a monthly basis thereafter; guaranteeing independent medical and media access to detention centres; and giving certainty to TPV holders.

That is Labor’s effort in relation to this debate and in respect of our position on the Georgiou bills. We are seeking to bring about a more humane and just detention system, which is something this government seems to have swept under the carpet. On that basis, we say that our amendments, which I will not go into in detail now but which I foreshadow we will be moving in this debate, are a better position—with all due respect—than Mr Georgiou got to. His bills never actually got to the parliament in any event, because he was waylaid en route. He did not get to the position of progressing the bills that he had been waving about.

We prefer our position—and the amendments that we intend to move—to Mr Georgiou’s, which I understand is represented by the Greens amendments today. We are not in fact meeting the Greens amendments as such but are meeting Mr Georgiou’s amendments, which are being progressed by the Greens. The Greens are not suggesting, of course, that they are representing Mr Georgiou or presenting the amendments on his behalf, and I do not take that to be the position, but it seems a strange way of progressing in any event. Be that as it may, we are not going to support this amendment, on the basis that I have outlined.

The position we have adopted and the amendments we have are in principle much better than what is reflected in the amendment that we have before us. We support the principle that is contained in the Greens amendment we have before us, which is that we should ensure that children are not detained. Ours is a better iteration of the substantive issue. It is preferred. We think it is more concise and goes to the actual point itself. Therefore we will not be supporting this amendment that the Greens have put forward this evening.

Senator BARTLETT (Queensland) (4.58 pm)—Just for the record: the Democrats are happy to support this amendment. I think there will be a few amendments coming forward over the course of this debate that are derived from what are being called the Georgiou bills. The Democrats’ view—as it has been on a whole range of legislation and amendments across a range of areas over many years—is that, if an amendment moves something in a better direction and gets it closer to what we believe is a desirable outcome, then we are likely to support it. Therefore we support this.

Without pre-empting debate on the Labor Party’s amendments relating to children, I
think both of them are slightly problematic in a best case scenario in that the Democrats’ view is that the principles surrounding detention should be ones that move away from mandatory detention, ones that move away from the inherent problems of indefinite detention, tacking on special arrangements to soften the position for children and families. Aligning it to an existing regime that is fundamentally flawed is understandable and we support that, but I think the core point needs to be made—whether in this amendment or in future ones—that the Georgiou bills themselves were a compromise, in my view. It may even be the case—I cannot speak for Mr Georgiou—that he assessed them as not necessarily going as far as what he thought was ideal, but as far as what he thought would be reasonable for the government to accept. That is a bit of speculation on my part but, certainly from the Democrats’ point of view, the bills themselves were compromises. Obviously, the agreement that Mr Georgiou and his supporters chose to make with the Prime Minister was, again, a compromise on that compromise. It is still a step forward and therefore worthy of some plaudit, but it is still short of what needs to happen.

To avoid repeating myself throughout this debate, the Democrats will support amendments linked to the Georgiou bills, despite the fact that we believe the Georgiou bills themselves fell short of what was needed. Anything that moves us forward is desirable and this amendment does that. The real problem of setting up special arrangements probably goes more to Labor’s amendments regarding just children and families which, to some extent, is inherent in the subtext of the bill before us as well. It potentially creates a perception that detention is okay for adults but not for children. I know that is not what this amendment suggests. I do not seek to portray it that way, but prolonged detention is damaging to everybody and we need to re-emphasise that. The Democrats do not oppose immigration detention per se, as long as it is properly defined, has the rule of law surrounding it, is not long term and is not indefinite—unless there are clear health or security risks to the community. In relation to all such amendments that will come forward throughout the day, the Democrats are willing to support them.

I should emphasise, as I suspect is the position of some others in this chamber, that we are not wanting to put ourselves or the chamber in a position where we are being accused of stopping legislation passing and keeping people behind the razor wire. If the government refuses to accept these amendments in the other place then that would certainly inform our position, were the bill to come back here. But, as it is appropriate for the Senate to put forward improvements to legislation and ask the other chamber to consider them, in that context we would support this amendment.

Senator Nettle (New South Wales) (5.02 pm)—I ask the minister whether she has any explanation—there may not be one—that she can give the chamber about why the second half of the sentence in Mr Georgiou’s bill had been dropped from the final agreement that had been reached by Mr Georgiou and Mr Howard.

Senator Vanstone (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (5.02 pm)—No, there is not. Question negatived.

Senator Nettle (New South Wales) (5.03 pm)—On behalf of Senator Brown, I move Greens’ amendment (2) on sheet 4625:

(2) Schedule 1, page 4 (after line 28), after item 5, insert:

5A Subsection 5(1) (after paragraph (e) of the definition of migration zone)
Add:

and (d) any Australian-funded, controlled and operated detention, migration or refugee centre, whether operated by Commonwealth employees or on contract and wherever situated;

This amendment, again, relates to the immigration detention centre on Nauru and the intention, as with the previous amendment that Senator Brown moved, is to lead to the closure of the detention centre on Nauru. The last amendment sought to do it by focusing on a memorandum of understanding between the Australian government and the Nauruan government. This amendment seeks to do it by saying that

... any Australian-funded, controlled and operated detention, migration or refugee centre, whether operated by Commonwealth employees or on contract and wherever situated ...

but run by the Australian government would be subject to the requirements of the act, which clearly is not the case.

The detention centre is obviously in another country; it is not subject to our legislation or our Migration Act. This amendment says that where it is an Australian funded, controlled and operated immigration detention centre—so essentially an immigration detention centre being run on our behalf—it should be subject to the legislation. It is a different way of expressing our view that we do not support the immigration detention centre on Nauru. We believe that it should be shut down. This debate is somewhat similar to the one we had on the first amendment that Senator Brown moved; it is just another way of achieving the same outcome.

Senator LUDWIG (Queensland) (5.05 pm)—The opposition does not support this amendment. The amendment seeks to add:

and (d) any Australian-funded, controlled and operated detention, migration or refugee centre, whether operated by Commonwealth employees or on contract and wherever situated.

It seemed to be the case that if the first amendment did not get up then this is another way of trying to achieve the same outcome. It appears, although I do not think they are quite that alternative in nature, in any event; they seem to do and can do different things. But Labor has indicated that, in terms of the excise of offshore processing, it is not a matter that we are going to revisit during this debate. There has been debate with respect to that issue and it has been determined that there is in the Migration Act 1958 the ability to have excise offshore processing. Therefore, we will not use the bill currently before us as a way of revisiting that issue. There is no doubt that, in terms of the Pacific solution, we have stated that it is the wrong solution and that it should end. It is certainly within the government’s purview to bring that situation to an end and to bring it to a conclusion as soon as possible.

In terms of this particular amendment, as I said, we are not going to reopen that issue in this bill. We do not know what was in the minds of Mr Howard or Mr Georgiou when they came up with their final solutions or whether there are any further agreements that might be pending or any further legislation that may be in the tube, so to speak, that might come down between Mr Howard and Mr Georgiou. We can only deal with what this amendment seeks to do in respect of the outcome of that particular negotiation, no matter how poor we think Mr Georgiou might have been in agreeing to so little in terms of where he started the debate. That matter in itself is a debate not for a committee stage, in any event, and we have made our position plain about those issues. Labor do not support this amendment for the reasons that I have articulated. (Quorum formed)
Senator BARTLETT (Queensland) (5.10 pm)—I understand Labor is not supporting this amendment, so this is probably academic, but I do wonder what sort of legal effect it would have given the amazing ability of the Department of Immigration, Multicultural and Indigenous Affairs to interpret words in a particularly unique way. The principle behind the amendment is one the Democrats support very strongly. In effect, it is one the opposition has supported in supporting all of the remaining people on Nauru being brought to Australia, which is the subject of a motion which passed this chamber earlier this week.

But the amendment seeks to bring the operations of Australian funded and Australian controlled and operated migration centres—detention centres—under the scope of the Migration Act. There are potentially problematic aspects to it, I suppose, if you want to speculate on all the different ways it might apply but, obviously, we support it in the current context of Nauru. It is often not realised that the detention facility on Nauru is completely outside Australia’s law, despite the fact that it is funded at massive cost by the Australian taxpayer and has been for over 3½ years. Despite the fact that DIMIA officials are doing all of the assessments of people’s claims there, they are doing so outside the operations of the Migration Act.

Indeed, if you needed a clearer indication of this reality, I note the correspondence from the Minister for Immigration, Multicultural and Indigenous Affairs to the Joint Standing Committee on Migration. I am a member of that committee and have been for quite some time. That committee expressed an interest in going to Nauru to see the facilities there and potentially meet some of the people detained there, and it wrote to the minister about that. One would think that would be a perfectly reasonable request—the committee was established to oversee migration issues and the operation of the Migration Act and to consider annual reports by the Department of Immigration, Multicultural and Indigenous Affairs.

The minister’s response firstly continued to insist that it is not a detention centre but a processing centre—that is another one of those lovely euphemisms we have. Secondly, her response said quite clearly that the committee reports on regulations made or proposed to be made to the Migration Act and the activities within the centre on Nauru do not fall within such boundaries. That is true: it does not fall within the Migration Act at all. As I said, it does involve DIMIA officers doing quite a lot of work on a lot of cases over a long period of time, assessing, reassessing and reconsidering.

All of that activity operates completely outside the Migration Act. That has been used as a reason by the minister to say that it is nothing to do with the parliament’s migration committee. In my view that is quite bizarre, because DIMIA’s annual report, and output 1.5 that we consider in estimates—from memory it is output 1.5, having sat through it so many times—deal specifically with Nauru and the department of immigration’s responsibility on Nauru. But all of that happens completely outside the framework of the Migration Act.

Regardless of what you think about all of the issues to do with this policy, I would suggest that that is not the best approach to regulating the activity of Commonwealth officers, because there is no regulation at all. It is completely ultra vires. It is outside the act, and therefore so are the actions, decisions and processes—everything that happens. There is no scope for people to respond to those administrative decisions through any form of process other than pleading back to the department, and that is what has been happening.

CHAMBER
We have seen again in recent times a few more people get visas after people have re-
submitted more information, made extra
pleas and pointed out inconsistencies in ear-
lier decisions. It should not have to take that.
If there were any scope for independent or
judicial review of those cases, or any scope
for oversight of those cases outside of the
department, those people who are being
freed now after 3½ years would have been
freed long ago, in my view. I think that is
highly unsatisfactory. It is an example of
why it is such a dangerous precedent and
such a dangerous situation. It is perpetually
to the shame of the Labor Party that they
supported this set-up in the first place back
in 2001, though they have now contracted
their position back down to Christmas Island,
which I suppose is an advance of sorts.

I really cannot pass up the opportunity to
emphasise to people that we have a whole
cell of activity conducted by Commonwealth
officers, through a Commonwealth depart-
ment, scrutinised by estimates and reported
in an annual report of that department, which
is completely outside our legal jurisdiction—
so much so that the minister’s reply to the
committee which one would think would
have a special interest in this was, ‘It’s noth-
ing to do with you guys because it’s nothing
to do with the Migration Act.’ That is a ri-
diculous situation but that is what we are
faced with. It is important to emphasise that
each time.

As senators may know, I have visited
Nauru and the processing or detention centre
there three times over the years. I do not
think a member of the government has done
that even once since the early days of the
facility when the former minister, Mr Rud-
dock, went there. I think that is an indictment
in itself. When you are trying to find out
what the status is of cases on Nauru, you
once again fall into one of those magical Al-
ice in Wonderland sorts of conversations that

People interested in some of the magical
elasticity of language in this arena might care
to consult the transcripts of the Senate esti-
mates hearing of the evening of Thursday, 26
May—right near the end of that hearing—
and read some of the extraordinary descrip-
tions of the status of these people’s cases or
non-cases or non-status that were tossed
around. Whatever you think about this par-
ticular area of policy, border control and eve-
rything else, that is not a way to oversee the
activities and decision making of Common-
wealth officers. To just grab people and stick
them outside in some legal shadow land is
not a way to regulate immigration activities.
The Democrats will continue to call at every
opportunity for that situation to be ended not
only to get the people there off the island,
because they have suffered so much, but also
to end the whole sad and sorry saga. It is a
particularly appalling precedent and, every
day that it is allowed to operated—at a con-
tinuing large expense—the longer that
precedent survives.

The number of asylum seekers left on
Nauru is, I think, down in the thirties now
and the number of employed staff through
the facility run by IOM is in triple figures.
When I was there last I was told that there
were about 80 local people employed and
international officers from OIM put it over
the 100 mark. That is a hell of a lot of money
to spend to look after a small number of peo-
ple. The only reason that we are keeping
those people out of here is to keep them out-
side any legal rights, and I think that is a
pretty sad state of affairs. We strongly opposed the decision at the time and we will keep opposing it. One day this situation will end—and the sooner the better. This Greens amendment will not make it happen. It might if it were passed and became law, but it is not going to. We support it anyway because of the reasons that I have outlined.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (5.19 pm)—I want to respond briefly. This bill is not about Nauru. Nauru is another country. The people who are there do not have legal rights in Australia. So, by virtue of them being there, it is not correct to say that they are denied the legal rights that they have. They did not get here, so they do not have them. If they had got to Australian soil they would have them, but they did not. That is the whole point. It is not the case that people who are roaming on the high seas are entitled to nominate the country that hears their protection claim or, for that matter, to nominate where the protection will be offered.

Senator BROWN (Tasmania) (5.20 pm)—I will not go right over this debate again, but one cannot allow that to stand. As the minister knows, these people were picked up under Australian government direction and, despite their wish to come to Australia, were directed to another country where this camp, which denied them their legal rights under international law, was established. This Greens amendment is to correct the government’s abrogation of its obligation to the folk who are in detention on Nauru by the artifice of the Howard government.

Question negatived.

Senator NETTLE (New South Wales) (5.21 pm)—I move Greens amendment (2) on sheet 4619:

(2) Schedule 1, page 5 (after line 3), after item 6, insert:

6A At the end of section 36

Add:

Protection visa to permit holder to remain in Australia permanently

(8) A visa issued under this section shall permit the holder to remain in Australia permanently, despite any other provisions of this Act or of the regulations.

This amendment seeks to abolish temporary protection visas. We have already had some discussion today about temporary protection visas and the way in which they are discriminatory and limit access to particular services within the community for people who have been found to be genuine refugees.

Concerns have been raised by groups such as the Refugee Council about the way in which the temporary protection visas that exist in Australia do not comply with our treaty obligations under the 1951 refugee convention. They highlight a number of sections in that refugee convention. One of those sections is article 31, which reads:

The contracting States—including Australia—shall not impose penalties on account of their illegal entry ... on refugees who, coming directly from a territory where their life or freedom was threatened ...

People who access temporary protection visas and who have come to Australia unlawfully but are found to be genuine refugees are given a legally sanctioned form of discrimination in which they access a form of visa that gives them less access to services and entitlements than a refugee who has come here by other means—not by unlawful means—has had their claim for asylum assessed and has also been found to be a genuine refugee. That is one of the concerns raised by the Refugee Council about the way in which our international obligations are not
being met by these temporary protection visas. Another part of the refugee convention that the Refugee Council point to is article 28, which requires contracting states such as Australia to ‘issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory’.

People on temporary protection visas are not able, as it currently stands, to get travel documents to travel outside Australia. That is a concern raised by the Refugee Council about another part of the convention, article 28. They believe—and it seems so to me, simply by reading it—that our temporary protection visas mean we do not meet those obligations. The council raise another area of concern: the requirement that refugees undergo periodic re-examination of their status as refugees is contrary to international practice and to the spirit of the convention. The Refugee Council have pointed out those three ways in which they believe we are failing to meet our international obligations under the refugee convention.

As we know from people who deal with refugee advocates, temporary protection visas also put a tremendous amount of pressure on advocates in the community who are supporting people on temporary protection visas. Those refugees are not able to access services, such as English language services or whatever service it may be. A tremendous amount of pressure is put on people who are providing refugees with the support that the Greens and others believe the government should be providing them. They have been found to be genuine refugees. We think they should have access to entitlements and services that enable them to be a part of the community. When they are not, it puts tremendous pressure on people who are supporting them and providing them with those services, including access to English language services.

Several years ago I worked in a centre that provided free English classes for people, but it was not allowed to provide them for people who were temporary protection visa holders. As workers in that particular community centre wanted to provide free English classes for people with temporary protection visas, it had to be done at a different time. It could not be done under the entitlements that we had to provide those English language classes because it was outside the sorts of services that holders of temporary protection visas were able to access.

Another issue about temporary protection visas is that, by their very nature, they are temporary, which means they do not provide any certainty for people who have been assessed to be genuine refugees—to know that they can rebuild their lives, start to develop long-term relationships, put down roots in the community and become responsible civic members of their community because they are going to be there for a long time. They cannot do that with the uncertainty of a three-year temporary protection visa. Studies have been done about the mental health implications of temporary protection visas where that lack of certainty exists. One study that I am aware of was carried out by Greg Marston from the Centre for Applied Social Research at RMIT, entitled Temporary protection—permanent uncertainty: the experience of refugees living on temporary protection visas. Social researchers, psychiatrists and other health individuals have looked at a number of studies of the ongoing uncertainty for people on temporary protection visas.

There were comments earlier about part of the agreement being that the government had agreed to assess people’s claims for protection visas—for people who are on temporary protection visas—within a limited period of time. That strikes me as an acknowledgment that there are difficulties in the uncertainty provided by the temporary protection regime.
and that the government have sought to reach some compromise to ameliorate the concerns of members of their own party and people in the community about that uncertainty. I would be interested to know whether the government see it that way—as an acknowledgment of the difficulties that exist for people who are on temporary protection visas. The minister indicated that, whilst the government have given commitments about the period of time in which they would assess people who are on TPVs and are then seeking other forms of protection visas to be assessed within a period of three months, it is not in the legislation.

For all those reasons, the Australian Greens do not support temporary protection visas. Clearly, that was the position of Mr Georgiou in drawing up the private member’s bill. That is where the amendment comes from. It is an amendment that the Greens support and it is clearly supported by the writers of the private member’s bill, so I commend it to the Senate.

Senator LUDWIG (Queensland) (5.28 pm)—In summary, with respect to the amendment moved by Senator Nettle, the government’s position provides no certainty. That is how I understand the bill before us. The Georgiou bill—if I may use that terrible expression—seems to say no to the idea of TPVs. Labor has a position which we will seek to explain later. I will not go to the detail of it but I foreshadow that we will move an amendment. It provides a clear-cut position. Therefore, Labor is not going to support the amendment that the Greens have moved. It attempts to abolish the use of TPVs. Labor understands that the use of TPVs in certain circumstances can be beneficial, but there are a number of provisos—not with what this government is going to do with them, though. The Labor Party says that in the way that you deal with those visas, you can also fashion certainty and ensure that they are a useful device for certain categories.

Labor’s amendment in relation to the TPVs, which we will debate later, would allow those applicants with short-term needs to be granted a TPV. For those with long-term needs, where protection is no longer required, Labor would offer better alternatives, as we have indicated, such as permanent residency. The Labor amendment provides certainty. I will not go to the detail of that now, but it would provide certainty to the detainees and fairness to the system. Of course, that does not rule out the issue of where Labor would allow TPV holders to access settlement services, including English language training and the Job Network. Determining what their needs might be really depends on the circumstances of the TPV holder in that instance—the circumstances of the person and their family, their position and how they arrived in this country.

Saying there should be no TPV does not provide the range of mechanisms that might be available to ensure that fairness and equity are provided and that, in those cases, people can be treated, in respect of their circumstances, in the way that they may wish to be treated. Therefore, the Labor Party is not minded to support the amendment moved by the Greens. Of course, as I said, one of the other issues is that there are circumstances where the type of outcome granted will really go to what is presented. We have to keep that in mind. However, I think the Greens have got the government’s position right, and I can agree that it is clear that the government does not provide any certainty.

Senator BARTLETT (Queensland) (5.32 pm)—I need to put the Democrats’ position on the record. This is one amendment that we very strongly support. The introduction of temporary protection visas is another major blight on this chamber. Frankly, it is a
major blight on the Labor Party, and it is astonishing that they still have not figured out that they should reverse that position. The Democrats, via me, moved to prevent the introduction of these visas on 24 November 1999. I think it is fair to say that most of the things that we predicted were wrong with them and the problems they would cause have been shown to have come to pass. It is an important issue. It clearly will not get up this time. I guess Labor’s current policy is slightly better than the existing law, but the fact is that temporary visas are iniquitous for a refugee.

People have been mentioning those who have recently arrived from Nauru. After all that time on Nauru, they get here, which is great, but they have a temporary visa and, after all the trauma they have been through, with the added extra trauma for many of them, they have to spend more years wondering what their future holds. One of the men who arrived here from Nauru just a few weeks ago is married with children but has not seen them since 2001 and will not be able to see them for at least another three years. In my view, there is no justification for that.

I take the opportunity to briefly outline the history of this. Temporary protection visas were initially a One Nation policy, released in mid-1998, that argued that refugees should only be given temporary protection. At that time, the then immigration minister, Minister Ruddock, responded: ‘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 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.’ Former health minister Michael Wooldridge, in a speech he made launching a GP’s manual on refugee health, said that this policy created ‘uncertainty and insecurity’ and it ‘is one of the most dangerous ways to add to the harm’. He said:

We must not and will not turn our backs on those who come here for refuge.

I do not use those quotes to try and score political points. I use them to highlight what was blatantly obvious until we got these extraordinary blinkers put on. It is one of those examples of the emperor’s new clothes phenomenon that seems to inhabit this area—people seem to be capable of blinding themselves to immense suffering that is a direct consequence of this measure. All of those problems and more are a direct consequence of it. Until it is removed from our laws, it will continue to cause immense suffering. As Senator Harradine, who we have all been praising this week, said in the disallowance debate to the motion I moved in 1999, ‘The worst aspect from a supposedly pro-family government is how it quite deliberately splinters families.’ That in itself adds enormously to the stress of people.

Think back to how long ago the Tampa and that election was. These people have still not been able to move on from the trauma they experienced and fled from way before that time. It seems like a different world to us—pre 2001, pre September 11, pre-Tampa—but they have not been able to move on from that different world, because their direct connection with that trauma is still there and is unable to be resolved, and temporary protection visas play a key part in that. That is why it is so offensive to the Democrats. To require people to re-prove their refugee status is very iniquitous. It is also, I might add, extraordinarily inefficient administratively. This is a policy that damages Australia.
Putting the damage to refugees to one side for a minute, there are people here in the community—and we have seen that the vast percentage of them have stayed after they have received further protection visas—who have suffered trauma and the deliberate denial of access to services, such as English language classes and family reunion. These services have been denied to people who are going to be part of the Australian community anyway. Why would you do that? As this minister quite rightly points out from time to time, we have actually done a good job in assisting refugee settlement—better than many other countries in the world—because we recognise that it is in our interests, once people are in the community, to help them settle. Why the hell would you make it harder for them? Because it sends a message or something?

It is such a counterproductive policy on so many fronts. There is the extra administration of having to reassess thousands of visas again. Consider all of the numbers that went up through the Refugee Review Tribunal with very large overturn percentages in some categories. It is so inefficient. It is so much trauma. There is all of the extra hassle for the minister and her staff. I would have thought she would have liked to have less of a burden and workload in this area. Think about all of the advocates who have to spend their time hassling the minister and the government about all the individual cases. We all know how much time and energy that takes up—it is so inefficient.

The main impact that it had was to dramatically increase the number of women and children who came here by boat as well. Now the circumstances have changed and that is a good thing. There is a whole range of reasons for that and we have different views in this chamber about why they have changed. But I do not see any evidence that the temporary protection visa is part of those reasons. People still kept coming; the only difference was the women and children came in much larger numbers, which was why so many women and children drowned on the SIEVX when it sank.

There are other factors that have led to them stopping. Some of the factors I support, some of them I do not. The simple reality is that temporary protection visas generate extraordinary suffering to people who have already suffered a lot. They are very inefficient in an administrative sense. My view is that they are bad law on a whole range of fronts. It is important for us to take the opportunity in this debate to make those points. This is probably one of the more critical amendments to try and keep pursuing. It will not get up this time around but it is a reminder as much to the Labor Party as it is to the government.

The government has moved in response to public pressure. I have found in talking to people around the country that, more and more, they have identified temporary protection visas as an unjust aspect of the system that is causing unnecessary suffering. It is an area where I would encourage people to keep the pressure up. We have seen the government shift in response to public pressure, and that is good. It is good that the government is listening and it is good that it is moving. We are going to keep the pressure up from the Democrats side of things and encourage people in the community to do so too because they have obviously got work to do on the Labor Party as well. That job will probably take a while longer, I might say. It is a job where people should not lose energy until this is expunged from our laws.

This is one example that I often cite of a policy that was specifically and consciously designed to generate suffering. To do that towards people who have already suffered so much makes it particularly appalling. It is
one issue that I signal that we will continue to push strongly on. I encourage the public and those within the various parties here to do so too. This was originally a position of Mr Georgiou’s and I am sure that he would still like to move to that position eventually. I am sure there are others in his party who would think that way. I know that there are others in the Labor Party who think that way. The Democrats and the Greens think that way. Brian Harradine thinks that way and there are many in the community who think that way. So people need to keep pushing for it. They should not feel that the debate is over now, because until the injustices that are inherent in the law are removed then inevitably the injustices that it inflicts on people will continue.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (5.41 pm)—Firstly, I am very proud as is every member of this government—to be a part of a government that has taken every possible step to ensure that the boats do not continue to come. In particular we want to ensure that boats like the SIEVX do not continue to come so that people do not lose their lives. That was just one of the consequences of leaving things as they were and allowing the boats to continue to come.

Secondly, we are very proud to be part of a government that has consistently, certainly since we have been in government, been in the top three countries that offer resettlement to people most in need. I believe this was the case under previous Labor governments as well but I have not checked. If we want to talk in the compassion stakes about where my heart lies first, it is with people in refugee camps who do not have running water or power. I will always take every step I can to give them preference over people who have enough money to pay a crim, spivvy people smuggler. I am very proud to be part of a government that does that.

Thirdly, the UNHCR is not of the view that people who have to flee their homeland for whatever terrible reason are best to leave and stay away forever. Amongst people who are genuinely interested in refugee issues, as opposed to using them for political point scoring—I do not include you in this category, Senator Bartlett; I understand that you have a longstanding committed view with respect to these temporary visas—the primary aim is to settle whatever hazard there is so that people who have had to flee can go back. That is the primary aim: that people can restore their lives as they were and, if they cannot restore their own lives, they can at least contribute to restoring a portion of their country, or their whole country, if that is at risk. So, bearing that in mind, I do not see a problem in offering people protection for as long as they require it. That is Australia’s position. Anyone here who needs protection will get it. If they need continuing protection they will continue to get it, but we will continue to offer permanent visas to those people who come from offshore lawfully and are stuck in refugee camps. We will always give them priority.

The business of government is not easy. I remember being in opposition, thinking getting into government was going to be the greatest thing since sliced bread. I think I still do think that, but it was not quite the sort of sliced bread that I might order. Dame Margaret Guilfoyle said at one of our conferences once that education teaches but responsibility educates. There are frequently decisions to be made that are not easy. Government is not about saying: ‘Here are three easy choices. Which one would you like?’ Here’s the lucky dip; you’ll always get a prize.’ It is frequently about choosing to give priority to competing principles, when you would really like to have both but the cir-
circumstances will not allow you to give equal weight to them. You are forced to make a choice. Or you are forced to make a choice between policy alternatives, and you do not want either of them but you have to have one. Or you are forced to choose between alternatives when you want both of them but you cannot have both.

Government is not about the luxury of writing on a whiteboard what is the ideal world; Mrs Ros Kelly’s sports rorts put aside. It is not about the luxury of sitting in academia and saying, ‘What would be ideal?’ It is about what must be done in the national interest at this time and what is fair. Senator Nettle, I understand that you have this long-standing view. I would not even call it a begrudging admiration that you continue to raise it, provided that you accept that other people have, legitimately and fairly, a different view. I have that and this government has that.

Senator Nettle (New South Wales) (5.45 pm)—The minister was speaking about giving permanent protection to people who come via offshore processing and temporary protection visas to people who come via other means, who come unlawfully. Does the minister believe that Australia is complying with its obligations under the refugee convention, which talks about not discriminating against people—in relation to the kinds of protection visas they get—on the basis of the way in which they have arrived; for example, if they have arrived illegally? I raised before the concerns that the Refugee Council has. Does the minister want to inform the Senate of whether the government shares those concerns in relation to our obligations under the convention? I also asked previously about the changes that the government has made to temporary protection visas. To me, they—and the commitment to make assessments within three months—seem to be an acknowledgement of the uncertainty that is provided for people on temporary protection visas. Am I correct in making that assumption?

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

The committee divided. [5.51 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 7
Noes............. 38
Majority........ 31

AYES
Allison, L.F. Bartlett, A.J.J. *
Brown, B.J. Greig, B.
Murray, A.J.M. Nettle, K.
Stott Despoja, N.

NOES
Bishop, T.M. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Carr, K.J.
Chapman, H.G.P. Colbeck, R.
Collins, J.M.A. Coonan, H.L.
Crossin, P.M. Denman, K.J.
Ellison, C.M. Ferguson, A.B.
Ferris, J.M. * Fierravanti-Wells, C.
 Fifield, M.P. Hogg, J.J.
 Humphries, G. Hutchins, S.P.
Kirk, L. Knowles, S.C.
Ludwig, J.W. Lundy, K.A.
Marshall, G. Mason, B.J.
McLucas, J.E. Moore, C.
O’Brien, K.W.K. Patterson, K.C.
Ray, R.F. Sherry, N.J.
Tchen, T. Troeth, J.M.
Vanstone, A.E. Watson, J.O.W.
Webber, R. Wong, P.

* denotes teller

Question negatived.

Senator Ludwig (Queensland—Manager of Opposition Business in the Senate) (5.54 pm)—I move opposition amendment (1) on sheet 4623:

(1) Schedule 1, page 5 (after line 19), after item 9, insert:

9A After section 194
Insert:

194A Independent medical access etc.

The Secretary must ensure that independent medical professionals and media representatives have access to a person detained under section 189 or 196.

This Labor amendment guarantees independent medical and media access. It will allow independent medical assessment and treatment for detainees by giving medical professionals access to detention centres, and it will allow media access. Unfortunately, the government’s claims that they provide a fair and humane mandatory detention system do not extend to the health of detainees. That has certainly been evidenced by the treatment by Ms Solon and Cornelia Rau. It may also be evident in other cases which have not yet come to light.

The government’s Migration Amendment (Detention Arrangements) Bill 2005 does not address the need for independent medical professionals to access detention centres. This omission is a clear illustration of this government’s lack of commitment to preventing further cases like the Rau case. When a government detains a person, for whatever reason, whether that detention is just or unjust, the government becomes responsible for that person’s health and well-being. There is no argument about that; that seems clear. Even murderers and other people in prisons have a right to adequate health care. Independent medical access will allow medical professionals to assess and recommend treatment for detainees. A number of detainees have had seriously mental health issues and it seems that provisions relating to independent medical assessment will ensure better monitoring of health, psychiatric services and better treatment.

We have all heard some of the sadder stories about children in particular in need of psychiatric care or other types of counseling. We have heard stories of abuse that have not been investigated. I am sure many here would have referred to the HREOC report dealing with cases of children in detention. From reading some of the stories that are contained within that, and its recommendations, it is clear that some of the most shocking things that you could imagine have gone on. The case of Cornelia Rau brought that to the public’s attention. It shocked the Australian public. We must deal with the underlying faults in the system which caused that person to be locked up. We must also ensure that people who are detained have access to decent health care, because it is in fact a right all Australians enjoy—although it seems to be a right that has not been extended to detainees in every instance. It is a basic right; it is not a privilege that should be granted to detainees only if the government wants to provide it.

Currently, the parliament must order the Secretary of the Department of Immigration and Multicultural and Indigenous Affairs to allow detainees access to independent medical professionals. It is clear that the physical and mental health of detainees has been neglected. That is what the Palmer report, if it ever sees the light of day, will demonstrate, I am sure. Whether the government will act on it is another issue altogether. But detainees must have the right of access to independent medical professionals as soon as they need it, not when the government thinks that they need it and not after the approval of a bureaucrat. Bureaucrats are not doctors; nor are they psychiatric assessors.

This amendment will also allow media access. The current policy of treating detention centres as though they are some kind of prison camp to which people are sentenced without right of communication must end. People in detention centres are not criminals. They are unlawful noncitizens being detained by the Australian government. That is
their status. They have the right to be able to speak and associate within the limits which the government sets in terms of their status as unlawful noncitizens. But those limits should not extend to the denial of the right to communicate. Media scrutiny and detainee access to the media are independent safeguards against the various abuses that have been unveiled. As every bureaucrat knows, the media being there is akin to someone ensuring that you treat people well. If you hide things away and allow no scrutiny and no independent check, then you can never be sure that people will not abuse the process.

The media are not always going to be in those places. But the ability to ensure access and the thought that the media can have access acts as a terrific deterrent and ensures that people do behave within reasonable bounds. I think that has been demonstrated across the board in a range of areas, not only in this one. It is also the case that, by involving the media in these issues, whilst one cannot say that what happened to Vivian Solon, Cornelia Rau and those 200 other cases would not have happened, the bureaucracy and the media have the ability to ensure—do their very best to ensure—that those issues are exposed. If they can be prevented then this is one more way of ensuring that prevention can occur. I put that to the government and seek support from the minor parties.

**Senator VANSTONE** (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (6.00 pm)—I will respond briefly. I understand what Senator Ludwig is saying but I do not agree, for the following reason. In effect, the way the amendment is drafted, I am advised, really makes detainees objects. There is no requirement that a detainee ask to see anybody, whether it is the media or medical staff. The requirement is only that those people have access. What is to stop any TV station or radio station saying, ‘I want access as per the act,’ then marching in and filming people who are going about their daily lives? Despite the fact that they are in immigration detention, they are still, in my view, entitled to a degree of privacy. The amendment as drafted at the moment overrides the right of detainees to decide what is appropriate for them.

It is not just that alone. Let me go to the point about who might then want to take advantage of this. I can assure the Senate that there are times when members of various groups such as Circle of Friends and others—and I am confident they believe they are doing the right thing—get an email message telling them to ring the minister’s office that day and say a particular thing about somebody. A good number of these people have never met the person. They are just part of a campaign. That is a perfectly legitimate exercise for people to engage in, but it takes an enormous amount of time. This amendment gives potential for people who do not have a specific interest in individual people to just show up and turn immigration facilities into something that I do not think any of us would want them to be.

As to the media, there have been times when, in my view, the department has perhaps been a bit harsh in terms of exclusion. That is why I have arranged for a number of opportunities for the media to visit. Certainly they had a visit to the residential housing project. I think Mr Skelton was refused access. I will let him speak about the circumstances in which that happened, but it is my understanding that he did not indicate that he was there at that time for the purposes of an interview and he did in fact conduct an interview. These people are not social museums or political opportunities for people to take advantage of. Nonetheless, even if Mr Skelton did make that mistake—that is my under-
standing of what he told me and he will obviously have something to say if I have got that wrong—for one reason or another, anyway, he was deprived of access to Baxter. He approached me, I said that that was not my view and he was given access to look around.

It does not matter who you go to in the gallery, they do not always get it right. I think of Mr Skelton’s recent article asserting, as it is so easy to do from under the cloak of anonymity, that he had been told that Mr Palmer had approached the government twice with two quite serious matters. I would have thought one of them, at least, was quite a serious matter of concern. The first matter was that he was not getting cooperation from the department. That is the serious one. The second matter was that someone in the department said that the inquiry would only take three weeks. That is a bit less serious because, frankly, what someone in the department thinks about how long it will take is almost irrelevant. Neither of those conversations took place. This is confirmed not only by me but also by Mr Palmer. Yet someone reading the Age would believe that to be the case.

I believe we need an independent and free media, but I do not believe that we should put our trust in them. They get it wrong as everyone else occasionally gets it wrong. I do not see them as the great protectors, always, of our freedom. In fact, I think that bad reporting damages the parliamentary system and the parliamentary system is in fact what protects our freedom.

Senator LUDWIG (Queensland) (6.05 pm)—The minister has been helpful in talking at least about media access, but the amendment went a bit broader—it went to medical access as well. I am sure she intended to answer that as well in her reply. I think she raised the question of providing a filter in the process because unlimited medical or media access might be unwarranted and might create a system where busybodies can come in. The amendment goes to the media as the people who are controlled.

The other question, in terms of asking for permission, is who would grant that permission. I see we are going to have a bit of a challenge on our hands in respect of this issue. Who would grant that permission and at what level would the bureaucracy grant that permission? Would it be the minister herself who would be the filter in that process? I will go through that again so that the advisers can understand that question. She might want to come back to it. There is also the issue of responding to the medical part of the question in the motion that we have moved. The minister has responded only on the media issue. In the answer she gave, she indicated that, in the government’s view, it would not be a question of condoning access on any basis; there should be some filter, such as someone to grant the permission.

Our response to that would be: who would be the person who would give permission? At what level would they get permission? In other words: at what bureaucratic level would the person be who would provide that filter? We do not want—and this is clear—to have a situation where all that happens is that another filter is put in that filters out everybody except those favourites that are wanted in certain circumstances and in only certain places, because if that were the case we would just be right back around to where we started.

The Labor Party is not pursuing a situation where busybodies could pursue issues on behalf of a person. Busybodies might want to come in and visit detention centres; that is not what this is about. This is about ensuring detainees have access to services for their medical needs and that the media
have access as well. Both of those issues go (1) to their health and wellbeing and (2) to ensuring that there is no ability to hide behind the detention facilities or to hide people in those facilities away from public scrutiny and examination of how this bureaucracy has treated those individuals.

Again, I will mention that HREOC report. It highlights where adequate media involvement would have, in my view, gone a long way to preventing some of the issues that arose in that report. It also would ensure that the media have, as they do in this country, access to most places. They can request permission and they can seek and pursue issues—that is the ability of the media to ensure that they have available those people that they wish to interview or talk to. The media have credentials and they can identify where they are from—which newspaper they represent or which television station they are acting on behalf of. Those matters can be dealt with and that is what the substance of this amendment goes to.

Senator BARTLETT (Queensland) (6.09 pm)—I will just put on the record that I think the minister made some reasonable points in her contribution. She was offering an alternative that got around some of the problems that Senator Ludwig rightly points out. I might have been inclined not to support this amendment but, in the absence of that, I think it does address issues that need to be addressed, so the Democrats will support it.

Senator NETTLE (New South Wales) (6.10 pm)—I just want to indicate that the Australian Greens will be supporting this amendment by the opposition, and indeed all the amendments by the opposition. As with our amendments, I suppose, that is not necessarily because they are accurate representations of our own position, but because they are an improvement on the existing position of mandatory detention. So we will be supporting these and the other opposition amendments.

Senator LUDWIG (Queensland) (6.10 pm)—I am curious as to whether or not the government is in fact going to respond to the issues that I raised.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.10 pm)—We are seeking some additional advice on the issue in relation to the media. My understanding from Senator Vanstone before she left was that she was of the view that she had responded to the issues in relation to medical advice.

The TEMPORARY CHAIRMAN—The question is that opposition amendment (1) on sheet 4623 be agreed to.

Question agreed to.

Senator LUDWIG (Queensland) (6.12 pm)—by leave—I move Labor Party amendments (2), (4), (7), (8), (17) and (18) on sheet 4623.

(2) Schedule 1, item 10, page 5 (line 26), after “189”, insert “or 196”.
(4) Schedule 1, item 11, page 7 (line 9), after “189”, insert “or 196”.
(7) Schedule 1, item 11, page 7 (line 28), after “189”, insert “or 196”.
(8) Schedule 1, item 11, page 8 (line 2), after “189”, insert “or 196”.
(17) Schedule 1, item 20, page 15 (line 5), after “189”, insert “or 196”.
(18) Schedule 1, item 20, page 15 (line 10), after “189”, insert “or 196”.

These are additional amendments that were not moved by the Labor Party in the House. They came up only as late matters that were pointed out to us. They are reflected, I think, in the Bills Digest on this migration bill. The amendments seek to correct apparent omissions in sections 195A(1), 197AA, 197AC(1) and items 20 and 21, if anyone is following
those numbers. These refer to all persons in detention under section 189 of the Migration Act. While section 189 of the Migration Act authorises the initial detention it is in effect section 196 that provides for continuing detention—that is, an unlawful noncitizen detained under section 189 must be kept in detention until he or she is removed, deported or granted a visa. Under section 189, the initial detention is authorised; in other words, the department can detain. But the ongoing detention is authorised under section 196. In other words, it establishes the lawfulness of a person being kept in detention until one of three things happen: they are removed, deported or granted a visa. They are the three conditions which operate under section 196 for determination of the status of the unlawful noncitizen. So the initial detaining power, as I have said, is granted under section 189 and the duration of that detention is determined by section 196. It is clear then that the length of the detention is a condition which is operated on by section 196; in other words, it is shorter or longer depending on when you are removed, deported or granted a visa. ‘Duration of detention’ of course is the heading of that provision.

The Labor Party is concerned that if you took a narrow view of this section—and this seems to be the view of the Bills Digest as well—the new provision in the bill to allow the minister to grant visas or make residence determinations may be ineffective. I am not going to comment on what the High Court may or may not do, but they may very well take a narrow view, as has been their wont of late. It would mean that the new provisions in the bill before us today do not deal with section 196. Strictly speaking, people in ongoing detention are in detention under section 196, so a provision that applies to people in detention under section 189 may have no application for them. The argument is that the current bill goes to section 189, but that relates only to the point of detention. The point of continuing detention—in other words, to keep a person in detention—comes under section 196, which the detention bill currently before us does not go to. It might be a technical amendment, and I am sure the advisers have a short answer to this and that I can move on to another point, but, just in case, if this bill is going to work effectively, it would seem that it would have to address section 196, which is the continuation of the detention provision. Without that, you end up with a provision which only operates on the part of detention under section 189.

Part of the argument in the Al-Kateb v Godwin (2004) HCA 37 High Court case was about whether section 196 authorises indefinite detention. At the very best, the government could argue that the case held that a combination of sections 189 and 196 authorises ongoing detention. It seems to be the best argument that could be run with regard to that. At any rate, the current detention bill does not address section 196; it only addresses the point of detention, or section 189. It seems to be that, to accurately reflect the stated policy position of the government and the advice given to it in the explanatory memorandum, the bill needs to refer not only to section 189 but also to section 196. That seems to be the position. It may be a belt and braces approach. I am confident that I can be told that I am wrong in my view about that, but I will wait for the government’s advice.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.17 pm)—The government’s view is that this amendment is not necessary. Section 196 refers to detention under section 189 and describes the process for the end of detention, not necessarily the process for detention, so it is the government’s view that this amendment is superfluous.
Senator LUDWIG (Queensland) (6.18 pm)—I am sorry, I missed that argument. Why do you say it is superfluous? That is what I cannot quite understand. You say that section 189 is the power of detention, but section 196 is the continuation of that detention, which then allows three operants to work. If you do not include section 196, how does the relationship between section 189 and section 196 operate? I did not quite get the answer.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.18 pm)—As I said, section 196 refers to detention under section 189, so section 196 refers to the process for the end of detention. Detainees are detained under section 189, not section 196.

Senator LUDWIG (Queensland) (6.19 pm)—I see the argument, but that is the argument I am putting in the reverse. Section 186 of the Migration Act states:

(1) If an officer knows or reasonably suspects that a person in the migration zone (other than an excised offshore place) is an unlawful non-citizen, the officer must detain the person.

(2) If an officer reasonably suspects that a person in Australia but outside the migration zone:

(b) would, if in the migration zone, be an unlawful non-citizen;

the officer must detain the person.

Subsection (5) then refers to subsection (3) and (4). In other words, that is the power to detain unlawful non-citizens. That is where an officer makes the original determination, but it does not mean that they can continue to detain and it does not indicate how detainees will cease to be unlawful noncitizens in detention. Section 196 talks about the duration of detention, so they are separate provisions; they are not the same provision.

The provisions only refer back to the sections under which they are detained. They are not sections that can be read together; they are separate. One has the power to detain and the other one has the power to detain until certain circumstances are met—in other words, it is the continuation of the detention. The section states that detainees must—and ‘must’ is the operative word—be kept in immigration detention until he or she is removed, deported or granted a visa. Once you have an unlawful noncitizen detained under section 189, if you operate on section 189, you have not got to the nub of the problem. The problem will exist in section 196 whereby, once you have detained, they must be kept in detention until you remove them, deport them or grant them a visa. No other conditions are provided for. If your non-compellable power only operates on section 189, a person can decide not to detain or to detain but, if a person is detained, it cannot operate; it can only operate under section 196, and you have not mentioned section 196. If you currently have a person in detention and the provision does not refer to the non-compellable power, how do you then make a determination to exercise that non-compellable, non-appealable power?

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.22 pm)—The detainees are in detention under section 189. Section 196 deals with the circumstances of release, not detention. That is the argument the government makes. I think that we are essentially arguing different views on that particular issue, but section 196 deals with the circumstances of release, not the circumstances of detention.

Senator LUDWIG (Queensland) (6.22 pm)—We seem to be in a circuitous argument, but we are going to move this amendment. We expect that you will not support it but we ask the Democrats and minors to
support it. What we say to you is that you should have a look at it overnight, and get some counsel to have a look at that provision to see whether or not you have made a technical omission there—or at least ask counsel to say I am wrong about this. I am happy to be wrong if, in fact, I have missed the issue completely or have failed to understand how section 196 operates. If I am right about that, you can come back and say I am right about that—and give credit to the Bills Digest as well, perhaps even more than me.

Senator BARTLETT (Queensland) (6.23 pm)—I am not sure I want to get into the competing interpretations of this bill. I might be very regularly critical of the government’s policy and laws in this area, but I have a reasonably high regard for their officials in terms of their understanding of the law, much as I do not like it a lot of the time. But Senator Ludwig is not too bad at this stuff either so I hate to pick sides in such a jousting of interpretations. If the government’s view is that this amendment is merely redundant, then I cannot see much of a problem in supporting it, frankly. On that basis, and subject to reinterpretation by the government of the word ‘redundant’ to mean ‘will stuff the whole thing up’ as opposed to ‘just doesn’t really matter’, I am inclined to go with the opposition on this.

Question agreed to.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (6.24 pm)—I move:

(3) Schedule 1, item 10, page 6 (after line 7), after subsection 195A(4), insert:

Considerations to be taken into account in granting visas

(4A) In exercising the power under subsection (2), the Minister must have regard to whether a person has a need for temporary protection or for permanent protection.

(4B) If the Minister considers that a person has a need for temporary protection, the Minister may grant the person a visa for a period not exceeding two years. At the end of that period, unless the Secretary has presented evidence to the Minister that satisfies the Minister that the decision to grant a visa should be reversed, the Minister must grant a further visa permitting the person to remain in Australia indefinitely.

(4C) If the Minister considers that a person has a need for permanent protection, the Minister must grant the person a visa permitting the person to remain in Australia indefinitely.

(4D) If the Minister considers that a person does not have a need for permanent protection but considers that the person has made, and can continue to make, a long-term contribution to economic, social or community life, the Minister may grant a visa permitting the person to remain in Australia indefinitely.

This amendment gives certainty to temporary protection visa holders. This amendment aims to grant permanent protection to TPV holders who have been in the community for longer than two years if ongoing protection under the refugee convention is required. In those cases where it is determined that protection is no longer required, permanent residence will be offered to the TPV holder who passes a rigorous public interest test, where it is found that the person is the sort of person who Australia could otherwise select for a migration program.

The government bill speeds up the processing time for TPV holders. This is a welcome change and perhaps even a significant change for this government, given its history. However, the bill does not provide any certainty for TPV holders. People deserve to live their lives with some certainty. Labor finds it truly unacceptable to have human beings strung along for long periods of un-
certainty associated with temporary protection visas. This is an issue that I raised previously during this debate in the committee stage, but I make the point again.

The amendment moved by Labor contains a better model for processing of visas for persons in detention. Our model removes the delays and potential unfairness involved in the use of the non-reviewable ministerial discretion by substituting an independent assessment for any compelling special humanitarian claim. The government’s proposed bill simply provides non-compellable power to the Minister for Immigration and Multicultural and Indigenous Affairs to grant a visa to a person in detention. The government’s changes keep the process in house, rely on catching the minister in a good mood, one would assume, and continue to avoid transparency and accountability.

I did not want to go to the Senate Select Committee on Ministerial Discretion in Migration Matters, but I think its report—and I am sure Senator Brandis is familiar with it—highlighted that the ongoing inability to ensure that there is transparency and accountability, as highlighted by the use of section 417, needs to be revisited. In this instance the government proposes a time frame for primary assessment, but the reality is that TPV holders will still be in limbo. That is clear; that is the situation you are still going to have. They will be unable to form long-term relationships or plan for their futures—or even the futures of their children. I urge the government to look at this amendment, look at the position they are going to put people in, and change their mind and accept it.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.28 pm)—I move:

That the committee report progress and seek leave to sit again.
Question agreed to.

Progress reported.

BUSINESS

Rearrangement

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.28 pm)—I move:

That the committee have leave to sit again at a later hour of the day.

Question agreed to.

Rearrangement

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (6.29 pm)—by leave—I move:

That—

(a) the hours of meeting for Thursday, 23 June 2005, shall be 9.30 am to adjournment; and

(b) the routine of business from 6.30 pm to 7.30 pm shall be second reading speeches only on the following bills:

<table>
<thead>
<tr>
<th>Bill Title</th>
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<tr>
<td>Tax Laws Amendment (2005 Measures No. 1) Bill 2005</td>
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<tr>
<td>Tax Laws Amendment (2005 Measures No. 2) Bill 2005</td>
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<tr>
<td>Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2005</td>
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<tr>
<td>Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005 and a related bill</td>
</tr>
<tr>
<td>Superannuation Bill 2005 and a related bill</td>
</tr>
<tr>
<td>Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005</td>
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Question agreed to.
TAX LAWS AMENDMENT (2005 MEASURES No. 1) BILL 2005

Second Reading

Debate resumed from 7 March, on motion by Senator Hill:

That this bill be now read a second time.

Senator Sherry (Tasmania) (6.29 pm)—I have given a copy of my speech on the Tax Laws Amendment (2005 Measures No. 1) Bill 2005 to the Government Whip. I intend to incorporate it, but I need to say a few words because I understand that there are some organisational procedures involved in getting Democrat senators et cetera.

The Acting Deputy President (Senator Brandis)—It is okay.

Senator Sherry—I am told it is okay. In that case, I just need to make a few comments about the second reading amendment that I will be moving on behalf of the Labor opposition, but that obviously we are not voting on in this hour. The amendment reads:

At the end of the motion add:

"but the Senate calls on the Government to within six months:

(1) report to the Senate, the long term revenue cost estimates of the mature tax offset until 2040; and

(2) undertake and publish econometric modelling of the labour market impact of the offset."

With those comments, I seek leave to incorporate my speech on this legislation.

Leave granted.

The speech read as follows—

Yet again those in this side of the Chamber find themselves in a position where we witness the Government having to correct its own mistakes. And this one is a spectacular error.

This bill TLAB 1 2005 and the next matter we are to consider TLAB 2 2005 both have major amendments made to them by the Government after the initial bills presented by the Minister were the object of scorn many in the sector.

But it comes as no surprise to us Mr Deputy President that this is occurring. As I keep saying to this chamber Minister Brough has form on this.

It is getting to the stage that those in the Opposition have begun to coin a phrase when referring to a major error: it’s not called a ‘stuff up’, we call it a “brough up”.

The Shadow Minister has captured the matter deftly in his media comment yesterday entitled: YET ANOTHER “BROUGH UP”.

And this is exactly what has occurred in schedule 3 of this bill.

Minister Brough has been forced to agree to Labor’s request to amend his own bill in the Senate after Labor identified significant problems with the bill.

Brough’s original bill was over-reaching in its attempts to apply GST to the supply of rights by foreign tour operators.

The bill would have had a major negative impact on inbound tourism.

Labor has supported measures to correct the anomaly that allows foreign tour operators to claim input tax credits without paying the GST. Now that the Government has heeded Labor’s call will support the amendments in the Senate.

However Labor remains concerned about the differential treatment of foreign tour operators and domestic tour operators. The Government needs to address this. I now call on the Minister to except that the differential treatment of these supplies by domestic and foreign tour operators is a taxation non-neutrality, and a negative tax expenditure.

This needs to be addressed and I now call on the Minister in this Chamber to put it to his colleague in the other place that this is a matter he needs to urgently address.

I will also note that the way in which the Minister has brought forward these major amendments without sufficient time for review represents a total contempt of the parliamentary process.

After 1 July when the Government controls the Senate they may seek to take the checks and bal-
ances away which have highlighted the inadequacies of this and previous bills.

If this flagrant abuse of process continues, taxpayers should expect a very “Brough” ride from this incompetent and arrogant Minister.

I might also say, that when the office of the Shadow Minister asked for Treasury brief on this bill the minister’s staff to truncate the briefing to my staff on the bill to 30 minutes. Its just another example of towering hubris from a Government that is starting to display its arrogance as a badge of honour.

I will now turn to the bill as a whole:

SCHEDULE ONE: FBT CONCESSIONS

Schedule 1 to this bill amends the Fringe Benefits Tax Assessment Act to:

• provide a fringe benefits tax (FBT) exemption to cover the engagement of a relocation consultant to assist in the relocation of an employee;

• broaden the FBT exemption for eligible work-related items (that currently includes laptops, and mobiles, airport lounges, journals etc) to include personal digital assistants and portable printers designed for use with portable computers; and

• broaden the FBT exemption for remote area housing to cover employers in industries where employer-provided housing is not customary.

These measures were announced in the last Budget.

Although this measure is described as providing greater incentive for small business these measures are not especially targeted to this sector. In fact it appears that the title of this EM was probably worded in this way to try to make the bill seems more targeted to this sector than it might really be.

Still, we understand that small business has asked for removal of the requirement that employment sponsored housing permitted an FBT exemption outside of the a sector in which such provision is customary. Labor supports these FBT related concessions to the extent that small business identifies them as important and necessary for labour productivity. The remote area housing concession may foster regional development.

SCHEDULE TWO: EFFECTIVE LIVE CAPS

The Commissioner of Taxation progressively updates the effective live rules of assets for depreciation purposes. A significant review occurred last year and came into effect on 1 January and was announced in a recent determination of the Commissioner. This significantly increased the effective lives of buses, light commercial vehicles, trucks and truck trailers (on average to 15 years). This means that since an asset is allowed to be depreciated over a longer period, a smaller annual deduction would apply. This is neutral tax treatment which enhances economic efficiency and good tax practice.

But in an election context the Government moved to override this determination by legislation (as it has already done in some other sectors). This bill specifies that the effective life is capped at 7.5 years.

Mr Deputy speaker, this is a straight tax concession to the sector. Such concessions create economic distortions. Labor’s approach to tax policy is to seek to minimise such concessions to enhance the efficiency of the tax system and to defend the tax base to fund social programs like reform of health and education systems.

However, we recognise that there are times when their could be good social policy reasons for tax concessions. There are legitimate concerns over safety and environmental issues associated with older buses and trucks. So there could be social or environmental benefit (a positive externality to use the economic parlance) from the measure from encouraging firms to renew the fleet and get old trucks off the road.

There are two points to be made here. The first is that the Government in the Explanatory Memorandum simply failed to mention this benefit. So the Government has put forward a tax concession without any social or environmental justification. What this tends to imply that the Minister does not proceed in relation to tax policy from a coherent microeconomic framework but simply creates a tax concession at the bidding of section of the business community, in an election climate for purely political reasons.
The second point to be made is that this concession should really include a sunset clause. If the justification for the measure is to renew the fleet of heavy vehicles then even this fleet have been updated the concession (which is not an insignificant cost to revenue at almost $200 over the forward estimates) should be phased out. Labor will support this schedule because of the social and environmental benefits we believe are contained in it, but this is not a concession which we now commit to agreeing to ad infinitum.

Labor is concerned that this bill was not introduced earlier as it is retrospective from 1 January. Retrospective tax legislation is poor tax design and bad legislative practice. The Australian business community requires Government to act with greater timeliness to reduce uncertainty of investment decisions and avoid retrospectivity of tax legislation. Retrospective measures like this, even if they increase concessions, are not good tax design.

SCHEDULE THREE: GST TREATMENT ON FOREIGN TOUR OPERATORS.

Schedule 3 as original drafted sought to close a loophole that allowed an option to purchase certain services (mostly room nights in a hotel) to be available to offshore wholesalers without imposition of the GST. So this effectively means that a package of tourism services can be constructed GST free to a foreign tourist.

The main group of non-residents that are able to make supplies in these circumstances are non-resident tour operators. Typically, these operators acquire Australian package holidays from resident tour wholesalers and then on-supply them to tourists. If these supplies constitute supplies of rights or options to acquire things to be consumed in Australia they will not be connected with Australia as required under the GST Act. This is contrary to the policy intent that GST should be paid on supplies of Australian package holidays to both Australian residents and non-residents.

Notwithstanding the numerous uncertainties that this definitional approach entails, Labor supports the broad measure of the Government to close this loophole. We do not believe that foreign tour operators should be able to claim input tax credits, as some appear to be doing, while not paying the GST.

However, the Government was somewhat overzealous in its approach Labor has consulted with experts on this schedule, even though time has been short. We have been advised that the approach in the bill is highly deficient in that it may mean that foreign contracts between countries with nothing to do with Australia are caught by GST (and also subject to similar taxes in another country). For example some contracts that relate to services that have at best a very weak connection to Australia may have to pay GST as well as UK VAT. And neither of these parties may be enterprises that operate in Australia. We have been advised that this measure may not be welcomed by other nations as it seems to impose tax outside our national jurisdiction. There is a concern that the ATO may have to vet all these foreign contracts which would effectively make the law totally unforeseeable. Unenforceable laws are bad jurisprudence.

In terms of the local industry there is a concern that the bill will not simply tax the supplies of the services by also the overseas wholesaler’s margin. This may drive up the price of the service. In tax terms this has the effect of disadvantaging Australian inbound tourism relative to other markets.

Given this Labor has no choice but to force the matter to be further considered in a senate committee process. The hearings incorporated some rather unusual eventualities that are worthy of being reported to the Senate:

(1) Senator Watson appeared to be in receipt of some crucial information relating to the number of foreign tour operators (FTOs) affected by the proposed measure. This information was not made available to the Committee, nor was it produced in evidence or via submissions to the Committee. Still, the large number of FTO’s alluded to by Senator Watson (some 400 according to the transcript), bolstered arguments made by some sector representatives that the overall impact
of the measure may have been underestimated by officials from the Treasury.

(2) The nature of the questioning of witnesses by Senators Brandis and Watson appeared to be favourable towards the bill being amended to deal with concerns raised by inquiry participants. Senator Brandis invited witnesses to propose amendments to the bill (especially the IACA).

(3) Senator Watson’s questioning of Treasury officials secured the response that the bill was more far reaching than simply an integrity measure designed to close the loophole whereby FTOs could claim input tax credits without paying GST on elements of a foreign tour package. This directly contradicts statements made by the Minister that the bill is an integrity measure only, placing officials’ statements at variance of those of the Minister.

(4) Deloittes, in a supplementary submission following the hearing, called for the bill to be returned to the House and recommended that the revenue figures be clarified.

Amendments to this Bill have been proposed by industry experts. We take this opportunity to thank those how have included such amendment in their submissions. The proposed changes fall broadly into two groups. The first is to apply an input taxing model which effectively removes the FTOs from the GST system leading to no GST liability and no input tax credits (A TEC, IACA, Deloitte). The further rules based model of PWC would apply a special definition of ‘connected with Australia’ for non-resident entities as an exception to the basic rule that applies in GST law. Both models could achieve the desired outcome of reducing the scope the bill to the primary policy intent of closing the loophole associated the FTOs getting input tax credits. We can accept either model, and call on the Government to return to the debate on the Bill in the Senate with an amendments that gives effect to one of these two proposed models.

The proposed amendments involving the PWC model do solve the problems in the tax law in a much better manner than the original bill and should be supported.

However, Opposition senators note that this opting out approach to the GST system for FTOs will not apply to domestic tour operators. This is a distortionary outcome in the tax law. The Government should come forward with further amendments to address this.

I also note that the Government pre-empted the Committee report by putting out the amendments before the report was tabled. But this is just a minor brough up, minuscule in comparison to the embarrassment caused to the Minister by the scope of these amendments.

Minister will you now admit to this chamber that the original bill was deficient, that it should have been released in exposure draft form. Will you request that Minister Brough make wider use of these exposure drafts.

In Conclusions of schedule 3 I state that we on this side of the chamber are of the view that the proposed amendments are a satisfactory manner to solve the problem addressed but:

(1) amendments should have been provided with greater time for review and with an supplementary explanatory memorandum; and

(2) the amendments will create non-neutrality of treatment between domestic and foreign tour operators. The Government needs to address this concern.

SCHEDULE 4: MATURE AGE WORKER TAX OFFSET

Schedule 4 to this Bill amends the Income Tax Assessment Act 1997 to introduce a tax offset for workers aged 55 years and over. Eligibility for the offset will be based on age and net income from working. This is income that is mainly a reward for the taxpayer’s personal effort or skills or income from a business that the taxpayer carries on, less any relevant deductions). Certain amounts of income are specifically excluded from the definition of ‘net income from working’. These amounts relate to eligible termination payments; payments received on retirement or termination of employment in lieu of long service leave and annual leave; and passive income.

There are a number of important point to be made in relation to Schedule 4. Labor does not seek to
oppose those measures in which the Government can legitimately claim an election mandate. The basic policy intent of the mature aged offset is an election commitment.

However, it is clear that the Government has introduced a number of new elements to the proposal that were not announced in the election context.

This is clearly seen by the increased costing of the overall measure. The costings exceed estimates by at least 25%. Why is this?

Firstly, the government has now extended the scope of the measure to include more persons. A key reason for this is that Government underestimated the number of persons who were over 55. Simply put, the Government did not know how many aged person were going to be working. They simply did not have a clear idea of who many people over 55 were in the workforce. This is a rather embarrassing admission for the Government.

What does it indicate? It indicates that this is a measure that was tied together in an election campaign without the assistance of Treasury in a very haphazard manner. It is policy on the run. It was not well thought through and poorly costed. This stands a reason to question the fundamental rationale of the whole offset.

More importantly the government has extended the measure to include not just gross income in the means testing measure but income from working net of tax deductions. This a strange way to construct a means test: almost unprecedented in the income transfer system. To base a means test on net income after tax deductions adds to the complexity of the whole system. It is a basis that is inconsistent with measures adopted in the family payments system and other elements of the tax system. This is another example of how the Government just adds another layer to the overall income transfer system in a haphazard way. The whole system looks like a house under constant renovation. There is no blueprint, not coherent architectural plan just another dodgy extension. As these new layers are added to the whole structure it begins to look increasingly unwieldy.

The Government has also extended the measure to include partnership income. An further extension of which it has no mandate.

Treasury has been consulted and asked as to whether the measure included an estimate of the gains from labour market participation mature Australians. Labor sought some indication of the dynamic gains of the measure. We have been told that Treasury has no calculated any such gains. So we can but conclude that there are no such gains associated with the measure.

The basic rationale for the offset is to increase labour market participation and thus drive up GDP and GDP per capita. But if Treasury cannot quantify any such dynamic gains then it appears the measure is bereft of any real justification in terms of macroeconomic dynamics and growth accounting principles.

Labor market participation of makes if a notoriously sticky variable. It simply has not moved in 30 years. There appears no reason to believe that any individual will decide to defer retirement and stay in the workforce over 55 simply as a result of a modest tax offset of $500 pa.

In the absence of an quantification of such dynamic gains Labor can only conclude that the measure was simply another pre-election bribe an expensive $500m per annum tax break to older Australians to buy their votes. This is not good economics. It is poor fiscal discipline.

Labor does not seek to amend this schedule in the Senate. However, given the extensions to the measure and the lack of evidence of dynamic benefits Labor will seek to have a Senate commit-tee further consider the underlying parameters of the costing of the measure. If the government believes that this offset is more than a mere election bribe, if it is more than mere policy on the run, then Government will have an opportunity to prove this in the context of the Senate Inquiry.

However, if such analysis is not presented this will be a tacit admission that this measure has no real economic benefits at all.

The ball is now in the Government’s court to jus-tify the basic economic rationale for the tax offset, or admit that no such rationale exists.

Senator STEPHENS (New South Wales) (6.31 pm)—I want to speak very briefly on
the Tax Laws Amendment (2005 Measures No. 1) Bill 2005. I want to make some comments, give some credit for the work that was done during the consideration of the bill in the hearings of the Economics Legislation Committee that were undertaken and acknowledge the work that you yourself did, Mr Acting Deputy President Brandis, in expediting a resolution to what was a difficult issue.

Submissions made to the committee by key representatives and advisers to the tourism export sector put forward some strong arguments that the bill in its current form would create significant adverse impacts. The testimony of witnesses at the hearing on 26 April 2005 strongly supported the arguments made in these submissions. Taken together, the oral evidence and the submissions present an overwhelming case against passing the bill in its current form.

The hearings incorporated some rather unusual eventualities that are worthy of being reported to the Senate. First of all, Senator Watson appeared to be in receipt of some crucial information relating to the number of foreign tour operators that were going to be affected by the proposed measure. This information was not made available to the committee, nor was it produced in evidence or via submissions to the committee. Still, the large number of FTOs alluded to by Senator Watson—some 400 according to the transcript—bolstered the arguments made by sector representatives that the overall impact of the measure may have been underestimated by officials from Treasury. Senator Watson’s questioning of Treasury officials secured the response that the bill was more far reaching than simply being an integrity measure designed to close the loophole whereby FTOs could claim input tax credits without paying GST on elements of a foreign tour package. It was welcome that you, as the chair of the committee, Mr Acting Deputy President Brandis, invited witnesses to propose amendments to the bill. That is what we have before us today as the government’s amendment to the bill.

We were also concerned about some of the deficiencies in the bill—certainly the scope of the bill, which goes beyond redressing the concern that some FTOs are claiming input tax credits without a GST liability. Naturally, we support the policy intent of closing this loophole. Still, that needs to be done without adverse unintended consequences that appear to flow from the way the bill has been drafted utilising the critical definition of ‘connection with Australia’ for assessing the GST liability. This appears to create the opportunity for goods and services that will not be consumed in Australia to be subject to the GST through the imposition of GST on wholesalers’ margins, which appear to fall within the definition of ‘having a connection with Australia’ under the bill.

As well, amendments to the bill were proposed by industry experts. We take the opportunity to thank them for including such amendments in their submissions. The amendments broadly fell into two groups. The first was to apply an input taxing model, which effectively removes the FTOs from the GST system, leading to no GST liability and no input tax credits. And there was a further rule based on the model provided by PricewaterhouseCoopers, which applies a special definition of ‘connected with Australia’ for non-resident entities. Both models could achieve the desired outcome. I understand that, in the amendment, the government is going to go with the PricewaterhouseCoopers model. We note that this opting out approach to the GST system for FTOs will not apply to domestic tour operators and that this is in fact a distortionary outcome in the tax law. The government should come forward with further amendments to address this.
We are of the view that the proposed amendments are a satisfactory way to solve the problem and we again express our appreciation for the work that you have done in dealing with what was an extraordinarily difficult situation, Mr Acting Deputy President Brandis. We note that the amendments will create non-neutrality of treatment between domestic and foreign tour operators, and the government will need to address this concern.

Debate (on motion by Senator Colbeck) adjourned.

TAX LAWS AMENDMENT (2005 MEASURES No. 2) BILL 2005

Second Reading

Debate resumed from 20 June, on motion by Senator Colbeck:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (6.36 pm)—I seek leave to incorporate my speech.

Leave granted.

The speech read as follows—

There is something quite extraordinary taking place in relation to this bill before us today. The government has introduced five pages of amendments to its own bill. This is another moment of considerable embarrassment for the government. Alarmingly, the Government has become a serial offender rushing tax legislation through without adequate consultation or scrutiny. There is even greater risk of this post 1 July when the government has the control of the Senate.

There is a chance that such a bill might fall foul of s55 of the Constitution. Currently machinery measures for taxation are usually included in an Assessment Act and don’t require a separate act. However if a bill that was passed that purported to be a mere machinery measure but did actually constitute a tax imposition measure and became part of an Assessment Act, then there could be adverse consequences. Under the second limb of s55 of the Constitution, the totality of the amending act would be invalidated.

This massive exposure is extremely worrying. While ever the government continues down this path pushing tax bills through the parliament, there is the potential to have assessment acts invalidated.

The government must end this fast food approach to tax legislation and ensure that sufficient time is given to the drafting and introduction of bills in this place.

But before speaking to the controversial schedule 6 amendments, I want cover the less controversial aspects of the bill

Schedule 1 simplified imputation system

The amendments will provide greater flexibility to private companies by allowing them, in certain situations, to pay franked distributions during the income year in which they first incur an income tax liability, without incurring the penalty that reduces their franking deficit tax offset by 30 per cent for that year.

Because franking credits are not received until the end of the year, a private company cannot really pay a franked dividend in its first profitable year without sending the franking account into deficit. This measure corrects that anomaly.

The Opposition supports this measure

Schedule 2 CGT roll-over for superannuation entities that merge under new superannuation safety arrangements

An automatic CGT roll-over applies during the period from 1 July 2004 to 30 June 2006 inclusive (transitional period) for the transfer of assets by a registrable superannuation entity whose trustee is not licensed to one or more registrable superannuation entities whose trustees are licensed.

The effect of the CGT roll-over is that the capital gain, or capital loss, that would otherwise be recognised when the transfer occurs is disregarded—the recognition of the accrued capital gain or loss is deferred until later disposal of the assets by one or more successor registrable superannuation entities.

This change is needed to ensure that the introduction of the tougher regulatory environment of ‘superannuation safety’ does not penalise superannuation fund members by creating a potentially adverse CGT event.
The Opposition supports this measure but seeks to raise with the Minister, questions associated with amendments he has proposed to the bill. In particular, items 1 and 2.

Items 1 and 2 in the amendments circulated in his name amend items 1 and 2 of the original bill with a somewhat curious form of words. The current bill uses the words “trustees are” on page 4 item 9 and the amendments replace these with “trustees are or will be”.

Now this amendment to his amendment to the law might at first sight, appear innocuous. But it begs for closer scrutiny. The superannuation safety provisions apply from 1 July 2004 with a 2 year transitional period ending on 1 July 2006. The newly proposed wording seems to be very open ended. Is the minister proposing that the CGT rollover provisions will apply to the transfer of an unlicensed trustee to a trustee who is also not licensed?

Is this exemption to apply in perpetuity as the words “or will be” seems to imply.

This is not an insignificant change, the policy intent of which the Minister has not yet made clear to this House. I call on the Minister to clarify whether this very open ended form of words implies some additional exemption to or derogation from the provisions of the superannuation safety regime.

In the absence of the Minister presenting a supplementary explanatory memorandum the Minister needs to clarify these changes. I remind the Minister that his comments on this issue in this House are of great importance and may be considered if there is any judicial review related to these proposed changes.

If the Minister cannot adequately explain the change then the matter will need to be referred to a Senate committee.

Schedule 3 providing capital allowance deductions for certain telecommunications rights

These amendments will allow capital allowance deductions for expenditure incurred on acquiring telecommunications site access rights. Domestic Irus will be written-off over the effective life of the underlying telecommunications cable. Telecommunications site access rights will be written-off over the term of the right. The new treatment will only apply to expenditure incurred on or after 12 May 2004 and the law contains integrity measures to stop access to the new taxation treatment where existing arrangements are ‘refreshed’.

Refreshing describes the situation where an existing arrangement entered into prior to a date of effect is essentially terminated and an arrangement on similar terms is entered into to qualify the expenditure for more favourable taxation treatment.

Changes in the telecommunications market have resulted in these rights to use the cable network being a significant expense to a telecommunications provider. Such rights should be deductible as any other capital expense.

This is an important recognition of changing commercial realities in this market and the Opposition supports the changes.

Schedule 4 changing from annual to quarterly payment of PAYG instalments

These amendments allow taxpayers to continue to pay only an annual PAYG instalment in the income year in which they become ineligible to be annual PAYG instalment payers. Generally, these taxpayers will begin paying quarterly PAYG instalments from the first instalment quarter of the following income year. Those taxpayers who are eligible to pay two quarterly instalments annually will commence paying quarterly PAYG instalments from the third quarter of the following income year.

This measure reduces the compliance burden of the BAS and gives firms time to adjust to quarterly reporting after GST registration. It is an important small business initiative.

While Labor supports this measure cannot be asked why this was not introduced before and why this change is not further evidence of the ongoing nightmare of GST implementation.
Schedule 5 deductible gift recipients

Schedule 5 to this bill amends the income tax assessment act 1997 (ITAA 1997) to update the lists of deductible gift recipients (DGRs).

The list includes the page research centre, the nationals’ ‘think-tank’ (if one forgives the oxymoron).

Treasury has advised that the Chifley research centre will soon receive DGR status via legislation in tax laws amendment bill no 4 2005. This bill has been introduced today and I note that the Chifley research centre has been listed for DGR status.

I will now move to schedule 7

Schedule 7 superannuation and family law

These amendments to the income taxation law extend the same taxation treatment currently provided to superannuation split on marriage breakdown to superannuation annuities split upon marriage breakdown.

If the superannuation annuity is an immediate annuity (i.e. an annuity that is presently payable) that has been split on marriage breakdown, then the amendments will ensure it is subject to the same taxation arrangements as apply to a pension in a superannuation fund that has been split in similar circumstances.

If the superannuation annuity is a deferred annuity (i.e. an annuity not payable on purchase) that has been split on marriage breakdown, then the amendments will ensure it is subject to the same taxation arrangements as apply to a superannuation interest in the accumulation phase that has been split in similar circumstances.

These amendments to the income taxation law also correct minor anomalies which Labor supports.

These changes are needed to ensure that tax law is consistent with family law changes.

Schedule 8 fringe benefits tax—worker entitlement funds

These amendments will replace the current condition that contributions to approved worker entitlement funds must be made under an industrial instrument.

Concerns with this schedule have been raised with the opposition.

We have been told that the reluctance of treasury to remove the “registered agreement” requirement appears to emanate out of the office of the minister for employment relations. We have been told that this seems to be based on a view that to remove the “registered agreement” requirement will give trade unions a free kick in attempts to persuade the larger employers (who have registered agreements) to renew them in a “go early campaign”, and to put replacement registered agreements in place before the coalition government has control of the Senate.

I call on the minister in his summing up to respond to the claim that has been put to us. Is this his policy intent?

Schedule 6 goods and services tax and real property

I now turn to the real issue with the bill, another occasion by the minister when he has been the victim of a major problem with drafting in tax law originating in treasury of schedule 6 of the bill.

I do not say innocent victim, although given the repeated nature of the offence I cannot but be moved to sympathy, but under our Westminster system he is responsible.

The department’s blunder is his personal blunder, and what a howler it is!

Have you ever heard of it Mr Deputy President, 3 months after introducing a major tax bill with some moment for a wide section of the community, he takes the key measure out of the bill more or less completely, he cuts the heart of his own bill. Why? Because he has found out that this is deficient.

So we have it 5 pages of amendments, why has the minister introduced such a major revision to this proposed amendments to the law. The reason Mr Deputy President is that he wishes to avoid a Senate review of the process as occurred in tax laws amendment bill No 1 2005.

In this bill, treasury clearly did not adequately capture the policy intent of its changes which
have been judged by sector participants and independent observers to be overreaching in their scope. In a review of the changes to the GST on supplies of rights of foreign tour operators even the government senators called for changes to the proposed law!

This whole process is messy and remains unresolved.

Seeing the possibility of repeating this embarrassment the minister has sort to avoid the senate review process and make the amendments himself.

Still what is clear is that the minister has effectively conceded by the scope of his own amendments that the original bill is highly deficient. Were this one off we might be more sanguine on the matter. But it is not. This is the sixth major error that has occurred in the sort time the minister has been holding this portfolio.

It is a reasonably long list for a short period of time and serves to add fuel to the smouldering sense of dissatisfaction with the minister’s performance in dealing with significant changes to tax law.

Minister, please listen that this is not a minor concern, these errors and omissions create a lack of clarity for economic decision makers and have economic costs.

The way to avoid this process if to make greater use of exposure drafts on proposed tax changes and I now call on you to commit to the use of this process in all tax law changes, except where exceptional circumstances prevail or a strict and tightly focused integrity measure is proposed.

The proposed clean up of your proposed changed in schedule 6 of the bill is complex.

The matter requires further consideration in a senate committee. Still, the minister now should clarify a few points.

I refer the minister to item 17 of his new proposed changes to item 16 of the current bill. This provision at first glance may in fact expand the existing concessions on the GST margin scheme to the supply of real property associated with property acquired from joint venture operators of a GST venture.

The minister may seek to argue that the change is purely interpretive and seeks to clarify the existing law. But without a supplementary explanatory memorandum it is difficult to judge this.

There is the chance that this item actually leads to an expansion of the current concession with a revenue cost. Minister please state in your summing up what is this revenue cost and why there is no regulatory impact statement on the proposed new amendments. You should have simply removed the whole schedule and reworked it in its totality and presented it again to this house with proper explanation. But you have not done so trying against to push through suspect tax changes under time pressure.

Its bad legislative practice minister and the opposition condemn the practice.

The key change in the newly proposed schedule of amendments to the bill is in item 26 which removes from the bill the primary measure that the schedule was created to implement.

This original schedule proposes major changes to the margin scheme associated with the application of GST to real (physical) property. The key provision is to apply a hard valuation date of 1 July 2000 for the use of the margin scheme. This increases revenue from the margin scheme arrangements in a manner neither expected nor previously announced.

Under the GST act, registered businesses can calculate GST payable on supplies of new residential or commercial property under the basic rules and pay GST at 1/11th of the GST-inclusive price. However, it is usually better to make use of the margin scheme in which GST is levied at 1/11th of the margin: the value added since acquisition. If you use the margin scheme you cannot claim input tax credits.

The most controversial element of the original bill related to the setting of the valuation date of 1 July 2000 for the use of the margin scheme on real property. Treasury has argued that a later date cannot be set because it is just too difficult to find the appropriate point from which to quarantine off all the input tax credits as required under the margin scheme. The neatest date is the date from
which the GST began. This is clearly true, but it has been asserted that through this measure treasury have sought to increase the tax base in an underhanded way that could be a breach of the agreement with the states.

The origin of the concern is that if the property is purchased after 1 July 2000 then there has likely to have been considerable capital gains since that time. This means that the base from which the valuation is set is higher and the margin to which the GST is applied is lower. If the date of 1 July 2000 is applied all capital gains since that date are excluded and the margin is higher and the GST liability greater.

The fact that the minister has omitted the key active provision in item 16 of the bill in item 26 of the newly proposed amendments is clear evidence that the concerns expressed by the sector have validity.

We welcome the back down from the minister which the Shadow Assistant Treasurer called for in the house in his second reading speech to another tax bill tax law amendment bill no 3 2005. But what will happen minister after I July when the government controls the senate. Will you allow us to use senate committees to review your bills. You should, given your dubious record on getting it right on the first pass.

I now call on you minister in your summing up to make the commitment that you will not use your imminent senate majority to frustrate this important process of scrutiny of these complex bills.

Mr Deputy President, lets face it, Minister Brough’s bungling on this bills is bad for business. It creates confusion and increases the burden of tax compliance. On this occasion he is condemned by sheer scope his own embarrassing amendments.

Debate (on motion by Senator Colbeck) adjourned.

SUPERANNUATION LEGISLATION AMENDMENT (CHOICE OF SUPERANNUATION FUNDS) BILL 2005
Second Reading

Debate resumed from 22 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (6.37 pm)—I commenced my contribution to this debate yesterday. To recap very briefly, we are dealing with the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2005. It represents some major amendments to the superannuation choice legislation that passed through the parliament some months ago. I have already made the point that, from the point of view of certainty, it is not good policy or practice to be dealing with some substantial amendments to what is by any judgment a radical change to the structure of superannuation so close to the time of its implementation—the legislation will take effect on 1 July, which is in just over a week’s time.

Connected to that are the issues relating to the financial services act which require disclosure—which is a central but, in my view, inadequate protection for employees. Involved in that is the issue of product disclosure statements under another piece of legislation and regulation which have not yet been finalised. So the concise, clear and informative product disclosure statements that consumers need to, hopefully, make an informed choice are not going to be ready by 1 July. That is also not an appropriate way to deal with what are such significant changes to the superannuation system. In my comments yesterday I outlined the significant difficulties that this new regime presents for business. There is a significant and costly new red tape burden imposed on business, and I have gone into the details of that.

Our first concern was the issue of complexity. The second theme of concern that I want to deal with now is the issue of safety from the employee’s point of view. Before I get to the theory of choosing a superannuation fund, I point out that most Australians have choice in the form of investment
choice—they can select an investment option within a fund. We are dealing here with joining a superannuation fund. The economic theory, at least, is that there is more choice and more competition. The government have claimed time and time again that the cost of superannuation will decline as a consequence of this competition. That is the economic theory, but it is dependent on what is known as an informed market.

We know from all of the financial literacy surveys that have been carried out that financial literacy with respect to superannuation is low. Therefore, will a competitive and informed market make rational decisions and drive down prices? It is Labor’s argument that at least in some areas that will not happen. In fact, prices will go up because it is not an informed market. People will seek additional advice and they will pay an additional cost as a consequence.

The ultimate test of the outcome will be the various fees and data surveys that are released in coming years. So we will be able to judge on the evidence available what happens with fees over coming years. There are obviously private fee companies. The regulator, the Australian Prudential Regulatory Authority, APRA, does quarterly superannuation trend surveys with considerable fee detail. So we will know what happens with fees. I would point out that on best estimates that is not easy to obtain at the moment because a large section of the superannuation industry savings is in small self-managed superannuation funds—it is a very substantial part of superannuation—and the tax office administers that. APRA does not have fee details on that section of the superannuation industry. There is approximately $800 billion in superannuation, and we know from the available data that the level of fees is between $800 million and $900 million per annum. It is a substantial amount of money.

The second defect in the argument about rational choice competition with respect to superannuation is that it is not a voluntary purchase; it is compulsory. Superannuation by its nature is a very unusual product from a consumer point of view. You are compelled to belong; it is compulsory. Therefore, by the very nature of its being underwritten by compulsion, you incorporate in it a significant group of people who do not wish to belong; and therefore the economic theory of informed choice is difficult to achieve. So we will look at the outcomes in terms of fees and charges at some future date.

The other issue, which I have touched on, is that there are some caveats. We are not dealing with a full choice of fund regime. There are caveats on it, and I mentioned those in my speech yesterday. So it is not choice of fund for everyone. The government’s propaganda is choice, but it is not choice of fund for everyone.

There is another important exception, and that is the half a million Australians who cannot exercise choice because of the fee structures of superannuation. About half a million of the 10 million superannuation fund members cannot exercise choice because of the exit fee structure of superannuation. An exit fee is not an administrative fee of $40, $50 or $100 to pay for the cost of the administration of moving from one fund to another; it is a deliberate financial barrier or wall created by the financial institution to stop a person from exercising choice of superannuation fund. So that is another barrier—a financial barrier—which this government has done nothing about.

A lot of publicity was given to the impact of exit fees in July last year. I think it was John Garnaut who did a very good analysis of this in the Sydney Morning Herald. We know that that analysis is broadly correct because ASIC, the independent regulator, has
confirmed that there are about half a million Australians that will have exit fees. A large section of the superannuation industry that have argued for choice have, of course, done nothing about exit fees. On one hand, they want choice of fund—where it suits them; on the other hand, they did not want to do anything about exit fees that prohibit people from moving to other funds.

There was a lot of publicity about this last July. The Treasurer, as is his wont, expressed concern and said he would do something about it. He said he would talk to the superannuation industry, particularly the retail funds. From the evidence we gathered on Monday night, nothing has happened—the Treasurer has not spoken to the industry. I stand to be corrected by the parliamentary secretary or whoever is going to respond. The Treasurer has done nothing. As usual, he talks tough but does nothing. Nothing has happened on exit fees.

One of the other interesting issues about choice from a consumer point of view is safety. Labor argues that the fee structures themselves, in a limited-knowledge market, are dangerous. I have mentioned exit fees. Interestingly, going forward, exit fees are legally still allowed to be charged—even if nothing is done about them retrospectively. In the context of superannuation and the issues I have touched on this evening and yesterday, Labor has long argued that you need to regulate the structure of fees. To ensure competition, you need to remove anticompetitive fee structures by regulation. Of course, some in the superannuation industry view this with great concern. They want regulation to compel employers and employees to contribute to super, but they want to be able to charge what they like, or, in some cases, get away with. Those who argue against fee regulation want regulation to make it compulsory to be in superannuation. They want it both ways.

Labor has advocated some structural fee regulation—specifically, the prohibition of entry and exit fees, which are inappropriate in the context of superannuation, and regulation of trail commissions. Labor argues that trail commissions are a fundamental conflict of interest. It is not well understood that a trail commission is a percentage fee paid to an adviser for advising on the fund an individual may join. Therefore, they represent a direct conflict of interest. They are anticompetitive, they are anti free market and regulatory structures should be put in place to deal with these anticompetitive arrangements. If we are going to have competition, if we are going to have choice of superannuation fund, then my view is certainly that we should move to total choice of superannuation fund, other than the default fund. Therefore, we have to make sure that any barriers to choice or any anticompetitive arrangements that lead to favouring one form of fund over another need to be regulated out of existence. These are our concerns. We have some amendments in the committee stage, and we will deal with those in due course.

Senator GEORGE CAMPBELL (New South Wales) (6.48 pm)—I seek leave to incorporate Senator Lundy’s second reading speech. This has been cleared with the Government Whip.

Leave granted.

Senator LUNDY (Australian Capital Territory) (6.48 pm)—The incorporated speech read as follows—

INTRO
The fact that we are here today debating yet another major change to this Government’s Super Choice legislation just weeks before it comes into operation highlights the fact that this is poorly considered policy… Poorly considered policy that will put both small businesses and consumers at risk.
Policy that is too complex and unsafe for both employers and employees.

This legislation encapsulates small business in even more red tape and exposes vulnerable employees to fierce marketing from superannuation providers attempting to sell a product many consumers do not understand.

**SMALL BUSINESS**

In 1996 the Government made a commitment to reduce red tape for small business by 50%.

Yet this Government just keeps handing small business more hoops to jump through—first it was Goods and Services Tax and Business Activity Statements and now with this super choice legislation it is more red tape, more forms and more time spent for businesses complying with new Government policy rather than focusing on their customers.

The Howard Government has not only misled Australian Small Businesses into thinking they will reduce red tape—they have increased it and increased it exponentially!

Smarter and wider consultation with small business—one of the major stakeholders in respect to this change would have shown this Government that they had needs that required respect and consultation.

Consultation would have shown the Government what a red tape nightmare the super choice regime would become—only adding to the pressures and uncertainties of running a small business.

They would have seen that prescribing big business policy does not work for small business with less than 20 employees and made changes and exemptions accordingly.

Instead small business once again is stuck with the compliance burden suited to big business—there is no doubt that the Government has made a mess of this legislation.

This legislation changes the way small businesses deal with employees superannuation.

As of July 1 the process will change from a three step process that has operated since the introduction of superannuation. Where the employee makes contributions in accordance with your workplace agreements or certified agreements. If neither of those applies, you make contributions as determined by the employer and employees.

This legislation will see that small businesses go from that simple three step structure to a 34 step process!

Super Choice is not new.

Many small businesses already give their employees choice in regards to their superannuation fund.

Choice does not always work for the small business owner…

Bruce was a franchisee—he employed nine staff he offered his staff a choice of superannuation funds. For his nine employees they chose six different funds. Each fund required a different form and a different web interface and multiple lodging. Bruce had to take on an additional employee to deal with the additional paperwork.

Bruce realised that choice was not efficient for his business and spent 12 months working with staff to get back on to one scheme.

Around 70% of small business already offer choice—however most of these funds are dealing with only 2-3 funds.

The difference between choice of fund as it stands now is that it is under a measured approach that the small business puts in place—it is not controlled by ill-considered Government guideline and regulation.

This regime is not one that where employers can assist their employees by offering examples of research and some constructive advice.

Under the Government’s regulatory regime—a small business operator providing any form of financial advice would be liable for penalties of up $22,000 and 2 years imprisonment.

**THE CONSUMER/EMPLOYEE**

The Howard Government tries to offset the burden on small business with the immense benefit to the employee.

They continue to tell the Australian public that this legislation is about giving consumers a choice about their superannuation needs.
What the Government does not tell employees is that to make an informed choice...

- They will need to know the intricate ins and outs of the way Australian superannuation schemes operate to generate returns.
- They will need to read a booklet over 50 pages in length to understand the government’s new scheme.
- They will then need to identify, consult and compare particular funds by wading through piles of fund specific information laced with fine print.
- They will need to be savvy enough separate super funds marketing tactics from their actual benefits.
- And finally—they will need to make this choice without any advice or assistance from their employer.

What is worse is that when the employer sees that the employee is making a poor choice they cannot do anything... They must sit back see the employee suffer and hope that the employee will realise on their own that they are making the wrong choice!

How does this Government expect any employee who could spend most of their lives organising their family, moving to and from work and going to the footy on the weekend, to be able to sit down, and work their way through the complex problem of superannuation choice with no assistance from their employer—who in most cases is the only logical person who they may be able to contact for help?

This legislation exposes vulnerable employees to fierce marketing from superannuation providers attempting to sell a product many consumers do not understand.

The Howard Government did not consider the complexity of superannuation advice when drafting this legislation. They have provided the power for superannuation providers to specifically target those with the least ability to understand the fine print in the volumes of information provided to them.

This poorly considered policy that can only be seen to benefit a few of the Howard Government’s ‘big business mates’—small business and vulnerable consumers will suffer.

Debate (on motion by Senator Colbeck) adjourned.

TAX LAWS AMENDMENT (IMPROVEMENTS TO SELF ASSESSMENT) BILL (No. 1) 2005

SHORTFALL INTEREST CHARGE (IMPOSITION) BILL 2005

Second Reading

Debate resumed from 12 May, on motion by Senator Ellison:
That these bills be now read a second time.

Debate (on motion by Senator Colbeck) adjourned.

SUPERANNUATION BILL 2005

SUPERANNUATION (CONSEQUENTIAL AMENDMENTS) BILL 2005

Second Reading

Debate resumed from 14 June, on motion by Senator Abetz:
That these bills be now read a second time.

Senator SHERRY (Tasmania) (6.49 pm)—We are dealing with the Superannuation Bill 2005 and a related bill. The government has announced the closing of the existing Public Sector Superannuation Scheme to new employees from 1 July 2005. That has been done by regulation, and the Labor Party supports that. There was significant negotiation between the government and the Commonwealth and Public Sector Union, and of course there was some discussion with the Labor Party. It is not often that I do this but I would like to thank the Minister for Finance and Administration, Senator Minchin, for involving me in some private and confidential briefings on this matter last year.

The Labor Party has not opposed the closure of the Public Sector Superannuation...
Scheme. It is a defined benefits scheme, and the average level of defined benefit for the PSS is 15.4 per cent. The most important aspect of the closure and the creation of an accumulation fund is that the government has given a commitment to pay in an accumulated form 15.4 per cent of contributions from the employer. Defined benefit funds, which are in rapid free-fall throughout the Australian economy, where they have existed, give a guaranteed outcome, usually in the form of a pension and perhaps a lump sum payout when the individual has accrued sufficient years in order to reach what is usually a scaled entitlement. The politicians’ Parliamentary Contributory Superannuation Scheme is a classic example of a defined benefit fund. It has now been closed as well, but obviously the level of benefit is more generous than that which exists in the PSS.

DBs, as they are known, have been in rapid decline not just in Australia but throughout the entire Western world. I have mixed views about that. Obviously a DB, because it gives a guaranteed final outcome, provided the years of service are completed, gives greater certainty. The employer is required to ensure that there is full funding, except in the case of the state and federal public sectors in this country. We are also fortunate in Australia that private sector defined benefit funds, where they exist, have a legal requirement for full funding. That can be under or over, depending on the asset backing and the movement in the markets.

By and large, Australia does not have some of the problems of countries where DBs are underfunded. We have the classic example in the United States at the moment with American Airlines, I think, which has an underfunded defined benefit fund. New accountancy standards are coming in and they are required to top up the funding of the defined benefit fund. If they do that in the short term, it will bankrupt the airline. So what has happened in the United States, and in varying degrees in the United Kingdom, is that employers are simply refusing to pay the monies required to fund the DB, and in the United States they can legally hand it over to a statutory guarantee corporation run by the government. That has occurred in the case of the airline sector in the United States. They have passed the cost on to the government through the guarantee corporation. The guarantee corporation in the United States is technically bankrupt and does not have sufficient money; nevertheless, the private sector effectively passes the matter over to the public sector. There is of course a cap on entitlement in the defined benefit fund if it is passed to the guarantee corporation, which means that employees will receive a lesser benefit than they would otherwise have been entitled.

In the UK the situation is not quite as serious; however, defined benefits are being closed. Defined benefits are a guaranteed outcome. I acknowledge that probably for the majority of employers in DB funds in the private sector not only is the effective level of contribution in excess of the nine per cent standard community payment but also many employers pay the insurance and the administration costs, which gives a higher end benefit to the employee. I acknowledge that this exists in the public sector, and it is also widespread in the private sector. The demise of defined benefit funds is not a good thing generally; nevertheless, it is a reality driven by the factors I have outlined plus the ending of lifelong employment—the increasing portability or transience, if you like, of the work force in general.

The public sector fund is closed by regulation on 1 July 2005. The Superannuation Bill 2005 is the legislation that will allow new employees to enter into the accumulation fund—rather than the old PSS Scheme, which is a defined benefit scheme—and, as I
have said, be paid an employer contribution equivalent to the PSS defined benefit contribution of 15.4 per cent. From 1 July, because the government in this case is legally required to pay the contribution—the accumulation of 15.4 per cent—it is fully funded from that point on.

One other aspect of this is that the government has agreed to pay the administration costs. The new employees in the public sector accumulation fund will receive not only the 15.4 per cent contribution from the employer but also, effectively, those investments of the management and administration fees being paid by the appropriate government department. In that sense it is a very generous arrangement for new employees going forward, albeit in the form of an accumulation rather than a defined benefit.

As an interim position, the accumulation fund is being administered by what is known as a subplan of the existing PSS defined benefit scheme. Once this bill is passed into law there will be a new PSSap—Public Sector Superannuation Accumulation Plan—established as a separate legal entity for administration and investment purposes. It is understandable that that should occur. However, we have an existing trustee structure in the CSS, the old Commonwealth defined benefit public service fund, and the existing PSS board. The trustees of the PSS board will be deemed to be trustees of the accumulation fund. That is a good arrangement. It is sound because we are sharing the costs of the trustee structure. Why have a new trustee structure?

The moneys will be invested by the commissioner and overseen by the Commissioner of Superannuation in the same way as about $13 billion of employee moneys is invested in the CSS and PSS. So there will be an administrative and investment efficiency established even though a separate legal accumulation entity is being created. The PSSap will be a default fund for the purposes of choice of superannuation fund. Going forward from 1 July the new public sector employees will be able to choose the fund into which they want their 15.4 per cent employer contribution to go. The PSSap is what is known as the default fund.

Frankly, it would surprise me if any employee were to choose any fund other than the PSSap. Why would they when the administration costs and the investment management costs are to be paid for by the department? The PSSap will certainly be one of the most efficient funds—if not the most efficient—with the lowest fees in existence, albeit they are being picked up by the government. At the moment the PSS and the CSS have a wholesale funds investment management cost of about 0.3 to 0.35 per cent of moneys under investment, whereas most other superannuation funds outside the public sector have an investment management fee of half a per cent up to one per cent and, on top of that, an administration fee. So, going forward from 1 July, the services as to PSSap trustee administration investment will be highly advantageous for new employees.

I refer to the administrative and legal requirements for the PSS, the defined benefits scheme. It is technically, administratively and legally difficult to have the DB fund, the PSS, going forward administering the accumulation fund, so Labor accept that the hybrid fund approach in these circumstances should be changed. We will be supporting this legislation. Separate schemes are the best approach, provided that the advantages I have outlined in terms of the accumulation PSSap scheme are not lost to new employees. As I have mentioned, there is a trustee board with employer and employee representatives. That is to remain the same—that is a good thing.
I have mentioned the economies of scale in investment management fees. From what I can find out, there is no better scheme—so that is maintained. The administration costs are paid for by the employer—the government departments—so that is maintained. As for the record, we have examined the rates of return in the PSS and CSS. Over the 10 years to 30 June 2004, the average yearly net rate of return is 8.51 per cent for the PSS and 8.35 per cent for the CSS. These are obviously due to trustee boards which have done a very good job. Also, these are a function of economies of scale. When you have got a superannuation fund with some $13 billion under management, you can negotiate the much lower funds management costs to which I referred earlier, so it is a highly efficient funds management fee scale. The public sector has one other advantage that most other superannuation funds do not have—one employer. One employer is a lot easier for administration purposes. You certainly do not have as high an employee turnover in terms of casuals and part-timers as other schemes have.

So this new arrangement going forward from 1 July preserves the existing advantages of the current arrangements, albeit in accumulation fund form. Compared to arrangements in the private sector—or indeed in other government sectors—it is highly advantageous. With a couple of exceptions, all state public service defined benefit superannuation funds have been shut off and usually contribution levels are anywhere between 15 and 20 per cent. I point out that in those cases both Liberal and Labor state governments have been paying only nine per cent, not the equivalent to the defined benefit, so the Commonwealth proposal is generous compared to the activities of all state governments, Labor or Liberal.

There are two issues with this legislation that do concern us. I have mentioned the closure of the public sector defined benefits fund. When the government decided to close the fund last year it carried out what is called an actuarial projection with the debts going forward. Obviously if you are closing the fund to new employees and therefore funding it with accumulation moneys, the level of debt that was projected to go forward from unfunded liabilities in the public sector superannuation will decline. There is no argument about that. The government had an actuarial projection carried out but it has not been published. Despite requests from me at estimates in February and May for the publication of the new actuarial assessment, it has not been published. That is not only information that should be made public in the context of the superannuation bills we are considering but also important information to have in the context of any debate around the Future Fund. The Future Fund is to be established for the purposes of unfunded superannuation public sector liabilities. We would like to know what those liabilities are going forward. In any sort of debate about how those liabilities increase and then generally fall away—we know that as a percentage of gross domestic product they will decline—we need to know what is occurring in this area.

We know from the estimates figures that I obtained in the last estimates round two weeks ago that the CSS is $47 billion; the PSS is $11 billion—and that will be lower over time; the Defence Force Retirement and Death Benefits scheme is $22 billion—and is still being kept open; the Military Superannuation Benefits Scheme is $7 billion; and the other schemes—for the Governor-General, judges and the Parliamentary Contributory Superannuation Scheme—is $1.5 billion. The schemes for judges and the Governor-General are still open. The raw figure of $91 billion rising to $140 billion sounds serious; however, there is an element of
scaremongering in these figures. A more balanced and informed approach to this debate would be to provide those updated debt figures as a percentage of gross domestic product, not simply in a raw monetary figure. That has been the traditional way in the actuarial reports on the major funds—both the money figure and the percentage of GDP projected through for 40 or 50 years. As a consequence, there will be a second reading amendment criticising the government for not providing the up-to-date actuarial reports.

In committee we will move an amendment that relates to workplace agreements. This is an interesting issue which I will expand on in greater detail in the committee stage. Under choice of superannuation fund a workplace agreement can override the individual selection of a fund. There are some exceptions also. If an employer is paying more than nine per cent, which they are in this case, they can require, as they would in this case, that the PSSap be the superannuation fund for the receipt of all of the contributions.

Labor argue that in the context of this bill an Australian workplace agreement, where a government department could go out and for whatever reason override the PSSap as a default fund and override individual choice with some other superannuation arrangements, is an undesirable feature. I suspect that it is probably not going to happen but who knows what may happen after 1 July. Some particularly ideological head of a government department may introduce an AWA, which overrides choice of superannuation fund and also the default fund, and a new default fund. We are concerned about that, and in the committee stage I will be moving an amendment that the Labor Party believe will prevent that from happening. It would be an undesirable outcome.

Debate (on motion by Senator Ian Macdonald) adjourned.

**TAX LAWS AMENDMENT (IMPROVEMENTS TO SELF ASSESSMENT) BILL (No. 1) 2005**

**SHORTFALL INTEREST CHARGE (IMPOSITION) BILL 2005**

Second Reading

Debate resumed.

Senator SHERRY (Tasmania) (7.10 pm)—I would have incorporated my speech on the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005 and the Shortfall Interest Charge (Imposition) Bill 2005, but I cannot because the bills were brought on so quickly. We have incorporated where we can.

Since 1986–87, Australia has operated a system of self-assessment of income tax. Under self-assessment, taxpayers’ returns are generally accepted at face value in the first instance, and the Australian Taxation Office, the ATO, may verify the accuracy of the return and if necessary amend an assessment within a prescribed period. The ATO now has the power to reopen assessments after many years. This has led to some uncertainty and calls for constraints on the Commissioner of Taxation’s capacity to enforce payment with penalties long after the original tax return has been submitted. Concerns of this nature have received some attention in the case of schemes propagated by tax promoters—mass marketed schemes and employee benefit arrangements. Even when a private ruling from the ATO was received, the commissioner had the power to impose tax in contravention of the ruling and impose penalties.

A general view emerged that reform was needed to provide greater certainty for the taxpayers—that, after a period of examination, there was a need for refinements to the present system to reduce both the level of
uncertainty for taxpayers and the compliance costs associated with self-assessment while preserving the capacity of the ATO to collect legitimate tax liabilities. In December 2004, the Treasurer announced that he accepted the findings of the review committee and would, where needed, legislate their effect. This bill is the first and most preliminary stage of the process of the implementation of the review’s findings. The full list of recommendations is included in the attachments to the bill.

I turn to the contents of the bill. Schedule 1 creates a new tax, the shortfall interest charge. A shortfall is where the taxpayer has paid too little tax. This usually relates to an amended assessment by the ATO. Late payment is different, as this relates to a known assessment not paid by the due date. The issue with the shortfall is that a taxpayer may not know for some time that he or she has a shortfall—say 18 months. But the current penalty charge, called the general interest charge, at 12.5 per cent, applies not from the date the taxpayer is advised of the error by the ATO but from the original date of assessment. So the high tax penalty applies from a period when a taxpayer has no knowledge that they have underpaid tax. The problem has been exacerbated by taxpayers with multiple assessments involving shortfalls. In some cases, this could occur over a number of years. The bill ensures that the general interest charge will not fall due until 21 days after the ATO advises of the shortfall. Before that, a concessional charge will apply, called the shortfall interest charge, at three per cent plus the prime rate.

Schedule 2 of the bill repeals the special penalty for those failing to follow a private ruling—25 per cent of the shortfall. It also requires the Commissioner of Taxation to supply reasons why a penalty has not been remitted in full and makes a technical clarification about when a position is reasonably arguable. The latter point is not insignificant as the law strictly imposes a high standard on what can be reasonably argued. A position that is reasonably argued avoids the imposition of penalties even if the commissioner disagrees with the assessment.

The current threshold is that the position is as likely to be as correct as incorrect. The ATO interprets this more loosely as ‘about as likely to be correct as incorrect’. The bill enshrines the ATO’s looser and more concessional definition. There are some interesting policy issues around these changes. Simplicity and transparency in the process of taxation administration are matters of justice. Taxpayers have a legitimate expectation that a good faith disclosure of relevant facts combined with a diligent attempt to comply with the law will not lead to the imposition of significant penalties. There are also economic benefits. Taxation uncertainty can threaten business survival and adds risk premiums to finance, increasing the cost of capital. Regulatory transparency, especially in taxation, will lower business compliance costs with consequent gains to productivity and economic welfare.

The reforms in this bill are sound in terms of basic principles of justice, administrative law and tax policy. However, the reforms come too late for those who have been disadvantaged by relying on ATO advice and subjected to penalties. Labor has received many representations in relation to this bill. Many individuals have given evidence to the Senate inquiry identifying the deficiencies in the ATO’s handling of this matter.

I hope the Senate committee review process continues after 1 July, because I think it is a very important check on executive government. There have certainly been many shortcomings identified in pieces of legislation, even though they have gone through the bureaucracy, cabinet, the parliamentary party
caucuses and their own committees. The Senate committees play a very effective role in identifying weaknesses in legislation. The Senate committee review process concluded that the bills do not go far enough to address shortcomings identified by the Treasury review of aspects of income tax self-assessment. The establishment of a shortfall interest charge, known as an SIC, which will replace the general interest charge, the GIC, for shortfalls of tax paid in the period between when a taxpayer submits a tax return and when the ATO reassesses the return addresses a notable shortcoming in the GIC system. The GIC is set at a higher rate—currently the 90-day bill rate plus seven percent to encourage the prompt settlement of tax debts.

The Treasury review has rightly observed that, until they receive an amended assessment, taxpayers are not in a position to respond to this incentive to settle. As such, applying the GIC to reassessments in this way is inequitable. The effects of applying the GIC at a higher rate can be very punitive. The Treasury review notes that over a six-year period the GIC can, at current interest rates, more than double a tax debt. This can result in crushing liabilities from which affected taxpayers can find it difficult to recover. Many of the submissions received by the committee confirm that this is the case. The Treasury review rejects the use of the GIC as a penalty. As the review rightly observes furthermore, the perception that taxpayers are being penalised twice for the same offence, or being penalised where it was decided that no culpability penalty should apply, is undesirable.

In introducing the SIC the government clearly recognises that in many circumstances the GIC is both inequitable and applied inappropriately. Yet, instead of the government taking steps immediately to address the shortcomings that have been identified, the SIC will apply only to the 2004-05 income year and future years. This means that back assessments which can still be conducted for ordinary taxpayers, as distinct from those who are reassessed under part 4A, can still be subject to the GIC for up to four years. Further, the ATO will have to administer two systems in parallel for up to six years—the period it will take for the changes proposed to be fully implemented. Labor senators therefore consider that the SIC should apply to back assessments made from the date of royal assent to the bills and recommend that the bills be amended accordingly.

We will be moving some amendments in the committee stage to deal with some of the issues that I have outlined. One amendment that I will be moving will not be genuinely retrospective but will try to make it possible for those audited on recent returns to enjoy the benefits of the new regime. We would argue that amendments to give effect to some level of benefit for those who have been audited would reflect some of the comments that Senator Murray made on behalf of the Democrats in the committee process. Labor senators recognise that some people who have already been assessed and who have paid or are in the process of paying their tax debts under settlement arrangements may feel unjustly treated as they do now. It is administratively impractical to reopen such cases. However, and this will be reflected in later consideration, Labor senators will at least ensure that all assessments after the bills receive assent will benefit from the introduction of the SIC.

Labor senators were also concerned about the apparent conflict between evidence received from the ATO and Treasury and from the many persons and organisations that made submissions. The ATO evidence appeared to indicate that the mass marketed schemes issue had been settled and that all
participants were offered favourable terms. This may be the case for many of the agricultural and franchise scheme participants, but it is of concern that there may be substantial numbers of other people who found themselves entrapped by bad advice in schemes such as EBAs and retirement home schemes who have not been offered realistic settlement terms. Many of these people have been ruined financially as a result, and there was substantial comment at the latest estimates in the questioning of the ATO again on this issue. It has been a running issue with the Taxation Office over many years.

Labor senators urge the ATO when making future settlement offers to be mindful of the policy intent in introducing the SIC and to ensure that the GIC is not applied as a quasi penalty in such cases. Labor senators, in their observations, concluded that changes should have been introduced earlier in order to minimise the concerns and the various ongoing problems. I think some 40,000 taxpayers would not have been suffering under the burden of crippling tax debts or penalties that have applied in many cases.

The other issue, on which I will conclude, is the future operation of machinery provisions relating to taxation involving more than one type of tax. Labor are concerned about this issue. We argue the government has shown a propensity to try to push tax law through the Senate with undue haste. Labor believe there is even greater risk of that after 1 July. Labor understand, and this is reflected in some of the more recent tax bills, that Minister Brough in the other place has had the carriage of a significant number of errors and mistakes. The Labor Party recognise that errors and mistakes can occur—they have been far too frequent, I have to say, on Minister Brough’s watch—but, if you make a mistake on a tax matter, own up. It is a complicated area. Do not stick out press releases, attempting to cover up your error and referring to enhancements, trying to bury them in either other tax bills via amendments or TLAB bills that subsequently have amendments added to them. Tax law is complicated. Where a mistake is made, there should be a frank admission of the mistake.

Obviously, the Labor Party, being the reasonable opposition that we are, understand that where those sorts of mistakes occur we should immediately have corrective action. The Labor Party are supportive of that. We do not blame public servants. Tax is a complicated area. Mistakes are made relatively frequently, despite the best intentions. There are advisers in minister’s offices. Ultimately, ministers are paid for this, they have to take responsibility, and they should own up and obtain the cooperation of Labor and other parties in the Senate to ensure speedy corrective action is taken.

As I have said, Labor argues that, after 1 July, with the government in a rush of blood with control of the Senate as well as the House of Representatives, it is more likely that tax bills might fall foul of section 55 of the Constitution, which requires each new tax to be in a new bill. Machinery measures for taxation are usually included in an assessment act and do not require a separate act. If a bill that was passed purported to be a mere machinery measure but actually constituted a tax imposition measure and became part of an assessment act, there could be adverse consequences. If this were to occur, under the second limb of section 55 of the Constitution the totality of the amending act would be invalidated.

There are many precedents confirming the need for additional scrutiny because of a failure to make corrective changes in the first instance. A good example is the consolidation regime, which was introduced in 2002 but which has now been amended 11 times. The consolidation regime, an attempt to sim-
plify tax law in some areas, has now been amended 11 times. So a simplification effort becomes more complicated and we start to revert to the very complexity of the tax base that is being sought to be simplified. It is also true that international tax changes have been amended a number of times in the same way. So Labor are concerned about the number of errors in tax bills that are having to be corrected, and we are concerned that there will be an increased propensity to rush legislation forward in the tax area and for the number of mistakes, which has been on the increase, to increase further. We do not believe that that is a good thing.

When we get to the bill in committee we will be moving a couple of amendments that we believe are important in respect of the general interest charge. Over the last hour—I do not say unfortunately; it is part of the job—I have incorporated a number of speeches on two tax bills. We will deal with the second reading amendments on those bills in the committee stage. In order to save time, I have incorporated speeches on two superannuation bills—I was halfway through speaking on one. For this third tax bill, which I have been speaking on for the last 20 minutes or so, due to the very quick notice for the bringing on of this legislation in order to cooperate with the government’s program, regrettably I was not able to obtain the necessary composite material in order to submit the speech that I have just given. I have had to give it from notes rather than incorporate the speech; otherwise, I would have been in a position to save time. Nevertheless, I stress that the opposition has effectively cooperated by delivering speeches on the second reading on five pieces of legislation in the hour we have had in lieu of the dinner break.

Senator MURPHY (Tasmania) (7.30 pm)—I will not take up much time. I wish to make a few comments in respect of this issue. In listening to Senator Sherry, I took note when he mentioned—

Senator George Campbell—Madam Acting Deputy President Kirk, I rise on a point of order. I draw your attention to the time. The break was until 7.30 pm and we should now be dealing once more with the Migration Amendment (Detention Arrangements) Bill 2005.

The ACTING DEPUTY PRESIDENT (Senator Kirk)—Order. It being 7.30 pm, the debate is interrupted pursuant to the order agreed to earlier today.

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

MIGRATION AMENDMENT (DETENTION ARRANGEMENTS) BILL 2005

In Committee

Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Kirk)—The committee is considering opposition amendment (3) on sheet 4623, moved by Senator Ludwig.

Senator IAN MACDONALD (Queensland) (7.32 pm)—The position of the government has not changed. It remains as Senator Colbeck so eloquently put it earlier in the debate. I am advised that there has not been any movement on the government’s position and the government stand by the approach we adopted previously.
Senator LUDWIG (Queensland) (7.32 pm)—I had completed the submissions I was going to make in relation to my amendment as well, but I think the government was going to respond to schedule 1, item 10.

Senator IAN MACDONALD (Queensland—Minister for Fisheries, Forestry and Conservation) (7.33 pm)—I am told that the government’s position on that is exactly the same as I just stated. On further consideration perhaps I will take advice from the portfolio minister who may have a slightly better understanding of the motion before the chair. Perhaps Senator Ludwig might repeat the question for the minister.

Senator LUDWIG (Queensland) (7.33 pm)—I had just finished my submissions in respect of the TPV amendment and we were waiting for the minors to give their view and for the government to respond.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (7.34 pm)—I understood Senator Ludwig to say that he was waiting for the ‘minors’—as he referred to them—to respond. I wait with him.

Senator NETTLE (New South Wales) (7.34 pm)—I indicate that the Greens do not support temporary protection visas. We acknowledge that this amendment is seeking to limit the period of time that people are on temporary protection visas. In that way, it is an improvement from the status quo, and we will be supporting the amendment, although it does not reflect our position.

Senator BARTLETT (Queensland) (7.34 pm)—Rather than going from bad to worse, this goes from worse to just bad. I guess that is a step forward to a degree, so we will support the amendment.

Question agreed to.

Senator NETTLE (New South Wales) (7.35 pm)—by leave—I move Greens’ amendments (3) to (8) on sheet 4169:

(3) Schedule 1, page 7 (after line 3), after item 10, insert:
10A At the end of subsection 196(1)
Add:
; or (d) released from detention in accordance with section 196A or 196B.

(4) Schedule 1, page 7 (after line 3), after item 10, insert:
10B Subsection 196(3)
After “doubt”, insert “and subject to sections 196A and 196B”.

(5) Schedule 1, page 7 (after line 3), after item 10, insert:
10C Subsection 196(4)
Omit “and (c)”, substitute “, (c) and (d)”.

(6) Schedule 1, page 7 (after line 3), after item 10, insert:
10D Subsection 196(4A)
Omit “and (c)”, substitute “, (c) and (d)”.

(7) Schedule 1, page 7 (after line 3), after item 10, insert:
10E Subsection 196(5)
After “doubt”, insert “and subject to sections 196A and 196B”.

(8) Schedule 1, page 7 (after line 3), after item 10, insert:
10F After section 196
Insert:
196A Detention of asylum seekers
(1) This section applies to a person who is an unlawful non-citizen who:
(a) has applied for a visa under section 36 which has not been finally determined; or
(b) has requested the Minister to:
(i) make a determination under section 48B; or
(ii) exercise the Minister’s power under section 417;
and has not received the decision of the Minister.

(2) An officer may detain a person to whom this section applies if the officer has reasonable grounds to consider that detention is necessary in order to:

(a) verify the identity of the person; or
(b) assess the application; or
(c) protect public safety or welfare; or
(d) ensure that the person is immediately available for health checks; or
(e) ensure that the person is available for removal if his or her application is unsuccessful.

(3) A person to whom this section applies who is detained must be given a written statement of the reasons for detention.

(4) A person to whom this section applies who is detained may apply to the Federal Court for an order that he or she be released because there are no reasonable grounds to consider that detention is necessary for the reasons specified in subsection (2).

(5) A person to whom this section applies may be detained for a period not exceeding 90 days unless the Federal Court makes an order under subsection (7), a further order under subsection (9) or an order under subsection (11) that the person must be kept in immigration detention.

(6) The Secretary may apply to the Federal Court for an order under subsection (7), a further order under subsection (9) or an order under subsection (11) that a person to whom this section applies must be kept in immigration detention.

(7) The Federal Court may make an order that a person to whom this section applies must be kept in immigration detention for a period not exceeding 90 days if the court is satisfied that it is necessary to do so in order to:

(a) verify the identity of the person; or
(b) assess the application; or
(c) protect public safety or welfare; or
(d) ensure that the person is immediately available for health checks; or
(e) ensure that the person is available for removal if his or her application is unsuccessful.

(8) In considering whether it is necessary to detain a person to whom this section applies in order to assess the application or to ensure that the person is available for removal if his or her application is unsuccessful, the Federal Court must take into account the effectiveness and appropriateness of imposing conditions of release which would ensure that, should the person be released from detention, the person would be available for the assessment of the application for the visa or for removal if the application is unsuccessful.

(9) If the Federal Court has made an order under subsection (7) or a further order under this subsection, that a person be detained for a further period specified in the order, at the end of that specified period the person must be released from immigration detention unless the court has made a further order under this subsection that the person must be kept in immigration detention, provided that a further order under this subsection must not order that the person be kept in immigration detention for a further period exceeding 90 days.

(10) The Federal Court may order that a person who is released from detention must comply with reasonable conditions to ensure that he or she is available for the assessment of the application or for removal if the application is unsuccessful.

(11) The Federal Court may order that a person who has not complied with conditions of release imposed by the court may be detained for a period which the court considers reasonable in the circumstances.
(12) A person to whom this section applies who is released from detention must be granted a bridging visa which provides that the holder is entitled to the same entitlements as are provided under a Bridging R (Class WR) visa.

196B Detention of unsuccessful asylum seekers who are subject to removal

(1) This section applies to a person who made a valid application, which has been finally determined, for a visa under section 36, and that application was unsuccessful. To avoid doubt, an application for a visa under section 36 does not include a request to the Minister to make a determination under section 48B or to exercise the Minister's powers under section 417.

(2) An officer may detain a person to whom this section applies if the officer has reasonable grounds to consider that detention is necessary in order to:

(a) protect public safety or welfare; or

(b) ensure that the person will be available for removal from Australia.

(3) A person to whom this section applies who is detained must be given a written statement of the reasons for detention.

(4) A person to whom this section applies who is detained may apply to the Federal Court for an order that he or she be released because there are no reasonable grounds to consider that detention is necessary for the reasons specified in subsection (2).

(5) A person to whom this section applies may be detained for a period not exceeding 90 days unless the Federal Court makes an order under subsection (7), a further order under subsection (9) or an order under subsection (11) that the person must be kept in immigration detention.

(6) The Secretary may apply to the Federal Court for an order under subsection (7), a further order under subsection (9) or an order under subsection (11) that a person to whom this section applies must be kept in immigration detention.

(7) The Federal Court may make an order that a person to whom this section applies must be kept in immigration detention for a period not exceeding 90 days if the court is satisfied that:

(a) there is a real likelihood of the person being removed from Australia in the reasonably foreseeable future; or

(b) if the person were allowed to leave immigration detention, there would be a significant risk that the person:

(i) would represent a danger to the safety or welfare of the Australian community, or to a segment of that community; or

(ii) would not be available for removal from Australia.

(8) In considering whether it is necessary to make an order under subsection (7) or a further order under subsection (9) to ensure that the person would be available for removal, the Federal Court must take into account the effectiveness and appropriateness of imposing conditions of release which would ensure that, should the person be released from detention, the person would be available for removal from Australia.

(9) If the Federal Court has made an order under subsection (7) or a further order under this subsection, that a person be detained for a further period specified in the order, at the end of that specified period the person must be released from immigration detention unless the court has made a further order under this subsection that the person must be kept in immigration detention provided that a further order under this subsection must not order that the person be kept in immigration detention for a further period exceeding 90 days.

(10) The Federal Court may order that a person who is released from detention must comply with reasonable condi-
tions to ensure that the person would be available for removal from Australia.

(11) The Federal Court may order that a person who has not complied with conditions of release imposed by the court may be detained for a period which the court considers reasonable in the circumstances.

(12) A person to whom this section applies who is released from detention must be granted a bridging visa which provides that the holder is entitled to the same entitlements as are provided under a Bridging R (Class WR) visa.

These amendments provide for judicial oversight by the Federal Court. They require a written statement to be given to detainees at the time they are detained about why they are detained. They set a 90-day limit on the detention of people and after 90 days the ongoing detention must be reviewed by the Federal Court. The Federal Court assesses their ongoing detention against the criteria of whether they are a danger in any way to the community and the likelihood of their absconding. The Federal Court can then decide either to release them or to continue to detain them for another 90 days. The Federal Court can also put conditions on the release of the detainees. The amendments provide that, when detainees are released, they are able to work and support their families in the community and are also able to access health services.

The amendments also provide that, if a detainee is found not to be an asylum seeker, this section allows unsuccessful detainees to apply to the Federal Court to be released into the community on a bridging visa while they await removal. Again, while they are in the community they have the capacity, on the visa proposed in the amendments, to work and support their families and to access health services during that period.

Amendment (8) seeks to bring in an independent body to determine whether or not detainees’ detention can continue. I referred to this issue already in my speech in the second reading debate and compared it to the way in which state or federal police forces have a requirement for people who are being detained for a long period to go before a magistrate or a member of the Supreme Court—whatever the various level may be; it varies in all the different jurisdictions. But in respect of almost every other form of detention, there is a requirement that an independent legal body review the ongoing detention. That is what this amendment seeks to do. It potentially means that a large number of people would be released from detention. It would mean there would be a body outside of the department of immigration that would be making determinations about whether people’s ongoing detention should continue. I hope that the amendment will enjoy the support of the chamber.

Senator LUDWIG (Queensland) (7.38 pm)—In effect, amendments (3) to (8) are what we have been referring to this evening as the Georgiou bill. As I have indicated previously, they did not make it to the House—one does not know whether or not they might have been continued in that way, or amended or changed in some other fashion. In Labor’s view there were a number of problems with their implementation and how they would work. Now that the Greens have sought—I will not use the word ‘adopted’—to progress those amendments in here they still suffer the same problems to do with how they will work effectively.

Broadly, we are supportive of the general thrust of the idea or principle that is behind them. However, we are not in a position where we can actually support the amend-
ments because we do not think the flaws can be overcome in here. As I have said this evening, Labor has its own package of amendments which advances the position significantly from that of the government in respect of this bill.

Parts of these amendments are consistent with amendments that we are proposing as well, so parts of these amendments move towards Labor policy. However, differences lie in the mechanisms and the way they will be implemented. We think that our amendments and the way our mechanisms will work will get to the objectives that we have outlined in a far better way. For example, proposed section 196A is to do with detention of asylum seekers and 196A(7) is related to the role of the Federal Court in reviewing cases where detainees are held for 90 days. Labor agrees that applicants should be reviewed at the 90-day mark and monthly thereafter. However, we believe that this duty is more efficiently fulfilled by the Ombudsman.

Also, these amendments call for the Federal Court to ensure that the person is available for removal if his or her application is unsuccessful. Again, while Labor agrees that people should not be detained unnecessarily, the implementation of such a policy is not really practicable. I suspect that may have been pointed out during the negotiations that we were not privy to. It may have even been recognised by Mr Georgiou himself. This was his opening position, and it may have subsequently changed or been altered by the time it got here or during the process he sought. It is not a case where we can simply say, ‘We will adopt them.’ We do not know what might have happened to them. We have our own amendments which go to the heart of how the process will work. We think they are better structured and will achieve the objective Labor has sought to progress here.

Therefore, as a whole, we do not support the amendments. We would, however, be happy to discuss a couple of the issues. We will get that opportunity during the inquiry into the migration matter itself. I am certain that Senator Nettle will be along to that committee, as will Senator Bartlett. I probably will be, too, and we will have the opportunity of hearing submissions and having a look at some of those issues again.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (7.41 pm)—Obviously, the government does not support the amendments. There are a couple of reasons for that. The amendments are a repeat of some draft ideas thought up by someone else. I make the point that what is coming from the other end of the chamber is catch-up politics. These are not initiatives that were originally moved or felt passionately enough about or strongly argued enough by people down that opposite end of the chamber. These amendments are now being moved with the idea that they are some sort of embarrassment or something—I do not know. They are certainly not original ideas from the people who are moving them.

I also make the point that the people who did have these ideas in the first instance have had hours and hours of discussion about getting a practical solution. The people who first thought of these ideas and were prepared to move them are happy with the arrangements that have now been put in place. I note that the people who are moving amendments that were originally planned by others have taken no account of what the original creators of those amendments now think. That is not a terribly edifying situation for any party—the Greens or anyone else—to find themselves in.
The next point I would like to make relates to the suggestion that we need judicial oversight. There is a vast amount of litigation covering this area. I made remarks earlier about the efficacy of the advice that is offered to litigants: since most of them lose, it is obviously not very efficacious. I make that point in order to point out that simply providing judicial overview does not necessarily give people a better outcome. It often means that people who are destined to not get a better outcome are simply dragged through the litigious mill. That is often all it means: it is not a magic wand. With respect to the judiciary, we have a fabulous legal system in this country and, by and large, top quality judges. But that is what they should be used as: judges, to decide matters of fact and to interpret the law. To somehow think that you can just wheel in the judiciary every now and then as a second guesser of the executive is a mistake in terms of understanding the separation of powers and what each of their responsibilities actually are.

I want it to be clear on the record that there is plenty of opportunity for review of departmental decisions. That already exists. People may not be happy with it, but it already exists. What is being suggested here—if I can borrow a phrase from Anton Scalia, a Justice of the Supreme Court of the United States, and rephrase it—is a judicial mugging of the executive. That is what it is. His phrase originally was ‘a judicial mugging of the legislature’. He is far more conservative than I but, when I heard him speak, I did think I would have gone to more constitutional law classes if he had been teaching them, because he spoke plain English. I understand what ‘a judicial mugging of the legislature’ means and, because of that, I also understand what ‘a judicial mugging of the executive’ means.

We have executive responsibilities, and they have to be carried out. The political system allows for them to be challenged and reviewed. The media, for all their faults, do a pretty good job of checking that. That is not to say that they are perfect all the time—I would be the last person to say that—but they do have a tremendous degree of freedom to query these things. I do not think that a judicial mugging of the executive is appropriate. That is why we are not supporting it.

Senator BARTLETT (Queensland) (7.46 pm)—The Democrats support these amendments as far as they go. As I made the point earlier, the draft Petro Georgiou bills were themselves comprised originally. They certainly do not meet what Democrat policy is. We think the core issue here is, as moved in our second reading amendment, the whole principle of indefinite detention without charge or trial, with decisions surrounding that totally contained within the executive and government officers. I think that is a bad principle and almost inevitably leads to some of the injustices we have seen and heard of in recent times. It is not necessary for departmental officers to be particularly bad people or whatever, but I think that it is almost inevitable that injustices will occur when you have a law that gives so much power with so little proper oversight on something as serious as taking away people’s freedom for a prolonged period of time.

These amendments, whilst they do not precisely match what my ideal solution is, are not something that a few backbenchers just thought about out of nowhere; they broadly reflect the general thrust of recommendations from a range of reports going back quite a number of years. I have mentioned them a few times in speeches in this chamber in the last few weeks, so I will not go into them in detail again. Suffice to say, the general notion of putting some sort of limitation on migration detention and some sort of limitation on how long someone’s freedom can be taken away before that re-
removal of freedom has to be justified in front of some independent body is the general thrust of what has been in any number of reports. That continues to be a goal that I believe is achievable and eminently reasonable.

I do take on board what the minister said about some of the issues to do with what things you get courts and judges to do and not do, but this is detention. Whilst it might be called ‘administrative detention’, you are taking away somebody’s freedom. In terms of the main migration detention centres, you are locking them up in extraordinarily jail-like environments with guards and officers who are, in many cases, actually ex-prison guards and certainly have a prison-type mentality. I contrast it—as I do from time to time—with the mentality of the IOM people at the camp on Nauru. Whilst I am clearly strongly opposed to that camp and believe it should be closed down, there is a difference between people approaching something as imprisonment and confining people, as opposed to people residing somewhere and you are looking after them or you have responsibility for them until you can find a viable solution for them. There is a very different mindset and it manifests itself very differently in how the officers who run the contrasting camps act and the environment and atmosphere that the detainees have to exist within. That is not to say that the camp on Nauru or the IOM are perfect, by any means, but this is not the time for that debate.

The broad principle has been put forward many times in this chamber by the Democrats over a long period of time—back to when mandatory detention was first introduced. The Democrats opposed the introduction of mandatory detention. While others may disagree with that position, I would hope that they would at least concede the consistency in it. The concerns that we have about that principle are probably stronger now than they were then, because we have seen how it is operating in practice. While we support, in a limited way, attempts to ameliorate some of the negatives of that principle as it currently exists under the law, until you actually take that unacceptable principle out of the heart of the law and cast it aside, we will continue to have injustices and continue to have these debates. As I am sure that we will continue to have these debates, I will not go on any more now. I am sure we will be talking about it again some time down the track.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (7.51 pm)—Not to get too poetic at this reasonably early hour—I think I will save that for later—there is a collection of phrases that I have never forgotten which someone put before me when I was much, much younger. I want you to remember this, Senator Bartlett, because it will come back at some point to what you have just said. It goes like this:

Tell me not, in mournful numbers,
Life is but an empty dream!
For the soul is dead that slumbers—
and the bit I want you to remember, Senator Bartlett, is—
And things are not what they seem.
I am not at liberty to go any further than that.
I know it is a bit of a tease, but I want you to remember it, because it will come back to you.

Senator Bartlett—Okay.

Senator VANSTONE—I like to say something that will keep you thinking.

Senator Ludwig—That is very deep for this hour.

Senator VANSTONE—I have never forgotten it. It was deep enough to go right in
and stay there—and it has stayed there for about 30 years. I have no idea who wrote it, and I do not really care. It is the substance of it that matters.

Senator Bartlett, you remarked that detention centres are prisons. I freely admit that I have not been to a prison, but I do not think they have big green yards or trips to the movies. For example, I do not think that people in the housing projects get to go to the swimming pool or to school et cetera. The analogy is poor. It is true that these people do not have the freedom to leave the detention centres and interact freely in the community, but they do have the freedom to leave Australia. That brings me to my third point. You talk about indefinite detention, and that is not the case. The people in detention are people who the government genuinely believes are here unlawfully. They are entitled to challenge that through the courts. That is not indefinite; that will come to an end.

There is another category of people—and Mr Qasim would fit into this category—who either cannot or will not identify who they are, and that makes it difficult to send them anywhere. Before the negotiations we had very limited capacity to deal with those people, but the new legislation gives us a much greater capacity to handle them. I do not believe that you need any further capacity than that which this legislation provides.

Senator NETTLE (New South Wales) (7.53 pm)—I have a distinct recollection that the minister was here when I moved the first amendment for the Australian Greens. I said at that time that these are not Greens’ amendments. The Greens’ position was put forward in the second reading amendment that we put up. That was lost. What I said was that we were facilitating the process—that is what we did when we introduced the bills into the parliament this week—to ensure that debate could occur in the Senate, because at that time of the week it seemed that the Prime Minister was intent on ensuring that debate on these issues, which have been publicly debated in the media for about a month, could not occur in the House of Representatives. That was our intention in moving these amendments.

As the minister would know, there is tremendous support behind the private member’s bills put up by Petro Georgiou, and support continues in the community. As I indicated at the beginning of this debate, we are allowing the debate to occur in the parliament by moving the amendments. They are not our position and we have never sought to say that they were, but we have said that we are allowing debate to occur on the issues that have been in the public arena for the last month. We are putting the issues. I have a distinct recollection that the minister was here when I outlined this at the beginning. Perhaps she did not hear what I was saying or perhaps she did not have the grace to hear what I was saying. I am repeating it now for your benefit, Minister.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (7.55 pm)—I was here and I did hear what you said, Senator Nettle. The point that I am making is not that you have not acknowledged that they are someone else’s ideas; the point I am making is just that they are someone else’s ideas and not yours. You highlighted that at the beginning. You have just stood up and said that you highlighted it. You stood up and highlighted your own vacuity.

Senator BROWN (Tasmania) (7.55 pm)—A better world it would be if the minister borrowed somebody else’s ideas instead of implementing her own. She talked about
judicial mugging of the legislature. Let me interpret it for you. It is having a go at the law. The judicial mugging comes out of the law of the land catching up with manipulative legislators who want to subvert either the Constitution or the norms of society. Isn’t it always the case that it is the conservatives who end up wanting to do that? The conservatives do not like democracy, do not like the parliament and do not like the judiciary when it catches up with them and says, ‘You observe the Constitution, you observe the international law’—and in this debate we have heard how often laws from this minister transgress international law—‘and you observe international covenants.’ But the minister does not do that and then claims foul when the judiciary says, ‘You must.’ It is thinly veiled disdain for both the democratic system and the legal system in this country that the minister is expressing.

**Senator LUDWIG** (Queensland) (7.57 pm)—The answer to the minister in relation to this amendment went to some of the detail of the bill. That was the argument that was put to Mr Georgiou as to why he should not progress the bill. It seems to have been put with some force today. I wonder whether that argument persuaded him not to adopt it. I think the minister foreshadowed earlier that there may be further amendments in the pipeline. I wonder what those amendments might go to and whether the minister is a position to outline the detail of some of them.

**Senator VANSTONE** (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (7.58 pm)—The advice I have is that they relate purely to the matter that I was referring to at the time, and that is the three-month limit and the reporting back to parliament with respect to that.

**Senator NETTLE** (New South Wales) (8.06 pm)—I move Greens amendment (9) on sheet 4619:

(9) Schedule 1, page 7 (after line 3), after item 10, insert:

10G After section 196

Insert:

196C Act of compassion for long-term detainees

(1) This section applies to a person who is an unlawful non-citizen:
(1) This section applies to:

(a) who has been in immigration detention for a continuous period of, or whose sum of immigration detention is, at least 365 days; and

(b) who has made a valid application (whether or not it has been finally determined) under section 36 for a visa.

(2) As soon as practicable after the commencement of this section, the Minister must appoint a person as the Judicial Assessor for the purposes of this section.

(3) A person appointed as the Judicial Assessor must either:

(a) be a judge of the Federal Court of Australia; or

(b) have been:

(i) a judge of the Federal Court of Australia; or

(ii) a judge of the Supreme Court of a State or Territory.

(4) The Secretary must make arrangements for the Judicial Assessor to consider all information available to the Secretary in respect of each person to whom this section applies.

(5) The Judicial Assessor must, in respect of each person to whom this section applies, consider whether, if the person were allowed to leave immigration detention, there would be a significant risk that:

(a) the person would represent a danger to the safety or welfare of the Australian community or to a segment of that community; or

(b) the person would not be available for the assessment of the application for a visa; or

(c) if the application for a visa has been or may be unsuccessful, the person would not be available for removal from Australia.

(6) In considering whether there is a significant risk in accordance with paragraph (5)(b) or (c), the Judicial Assessor must take into account the effectiveness and appropriateness of imposing conditions of release which would ensure that, should the person be released from detention, the person would be available for the assessment of the application for a visa or for removal from Australia.

(7) The Judicial Assessor must:

(a) if satisfied that it is necessary that a person to whom this section applies should remain in immigration detention—advise the Minister accordingly; or

(b) if satisfied that it is not necessary that a person to whom this section applies should remain in immigration detention—advise the Minister that a bridging visa should be granted to the person.

(8) If the Judicial Assessor advises the Minister that a bridging visa should be granted to a person, the person must be:

(a) granted a bridging visa permitting the person to remain in Australia pending the determination of the application for a visa or removal from Australia; and

(b) released from immigration detention as soon as practicable.

(9) A bridging visa granted under paragraph (8)(a) must provide that the holder is entitled to the same entitlements as are provided under a Bridging R (Class WR) visa.

(10) A bridging visa granted under paragraph (8)(a) must provide that the holder must comply with the reasonable conditions, if any, that were recommended by the Judicial Assessor to ensure that the person is available for the assessment of the application for a visa or for removal from Australia.

196D Act of compassion for children and their families in detention

(1) This section applies to:
(a) a child aged less than eighteen who is in immigration detention and who has made a valid application under section 36 for a visa or on whose behalf a valid application under section 36 for a visa has been made; and

(b) the parent or parents and sibling or siblings, if any, of a child in immigration detention, who is or are also in immigration detention, and who has or have made a valid application under section 36 for a visa.

(2) The Judicial Assessor must, in respect of each person to whom this section applies, consider whether, if the person were allowed to leave immigration detention, there would be a significant risk that:

(a) the person would represent a danger to the safety or welfare of the Australian community or to a segment of that community; or

(b) the person would not be available for the assessment of the application for a visa; or

(c) if the application for a visa has been or may be unsuccessful, the person would not be available for removal from Australia.

(3) In considering whether there is a significant risk in accordance with paragraph (2)(b) or (c), the Judicial Assessor must take into account the effectiveness and appropriateness of imposing conditions of release which would ensure that, should the person be released from detention, the person would be available for the assessment of the application for a visa or for removal from Australia.

(4) The Judicial Assessor must:

(a) if satisfied that it is necessary that a person to whom this section applies should remain in immigration detention—advise the Minister accordingly; or

(b) if satisfied that it is not necessary that a person to whom this section applies should remain in immigration detention—advise the Minister that a bridging visa should be granted to the person.

(5) If the Judicial Assessor advises the Minister that a bridging visa should be granted to a person, the person must be:

(a) granted a bridging visa permitting the person to remain in Australia pending the determination of the application for a visa or removal from Australia; and

(b) released from immigration detention as soon as practicable.

(6) A bridging visa granted under paragraph (5)(a) must provide that the holder is entitled to the same entitlements as are provided under a Bridging R (Class WR) visa.

(7) A bridging visa granted under paragraph (5)(a) must provide that the holder must comply with the reasonable conditions, if any, that were recommended by the Judicial Assessor to ensure that the person is available for the assessment of the application for a visa or for removal from Australia.

196E Act of compassion for temporary protection visa holders

(1) If a person is the holder of a temporary protection visa on the date of commencement of this section, the Minister must grant the person a visa permitting the person to remain in Australia permanently.

(2) Subsection (1) is to be taken as sufficient authority for the grant of a visa permitting a person to remain in Australia permanently notwithstanding any inconsistency with any other provisions of this Act.

196F Permanent residence for people who cannot be removed from Australia

(1) This section applies to a person who:
in detention, to the opportunity for people who are currently on temporary protection visas to permanently reside in Australia, and to people who cannot be removed from Australia and their capacity to reside in the community.

The way in which it seeks to do that is by saying that anybody who is in detention for over one year will have their detention reviewed by a former or serving Federal Court judge or a former Supreme Court judge. They will assessed, again against the same criteria as in the previous series of amendments that were dealt with, to see whether they are a danger to the community and whether they are likely to abscond. There are the same provisions dealing with the type of visa under which they would be released into the community. That visa would allow them to work, support their families in the community and access health services. That provision relates to people who are in detention for over one year. In this amendment the same process is proposed for children and families in detention. It is proposed to have their cases reviewed by the same judicial assessors against the same criteria. If they are released into the community, they will be able to work, support their families and access health services.

I have already described the proposal dealing with temporary protection visas, whereby all people currently on temporary protection visas would be allowed to remain permanently in Australia. The final provision in the amendment relates to when a detainee is found not to be an asylum seeker but has been granted a bridging visa in order to live in the community and has been subject to removal for three years. They will be given a visa to remain permanently in Australia. One other hurdle is proposed in the amendment, which is a character test. This amendment would relate to somebody like Peter Qasim, for example, or to anybody who is found to
be stateless. There are a number of Palestinian refugees and Bedouin people who may be found in this situation. The amendment relates to those who cannot be returned to their home country because it is a war zone, such as Afghanistan and Iraq. It also covers people who face persecution for a variety of other reasons. Iranian Christians are one group that comes to mind, but there could be a whole raft of people who do not fit the determination of a refugee but who are found to face persecution elsewhere. The amendment allows them to live in the community.

That is all I have to say about what the amendment does. It goes to those four areas. We support these changes not because they are our policy but because we are advocating changes that have been discussed in the community, in the coalition and in a whole range of different places over the last month. We are putting the amendment forward for debate and for the opportunity to be supported in the Senate. I hope that it is supported.

Senator LUDWIG (Queensland) (8.10 pm)—Senator Nettle was helpful in providing two parts to the bill to give a bit of focus to this evening’s work. This is the second part of the Georgiou bills which, as Senator Nettle has said, deals with acts of compassion, long-term detainees, families and children. She does not call it the abolition of TPVs, but I think that is the effect of it, because if you give permanent residency to people on TPVs then is there still the ability to have new TPVs? I suspect not. We will not argue semantics. I will call it the abolition of TPVs and attract the criticism of Senator Nettle. Be that as it may.

Labor do not support the amendment moved by Senator Nettle. I think we have made that plain on a number of occasions in respect of the Georgiou bills. Much of the Georgiou bills is supported by Labor in principle. We have said that this evening on a number of occasions. We argue that the mechanisms that Labor have put forward in our amendments—both in the amendments that we moved earlier and in the ones that are yet to be moved—provide for a better process and a better outcome for the migration detention regime. They provide a better outcome for the bill that is currently before us. They will ensure that those people who will be dealt with under the bill will have a much better outcome than under what the government is providing.

As we have indicated earlier, some of the mechanisms that the Georgiou bills have outlined are problematic. It is not known how they would work or whether in fact they would work at all. There are difficulties when you look at how the judicial assessor will deal with those people who might abscond. Those matters have not been worked out clearly in the Greens’ amendment. For those reasons it is not supported. We do not know how the judicial assessor will work in practice. One of the interesting issues that this highlights is that Labor have proposed oversight by the Ombudsman with an end point, not just a filter. But the government’s response to this is to always intervene as a discretion, which not only is a filter but also might lead to no outcome. That is the problem with the government’s position.

The problem with the Greens progressing the Georgiou bills is that the mechanisms may not create favourable circumstances for the people who are going to be most affected—that is, those people who are in detention and who are unlawful noncitizens. The mechanisms put forward by Labor embody a couple of basic tenets. They are there to assist, they are there to have a conclusive outcome and they will ensure that the process works. The mechanisms will ensure that there is some point where it clicks over; in other words, that it does click in and work.
The government’s position is still dependent upon what the government might decide. The way it works with their Ombudsman is that there is only a recommendation, effectively; there is no certainty for people that the report will be taken on board. They do not know whether it will be ignored or dealt with at all. The government might argue that that is a good thing, but I am not so sure about that. Labor have put forward, as I have said, a more workable solution, and we remain convinced that it is a preferable position to that which has been put forward by the Greens this evening. For those reasons, we are not in a position to support the amendment.

Senator BARTLETT (Queensland) (8.14 pm)—I will just put on the record again, to make the point, that the Georgiou bills themselves were a compromise initially but, none-theless, they still contained some positive aspects. This notion of act of grace, act of compassion and that type of thing has been pushed for some time by many refugee advocates in the community, as well as by me, and I tabled a fairly sizeable petition in this place along those lines. It is not as good as abolishing mandatory detention completely, but in the absence of that it is certainly a step forward.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (8.15 pm)—The government do not support this amendment. Some people have perhaps been a bit harsh when they say that it is a mandatory release provision. We believe the modifications we are making are appropriate. We are giving the minister extra power to handle exceptional cases. We have a new visa to handle people whom, for one reason or another, we cannot remove and who can still go on with litigation when the primary decisions have been made. The minister has another non-compellable power for special circumstances unrelated to the ones I have just mentioned. We believe this can be handled. We do not believe the appropriate solution is mandatory release at 12 months.

Senator NETTLE (New South Wales) (8.15 pm)—I have some questions for the minister that relate to the obligations of the Ombudsman that are provided for in the bill. Is there any time frame either set out in guidelines or envisaged by the government for the Ombudsman to make their assessment to the minister? I note the time frames for when the Ombudsman must be notified and when the minister must respond. Does the government have any view about how long that process of assessment by the Ombudsman may take? If you do not have a view, maybe you have an idea of how along those kinds of assessments have taken or should take. Does the minister have any comment on that? In the statement on the financial impact of the bill, there was an indication about additional resources to be provided to the Commonwealth Ombudsman in order for them to carry out those duties. Have the government determined what size that additional resourcing will be or do the government have an indication of that, if that is valid?

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (8.16 pm)—Firstly, I think I compliment Senator Nettle by saying that she may have missed her calling. I noticed that, when she was referring, yet again, to the fact that these are someone else’s ideas and not her own and that this was the second of the Georgiou bills, we had the body language that is usually seen from a teacher. Body language is not revealed in Hansard, so, for the purposes of Hansard, I will spell it out. You put your hands out in front of you and say, ‘We had the first bill,’ and you put your
hands separately to indicate ‘one bill’ over here; and then you turn a little to the other side and say, ‘And then we had the second bill,’ and by still keeping your hands separate you indicate that there are two ideas. Most of us have got that by the numerical concepts of one and two, but I do appreciate the graphic presentation of it. Senator Nettle, if you ever lose your seat, you could have a very good career in primary school teaching.

Your questions after that were relating to the Ombudsman. As you know, the Ombudsman already has the power to investigate whatsoever he or she chooses. A number of cases are referred to the Ombudsman, and they can do investigations of their own motion. So there is already a very extensive oversight by the Ombudsman. What is being added here is a requirement that the Ombudsman report—a required report—on the department after a matter has not been concluded after a period of time. The resources will be provided. I do not think the level of the resources has been resolved.

I have not heard anyone question the length of time the Ombudsman takes. I am sure the Ombudsman does these things as expeditiously as he or she can. It is an ongoing question. Who guards the guards? is one of the Senate reports that I have been a party to. Who keeps a check on the Ombudsman? Who keeps a check on the Auditor-General? These are very interesting questions. The Auditor-General has looked at some issues, and the report has come out four months later and is, frankly, useless in a political sense because the moment has passed. Who does that check on the Auditor-General? Who says, ‘Thanks very much, but producing a report four months later is a bit useless’? Who keeps a check on the Ombudsman and the Auditor-General is an interesting question. Not many people are interested in that. I am, but I have not heard anyone query or suggest that the Ombudsman has been lax before, and we do not think they are either. We think they will do it as expeditiously as they can.

Question put:

That the amendment (Senator Nettle’s) be agreed to.

The committee divided. [8.24 pm]

(The Chairman—Senator JJ Hogg)

Ayes……….. 5
Noes……….. 28
Majority……….. 23

AYES
Bartlett, A.J.J. * Greig, B.
Murray, A.J.M. Nettle, K.
Ridgeway, A.D.

NOES
Barnett, G. Bishop, T.M.
Boswell, R.L.D. Buckland, G.
Chapman, H.G.P. Colbeck, R.
Collins, J.M.A. Crossin, P.M.
Eggleston, A. Ferris, J.M. *
Fierravanti-Wells, C. Hogg, J.J.
Humphries, G. Kirk, L.
Knowles, S.C. Lightfoot, P.R.
Ludwig, J.W. Macdonald, J.A.L.
Marshall, G. McGauran, J.J.J.
Moore, C. Patterson, K.C.
Stephens, U. Tchen, T.
Troeth, J.M. Vanstone, A.E.
Webber, R. Wong, P.

* denotes teller

Question negatived.

Senator LUDWIG (Queensland) (8.26 pm)—by leave—I move opposition amendments (5), (6) and (9) on sheet 4623:

(5) Schedule 1, item 11, page 7 (line 13), omit “If”, substitute “Subject to section 197ABA, if”.

(6) Schedule 1, item 11, page 7 (after line 25), after section 197AB, insert:

197ABA Children to reside at specified place rather than being held in detention centre etc.
(1) Unless the Minister receives a determination under section 197ABC from the Judicial Assessor, the Minister must make a residence determination for a child under the age of 18 years within 30 days of the day on which this section commences.

(2) Unless the Minister receives a determination under section 197ABC from the Judicial Assessor, if the Minister has made a residence determination under subsection (1) for a child, the Minister must also make a residence determination for any parent, brother or sister of the child if that parent, brother or sister is held in detention with the child.

197ABB  Appointment of Judicial Assessor

(1) As soon as practicable after this section commences, the Minister must appoint a person as the Judicial Assessor for the purposes of this section.

(2) A person appointed as the Judicial Assessor must either:

(a) be a judge of the Federal Court of Australia; or

(b) have been:

(i) a judge of the Federal Court of Australia; or

(ii) a judge of the Supreme Court of a State or Territory.

(3) The role of the Judicial Assessor is to consider applications by the Secretary for a determination by the Judicial Assessor that a residence determination should not be made under subsection 197ABA(1) for a child or under subsection 197ABA(2) for a parent, brother or sister of a child.

197ABC  Determinations by Judicial Assessor

(1) If the Secretary makes an application to the Judicial Assessor for a determination under this section for a child or the parent, brother or sister of a child, the Secretary must ensure that all information held by the Department relating to that person is made available to the Judicial Assessor.

(2) The Judicial Assessor must not make a determination that a residence determination should not be made for a child or the parent, brother or sister of a child unless the Judicial Assessor concludes that, if the person were allowed to leave immigration detention, there would be a significant risk that:

(a) the person would represent a danger to the safety and welfare of the Australian community or to a segment of that community; or

(b) the person would not be available if required for any further action under this Act.

(3) A determination by the Judicial Assessor under this section must:

(a) be made by notice in writing; and

(b) be provided to the Minister within 7 days after it has been made.

(9) Schedule 1, item 11, page 9 (line 28), omit “The”, substitute “Subject to section 197ABA, the”.

We are moving these amendments now so as to give Senator Vanstone the opportunity to take a short break. These amendments can be encapsulated by the statement, ‘Remove all children from behind razor wire’. That is what Labor is putting here tonight. Regardless of detention period, children under 18—along with their parents and siblings—will be released unless it is determined by a judicial assessor that they pose a threat to security or are likely to abscond. That underlines the Labor Party’s position. These amendments seek to progress that.

Under the government’s Migration Amendment (Detention Arrangements) Bill 2005, the Minister for Immigration and Multicultural and Indigenous Affairs is given non-compellable powers. There is no obligation on the minister to administer the policy in a compassionate manner. This is one of
those critical things that is not made plain. I have looked at this non-compellable power and it is not appealable—the minister has a complete discretion. Very few people get the opportunity in life to have a complete discretion to determine whether someone’s future life is going to be spent in detention or not. This is the power the minister will have. The minister does not have guidelines to tell her how it will work; the minister simply has the discretion. It is non-reviewable. There is no one to oversight it or check to see whether or not the discretion is exercised with fairness, compassion or equity. There is no check to see whether it is implemented with a one-eyed, jaundiced or dispassionate view of the world. There is not even a check to see whether the file was considered in detail.

The department, for all its good work, will have guidelines as to how it might assess cases and bring them forward. That will be delegated by the minister generally. The minister will say, ‘Prepare some guidelines on my behalf as to how you will assess those cases, bring them forward and let me then consider them.’ Cases might come up in an orange, a purple or a blue folder for the minister to either look at or not look at. The minister will then have the ability to open the file if she wants or not open it but still make a determination in respect of it, irrespective of what the department might have assessed or put forward. What you would end up with is a list that might go forward and a list that does not go forward. You would still have the ability as minister under that power to then draw forward a name that is not even on the list.

It does open up Pandora’s box. It has been opened up with the use of 417. Senator Bartlett, I and others have had the opportunity of seeing how the exercise of that power in fact works. I have to say that it was not always the case that you came away with confidence that it was exercised in fairness or with due regard to the various issues that surround people. In fact, I think we referred to it as Pandora’s box—or a black box, perhaps—in the sense of how this government would exercise the power.

It is not good enough. There was much expectation that, when the member for Koo-yong proposed his two initial bills, they had provisions for removing children from detention and placing them in community homes. The Prime Minister watered down the compromise and this bill certainly does not go that far now. It does not enshrine in legislation what many Australians believe in, which is that all children should be removed from behind razor wire. I think the Australian people have an expectation that we are finally going to act on this important issue and ensure that, from this day forward, no child will grow up in a detention centre in this country. That is what the Labor amendments seek to do. This detention bill, the Prime Minister’s bill, leaves it to the discretion of the minister and relies on the assessment of the minister, who does not, with all due respect, have a great track record of objectivity and compassion, in the Labor Party’s view. To date we have clearly seen how ministerial discretion has been applied. We think it has been applied in an ad hoc fashion without transparency and without any apparent system to give it equity.

We have been calling for changes to detention and immigration assessment for more than three years now. We have called for the release of kids from behind razor wire and for all unaccompanied minors and children with their families to be settled in alternative accommodation. Labor moved amendments to the Migration Act in 2002 and 2003 to remove children from detention. It is strange that some members on the opposite side insist that Labor have been silent on the issue. That is not the truth. Labor want children out of detention. That is the truth. Whilst I am
glad that this dialogue has now re-emerged in parliament. I am a little disappointed that the potential to remove children from detention as envisaged by the member for Koo-yong in his initial bills has not been realised by the government. It has fallen once again to the Labor Party to right the wrongs of the detention system in Australia.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (8.33 pm)—I think it has been a very long time since unaccompanied minors have been in detention and certainly in detention centres. They are largely in foster care. We certainly do not have any unaccompanied minors at the moment in detention centres. With respect to children, I simply put on record that it was the Liberal Party that introduced housing projects. They were never there under the previous government when hundreds of kids were in detention. I would just make the point that, for a variety of reasons—not only because of my own intervention, but partly because of it—there are now half the number of kids in detention centres that there were when I got the job.

I acknowledge what Senator Ludwig says. I do not think he is right in making the assessment that he says the Labor Party has made—that is, that I am lacking in compassion. But he is right in saying—although I might choose different words—that he cannot see where that exercise of compassion is. I have covered that in this place before, but I will briefly refer to it. When people seek ministerial intervention, if they do not have a very successful case or a doubtful case, it does happen—not necessarily more often than not—that they seek media intervention. They seek media intervention because every case for ministerial intervention is a sad case. That is simply because they have been through all of the processes and had all of the reviews by tribunals and judicial officers and they have been given a no. But they still desperately want to stay in Australia, so they seek ministerial intervention. To get a no from that is, of course, a very sad situation. Legally it might be quite appropriate, perhaps, but personally it is sad. We all know that newspapers, radio stations and TV outlets love a sad story because it sells papers.

On the other hand, those people who have a good case less frequently go to the media. But, more importantly, whether they go to the media or not, there are good cases. I have not to this point thought it appropriate to try to find a way to highlight the number of people who have had the benefit of ministerial intervention. I can think of one case—I cannot remember now whether it was a 351 or a 417—of a young child who was destined not to get the appropriate health care in his country. That health care was a transplant. I was delighted to have the opportunity to help that family. I can think of another child who had some very sad circumstances with respect to the death of his mother and associated with his father and who we were able to help. Another child who came here had a father who was either deceased or ticked off and we do not know which it was. He was from your state of Queensland, Senator Ludwig. He was found by another mother, who had the sense to offer this boy some sort of hospitality to get his confidence. She finally got him to deal with child-care authorities, who put in an intervention request. We were very pleased to give that boy, very quickly, a visa to stay in Australia. There is no reason that this kid should have been living in parks for 18 months or so not knowing where his parents were. I could go on.

Turning my mind to the way I can do this without doing what some do; that is, inviting TV cameras into their life to drum up a story—a tear-jerker story, positive or otherwise—to influence intervention. I have had
to be very careful to ensure that I was not
misusing the opportunity I have been given
to help these people, in a political way by
inviting them to participate in some media
opportunity. I can assure you there are plenty
there, but I want to put on record that I un-
derstand that you cannot see them.

Senator BARTLETT (Queensland) (8.37
pm)—Given the time and the reality of what
is going to happen I will process, rather than
go through, some of my arguments, which
are not dissimilar to what I have already said,
and just indicate that we will support these
amendments.

Question agreed to.

Senator LUDWIG (Queensland) (8.38
pm)—by leave—I move Labor amendment
(10) on sheet 4623:

(10) Schedule 1, page 11 (after line 23), after
item 18, insert:

18A Before Part 9
insert:

PART 8BA—INSPECTOR-GENERAL
OF DETENTION

486KA Inspector-General of Detention
As soon as practicable after this sec-
tion commences, the Minister must
appoint a person as the Inspector-
General of Detention (the Inspector-
General).

486KB Functions of Inspector-General of
Detention

(1) The functions of the Inspector-General
are to:

(c) consider general or systemic matters
the Inspector-General decides of his
or her own volition to consider; and

(d) consider all matters the Minister
directs the Inspector-General to con-
sider.

(2) For the purpose of this section, in im-
migration detention means being de-
tained in a place accordance with para-
graph (b) of the definition of immigra-
tion detention in subsection 5(1).

486KC Exercise of functions of Inspec-
tor-General of Detention

(1) The Secretary must ensure that the
Inspector-General is given unrestricted
access to:

(a) detention centres and immigration
processing facilities (including those
on Christmas Island); and

(b) detainees; and

(c) the staff of the Department or of
private contractors employed at deten-
tion centres or immigration proc-
essing facilities; and

(d) all records relevant to a complaint
made under section 486KB.

(2) The Inspector-General may make a
finding about any matter considered by
the Inspector-General.

(3) The Secretary must take action to give
effect to any finding made by the In-
spector-General.

This is one of the main areas where the La-
bor Party has been arguing for an independ-
ent, formalised review system. Labor’s
amendment seeks to establish an independent
inspector-general of detention centres. The
inspector-general will be able to enter deten-
tion centres, community care facilities and
settings, and immigration processing facili-
ties; receive and resolve individual com-
plaints from detainees; and monitor condi-
tions.

It goes one step further because, when you
look at the work that HREOC did when they
went to detention centres and produced their report, you will see that they could not then take the next step. Instead, they could only make recommendations to government, and government at that time did not listen, much to my disappointment. In this amendment the minister, in addition, would also be able to direct the inspector-general to inquire into a detention issue and receive recommendations about it; so the inspector-general will have not only that power but also the power to enter, receive and resolve individual complaints. It gives a much better system of ensuring that there are better outcomes for those people who are detained.

The government's bill does not provide a systematic way in which detention centres, community care facilities and the needs of applicants that have been detained for any given period of time can be fairly and independently reviewed. Introduction of an inspector-general would illustrate a true willingness by the government to operate a transparent and fair mandatory detention system. In light of many recent revelations of mismanagement at detention centres, other wrongful detentions and information not being passed through proper channels or not at all, an independent intermediary is required on an ongoing basis to monitor conditions and resolve complaints. When Mr Georgiou was perhaps of a more open mind, before he came to the Howard-Georgiou compromise, if I can call it that, he said:

... no government department has greater unscrutinised power over people's lives than the Department of Immigration, Multicultural and Indigenous Affairs ...

He went on to say:

... I do not believe that it is acceptable to leave decisions about detentions in the hands of DIMIA officials without additional independent scrutiny and intervention.

The only matter I would raise in respect of that is that I think he overconcerned himself with the department and not with the minister, in that instance. Perhaps for his own particular reasons he did not.

This amendment would also minimise situations such as female detainees being viewed in the shower or toilet by male guards, as are some of the allegations that have been made, and the placement of detainees in management cells without justification or scrutiny for weeks at a time. Of course, that also ensures employees of those detention centres, the department and their officials have safeguards in place. Earlier, Minister Vanstone commented that she was ‘satisfied with the detention system’ after revelations of systemic failure in immigration detention. The minister went on to comment: ‘I am sure that there are systems that can be made to improve.’

We have taken that comment on board and taken it to heart, and only under Labor will there be an adequate, fair and transparent immigration system. Currently there are no regular systematic performance audits that are made available or public. There are no independent review mechanisms for detainees’ situations and complaints that are made available. They certainly may be in place or exist, but there are certainly none that we are aware of. Many of the recent detention dramas illustrate the many issues of concern about the management, operation and administration of detention centres. Under the current government and Mr Howard’s proposed changes it remains inadequate and inappropriate and still there is no accountability and no transparency.

Labor’s proposed inspector-general of detention would not solve the problem but it would rectify many of the chronic problems inherent in the detention system. In particular the inspector-general would pay particular attention to the needs of children in immigration detention—it should not be a case of
there being fewer children; there should be none unless, as I have indicated before, there is a very good reason—and receive and make determinations concerning complaints from detainees. This is in line with the Labor Party’s policy of a humane, dignified and transparent approach to immigration detention.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (8.43 pm)—I thank the senator for his contribution. First of all I want to put on record that I strongly disapprove of the albeit smoothly delivered but nonetheless personal attack on Mr Palmer by way of suggestion that he may have, for his own political reasons, not said something that the Labor Party might have preferred him to say. I am happy to leave it until the Palmer report comes out for people to judge whether or not Mr Palmer is his own and an independent person. I personally see it as an unsatisfactory contribution in the Senate when an aspersion is cast on someone before they have even had the chance to speak. We have seen a bit of this denigration through the media—no doubt it will continue. It is not quite as vacuous as some of the comments made earlier tonight from the other end, but it is not attractive in any event.

As to the question of an independent inspector-general, the Ombudsman is there. I have not heard any argument that the Ombudsman is not independent. He was there under the Labor Party; he is there under us. No-one has made the case that the Ombudsman is not independent. No-one has disputed the fact that anyone can take a complaint to the Ombudsman. No-one has disputed the fact that the Ombudsman can, of his own motion, carry out an investigation. No-one has disputed the fact that, to the best of my knowledge, the Ombudsman has never been denied access to any information that he has required to be given. No-one has acknowledged in the debate on this amendment that we have enhanced and highlighted the role of the Ombudsman.

In other words, the caretaker is already there. Frankly, to appoint another one seems to me to simply ensure that you have another body, another public servant who is the personnel person, more cars, more phones, more officers and no better job done than is already being done by the Ombudsman. This in itself is a criticism of the existing Ombudsman, and I have not heard the case for that criticism made out. The access is there; the opportunity is there. It is all there. No case at all has been made out to say that what is happening at the moment with regard to scrutiny is inadequate. In order to make that case out, someone has to say that the Ombudsman has not used the powers that he or she has. That case has not been made out.

Senator LUDWIG (Queensland) (8.46 pm)—With regard to Mr Palmer, we can sweep that debate aside if you would confirm that he will make his report public. If you answer that in the affirmative, I will take the criticisms that you have levelled at the Labor Party about Mr Palmer. I think Mr Palmer is an excellent person. It is not about him personally—and I have been very careful about saying that in this debate. I have met him a number of times before. It is not about his qualifications or his job; it is about the report, the inquiry, the way you set it up and what should have been done. It has always been the case that we have put it that way.

With regard to the Ombudsman, the view that the Labor Party have expressed is the concern that the Ombudsman’s determinations in terms of this detention bill before us are non-binding: you do not have to take into consideration what the Ombudsman recommends or does; it is simply not binding. That
is the point we make. If you make them binding and say: ‘We’ll make them binding; not only will we have them reported to us but we will then do something about them,’ that might go some way to ameliorating the situation. Alternatively, explain why you will not. That might assist in the debate as well.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (8.48 pm)—I can respond briefly to both of those points. Firstly, with regard to Mr Palmer, it is not my view that you can weasel out of the remark on ‘his own political reasons’ by saying, ‘It’s a question of whether he’ll make it public; that’s all I was really saying.’ The words ‘his own political reasons’ do not go to publication or otherwise of his report; they go directly, specifically and clearly to whether Mr Palmer would let some political views he may or may not have be brought to bear on his report. No amount of dancing around can change those words, and I do not take what you have just said to be any withdrawal at all of your remarks. I feel confident that Mr Palmer would not either. Nonetheless, let us let that pass, because he is a grown man and I am sure he can handle it, but let us not pretend for the record here that you have done anything other than make a very specific and direct accusation that this man, whom your party appointed and my party reappointed and who has worked as police commissioner in the Northern Territory and in the Australian Federal Police—he has trained as a lawyer and as a police officer and is pretty good at change management—may be using his own political views and bringing them to bear on his report. That is what you have done, and you have not taken it back.

The second point you make is in relation to the non-bindingness of the Ombudsman’s reports as they may be at the moment. With respect, you have approached this subject with a degree of frankness that surprises me. It is the same degree of frankness that Senator Nettle brought when she, as I indicted, displayed her own vacuity by indicating that she was just trouncing out someone else’s ideas. Senator, what you have done by saying that the Ombudsman is not helpful unless his determinations are binding is indicate the incompetence—

Senator Ludwig—I did not say that. You added words to that.

Senator VANSTONE—I did not interrupt you, Senator. We are not having a debate without the Hansard; hopefully we are having it in a civilised and ordered manner. What are the consequences of saying, ‘The Ombudsman’s not much chop unless his determinations are binding’? What is the purpose of an ombudsman’s report? It is so that someone who is independent can put an alternative view and it can be debated publicly and politically. If an opposition come to the point where they then say, ‘The government must be bound by the Ombudsman’s report,’ they are doing two things. First of all, they are saying that there should be some sort of ombudsman’s mugging of the executive but, I think, more damaging than that—because we can handle that argument—is that they are admitting their own incompetence or impotence. You have a report by an independent authority put out there into the political field and what you are saying is: ‘We the opposition couldn’t possibly make anything of it. If the Ombudsman had an adverse finding, we couldn’t do anything with it; we’re hopeless.’ I can see why you might come to that conclusion. If you are really saying that you want an independent ombudsman to do your job, Senator, you are battling.

Senator Ludwig—Ask Cornelia Rau what she thinks.
Senator VANSTONE—I have read the papers on what has happened over the last few days, and I will resist comment on that. The temptation is too great and the debate might go on for too long. But I hope you take this as genuinely as it is meant: the solution to the political problems of parliaments, who are there to keep a check on the executive, is not to subcontract out to someone else so that other people can sit in here, be the opposition and not do their job. That is not the solution. The Ombudsman is a tool that is there for the community and particularly the opposition because the Ombudsman will provide an independent assessment of what the executive has done. If we are now in a position where the Labor Party throw up their hands and say: ‘Oh, look, even with all that help we can’t do it. Make the Ombudsman be the executive instead!’ it is a damning indictment of your incompetence, Senator.

Senator BROWN (Tasmania) (8.53 pm)—When the Minister for Immigration and Multicultural and Indigenous Affairs gets it wrong, she really does get it sensationally wrong. The Ombudsman is a concept from Scandinavia to help deal with ministerial and bureaucratic bungling. It is not to be toothless but to be empowered so that its findings can be utilised through the court system to bring that bungler—whoever it might be—to justice. What we have here, however, are a minister and a government who do not accept that that is the way ombudsmen work. She is saying: ‘Well, on this occasion, to make it look good in public’—and Prime Minister Howard signed off on this, and I pity the minister because she has to try to argue his outcome—‘there will be a judgment made by the Ombudsman.’ However, on this occasion there is no action that can be taken on the judgment when it arrives, except a political debate.

So, having had a go at the judiciary and the parliament, we now have the government devaluing the office of the Ombudsman in this country. The minister would know that the Ombudsman does not report to the minister as such, and was never meant to, but reports to the parliament because it is not a position to be politicised. Its position is to defend the public interest against politicians, particularly ministers and bureaucracies. But on this occasion the government is legislating differently so that does not occur. What happens is that you get an Ombudsman’s report and that is where it ends. You can have a political debate, but no empowerment beyond that. In particular, you do not give the parliament the power to act on that report.

If this were genuine and the Ombudsman made an adverse finding, it would be regulated in this parliament and then it would be up to the parliament to allow or disallow that finding—but not this government, because they do not trust parliament, and they particularly do not trust a parliament in which they are going to have a one-seat majority in the forthcoming Senate. Do you know why? Because they do not trust each other. So there is not going to be a disallowable instrument, as it is called, companioning the Ombudsman’s finding. The minister says, ‘There will be a political debate.’ What a failure to understand the office of the Ombudsman, to understand its relationship with parliament and, above all, to understand that the parliament is elected. Not the executive, not the ministers, not even the Prime Minister; the parliament is elected. This government have shied away from the idea that parliament is supreme because they believe the executive should reign supreme. That is what this legislation does: it says the executive can accept or reject a report of the Ombudsman and parliament will be sidelined with no power to act. That is why the amendments are here and that is the point that the minister
either does not understand or does not want to confront.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (8.57 pm)—Senator Brown obviously has a different view about the role of parliament.

Senator Brown—you’re right. You got it!

Senator VANSTONE—How insightful the senator is this evening! He apparently sees parliament as an impotent debating society. He has not recognised the power the parliament has, which is not always to substitute one executive decision for another decision made by parliament. But it has the power to raise issues to such a point that it becomes imperative, in the political environment we live in, for the executive to change its view or to act. There can be no better example of that than this debate. The senator sits down calmly with his legs crossed and his hands on his lap as he is comfortable in the knowledge that he did not start this debate. He had nothing to do with it.

Senator Brown—I had a lot to do with it.

Senator VANSTONE—Nothing to do with it whatsoever. It reminds me of something that a former colleague of mine once told me—he was then the Leader of the Opposition in the Senate—that I had occasion to reflect on recently in my capacity as a minister because it relates to ministers as much as it does to members of parliament. Senator Fred Chaney said to me: ‘Members of parliament have got all the power they need. They just have to have the courage and the sense to use it.’ If there are people here who do not understand how to use the power they have, it is unacceptable, in my view, to say, ‘Give it to someone else.’ If you do not understand that, Senator, that is fair enough, but I can assure you that when you do you will be a lot more effective.

I had occasion to think recently that this applies to ministers as well. I am not going to give you the details, but there was an occasion recently when I was very, very uncomfortable with the proposition in my head that there was potentially a wrong and I could fix it, leave it or go to a halfway mark. That is what each of us has to face up to in our jobs. Ministers are different from members of parliament, but my view is that we all have as much power as we need. What we have to have is the strength and the wit to use it, and you do not get that by giving your power to someone else.

Senator BROWN (Tasmania) (8.59 pm)—The minister can be very silly at times and to imply that we all have equal power and that Mr Chaney—and I have the greatest respect for Fred Chaney—would believe that everybody has the same amount of power; it is just a matter of how they use it—

Senator Vanstone—I didn’t say that.

Senator BROWN—I did not say you said it; I said you implied it—and you did. I think it points to how silly this minister can be when she does not want to argue the facts about the Ombudsman that I put before the chamber. What we are saying is: ‘Let’s empower the parliament to allow or disallow the Ombudsman’s recommendations. Let’s give him the equal power that the minister talks about.’ What she will do is vote that down. That is the test of the difference between the two of us.

Senator BARTLETT (Queensland) (9.00 pm)—I assume that this bill will come back later tonight in any case as a message. The government is not going to accede to all of the amendments that have been passed, and there have been a few. I think this might be one of those occasions when I have been swayed by the debate and the course of his-
tory has been changed, although I guess the end result will be the same and that the government will reject any amendments. But I actually agree with the minister’s argument in relation to this amendment. As things stand at the moment with the detention system and the number of people in it and everything else, I do not see the value of having an inspector-general of detention on top of everything else. I am not convinced it would be necessary at this point. So never let it be said that a few well-chosen words cannot influence other people, because I am not of a mind to support this amendment.

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

The committee divided. [9.06 pm]
(The Chairman—Senator JJ Hogg)

Ayes…………… 24
Noes…………… 35
Majority……… 11

AYES
Bishop, T.M.  Bolkus, N.  Buckland, G.
Brown, B.J.  Collins, J.M.A.
Campbell, G.  Crossin, P.M.
Conroy, S.M.  Faulkner, J.P.
Evans, C.V.  Forshaw, M.G.
Kirk, L.  Hogg, J.J.
Marshall, G.  Ludwig, J.W.
Moore, C.  McLucas, J.E.
Nettle, K.  Murphy, S.M.
Webber, R.  Stephens, U.
Webber, R. *  Wong, P.

NOES
Abetz, E.  Allison, L.F.
Barnett, G.  Bartlett, A.J.J.
Boswell, R.L.D.  Brandis, G.H.
Chapman, H.G.P.  Colbeck, R.
Coonan, H.L.  Eggleston, A.
Ellison, C.M.  Ferguson, A.B.
Ferris, J.M. *  Fierravanti-Wells, C.
Fifield, M.P.  Greig, B.
Heffernan, W.  Humphries, G.

Johnston, D.  Knowles, S.C.
Lightfoot, P.R.  Macdonald, I.
Macdonald, J.A.L.  Mason, B.J.
McGauran, J.JJ.  Murray, A.J.M.
Patterson, K.C.  Ridgeway, A.D.
Santoro, S.  Scullion, N.G.
Stott Despoja, N.  Tchen, T.
Troeth, J.M.  Vanstone, A.E.
Watson, J.O.W.

PAIRS
Cook, P.F.S.  Payne, M.A.
Hutchins, S.P.  Minchin, N.H.
Denman, K.J.  Hill, R.M.
Lundy, K.A.  Kemp, C.R.
Mackay, S.M.  Campbell, I.G.
Sherry, N.J.  Harris, L.

* denotes teller

Question negatived.

Senator LUDWIG (Queensland) (9.10 pm)—by leave—I move opposition amendments (11) to (16) on sheet 4623:

(11) Schedule 1, item 19, page 12 (line 2), omit “2 years”, substitute “90 days”.
(12) Schedule 1, item 19, page 12 (line 10), omit “2 years”, substitute “90 days”.
(13) Schedule 1, item 19, page 12 (line 11), omit “2 years”, substitute “90 days”.
(14) Schedule 1, item 19, page 12 (line 15), omit “2 years” (twice occurring), substitute “90 days”.
(15) Schedule 1, item 19, page 12 (line 22), omit “6 months”, substitute “one month”.
(16) Schedule 1, item 19, page 12 (line 31), omit “6 months”, substitute “one month”.

These amendments relate to the debate in respect of the Ombudsman. These amendments would mean that the Ombudsman would report on every detainee whose application has not been determined after 90 days and on a monthly basis from then on. These amendments provide for the Ombudsman to undertake an independent review and report on these cases. Such a review must be completed within 90 days and on a monthly basis thereafter under Labor’s proposed amend-
ments. This is consistent with Labor’s policy of seeking to determine 90 per cent of claims within 90 days. That is the only effective way you are going to get a beneficial outcome for unlawful noncitizens who are detained. The Ombudsman’s recommendations will be made public and laid before parliament. If the Minister for Immigration and Multicultural and Indigenous Affairs does not accept the recommendations, the minister will be required to provide an explanation before parliament. That is the nub of the process. It does not mean that, as in the bill that is before us, they will simply be tabled.

Unlike the government’s bill, in our amendments the two periods of waiting before action are based on the objectives of fast and fair processing, transparency and accountability. They also ensure that justification must be given to parliament if the minister refuses to take up the recommendations of the report, thereby removing the ability to hide behind the non-compellable power of the minister. It avoids unnecessary and prolonged detention and ensures a humane system which is not punitive. In the government’s bill, on the other hand, until two years of detention have passed detainees are denied the right to challenge detention and have no independent review mechanisms for issues that arise. The Ombudsman only intervenes in cases where a person has been in detention for two years or longer. You have got to question whether this is an unnecessarily prolonged, drawn-out and arbitrary approach.

The tabling of reports detailing failures to meet time limits does not provide a remedy for the breaching of time limits—we are not suggesting they should, but they do not under the current detention regime and so there is no basis on which to say that that is a fair or equitable system. The process may be sped up, but there is no certainty provided in it. I do not think the minister has grappled with this. However, if you look at the detail in the amendments, we are not saying that the Ombudsman’s report is binding. We are not saying that there should be a mandatory execution of each recommendation made by the Ombudsman. The amendments go to the detail of what we have been putting, and I have outlined how that operation would work.

It is clear that it is still a matter for government—government has not lost its ability to make decisions as the executive. No-one is walking away from the ability of government to hold the decision-making power. But government should be in a position to explain in parliament the decision-making process. It should be open and transparent. I accept that the minister argues on occasion that if I could see inside the black box I might see fairness and equity, although certainly not transparency. That could be the case—I do not know. I can only argue for a fair, transparent and open system. That is the only system that Labor would progress.

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (9.14 pm)—In response to that I would like to say a couple of things. It is of interest to me that it is being put that the government can see the value of an Ombudsman’s report that is not binding for 90 days but cannot see the value in two years; that somehow the Ombudsman is impotent after a two-year report but quite useful for a 90-day one. I am a bit lost, Senator Ludwig. If you were trying to confuse me, you have succeeded, because I cannot make the jump that the time difference is that critical—that somehow an Ombudsman’s report is not useful at two years but it is at 90 days. But let us put that aside, because you might have some other reasons for that.
The basic practicality of this is one of the very serious problems. By and large, most people who put a claim in for protection are dealt with in 90 days anyway. I realise this does not relate only to people who are seeking protection, but that is a diminishing case load. We hope to keep it a diminishing case load (a) by dealing with the case load that we have got and (b) by stopping it increasing—stopping the inflow—which will leave us, as we are now, largely dealing with a compliance case load. A very significant portion of those—I think it is towards 50 per cent, if not over—are dealt with in under this time because they have gone. The reason they have gone is that they have already overstayed their visa, they have had bridging visas—some of them on a condition that they leave—and they get caught for one reason or another. They are in the smaller group who do get detained and we just have to get documents or something to get them to go.

Nonetheless, there is a baseline case load of compliance people who do present difficulties—people who come in on one passport and then announce that that was false and they have another identity; they only used the false passport because they had to to get out of their country or for whatever other reason they want to suggest—and, with respect to some countries, it can take significant time to actually get to the bottom of the matter. If you adopted this you would end up with a recurring turnover of the same issue—added to which, 90 days is not that long for the difficult cases. As I say, we get most of them out in that time. The expectation is that we should be able to do that. But, for these cases that I am thinking of, part of the reason that they are there for more than 90 days is that we cannot get the facts—and neither will the Ombudsman be able to. If the Ombudsman can get more facts than us that would be a good thing, but I am sure in this respect that he could not get more facts.

So I think this will be a bureaucratic nightmare. By the time the Ombudsman starts his inquiry, the person will presumably have gone—or, if they are one of the harder cases, they will be there next time under the same circumstances because the reasons are beyond our control. Another example is people who come here and overstay a visa. They might have a couple of kids and then they have two or three more. They do not register them in the country that would be the child’s citizenship country—because it is certainly not an Australian citizenship—and the process of registration takes some time. All of this is a bureaucratic nightmare, particularly when you already have the capacity for the Ombudsman to make a report either on his own motion because advocates have put it before him or because an advocate is aware of something that they think is unsatisfactory and they take it to the Ombudsman. I really put it no higher than that, Senator.

Senator BARTLETT (Queensland) (9.18 pm)—If I say I agree with the minister we will probably have another division, so it might save time if I agree with the ALP, given it is all going to be the same thing in the end. So I think I will do that.

Senator Vanstone—Could you just put it on record anyway? If you put your view on record we will not call a division. We will just say it is a miscall.

Senator BARTLETT—Perhaps I could just say that, based on the contributions to date, I think the minister has made the more compelling case. Nonetheless, in the interests of a wide range of broader factors, I recognise some of the underlying components of the position put forward by the Labor Party spokesperson and, taking all of those things into account—not the least of which is the time—we will vote for the Labor Party amendment in this case.

Question agreed to.
Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

**Third Reading**

**Senator VANSTONE** (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (9.20 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**TAX LAWS AMENDMENT (2005 MEASURES No. 1) BILL 2005**

**Second Reading**

Debate resumed.

**Senator MURRAY** (Western Australia) (9.21 pm)—I seek leave to incorporate my speech on the Tax Laws Amendment (2005 Measures No. 1) Bill 2005.

Leave granted.

*The speech read as follows—*

I rise today to speak to the Tax Laws Amendment (2005 Measures No.1) Bill.

This bill deals with a range of taxation issues. I will deal with them individually.

Schedule 1 is the introduction of a fringe benefits tax exemption for the engagement of a relocation consultant, a ‘personal digital assistant’ and portable printers. These changes are expected to have an ‘unquantifiable but insignificant’ financial impact.

Schedule 2 contains changes to the depreciation rates for large vehicles such as buses, light commercials and trucks. The schedule caps the effective life of these vehicles at between 7.5 and 10 years. This allows a greater depreciation deduction in the first few years after the post-1 January 2005 acquisition of a large vehicle.

The Democrats have been lobbied about the effective life of buses. We note that the Taxation Office has deemed the effective life of a bus to be around 15 years. The legislative change to deem the effective life to be 7.5 years will allow businesses to purchase buses in a more tax-effective manner. The result should be that we have more newer, cleaner and environmentally safe buses on the road and accordingly this is a change that the Democrats strongly support.

Schedule 3 introduces a GST integrity measure dealing with the supply of rights or options offshore. This measure targets a scheme in which offshore tourism operators were selling Australian package holidays and recouping GST on the onshore component of the costs such as accommodation and transport. This schedule increases revenue by $110m per year.

The Senate Economics Committee considered the impact of the original schedule and concluded that the original measure in the bill would cause an undue compliance burden on offshore suppliers of Australian holidays. The government has now introduced amendments allowing offshore suppliers to ‘opt out’ of the Australian GST system.

Despite this, ATEC, the Australian Tourism Export Council, is still not happy with the outcome. They argue that the differential in GST treatment may result in Australian tour packages being one to two per cent cheaper if sold offshore.

However, the government amendments remove the compliance difficulties and remove the GST anomaly which created a 10 per cent price differential in favour of offshore tour operators. Accordingly the Democrats will be supporting this measure.

Schedule 4 introduces the mature age worker tax offset. This is a maximum rebate of $500 for the workers over 55 earning income under $58,000. This was an election commitment. The cost of schedule 4 is around $480 million per year. This is a significant amount of money, however, like other Treasury costings it ignores the incentive for more mature workers to stay in the work force.

This is the actual intention of the measure and, we support this intention. Accordingly, the beneficial impact of the additional tax revenue generated and reduced pension payments is likely to offset the $480 million year.
Labor have circulated a second reading amendment. The Democrats do not support that.

The Democrats support all schedules in the bill

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator SHERRY (Tasmania) (9.22 pm)—Could I clarify: are we dealing with the opposition amendments or the government amendments?

The CHAIRMAN—Senator Sherry, it has just been drawn to my attention that there was a second reading amendment. The second reading amendment, which I did not realise you were to move, will be regarded as an amendment to the motion to adopt the report. Are you happy with that?

Senator SHERRY—Yes. It has just been drawn to my attention that the Labor Party does not have amendments to this bill; there are government amendments. The clerks look relieved.

The TEMPORARY CHAIRMAN (Senator Sandy Macdonald)—I understand that the Labor Party does not have amendments.

Senator SHERRY—There are many tax bills in front of me at the moment. There are eight government amendments. While we are waiting for the Minister for Communications, Information Technology and the Arts, I indicate formally that the Labor Party support the various amendments that have been presented. I must say that we are concerned that the amendments were not presented in the original Tax Laws Amendment (2005 Measures No. 1) Bill 2005. I note that the first amendment goes to the mature age worker tax offset. There are some other amendments, but, with respect to the mature age tax offset, I drew the attention of the Senate to the fact that this was incorrectly costed by the government, firstly, because it underestimated the number of persons over the age of 55 who would be eligible and, secondly, because of the expansion of eligibility. It was undercosted by approximately $400 million. That is not small change in anyone’s terms.

An election promise was made. The mature age worker tax offset was poorly costed, and we dealt with that in some detail in the Senate estimates committee when I questioned the officer. We find it amazing that, in the context of the original costing that was done by the Treasury officer concerned, the government took that costing and made an election promise. As I recall, it was recosted under the Charter of Budget Honesty and reconfirmed. So it was costed not once but twice and then shortly after the election there was a very significant cost blow-out. Suffice to say that the Labor Party are not opposing the eight amendments the government is moving in committee. With those few comments, I indicate our general support. The minister is now here, so I will conclude my remarks.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (9.27 pm)—by leave—I thank Senator Sherry. I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 22 June 2005. I move government amendments (1) to (8) together:

(1) Clause 2, page 1 (line 7) to page 2 (line 6), omit the clause, substitute:

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

(2) Schedule 3, item 3, page 6 (lines 18 to 22), to be opposed.
(3) Schedule 3, page 6 (after line 26), after item 4, insert:

**4A At the end of subsection 83-5(2)**
Add:

: or (c) a supply that is disregarded under paragraph 188-15(3)(b) or (c) or 188-20(3)(b) or (c) (which are about supplies of rights or options offshore).

(4) Schedule 3, page 8 (after line 21), after item 16, insert:

**16A Section 151-5**
Before “You are eligible”, insert “(1)”.

**16B At the end of section 151-5**
Add:

(2) However, you are not eligible to make an annual tax period election if the only reason you are not required to be registered is because you disregarded supplies under paragraph 188-15(3)(b) or (c) or 188-20(3)(b) or (c) (which are about supplies of rights or options offshore).

**16C Subsection 188-15(3)**
Repeal the subsection, substitute:

Supplies that are disregarded

(3) In working out your current annual turnover, disregard:

(a) any supply that is not connected with Australia; and

(b) any supply that is connected with Australia because of paragraph 9-25(5)(c); and

(c) any supply (other than a supply covered by paragraph (a) or (b)):

(i) of a right or option to use commercial accommodation in Australia; and

(ii) that is not made in Australia; and

(iii) that is made through an enterprise that the supplier does not carry on in Australia.

16D Subsection 188-20(3)
Repeal the subsection, substitute:

Supplies that are disregarded

(3) In working out your projected annual turnover, disregard:

(a) any supply that is not connected with Australia; and

(b) any supply that is connected with Australia because of paragraph 9-25(5)(c); and

(c) any supply (other than a supply covered by paragraph (a) or (b)):

(i) of a right or option to use commercial accommodation in Australia; and

(ii) that is not made in Australia; and

(iii) that is made through an enterprise that the supplier does not carry on in Australia.

(5) Schedule 3, item 17, page 8 (lines 22 to 25), omit the item, substitute:

**17 Application provision**
The amendments made by items 1 to 16D apply to supplies made on or after 1 October 2005.

**18 Transitional provision**
For the purposes of sections 188-15 and 188-20 of the A New Tax System (Goods and Services Tax) Act 1999, in working out an enterprise’s current annual turnover, or projected annual turnover, at a time during July, August or September 2005, disregard a supply if:

(a) the enterprise through which the supply is made is not carried on in Australia; and

(b) the supply:

(i) is a supply of a right or option to use commercial accommodation in Australia; and

(ii) is not made in Australia.

(6) Schedule 4, heading to item 5, page 11 (line 30), at the end of the heading, add “of items 1 to 4”.
(7) Schedule 4, item 5, page 11 (line 31), omit “this Schedule”, substitute “items 1 to 4”.

(8) Schedule 4, page 11 (after line 32), at the end of the Schedule, add:

_Taxation Administration Act 1953_

**6 Section 45-340 in Schedule 1 (method statement, step 1, after paragraph (a))**

Insert:

(aaaa) Subdivision 61-K of the _Income Tax Assessment Act 1997_ (for mature age workers); or

**7 Application of item 6**

The amendment made by item 6 applies in relation to the calculation of an entity’s adjusted tax:

(a) for a base year that is the first income year starting on or after 1 July 2004 or a later income year; and

(b) only for the purposes of a PAYG instalment period that includes, or starts after, the day on which this Act receives the Royal Assent.

**8 Section 45-375 in Schedule 1 (method statement, step 1, after paragraph (a))**

Insert:

(aaa) Subdivision 61-K of the _Income Tax Assessment Act 1997_ (for mature age workers); or

**9 Application of item 8**

The amendment made by item 8 applies in relation to the calculation of an entity’s adjusted assessed tax for a variation year that is the first income year starting on or after 1 July 2004 or a later income year.

_Senator SHERRY_ (Tasmania) (9.28 pm)—We are happy to deal with government amendments (1) to (8) together. I make the point that the minister has just tabled the supplementary explanatory memorandum. The Labor Party is concerned about this. It would have been a very good idea if we had the EM circulated earlier in the piece. I do not know how Senator Murray feels about that, but it would have helped us to consider the detailed amendments more easily. Nevertheless, on the best advice that I am given—which is very good advice, I have to say—and notwithstanding the failure to circulate the explanatory memorandum, the Labor Party is still supporting the eight amendments.

_Senator MURRAY_ (Western Australia) (9.29 pm)—I concur with concerns whenever an explanatory memorandum is not made available. This is not a tin-pot government and not a tin-pot parliament. We should always try and make sure that they are available when needed, but we support the amendments.

Question agreed to.

_Bill, as amended, agreed to._

**Adoption of Report**

_Senator COONAN_ (New South Wales—Minister for Communications, Information Technology and the Arts) (9.30 pm)—I move:

That the report from the committee be adopted.

_Senator SHERRY_ (Tasmania) (9.30 pm)—by leave—There was some confusion earlier. It was no-one’s fault in particular; it was just because of the unexpectedly hasty process. So I will now move the second reading amendment standing in my name. I move:

At the end of the motion add “but the Senate calls on the Government to within 6 months:

(a) report to the Senate the long-term revenue cost estimates of the mature tax offset until 2040; and

(b) undertake and publish econometric modelling of the labour market impact of the offset.”

_Senator MURRAY_ (Western Australia) (9.30 pm)—The Democrats see significant technical problems with this amendment. We will not be supporting it.

Question negatived.
Original question agreed to.

**Third Reading**

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (9.31 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**TAX LAWS AMENDMENT (2005 MEASURES No. 2) BILL 2005**

Second Reading

Debate resumed.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (9.31 pm)—I will sum up the debate on the Tax Laws Amendment (2005 Measures No. 2) Bill 2005 on behalf of the government. I thank all senators who have taken part in the debate on this bill. It continues the government’s program of modifications and improvements to the tax laws, providing greater flexibility to taxpayers in managing their affairs. Firstly, the bill amends the simplified imputation system, allowing private companies, in certain situations, to pay franked dividends during the income year in which they first incur an income tax liability.

By way of background to the next measure, the new superannuation safety arrangements commenced on 1 July 2004 with a two-year transitional period. New licensing requirements for trustees of superannuation funds evolved from these arrangements. In order for funds to meet the new licensing requirements, they can merge with other funds. However, merging would normally give rise to a capital gains tax liability or loss. The measure in this bill provides an automatic CGT rollover for the transfer of assets. A rollover is also available when assets are transferred to one or more superannuation entities whose trustees are not licensed at the time of the transfer but where it is reasonable to assume that they will be licensed by 1 July 2006. Conversely, if the trustees do not acquire the required licence by 1 July 2006, the rollover will be treated as if it had not happened.

The third measure allows capital allowance deductions for expenditure incurred in acquiring indefeasible rights of use over domestic telecommunications cables and expenditure on acquiring telecommunications site access rights, thereby facilitating the sharing of telecommunications infrastructure within the telecommunications industry and, furthermore, decreasing inefficient replication of infrastructure. The fourth measure simplifies the rules for pay-as-you-go instalment payers to move from annual to quarterly instalments by allowing taxpayers who become ineligible to pay annual pay-as-you-go instalments during an income year to commence paying quarterly instalments in the first quarter of the following income year. This measure reduces compliance costs and increases certainty for taxpayers. Schedule 5 lists several new organisations as deductible gift recipients. Deductible gift recipient status will assist the listed organisations to attract public support for their activities.

The sixth measure amends the GST act to remove unintended outcomes that arise from the interaction of various provisions of the act, allowing property owners to reduce their GST liability on supplies of real property. It ensures that entities joining a GST group have appropriate adjustments to input tax credits and addresses certain aspects regarding the application of the margin scheme. The government has decided to carry out further consultation with industry on proposed new rules for calculating the margin for the supply of real property that was initially acquired as a GST-free going concern...
or GST-free farmland. This will ensure that the margin scheme applies appropriately to suppliers of real property.

The seventh measure of the bill will amend the income tax law so that superannuation annuities split on marriage breakdown can be taxed in the same way as other superannuation benefits are taxed on marriage breakdown. In addition, some minor anomalies in the income tax law relating to superannuation benefits which are split on marriage breakdown will be corrected. The final measure of the bill will remove the condition that contributions to approved worker entitlement funds must be required under an industrial instrument in order to be eligible for an exemption from fringe benefits tax. Instead, it will be enough if the industrial instrument creates the obligation to make the payment but does not specify that it has to go to an approved fund. Also, the transitional arrangements for the FBT exemption from certain contributions to worker entitlement funds will be extended by one year. In concluding, I suggest to the Senate that the measures proposed in this bill will make the taxation regime more equitable in a number of ways. For these reasons, I commend the bill to the Senate.

Senator MURRAY (Western Australia) (9.36 pm)—I seek leave to incorporate my speech.

Leave granted.

The speech read as follows—

I rise today to speak to the Tax Laws Amendment (2005 Measures No.2) Bill.

This bill deals with a range of taxation issues. I will deal with them individually. Schedule 1 amends the simplified imputation system to ensure that, in certain situations, private companies that pay franked distributions will not have their franking deficit tax offset reduced in respect of the income year in which they first incur an income tax liability. The Democrats support this compliance measure. It will have no financial impact on the Federal Budget.

Schedule 2 amends the Income Tax Assessment Act 1997 to provide an automatic capital gains tax (CGT) roll-over for the transfer of assets of registrable superannuation entities that merge during the transitional period to comply with licensing requirements under superannuation safety reforms.

The CGT roll-over ensures that the capital gain or capital loss that would otherwise be recognised when the transfer of assets occurs is disregarded and that the recognition of the accrued capital gain or loss is deferred until later disposal of the assets by one or more successor registrable superannuation entity trustees. I understand that this licensing must be completed by 1 July 2006 and this is one of the reasons for the urgency in this bill. Again, this measure has no financial impact and is supported by the Democrats.

Schedule 3 amends the Income Tax Assessment Act 1997 to provide appropriate taxation treatment of expenditure incurred on acquiring certain telecommunications rights. It has a minor cost to revenue of around $14m over four years. Note the comments of the Parliamentary Libraries’ concluding comment to the bills Digest states: “It is a policy decision for the Government to determine whether telecommunications carriers and service providers should be provided the effective taxation deduction enabled by this legislation, given their past history of slow cable system rollout. There is a public policy argument in that, as long as the bulk of the population is denied affordable broadband access, carriers should be encouraged to quickly provide quality communications.”

This Schedule removes some of the inconsistency in the taxation treatment of telecommunications rights and, accordingly it is supported by the Democrats.

Schedule 4 simplifies the transition from annual PAYG payments to quarterly PAYG payments. It has no impact on the revenue and is supported by us.

Schedule 5 updates the list of deductible gift recipients. The new funds include Freedom Across Australia, the Rotary Leadership Victoria Austra-
lian Embassy for Timor-Leste Fund Limited, National Police Memorial, Page Research Centre Limited, and the Russian Welfare Aid to Russia Fund. The Democrats support this measure.

Schedule 6 to this bill amends the A New Tax System (Goods and Services Tax) Act 1999 to prevent entities from reducing or eliminating their goods and services tax (GST) liability on supplies of real property through unintended outcomes arising from the interaction of a number of special rules in the Act. It also clarifies the operation of the margin scheme and ensures entities joining a GST group have appropriate adjustments to input tax credits. The Government has introduced a range of technical amendments to this Schedule which the Democrats will be supporting.

Schedule 7 ensures the appropriate taxation treatment for superannuation assets that have been split upon marriage breakdown. It is expected to have a ‘very small’ impact on revenue.

Schedule 8 amends the Fringe Benefits Tax Assessment Act 1986 to remove the condition that contributions to approved worker entitlement funds must be required under an industrial instrument in order to be eligible for an exemption from fringe benefits tax (FBT). It has been the most controversial aspect of the bill, primarily because the change does not remove the FBT problem for Western Australian employers. We have received representations from the WA Construction Industry Redundancy Fund raising concerns that Schedule 8 dealing with FBT and Worker Entitlement Funds did not adequately correct an anomaly as intended. The Master Builders Association of Western Australia also wrote to me saying that the “This bill will have a negative and unfair impact on the operation WA Construction Industry Redundancy Fund.”

We asked for this to be looked at in the Senate Inquiry but were told that because other parts of the bill were urgent, this was not possible.

We then put forward, what we considered to be a reasonable amendment which would have solved the problem for WA employers; it must be remembered that it is the employers that will pay any FBT liability if this bill is ineffective, however, the Government, did not support this.

Accordingly, we have agreed to a compromise proposal that permits a further twelve month transition. This will give time for the matter to be satisfactorily resolved. I understand that WA employers and the Construction Industry Redundancy Fund are comfortable with this result.

The Democrats will be supporting this bill.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (9.37 pm)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 23 June 2005. I can anticipate the comment that it would have been preferable had it been available earlier. I seek leave to move government amendments (1) and (2) on sheet RB265 together.

Leave granted.

Senator COONAN—I move government amendments (1) and (2) on sheet RB265:

(1) Schedule 8, page 40 (after line 9), after item 2, insert:

2A Paragraph 58PC(1)(d) Omit “or 1 April 2004”, substitute “, 1 April 2004 or 1 April 2005”.

(2) Schedule 8, item 3, page 40 (line 11), after “made by”, insert “items 1 and 2 of”.

Senator SHERRY (Tasmania) (9.37 pm)—I indicate on behalf of the Labor opposition that we will be supporting these amendments. For the record, we have a copy of the EM. My usually efficient adviser tells me that we have no problem with the amendments. I want to point out that this bill was extensively amended in the House of Representatives. There were quite massive
amendments—some 32—dealt with in the House. I want to note that the Labor Party had been insisting that the margin for supply of real property be clarified. It has been clarified. As the minister has indicated, there will be further consultations because the operative date from which the GST was to apply made a very significant difference to the revenue that would have been collected. Apparently, on pressing by my colleague Mr Fitzgibbon, the government has decided to remove that at the present time for further consultation. Hopefully, when that consultation is concluded we will have some idea about the extra revenue that will be collected or not, depending on the base definition—which Treasury apparently indicated to my colleague that they could not provide.

I know this is a little unusual, but four government members in the House of Representatives referred to the superannuation fund rollover. The words ‘or will be’ were inserted in the House of Representatives. We were unsure in the House what that qualification meant. If the minister is able, through the advisers, could she indicate what those words mean or what the impact of them will be. Other than that, we support the amendments and we have no further concerns.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (9.40 pm)—I am advised that the transferee superannuation entity trustee must either be licensed at the time of transfer or intend to be licensed by 1 July 2006—that is, at the end of the superannuation safety transitional period. If the transferee entity trustee is not licensed by 1 July 2006, the rollover is reversed. This ensures that only transfers to licensed trustees can benefit from the rollover.

Senator SHERRY (Tasmania) (9.41 pm)—Thanks for that clarification. The only other point is that I understand that, in consultation with superannuation funds and various people who are advising them on the safety licensing provisions, APRA has a huge backlog before it. The best advice I am given is that it is unlikely that APRA can license all the superannuation funds in time. I mention that because I think there is going to be an issue. It would be very difficult for APRA not to give either an extension or an interim approval because, if it does not license a fund, presumably that will mean that the members in the fund will be the ones who are affected. There would be significant disruption as a consequence. I just mention it as an issue, because some sort of consideration may have to be given to an extended date for final licensing and/or some interim licensing while that backlog gets cleared up.

Senator MURRAY (Western Australia) (9.42 pm)—We are appreciative that the government is consulting further on the real property issue and we are also appreciative of the hard work that the House of Representatives have been doing for a change. Normally we have to do it all up here. It is nice to see them earning their dollar down there. What Senator Sherry has raised with respect to APRA and superannuation funds is an issue. I would urge that a mechanism be provided for some relief to be made available as and where required. It would be the obvious, sensible thing to do whilst the new scheme is being shaken down. We support the amendments.

Question agreed to.

Bill, as amended, agreed to.

Third Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (9.44 pm)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.
SUPERANNUATION BILL 2005
SUPERANNUATION (CONSEQUENTIAL AMENDMENTS) BILL 2005
Second Reading
Debate resumed.

Senator CHERRY (Queensland) (9.45 pm)—As I am not quite gone—give me a few hours—I rise to speak on the Superannuation Bill 2005 and the Superannuation (Consequential Amendments) Bill 2005. The Democrats will be supporting this legislation. It is a matter that has been around for quite a long time. In fact, the question of closing down the Public Service scheme to new entrants has been around for the whole period of this government. I am very pleased that, with this legislation, the government has done it the right way—that is, it has reached an agreement with the Community and Public Sector Union and the other unions in the area to ensure that this is done in a way that does not disadvantaged any employees; in fact, it advantages them.

This legislation provides significant advantages to new employees of the Public Service after 1 July because they will have complete control over where they put their superannuation. Their superannuation will be fully funded and paid upfront, and they will have complete control over where it goes, even after they leave the Public Service. That is a huge advantage compared with the current unfunded scheme, which results in the government paying out the employer contribution of super only when a person retires. For former Commonwealth employees, like me, that results in their superannuation being preserved until age 60, accumulating at the CPI rate, and it cannot be transferred to another fund. On behalf of the many hundreds of thousands of people who are in the same boat as me—although I will add that the CPI has been much better than the superannuation fund’s performance for the last three or four years, and I am thankful to the Commonwealth government for that—it makes much more sense to give people much more control over where their superannuation goes and much more control over where it goes after they leave employment. Also, importantly, it ensures that superannuation liabilities are kept under control by the government paying as they go.

This is a very welcome advance in superannuation policy for the public sector, and the Democrats will support it. The only tiny concern I have—and this is from someone who is interested in the development of national savings in this country—is that, with the shift to a 15.4 per cent employer contribution, the requirement for the employee to make a contribution, which exists under the current public sector scheme, will be lost. I hope that future public servants will decide to put away a little more of their own money, as they do now—between two per cent and 10 per cent—as a co-contribution into the fund of their choice. That will be a matter for them to decide, but I certainly believe—and it is of tiny concern—that, as a result of this measure, whilst people have more control over their retirement savings, they may end up with less retirement savings because requirements to make that voluntary co-contribution will no longer be there. That is a decision that each and every person must make. I certainly urge the Commonwealth and the unions in this area to educate people, to encourage them to make co-contributions in their own right, because ultimately they will be better off. With that small caveat, I wish to indicate that the Democrats will be supporting these bills.
Senator ABETZ (Tasmania—Special Minister of State) (9.48 pm)—in reply—I thank honourable senators for their contributions to this debate.

Question agreed to.

Bills read a second time.

In Committee
SUPERANNUATION (CONSEQUENTIAL AMENDMENTS) BILL 2005
Bill—by leave—taken as a whole.

Senator ABETZ (Tasmania—Special Minister of State) (9.50 pm)—I move government amendment (1) on sheet QS312:

(1) Schedule 7, page 23 (after line 12), at the end of the Schedule, add:

3 CGT roll-over—transfer of PSS Fund assets to pooled superannuation trust

Object
(1) The object of this item is to provide for a CGT roll-over so as to facilitate the exercise by the PSS Board of its powers under:
(a) section 22 of the Superannuation Act 1990 in relation to the PSS Fund; and
(b) section 20 of the Superannuation Act 2005 in relation to the PSSAP Fund;

to set up and/or operate a pooled superannuation trust that is used for investing the assets of the PSS Fund and the assets of the PSSAP Fund.

Roll-over
(2) There is a roll-over if:
(a) one or more CGT events happen because the PSS Board ceases to hold all of the CGT assets of the PSS Fund; and
(b) because of the cessation, CGT assets (the identical assets) that, together, are identical to all the CGT assets of the PSS Fund just before the happening of the CGT events start to be held by the trustee (the transferee trustee) of a pooled superannuation trust (whether or not all the identical assets were assets of the PSS Fund just before the CGT events); and
(c) the cessation is part of a scheme under which CGT assets of the PSS Fund are replaced with units in the pooled superannuation trust.

Note: The transferee trustee may be the PSS Board—see subsection 960-100(3) of the Income Tax Assessment Act 1997.

(3) A capital gain or capital loss the PSS Board makes from each of the CGT events is disregarded.

(4) For the transferee trustee, the first element of the cost base of each of the identical assets the transferee trustee holds is the cost base of the corresponding asset for the PSS Board at the time of the relevant CGT event.

(5) For the transferee trustee, the first element of the reduced cost base of each of the identical assets the transferee trustee holds is the reduced cost base of the corresponding asset for the PSS Board at the time of the relevant CGT event.

(6) For the purposes of the Income Tax Assessment Act 1997, a roll-over covered by this item is taken to be a same-asset roll-over.

Interpretation
(7) An expression used in this item and in the Income Tax Assessment Act 1997 has the same meaning in this item as it has in that Act.

The government’s proposed amendment to the Superannuation (Consequential Amendments) Bill 2005 modifies the application of the Income Tax Assessment Act 1997 to provide for the effective deferral of any capital gains tax liability that would otherwise result from the restructure of the assets of the PSS fund by the PSS board. The deferral or capi-
tal gains tax rollover facilitates the PSS board establishing a pooled superannuation trust that will be used for investing the assets of the PSS fund and the assets of the PSSap fund. These are the main superannuation funds for Australian government employees. The provision of the capital gains tax rollover not only reflects the fact that there will be no change in the underlying economic ownership of the assets of transfer but also reflects the special circumstances of the new superannuation arrangements for new Australian government employees, who would reasonably characterise the capital gains tax taxing points arising from the restructure as involuntary.

**Senator SHERRY** (Tasmania) (9.51 pm)—I indicate that Labor support the amendment. Given the circumstances, it is perfectly reasonable that with the establishment of the new legal entity PSSap there should be capital gains tax rollover relief. In my comments on the Superannuation Bill 2005 I spoke on a number of issues that Senator Cherry touched on. I know you will not be in this place, Senator Cherry, and the Senate will be the loser for it. I touched on a number of issues on defined benefit fund collapse and closure. I am interested in the issue you raised that one of the problems may be that we might actually end up with a lower level of saving as a consequence of this. Even though in the current circumstances the government—as I said earlier—has been generous in the arrangement it has come to for future public servants, it will be interesting to look at what the level of employee contribution is and the number who come to the conclusion that 15.4 per cent is sufficient and do nothing more. We could end up with less, effectively, in superannuation for those people. But that is a longer term issue to keep an eye on. I know Senator Cherry will not be here, unfortunately. I will keep an eye on it and, if you are interested, Senator Cherry, you can email me and I will send you the results of my keeping an eye on the issue.

**Senator ABETZ** (Tasmania—Special Minister of State) (9.53 pm)—I have just been reminded that I should have tabled a supplementary explanatory memorandum relating to the government amendment that I have moved to the Superannuation (Consequential Amendments) Bill 2005. The memorandum was circulated in the chamber on 16 June 2005, and I now table it.

Question agreed to.

Bill, as amended, agreed to.

**SUPERANNUATION BILL 2005**

Bill—by leave—taken as a whole.

**Senator SHERRY** (Tasmania) (9.54 pm)—I want to make the point that the Labor Party is concerned about the capacity for departments to impose AWAs that may be detrimental to the employees in particular departments in the context of the PSSap. I do not think it is likely but, nevertheless, the opportunity is there for unscrupulous exploitation in the context of this arrangement. But, if we are concerned about outcomes, we can cross-amend at another time.

Bill agreed to.

Superannuation (Consequential Amendments) Bill 2005 reported with amendment; Superannuation Bill 2005 reported without amendment.

**Adoption of Report**

**Senator ABETZ** (Tasmania—Special Minister of State) (9.55 pm)—I move:

That the report from the committee be adopted.

**Senator SHERRY** (Tasmania) (9.55 pm)—I move:

At the end of the motion, add “but the Senate condemns the Government for failing to publicly release updated actuarial projections which take into account the impact on public sector superan-
nuation liabilities of the closure of the Public Sector Superannuation scheme on 1 July 2005 despite being asked to do so during Senate estimates hearings in both February and May 2005."

Question negatived.
Original question agreed to.

Third Reading
Senator ABETZ (Tasmania—Special Minister of State) (9.56 pm)—I move:
That the bills be now read a third time.
Question agreed to.
Bills read a third time.

TAX LAWS AMENDMENT (IMPROVEMENTS TO SELF ASSESSMENT) BILL (No. 1) 2005
SHORTFALL INTEREST CHARGE (IMPOSITION) BILL 2005

Second Reading
Debate resumed from 12 May, on motion by Senator Ellison:
That these bills be now read a second time.

Senator MURRAY (Western Australia) (9.57 pm)—We are dealing with the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005. This is the first in a series of bills that will apply as a result of the Treasury review of the income tax self-assessment system. This particular bill, if my memory serves me correctly, deals with but six of about 54 recommendations. It reduces the interest payable on tax shortfalls—in other words, moneys owed to the Taxation Office—by four per cent. It provides the tax commissioner with greater powers to remit penalties and requires him to explain why a penalty has not been remitted, and it clarifies the definition of a reasonably arguable position. All of those things improve equity for affected taxpayers.

The Senate Economics Legislation Committee examined this bill. Both the committee and senators such as me, who deal with the taxation area, have had a large number of letters and submissions from taxpayers seeking for this bill to apply retrospectively. These taxpayers appear to have entered into a range of mass-marketed tax avoidance schemes in the 1990s that were subsequently considered by the Taxation Office to not provide the taxation benefits that the promoters had promised. The vast majority accepted an ATO settlement that no interest or other penalties apply. I will say again that those people were greatly assisted by the Senate inquiry and the subsequent negotiations conducted by Labor, the coalition and the Democrats with the ATO. That resulted in nearly $800 million worth of relief, by my calculation. About 38,000 people—87 per cent—accepted an ATO settlement.

There has been a campaign for these measures to apply retrospectively. In a number of cases that is meant as genuinely all the way back to 1987, and to 1994 in some of the submissions. But also some people are of the view that it should at least go back as far as the period that is available for the ATO to subsequently verify the accuracy of the information in the return within the prescribed period. Those periods, just to restate them quickly, are two years after the date tax became due and payable under the assessment if the taxpayer is subject to a shorter period of review, four years after the date tax became due and payable under the assessment, six years after the date tax became due and payable under the assessment where the assessment provided the taxpayer with a tax benefit, and at any time under part IV A where there has been an avoidance of tax due to fraud or evasion.

I must say that personally I have little difficulty with the concept that the provisions of this bill should in fact apply back within the prescribed period, which is what I would refer to as the period where time has not expired. However, there is no support for that.
The government does not support that position and neither does the Labor Party, as far as I understand. Because the financial impact of the current bill is around $100 million over the next four years, which is a clear indication of its beneficial nature for taxpayers, and because this bill does improve process and equity from the perspective of taxpayers, I think it is appropriate to support the bill.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.01 pm)—I will sum up on behalf of the government on the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 1) 2005 and the Shortfall Interest Charge (Imposition) Bill 2005. To begin with, I thank all senators who have taken part in this debate. On 24 November 2003 the Treasurer announced the review which has led to this bill being introduced. The review was to determine whether the self-assessment arrangements struck the right balance between protecting the rights of individual taxpayers and protecting revenue for the benefit of the Australian community. As part of the review, the government released a discussion paper. In response, Treasury received over 30 formal submissions and held face-to-face consultation with practitioners and other government agencies. The review identified a number of refinements to the self-assessment system to reduce uncertainty and compliance costs for taxpayers while preserving the Australian Taxation Office’s capacity to collect legitimate income tax liabilities. The recommendations—that is, the recommendations from the review—will move the balance of fairness markedly in favour of taxpayers who act in good faith and will build more flexibility into the self assessment system. These measures are another major step in this Government’s ongoing commitment to improving the Australian taxation system.

This bill contains the first tranche of these recommendations. Under current tax law a shortfall or underpayment of income tax is treated in the same way as a late payment, with a general interest charge accruing on the underpayment from the due date of the original assessment to the time the amount is paid. We are introducing a new penalty with a lower interest rate to cover the period before a taxpayer is notified of the shortfall, when he or she may or may not know of the problem. The new penalty will replace the general interest charge. It will be calculated in the same way as the general interest charge rate but will be four percentage points less per annum. It will have a three percentage point uplift over the base rate, which is an average of bank bill yields, in contrast with the seven percentage point uplift used by the general interest charge.

The Commissioner of Taxation will have the power to remit the charge when fair and reasonable to do so. In addition, there will be some other changes to the penalty provisions. We will abolish the penalty for failing to follow a private ruling issued by the Commissioner of Taxation. The penalty is being abolished because of concerns that it is acting as a disincentive to seek rulings in the first place. We will require the commissioner to give reasons to taxpayers for why they are being penalised and why the penalties have not been remitted in full. We will clarify when a statement by a taxpayer about their income tax liability is reasonably arguable in
relation to income tax law. A taxpayer is not penalised if he makes a claim for a tax concession that is reasonably arguable. The clarification will make the law consistent with the ATO practice, which is not to penalise if the argument is about as likely to be correct as incorrect. A strict reading of the existing law would require a higher standard and therefore subject more people to penalties.

I believe that some of the concern about this bill stems from a belief that it goes further than it actually does. Many people have suggested that the review of self-assessment provisions should be retrospective. This argument is often raised in discussion about the treatment of investors in mass-market schemes. However, the amendments should be considered in a broader context. This government has a good record when it comes to improvements in tax administration and this bill is merely the latest in a long list of changes. As the review points out, over the last few years this government has shortened the period of review for taxpayers with straightforward tax affairs, introduced binding oral advice, reduced the rate of interest on shortfalls and late payments, and introduced the office of the Inspector-General of Taxation—a new statutory officer with responsibilities for investigating systemic tax administration issues.

The bill should not just be viewed through the prism of the treatment of mass-market schemes however. It is a wider measure which will give interest charge reductions and other benefits to a wide range of taxpayers in a variety of circumstances.

Finally, the Shortfall Interest Charge (Imp position) Bill 2005 accompanies this bill. The imposition bill will impose the new shortfall interest charge. I believe these are a very sound set of amendments and I commend these bills to the Senate.

Question agreed to.

Bills read a second time.

In Committee

TAX LAWS AMENDMENT (IMPROVEMENTS TO SELF ASSESSMENT) BILL (NO. 1) 2005

Bill—by leave—taken as a whole.

Senator SHERRY (Tasmania) (10.08 pm)—by leave—I move:

(1) Schedule 2, item 16, page 14 (after line 25), at the end of subitem (1), add:

; and (d) the rate of the general interest charge is to be equal to the rate of the shortfall interest charge in respect of amended assessments where the general interest charge is incurred due to an increased taxation liability, after the date of Royal Assent.

Note: In relation to paragraph (d), where the shortfall interest charge is not paid within the required period, the provisions of the Act relating to the general interest charge apply.

(2) Schedule 2, item 16, page 14 (after line 34), at the end of subitem (2), add:

; and (d) the rate of the general interest charge is to be equal to the rate of the shortfall interest charge in respect of amended assessments where the general interest charge is incurred due to an increased taxation liability, after the date of Royal Assent.

Note: In relation to paragraph (d), where the shortfall interest charge is not paid within the required period, the provisions of the Act relating to the general interest charge apply.

By way of explanation, I did deal with this to some extent in the second reading debate. I appreciate that Senator Murray may not have been watching and he was not in the chamber at that time, understandably. Labor’s
amendments seek to introduce the SIC—that is, the standard interest charge. The government clearly recognises that in many circumstances the GIC—the general interest charge—is both inequitable and applied inappropriately. Yet, instead of taking steps immediately to address the shortcomings that have been identified, the SIC will apply only to the 2004-05 income year and future years. That means that back assessments which can still be conducted for ordinary taxpayers, as distinct from those who are reassessed under part IVA, can still be subjected to the GIC, which is the higher charge, for up to four years. These are only approximate figures, but I understand the GIC is around 12.5 per cent and the SIC, which is the lower charge, is approximately 8.5 per cent.

Further, the ATO will have to administer two systems in parallel for up to six years—the period it will take for the changes proposed to be fully implemented. Labor senators at the committee hearing considered that the SIC should apply to back assessments made from the date of royal assent to the bills, and therefore the amendments that we have proposed we argue should be passed. It is not genuine retrospection in that sense, but it does try to make it possible for those audited on recent returns to enjoy the effective lower penalty rate of the new regime.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.10 pm)—The government will not be supporting the amendments for these reasons. The Labor amendment would, we think, be unfair to taxpayers who had already had their shortfalls identified and their assessments amended. Taxpayers would be subject to different statutory interest rates for the same year of income depending on whether or not the tax office had amended their assessments before or after royal assent. One reason cited by the Labor senators and mentioned by Senator Sherry for their proposed amendment is administrative difficulties; namely, that the Australian tax office would have to administer two systems in parallel for up to six years. I am advised however that the ATO has indicated that they do not see any significant difficulty in implementing the shortfall interest charge in the manner that is proposed by the government.

Conversely, applying the SIC, the shortfall interest charge, to all amendments made after royal assent would create administrative difficulty. As the bill currently stands the tax office will have some time to prepare for the new system as there is unlikely to be, I am advised, a significant number of amendments to assessments for the 2004-05 income year in the period immediately after royal assent. Labor’s perceived problem will be considered by the tax office as it revises its guidelines for remitting interest charges on shortfall to better reflect the new remission principles. It is for those reasons that I have indicated to the Senate that the government does not accept the amendments. Further, as a technical matter, I should record that the proposed amendments are, according to my advice, to the wrong schedule. I am advised that they are interest amendments and stated to be in schedule 2. But, when looked at, it seems schedule 2 deals with tax shortfall penalties. My advice, for the assistance of the Senate and for Senator Sherry, is that schedule 1 is the schedule that deals with interest.

Senator MURRAY (Western Australia) (10.13 pm)—I attended the committee hearing into this bill. As I think I indicated in my second reading remarks, I have real sympathy with the view that anybody whose period of potential reassessment is still open should be subject to the same appraisal and laws. Essentially, people who have already been appraised are on one set of laws and people who might yet be appraised are on another. I
could not see that going back within the period which is not time expired should be a problem. However, when I explored that concept with a number of the witnesses they expressed views similar to those the minister has just outlined. I did not get a clear indication that the road down which I was interested to go would in fact produce a fair and easily administered outcome.

I have a great deal of sympathy for the intent of the Labor amendment as I understand it because, essentially, it is an equity measure. It is trying to ensure that whoever is within the period open for reassessment has access to the improved regime, which will be prospective. I feel that that is fair, but I have three things governing my decision to oppose the amendment. The first is that it is quite plain to me that the government is not of a mind to support that approach. The second is that this bill does need to pass in this financial year and is of real benefit to people. You can put a value on it—the Treasury has—of $100 million over four years. The third thing is that I am nervous about the design of the amendment because I am not sure that the Labor Party has had enough time to interact with Treasury and other people to make sure that it has all its i’s dotted and its t’s crossed.

On those three grounds—although, as I say, I have real sympathy for the equity or the fairness that is driving this—I am going to vote against the Labor amendments. I would, however, ask that the minister agree to take on board a re-examination of this issue, because it would be quite unfair if somebody who is reassessed who put in their returns two years ago and still falls within the non time-expired period gets access to a better regime and somebody who might have been assessed yesterday does not. That makes me uncomfortable.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.17 pm)—I have listened carefully to both Senator Sherry’s and Senator Murray’s comments and have taken on board the suggestion, as I did indicate in my remarks in response to Senator Sherry’s amendment. I am advised that the tax office will have these matters in front of mind as it revises its guidelines for omitting interest charges on shortfalls to better reflect the new omission principles, and I will ensure that your comments, Senator Murray and Senator Sherry, are brought to the attention of the office.

Question negatived.

Bill agreed to.

SHORTFALL INTEREST CHARGE (IMPOSITION) BILL 2005
Bill—by leave—taken as a whole.
Bill agreed to.

Bills reported without amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.19 pm)—I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

SUPERANNUATION LEGISLATION AMENDMENT (CHOICE OF SUPERANNUATION FUNDS) BILL 2005

Second Reading

Debate resumed.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.19 pm)—I do thank honourable senators who have made a contribution to this debate on the Superannuation Legislation Amendment (Choice of
Superannuation Funds) Bill 2005. The government's choice of fund policy is about giving people the right to choose the fund to which their employer makes compulsory super contributions on their behalf. The government believes that people should be able to decide who manages their superannuation which, for most people, will be their second largest asset after the family home. Choice will create a competitive environment that ensures superannuation providers are doing their best to increase the retirement incomes of all Australians. It will promote competition and place downward pressure on fees and charges. We have already seen evidence of this with a number of major funds reducing their fees in anticipation of choice and at least one new player looking to enter the market. These fee reductions and competitive pressures provide hard evidence that Labor's opposition to choice has been and is counterproductive and detrimental to the retirement savings of ordinary Australians.

This bill gives effect to announcements made by the government earlier this year to ease the transition to superannuation choice for business and employees and to minimise the burden on employers in complying with their choice obligations. It has resulted from ongoing consultations between the government, employer organisations and the superannuation industry. The bill will ensure that the choice of fund legislation does not impose unnecessary costs on employers by specifying additional circumstances where the standard choice form does not have to be provided to employees. Employers wishing to use the superannuation holding accounts special account to meet their choice obligations will be given an additional year to make alternative arrangements before it is closed. The employees will be able to exercise their choice of fund without risk of being charged by their employer for the cost of contributing to their chosen fund. This bill ensures that the choice of fund legislation strikes the right balance between allowing employees to choose who manages their superannuation and minimising costs for business. I commend the bill to the Senate.

Senator SHERRY (Tasmania) (10.22 pm)—by leave—I move:

At the end of the motion, add “but the Senate:

(a) condemns the Government for the poorly designed choice of superannuation fund regime which is too complex and unsafe; and

(b) calls on the Government to:

(i) exempt small businesses of 20 employees or less from this new red tape burden, and

(ii) remove the two-year gaol term and the $22,000 fine on employers if they provide advice to their employees”.

Question put:

That the amendment (Senator Sherry's) be agreed to.

The Senate divided. [10.26 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes........... 23

Noes........... 36

Majority....... 13

AYES

Bishop, T.M. Bolkus, N.
Brown, B.J. Buckland, G.
Campbell, G. * Collins, J.M.A.
Conroy, S.M. Crossin, P.M.
Forshaw, M.G. Hogg, J.J.
Kirk, L. Ludwig, J.W.
Marshall, G. McLucas, J.E.
Moore, C. Murphy, S.M.
Nettle, K. O'Brien, K.W.K.
Ray, R.F. Sherry, N.J.
Stephens, U. Webber, R.
Wong, P.
Question negatived.
Original question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CHERRY (Queensland) (10.30 pm)—The Democrats will be supporting this bill. The bill amends the choice of superannuation funds legislation in a number of ways. It imposes a penalty on employers who recoup from employees the cost of complying with superannuation choice. It specifies a rare circumstance where an employer does not have to provide an employee with the standard choice form. It specifies that ASIC will administer the ‘no employer kickback’ provisions. It allows the superannuation holding account special account to be an eligible choice fund from employers until 30 June 2006. Those accounts will of course close for new employers from 1 July 2006, and the bill makes other minor technical changes.

The bill is very technical and follows on from the agreement that the government reached with the Democrats—and I should acknowledge that Senator Coonan, who is in the chamber tonight, did some marvellous work on this very important legislation last year. Choice of fund takes effect from 1 July this year. I think it will provide enormous benefits to employers across this country. The legislation is full of safeguards which the government and the Democrats have agreed on after very long negotiations lasting some seven years. As a result, the overall benefit to the community will be quite substantial. The amendments to this legislation will ensure that the scheme operates better and that the compliance costs on employers and employees is minimised as much as possible.

We are entering a new world of superannuation from 1 July. I think it is a very exciting world. It is also a world which I think will result in substantial benefits for employees across this country and will hopefully encourage people to have more of a sense of ownership of their superannuation and, as a result, be prepared to put more money into superannuation. As several reports of various Senate superannuation committees have found, unless workers are prepared to put in more money into their superannuation, on current indications Australians will have inadequate superannuation savings. My hope is that choice of funds will result in increased savings as people feel they have more control over where their savings are going. They will feel more committed to it and, as a result, they will feel that ownership coming through. I know that Senator Sherry is going...
to move some amendments in this debate, and I will speak to those as we come to them.

Senator SHERRY (Tasmania) (10.32 pm)—by leave—I move opposition amendments (1) to (4):

(1) Schedule 1, page 3 (after line 14), after item 4, insert:

4A At the end of subsection 32C(1)
Add:

; or (c) in the case of an employer with fewer than 20 employees at the time the employer would but for subsection 32NA(2A) provide an employee with a standard choice form under section 32N, a fund chosen by the employer.

(2) Schedule 1 page 5 (after line 8), after item 9, insert:

9A At the end of section 32FA
Add:

(3) An employer with fewer than 20 employees, at the time the employer would but for subsection 32NA(2A) provide an employee with a standard choice form under section 32N, may refuse to accept the fund chosen by the employee under section 32F.

(3) Schedule 1, item 11, page 5 (after line 24), before subsection (3), insert:

2A An employer is not required under section 32N to give an employee a standard choice form if, at the time the employer would, but for this subsection, provide an employee with a standard choice form under section 32N, the employer has fewer than 20 employees.

(4) Schedule 1, page 6 (after line 35), after item 11, insert:

11A After section 32ZA
Insert:

32ZB Provision of superannuation advice by employers to employees
For the avoidance of doubt, if an employer provides an employee with superannuation advice; and:

(a) the employer has no pecuniary interest in the advice given; and

(b) the advice is provided at the request of the employee;

Labor’s amendments go to two basic issues, and I am pleased that Senator Cherry is here. He probably would not have heard my remarks yesterday and today about this legislation. I do not want to speak for too long, because I have made my points on a number of occasions. Interestingly, in the Financial Review and other media reports there is no doubt that there will be a significant additional compliance burden for employers in terms of paperwork, cost, filling in forms, form record keeping and penalty provisions. That is fact: it is extra work for employers. I do not think Senator Cherry, with due respect, will find too many farmers and employers whom he is representing in the Farmers Federation—not that I am criticising that; that is his call—happy with so-called super choice and thanking Senator Cherry for his efforts in this area. I think the Democrats cobbled together a very poor deal. I do not view the outcomes of this piece of legislation with the same excitement that Senator Cherry was bubbling on about earlier.

There is no doubt that there are a range of adverse consequences for employers. If you were going to design a choice of fund superannuation bill, there are other mechanisms you could have looked at so that employers would not have had the additional burdens that have been the subject of debate. I know we will not win that argument, Senator Cherry, so I will not persist. The Labor Party have already commenced consulting business, and we are very confident that we can design a new choice of fund regime. That will be reflected in our policy, which will
relieve employers of the new burden that the government and the Democrats have imposed on them, whilst still allowing choice of superannuation fund. This reminds me somewhat of the GST deal, Senator Cherry, in terms of the additional obligations that you have whacked on employers.

Labor has two themes, and one is the complexity of this legislation for employers. Our view is that small business, in particular, should be exempted. I had hoped that the Democrats would see the sense in that. I had some hopes of Senator Murray—but that obviously has not transmitted to Senator Cherry—that there would be some compromise and some concession to small business but that is not forthcoming, as I understand it.

Labor’s second theme is that of safety for employees. I do not know whether Senator Cherry is aware that the PDS statements—product disclosure statements—under FSR are having to be remodelled and simplified. We are not dealing with that in this legislation, but the government has released a draft new PDS. There are some enhancements and simplification under FSR and consumers are faced with 50- to 80-page PDSs. The government has recognised that that is a problem. I certainly think you made the point—I have certainly made the point—that it is a problem and an issue in the context of choosing a superannuation fund.

We will not have the new simplified PDSs until well after 1 July, because the regulations have not been finalised. Then, of course, the financial institutions have to reissue PDSs—not all of them but many of them. So you are going to have very complicated PDSs being handed out up to 1 July and thereafter. So there are poor protections for employees. The other issues are exit fees—I touched on that in my earlier debate—and the issue of trail commissions.

The second aspect of Labor’s amendments goes to removing the two-year jail term and the $22,000 fine on employers if they provide advice to their employees. There is a penalty provision in the choice of funds bill—I think it is up to $500. We believe that that is an appropriate penalty, not two years in jail or $22,000 worth of fines under the FSR regime. Employers should not be advising their employees about which fund to choose, but a penalty regime of two years in jail and a $22,000 fine is over the top in the context of the introduction of superannuation choice of fund. It is over the top. It is inevitable, in our view, that with five million employees at least some of them are going to be saying to their employer, ‘What is all this about? What should I do?’ Not unnaturally, some employers will provide some advice that is outside the parameters of the choice of superannuation funds bill.

I know my words are falling on deaf ears, so I hope that Senator Cherry communicates with me when one of the farmers he represents gets pinged for providing advice. It is almost a certainty that there will be some employers who will end up being caught by this. I notice that ASIC have said they will be lenient and consider it and so on. The fact is that the law is the law. As Minister Brough confirmed yesterday in the House of Representatives, ASIC is obliged to investigate and take legal advice from the DPP. I do not think employers should be put through that sort of scrutiny at this time in those circumstances. Nevertheless, the die is cast. I have put our case on behalf of employers. We have done all we can. The amendments are not going to be carried and we will move forward to present alternative policy in this and a number of other areas to ensure that superannuation choice is simplified and made safer. That is our obligation, and we will be doing that in the next two years.
Senator CHERRY (Queensland) (10.40 pm)—The Australian Democrats will not be supporting these amendments. We think they are grossly unnecessary. Senator Sherry says I will be pinged by farmers for not supporting these amendments. I think Senator Sherry could be pinged by unions for taking such a discriminatory approach to the employees of small business. It is an approach which the Labor Party has not taken on issues of access to redundancy payments and access to unfair dismissals.

One of the things we like doing over here in Democrat land is being consistent across the board. You cannot treat small business employees as second-class citizens for one condition of employment and not for another. You must treat them equally fairly across the board. If we decide that the employees of small business should have the same rights as the employees of big business in respect of access to redundancy pay and access to unfair dismissals, then the same should apply in respect of their superannuation. That is an important principle which Senator Murray has argued in this debate—Senator Sherry mentioned him to me—and one that all Democrat senators rely on. I also note that small business employees are one of the biggest beneficiaries of the choice regime.

Senator Sherry—Turn it up!

Senator CHERRY—Let us talk about the employees for a while, Senator Sherry—you are the Labor Party representative and you are supposed to represent the employees. As you well know, possibly the largest percentage of small business employees are award free. According to the most recent figures across the Commonwealth jurisdiction at the moment, 50.9 per cent of private sector employees are award free. According to the most recent figures across the Commonwealth sector, 15.6 per cent are on Commonwealth agreements, 16.4 per cent are on Commonwealth awards and another 17 per cent are on state awards and agreements. That is the whole private sector work force. But 51 per cent of the private sector work force is award free. They are the ones who benefit the most from choice. At the moment they have no choice. They have no union fund and they have no award fund. It is the employer who decides where their super goes. So, with this amendment, Labor is saying that the employer should continue to decide where the super goes for those two million employees of small business, most of whom are, in my observation, award free.

This legislation actually helps employees substantially, because for the first time it will be the employee deciding where their super goes, not the employer. To me, the biggest single benefit of the choice regime is award-free workplaces, because in award-free workplaces the workers finally get to choose where their super goes, not the employer. From that point of view, I cannot understand this coming from a Labor Party senator and I hope that as good union reps Senators Marshall and Moore, sitting behind Senator Sherry, will vote with me on these amendments when the division comes—

Senator Marshall—You’re joking; you haven’t got a clue.

Senator CHERRY—This is a situation where Senator Marshall should be standing up—I know he is a good union boy—for the rights of small business employees, particularly the ones which are award free, and making sure that from 1 July they get the right to choose where their super goes. I will not be supporting this amendment, because it is a stunt, it is a sham, and it is anti worker.

I also will not be supporting Senator Sherry’s second amendment—part of the marvellous scare campaign that he is running against employers and employees—about financial advice. It is utterly unnecessary. Senator Sherry well knows that the amend-
ment adds nothing to the law. The amendment says ‘For the avoidance of doubt’. There is no doubt in the law. There is no doubt about the nature of general advice. There is no doubt in ASIC or in the mind of anyone in the financial sector that there is no penalty for providing general advice on the FSR and that employers should not be giving specific personal advice. We all know that. They should not be advising which fund you put your money in. Their advice should extend no further than that which ASIC currently allows—which is providing general advice. ASIC needs a complaint to enforce the FSR and it has made it quite clear that it will only enforce the FSR rules in the case of clear breaches committed by crooks and dodgy financial planners—people who have clearly breached the law.

This is simply a piece of scaremongering by Senator Sherry, hoping to get a little bit of attention in the lead-up to the choice regime. He is trying to make life harder for small business employees, which I think is a very sad thing coming from a Labor MP, and he is trying to rustle up a bit of fear in employers when they should not be concerned because this is about making sure that their employees have a bit more control over their superannuation. From that point of view, we will not be supporting these amendments.

I am disappointed, Senator Sherry. You and I have been dealing with superannuation in this place since I arrived here as an adviser 12 years ago. I have found almost all of your contributions extraordinarily positive and constructive. Senator Sherry is one of the very few experts on superannuation I have seen in this place. It has been a pleasure dealing with you, Senator Sherry, through committees, through legislation and through many issues. On this particular occasion, I cannot support you—because you are wrong. On most occasions you have been right and a pleasure to deal with, and I thank you for your contribution. You have made a huge contribution in this area over 12 years. Very rarely in this place do we see a senator who specialises in an area for so long and makes such a huge personal contribution. But tonight I cannot help you, because on this particular occasion, Senator Sherry, you are letting down the workers of Australia.

Senator SHERRY (Tasmania) (10.46 pm)—We are under parliamentary privilege; otherwise what you have just said, Senator Cherry, would constitute financial advice that is grossly wrong—and you could end up in jail for the advice we have just received from you. There are a couple of areas where you are factually incorrect. I do not believe that the majority of small business employees are award free. I do not know what the statistics are, but I do not believe that is correct.

Secondly, there is no such thing as a union fund. Factually, that is incorrect. There are joint trustee funds in law in Australia. I know that because it was Prime Minister Hawke or Keating who changed the law to ensure that there were no employer trustee funds or union funds in this country—it has to be joint trustee funds. So what you said is factually wrong. It shows that you have fallen for the propaganda line that the government has continually trotted out about some funds being union funds when they are in fact not union funds. There are certainly some employer funds—corporate funds—but they now have joint trustees. I do not bag employer funds and misname them as employer funds. They are corporate funds with joint trustees—as indeed are industry funds.

For a number of reasons, it is a poor deal, Senator Cherry, that you have negotiated. We have debated this substantially for many years now, but let me briefly point out a couple of issues. What about the issue of trail
commissions—a fundamental conflict of interest that is still rife in the superannuation retail industry? It is a fundamental conflict of interest.

Senator Cherry—Fully disclosed.

Senator SHERRY—Disclosed? Doesn’t Senator Cherry have any concerns about the PDS disclosure regime? The simple regime we are supposed to get is not going to be in place by 1 July. It will be in place some months after that. It is a very inadequate disclosure regime. Why didn’t you make sure that was done properly when you signed off and consummated your deal with the government?

Secondly, there are a number of exclusions to superannuation choice—for example, defined benefit funds. There is no argument from us about that issue, but there is the issue of AWAs. I have already had a number of cases brought to my attention of employers saying, ‘AWA; no choice of fund.’ A number of retail funds that had their own retail arrangements, with commissions, with employers—bulk commission and bulk retail arrangements, usually at a fee discount—have locked in those arrangements using AWAs. That is not choice of fund. It is wrong that they should do that. Some of these retail funds have argued for choice of fund where it suits them and in other circumstances they have locked in arrangements excluding choice where it suits them—and that is fundamentally wrong.

There is the issue of the default fund. This is an area which is extremely dangerous. As you well know, Senator Cherry, the government will change industrial relations legislation and remove superannuation as an industrial matter. Approximately 70 per cent of the Australian work force is covered by state or federal awards. Therefore, it is totally within the power of the employer to pick the default fund—carte blanche; no check; no balance; no particular guidelines about how the default fund should be selected. A substantial number of people will end up in the default fund—and the employer will pick the default fund. I thought this was supposed to be about employee choice, not employer choice. That is another consequence that I do not believe that Senator Cherry has thought through.

There is the issue of exit fees. At the present time, there are half a million Australians in funds with exit fees. There was quite a lot of controversy about exit fees. I am sure you will remember that. Last year the Treasurer made very tough statements, as he is wont to do, about how dreadful exit fees are and he talked to the industry about trying to do something about it—because they are obviously a denial of fund choice. And what happened? Nothing happened. The exit fees are still there. They might be legacy products but they are still an issue that fundamentally blocks choice of fund for half a million Australians. I would have thought that, in any deal, there should have been some negotiations to try to at least minimise that particular problem, but that did not happen. And we have the issue of exit fees going forward. Exit fees are still legal in the system.

One other issue I will mention to Senator Cherry is that, in that context of AWAs, it is perfectly legal for a planner to rebate part of the commission to the employer. I drew attention to a case in my home state of Tasmania where the Retail Trades Association had set up a superannuation fund. They had already done it, and it can continue under choice of fund using an AWA. The commission agent was paying some of the commission—not a great deal of money but in principle it is wrong—to the employer organisation. If it were a union doing that, there would be an outcry.

This is a poorly thought through regime in terms of choice of superannuation fund. I am
confident we will hear a lot more about it. My critique of the Democrats and the government is not with respect to choice of superannuation fund; it is with respect to the poorly designed regime that they have cobbled together.

I see Senator Cherry talking to one of his advisers. We had a chat about this last night at the dinner. I am not going to relate private conversations. Senator Cherry, the adviser that you are talking to at the moment had a very good idea about the difficulties and how you can solve the problems for employers. I was quite taken with his suggestion. It is a pity you have not listened a little bit more.

This is an issue we will hear a lot more about. Senator Cherry, you did not make any comment that I can find about the retail funds not providing details of their fees to APRA, as required by law. We know that 10 to 20 out of 133 funds did not provide their fee details to APRA, the regulator, as required by law. I am sure that in at least a number of those cases they deliberately withheld their fee details because they do not want it disclosed. They came up with all sorts of excuses so that they could avoid that disclosure prior to 1 July. They are fees in the aggregate—we are not talking about fees as required by the PDS.

As I have said, we will be announcing policy that will substantially simplify and make safer this choice of fund regime. I will conclude by saying that most Australians already do have choice anyway—they have investment choice. There have been a number of serious problems with choice of fund where it has been implemented overseas. There are still issues that we have identified as problems and the Labor Party will be addressing those particular issues.

I will have to think twice about the kind comments I made about you earlier, Senator Cherry. I condemn your lack of foresight and your lack of attention to the detail and the consequences for at least some consumers and some employers who will get burnt as a result of this regime. It could have been a much simpler and safer regime. That has not emerged. It will come back to being the Labor Party’s responsibility to fix up these problems, and we will.

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (10.54 pm)—One thing that is absolutely certain in relation to this matter is that it must be the end of session, because it is getting late at night on the very last day—it is five to 11—and, yet again, we are debating superannuation. Unfortunately, as Senator Cherry said, Labor are seeking to conduct a scare campaign that has been going for some considerable period to scare small business on the introduction of super choice. For over nine years, Labor have been opposed to Australian workers having the right to choose their super fund and are now resorting to increasingly desperate and ill-founded tactics.

There are two parts to these amendments and I want to mention each briefly in turn and put the government’s perspective. First, these amendments exempt small business employees from the right to choose their super fund. This exemption would deny a large number of employees the basic right to choose a fund. Indeed, around 50 per cent of private sector employees are employed in small businesses. This would particularly disadvantage small business employees who regularly change jobs or work multiple part-time jobs. Many of these people are low-income workers in Labor heartlands who have simply been forgotten by Labor and who, no doubt, will not be comforted by the fact that, after these many years, Senator Sherry, on behalf of the Labor Party, still does not have a settled position.
Choice will allow people working multiple jobs to consolidate their super into one account and avoid paying multiple account fees, which can devastate retirement savings, but the Labor Party want to remove this fundamental right regardless of the consequences for the retirement incomes of these people. There is evidence that choice has increased competition in the industry. For example, some superannuation funds are decreasing fees and charges in the lead-up to choice, while other funds are increasing their levels of service. Virgin Money has entered the superannuation market because of the introduction of super choice. Exempting small business employees from super choice would diminish the extent of these competitive benefits.

I want to mention briefly the issue of business costs. The government has already taken a number of steps to minimise the costs on small business. For instance, the employers can satisfy their choice obligations by entering into a certified agreement or AWA. The legislation transfers the responsibility for choosing the fund onto the employee. To meet their obligations, employers are only required to hand over a standard choice form and, if the employee chooses a fund, contribute to the chosen fund. Also, employers will not be forced to contribute to a fund that requires them to become a participating employer.

Labor continues to ignore the existing evidence on this issue. In Western Australia, the state government’s choice of fund policy has been operating successfully since 1998, including for small business. The experience in Western Australia has been that private sector solutions have emerged to reduce the administrative costs for businesses in complying with their choice obligations. Super funds have established clearing-house devices and provided these services to employees at little or no cost. A clearing house allows an employer to efficiently and cheaply make contributions to multiple funds, while having to write only one cheque.

Business software providers have software that allows employers to send all super contributions directly to their employees’ chosen funds easily and efficiently. A substantial education campaign has commenced to advise employers of their obligations under the choice of fund measure. The campaign has a specific focus on micro- to small business. For instance, the government has just commenced a second mailout to all employers to inform them of their obligations. The ATO will be contacting selected microbusinesses to remind them of their choice obligations and to assist with any questions they may have. There is a single web site and phone number which employees can use to get more information about choice of fund. The ATO’s education seminar speakers are trained to include choice of fund in the seminars they conduct for small business groups.

The amendment will diminish the benefits of choice. It will deny many Australians the right to choose a super fund that meets their needs. There is simply no empirical evidence that it is needed, so the government will not support this amendment. The second part of the amendment exempts small businesses from the requirement to be licensed to provide financial advice to employees in certain circumstances. Choice of fund policy has been carefully designed to ensure employers are not unnecessarily burdened with additional requirements or obligations. There is no legal or other obligation on employers to provide any financial advice to employees. Such a requirement would be clearly unreasonable.

The coalition understands that employers have better things to do than provide financial advice to their employees and that most employers certainly would not want to do so.
Permitting unlicensed advice could also expose employers to legal claims by employees unhappy with the financial advice offered. Employees who wish to obtain free information on choice of fund and what to consider before choosing a fund can do so from the super choice web site or by calling 13 28 64.

This amendment is related to the financial services reform legislation. The FSR Act ensures that those providing financial services or advice are licensed or authorised to provide such services. This is not new as a result of super choice, nor is it restricted to super choice. It was introduced with the full support of the Labor Party. In respect of employers who inadvertently provide financial advice to employees, ASIC has stated that it will, in the early stages of super choice, take a balanced approach with employers. ASIC is not out to punish employers who are genuinely attempting to do the right thing. In Western Australia, where choice already operates, ASIC has prosecuted no employers—not a single one—for providing unlicensed advice and there is no evidence that this amendment is needed. I note that employers do not need to be licensed to give employees factual information in relation to superannuation and super choice.

In conclusion, in the government’s view this amendment is poorly conceived, and an ongoing exemption for employers to be licensed to provide financial advice would place consumers at significant risk. The FSR Act was designed to benefit consumers by ensuring that they are dealing with qualified and competent individuals and organisations. It is for these reasons that the government will oppose these amendments.

Senator GREIG (Western Australia) (11.02 pm)—I cannot let a late night debate on superannuation go past without making a contribution—but it is a sincere contribution. I am seeking some clarification and answers from the minister on the following points. Minister, without going over the debates we have had previously, I would like an update on where we are at with bringing the interdependency definitions or, more broadly—

Senator Coonan—Sorry, I cannot hear you.

The CHAIRMAN—Senator Grieg, you might start again. The minister has interference behind her and did not hear what you said.

Senator McGauran interjecting—
Senator Eggleston interjecting—

The CHAIRMAN—Senator Grieg, take no notice of the gratuitous advice that is being given from my right.

Senator GREIG—I have done that for six years. I have found that to be helpful advice. Minister, I am anxious to find out where we are at with ending the discrimination against same-sex couples within superannuation in the public sector. As I understand it—and I confess to not being an expert in these things—the super choice, as it now stands and as it has evolved and is being implemented, is largely quarantined to the private sector, and there was an unequivocal commitment from the minister, the government and the Prime Minister to ensure that, when the deal was done, discrimination would be removed in its entirety against same-sex couples. That was the form and nature of the press statements and doorstops. But I am anxious, and I confess to being in receipt of an increasing number of letters, phone calls and emails from lesbian and gay constituents who are anxious to find out what is happening with the moving of those definitions and the inclusion or removal of discrimination from within the public sector, particularly the Commonwealth Public Service. Some 250,000 people come under the CPS regime. Many of those may be in same-sex relationships, and they too deserve equal-
ity. There was no ambiguity in the Prime Minister’s statement that this would happen. I want to know where we are at with that. Why is it taking so long, and when will it be introduced?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.04 pm)—Thank you for the inquiry. I well recall that on the passage of the amendments relating to interdependency I undertook to write to relevant ministers to ask for a review to ensure consistency with other schemes. In fact, I am reminded by my advisers that I wrote to Senator Minchin about that last year. It is obviously a matter for Senator Minchin. I cannot speak for him, and I do not know where it is up to, but my advisers tell me that the matter is under consideration. I have of course now moved from the portfolio but, because that letter and those amendments were undertaken by me with a great deal of sincerity, I will make an inquiry and will get you some more information as to where it is at.

Senator GREIG (Western Australia) (11.06 pm)—I thank the minister for her answer. I do express genuine disappointment at the length of time this is taking, and I take this opportunity to convey that message from many people in the community who are concerned. Some of them have a fear that the promise is not being kept and a fear that, post 1 July, when the government has control of the Senate, the promise will not be honoured.

A second question is: in terms of the government’s and Prime Minister’s promise to end discrimination within superannuation against same-sex couples, what does that mean for reversionary pensions? I understand that it is the case, more particularly in the public sector than the private sector, that there are scenarios under which reversionary pensions are paid. That means that where one partner of a married or de facto couple dies, the surviving spouse—and the current definition is heterosexist—receives a pension but at a reduced rate. What does this mean under the non-discrimination regime promised by the government for same-sex couples? Is it the case that a surviving same-sex partner will receive the reversionary pension? Is that understood by the government? Is the government 100 per cent serious about ending all discrimination, and will that include reversionary pensions?

I ask that in the context of this: if you were to simply track the interdependency definitions from super choice over into the public sector, which I know is not quite the case, then it would be difficult if not impossible to provide for reversionary pensions because the definitions of interdependency are so broad. You would be aware, Minister, that the government chose not to specifically recognise same-sex couples but to refer to them obliquely by covering a large range of relationships that includes non-conjugal relationships and caring relationships. But it is not the case. It was never meant to be, nor should it be, that a reversionary pension would be paid to a carer or to someone in a non-conjugal relationship. It was specifically meant for a spouse. To get to the heart of the matter: is the government 100 per cent serious about ending discrimination against same-sex couples? Does that include reversionary pensions? How will those definitions be determined?

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.08 pm)—Senator Greig, with the best will in the world, with the advice available to me I am not able to answer all those questions that you have raised in the way in which you would expect I would be able to if I could get some advice. What I can say is that I
think everyone would agree that the PSS is a complex scheme. Amendments to eligibility are certainly not straightforward. I am not going to give you answers here until I am certain that what I am saying is factually correct. I have noted your comments, I have listened to you carefully and I will get some advice and write to you.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (11.10 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

CRIMINAL CODE AMENDMENT (SUICIDE RELATED MATERIAL OFFENCES) BILL 2005

Second Reading

Debate resumed from 20 June, on motion by Senator Ellison:

That this bill be now read a second time.

Senator GREIG (Western Australia) (11.10 pm)—The Criminal Code Amendment (Suicide Related Material Offences) Bill 2005 is absurd. It represents another triumph by the religious Right, which continues to press the government on conservative and symbolic reforms that have little or no impact on reality. For this reason it is a pyrrhic victory for reactionary forces. This bill illustrates the way in which the coalition continues to politically gesture to the more extreme church groups and how Labor has not learnt its lesson in trying to copy the government in this regard and trying to corral the same voting base. This bill is victory of style over substance, of superstition over reason and of ignorance over education. This bill is a fool’s illusion because it cannot and does not achieve the outcome that it claims to provide for.

This bill is not about suicide. It does not address the causes of suicide, nor does it even pretend to address them. At its heart, this bill is nothing less than the religious Right attempting to shut down and censor voluntary euthanasia support groups and voluntary euthanasia discussion in the broader community. We can see this clearly simply by looking at the key individuals and groups which made submissions to this bill and which pushed for its introduction in the first place. They are the usual subjects. They are a who’s who of the religious Right in Australia. And in spite of their disingenuous secular names, they are fundamentally religious organisations. Their push for this bill is all about laundering their religious belief into a secular argument, hiding church from state and translating their personal religious views into public policy and then imposing them on all citizens. It represents yet another push for theocracy over democracy. It is about the minority of Australians who oppose voluntary euthanasia and who do so largely because of their belief in God—however they define him or her—as being the only arbiter of who lives and dies, and their desire to remove that personal right from people who may want to decide that for themselves.

It is also about such people believing that those in pain and despair must suffer and not choose a dignified death over a life of suffering. This arrogant view ignores the fact that many Australians hold dearly to the view that if they are in uncontrollable pain or suffering, that if life has become unbearable and that no amount of medical help will alleviate this, then they will want the option to choose the right to die with dignity. Such deaths are not suicide in the general sense of the word. We should be clear about this. There is a gulf
of difference between those people who, because of emotional pain, confusion or depression, may contemplate suicide and those people at the end of life's road who, due to tragic circumstances or great age and frailty, may make the perfectly rational decision to opt for euthanasia.

Opinion polling continues to show that an overwhelming majority of Australians support voluntary euthanasia. Yet, while the vast majority of Australians support voluntary euthanasia, it is the organised political base of the religious Right, putting the squeeze on government in marginal seats, who have had a win in this instance. But it is not sustainable. Despite the excitement by supporters of this bill about its pending passage, it does not and cannot do what they think it does. In a general sense, the mythology surrounding this bill is that it will be cracking down on suicide sites on the internet. This is code for voluntary euthanasia sites on the internet. Those people with a limited or poor understanding of the internet might think that this will happen or that it is even possible. It is not. But just as previous well-meaning but clumsy attempts to censor the internet in this place, on issues such as pornography and online gambling, have been technical failures, so too will this bill.

The bill will fail for two key reasons. Firstly, it has no international reach. Given that the internet is an international medium, this is like removing a grain of sand from the beach and then claiming there is a discernible difference. It is nonsense. Simply by typing the words ‘How to kill yourself’ into the Google search engine I was able to access more than 7,230,000 hits in 0.1 seconds. This includes the site ‘How to kill yourself using the inhalation of carbon monoxide gas’ which comes complete with step-by-step pictures. This bill will not and cannot ban this site or the thousands of others like it. In other words, simply with the click of a mouse, any computer can and will be able to access tens of thousands of pages of information on the topic of voluntary euthanasia, suicide and methods of killing yourself.

Defenders of this legislation might argue that international cooperation is the long-term goal of this campaign, but of course legislation such as we have before us today would be unthinkable and, indeed, impossible in places such as the USA because that would breach the constitution as it applies to freedom of speech. But, as Australia is the only Western democracy without a bill of rights, the rights and freedoms of our citizens can be trampled, and that is what is being attempted here.

Although the outcome of the bill is unclear because of its hazy vagaries, it may be the case that, if passed, this bill will restrict the activities of legitimate domestic voluntary euthanasia advocacy groups. Opponents of voluntary euthanasia will argue at the first opportunity that this is the case and that the mere existence of voluntary euthanasia web sites constitutes a breach of this pending law. This is because the bill creates the extraordinary situation whereby it may be deemed that simply providing voluntary euthanasia information domestically constitutes unlawful counselling or inciting when provided via the internet, including email, or over the phone yet it is not unlawful if the same information is provided by regular post. It means, for example, that the Voluntary Euthanasia Society of New South Wales or Victoria or Western Australia, or wherever, may find itself in breach of the law simply by advocating for the introduction of voluntary euthanasia in state parliaments and discussing this online with members and supporters. I suggest this is the real agenda behind those conservative and religious organisations which most push for this bill. I predict it will likely result in civil disobedience, with voluntary euthanasia groups around
Australia daring the Commonwealth to prosecute them in an environment where the populace overwhelmingly supports voluntary euthanasia.

This brings me to my second point—that is, the law, as it is perceived, will not be complied with. Indeed, my advice to these groups would be: ‘Ignore this law; it’s a joke. Carry on what you’re doing and as you’ve always done. Treat this idiotic law with the contempt it deserves.’ This law is conservative symbolism that will be much more honoured in the breach than in the practice. And you can see this as a pattern of process that spans a wide variety of what are sometimes called ‘moral issues’, or where you find an intersection between religion and politics.

Let me give two examples of what I mean. Firstly, I go to homosexual law reform. For many years the same groups and individuals, and their like, who most pressed for this bill also strongly opposed the decriminalisation of homosexuality. This was most acute in Tasmania. They argued that the laws were a deterrent—to what exactly, I am uncertain—and that it was an important symbol of community morality. But such laws crumbled under the weight of public opinion, most especially when gay men handed themselves into the police, forcing their hand, and daring them to charge and jail them. The result was that the laws were brought in disrepute and ultimately repealed.

Another example I will give is that of abortion. In my home state, successive governments, under pressure from conservative forces, failed to make terminations lawful, even though this was clearly at odds with public opinion. But all this was brought undone when just a few years ago police pressed charges against one doctor who readily confessed to performing abortions and, once again, the weight of public opinion brought the law crashing down and reform was implemented. So too it will be with this legislation, if—in the highly unlikely event—at some point in the future voluntary euthanasia groups around Australia are arrested and charged under the ridiculous ‘counselling’ and ‘inciting’ definitions contained within this legislation. And I suspect the Commonwealth full knows this, and that would explain the remarkably low penalties prescribed in this bill. Civil disobedience will render this legislation useless.

To highlight the silliness of this bill, consider the bizarre situation it creates, for example, in that providing quotes and chapters of the book Final Exit, by author Derek Humphry, via email may be unlawful yet buying the book from a newsagent remains lawful. Then there is the question as to whether purchasing this book from online company Amazon.com constitutes an offence under the act. I suggest it may well do so, even though this book remains freely available in bookshops and libraries. This is ridiculous and brings public policy into disrepute. The bill lacks rationale and consistency, and it demonises the internet. It preys on the ignorance and misunderstanding many people have of the internet by perpetuating the myth that it can be censored as easily as a book or a film. It cannot.

But, most importantly, this bill completely fails to address the causes of suicide or offers any suggestions to help mitigate this tragedy. Suicide is a difficult social issue, and it is more common with elderly people than with the young, as is the perception. Yet elderly people are much more likely to get information about voluntary euthanasia through books and brochures than by attempting to do this online. The government says that the bill is a response to the incidence of suicide; yet, ironically, research shows that suicide rates have in fact fallen since the internet became publicly accessible in 1994. There is therefore no rationale between this bill and
the government’s argument for it. As the Law Society of New South Wales rightly said in its submission:

The major factor leading to suicide is despair, which can be triggered by tragedy such as personal despondency, loneliness, depression, mental illness, family breakdown or death of a loved one, poverty, unemployment, financial ruin, substance abuse or the chronic pain of a terminal illness. People at risk, in particular young people, require far more pro-active measures to address the causes of suicide and to help them rebuild their lives.

I have long had an interest in youth suicide prevention, most particularly from the demographic of gay and lesbian youth. A shocking statistic is that up to one-third of all same-sex attracted youth, those who are lesbian or gay, questioning their sexuality or perceived to be homosexual, attempt or succeed at killing themselves. I repeat: one-third. Australian and international research has repeatedly shown that harassment, discrimination, intolerance and prejudice aimed at young people who are homosexual, or presumed to be so and victimised for it, are key reasons for youth suicide.

The Commonwealth and the states have, to varying degrees, recognised this phenomenon and taken some limited steps to address it. Counselling, support and self-esteem programs, such as the Working It Out program in Tasmania or the Here For Life program in my home state, are examples of this. So I cannot let it pass without noting the bitter and cruel irony that many of the religious organisations which made submissions in support of this bill are also some of the most vehement opponents of civil and human rights for gay and lesbian people, and they host, refer to or advocate web sites that denigrate and vilify homosexual people. These includes anti-gay sites—mostly from the US—which state or imply that gay and lesbian people are mentally ill, morally depraved, diseased, corrupted and child abusers, amongst other things.

This anti-gay hatred and promotion is part of the problem that leads many young people to kill themselves. It contributes to an environment of fear and isolation many young homosexual people face, and it can result in homophobic harassment and violence towards vulnerable youth. There is a clear, academically established link between the fear and loathing promoted by anti-gay groups and the death of many young people.

It sickens me that religious organisations which passionately support this bill because of their declared passion for preventing suicide in fact have blood on their hands when it comes to their own contribution to the appalling levels of anti-gay violence and youth suicide amongst young people who are gay, lesbian, bisexual, transgender or intersex, or perceived to be so. And it is not acceptable that the Commonwealth remains silent on this nexus, despite its professed desire to limit suicides in Australia.

There are mixed views in my party on the question of voluntary euthanasia, and rightly so. It is rightly a conscience matter for senators. But, above and beyond this, my party believe strongly that voluntary euthanasia groups, or indeed any other lawful group, should be able to advocate their cause without parliamentary interference. We also believe strongly in the separation of church and state and that no church group should be allowed to unduly trespass on the role of parliament. But from my own perspective, and as the Democrats’ spokesperson for IT, I cannot endorse legislation that takes a clumsy, ham-fisted and nonsensical approach to the internet, that blames it for social ills and demonises it and that panders to ignorance about modern IT communications. I strongly oppose this bill.
Senator ALLISON (Victoria—Leader of the Australian Democrats) (11.25 pm)—I cannot much improve on my colleague's speech but I offer some slightly different perspectives to it. I, too, strongly oppose the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005 and will vote against it. The Bills Digest points out a lot of the problems associated with this legislation. It is not clear in what situations material would indirectly 'promote' or 'provide instruction'. The issue of intention in the third of the three offences might cause problems because, according to the Bills Digest:

... should a person put material on the internet, it might be difficult for them to refute the proposition that they were ‘aware’ that it might be accessed by someone who would then use it to counsel suicide etc.

They say there is an uncertainty about what constitutes 'material'. Is a private conversation on the telephone between two people ‘material’? I have had such conversations with people over the phone about euthanasia. Would I be guilty of a crime? The bill does not require anyone to actually commit suicide or even attempt to do so in order for an offence to occur. They are just some of the legal issues and lack of clarity with regard to this bill. There are also all those other technical problems about dealing with the internet which my colleague Senator Greig has already raised.

It seems to me, as it does to him, that this is not a bill that has anything to do with suicide. If the government were really serious about reducing suicide levels there are many things that it could do to achieve that. For one thing, we know that, if this government and others were more interested in improving services for people who have mental illnesses, many suicides could be prevented. Mental illnesses such as depression and serious conditions like schizophrenia so often give rise to suicide, and are probably the major cause of suicide in this country. If we had governments more interested in tackling that problem then we could be reassured that there was something serious going on here to reduce suicide rates. But that is not what this legislation is about.

Hundreds of submissions have already been made to the mental health inquiry telling tragic story after tragic story about people who have sought treatment for mental illness and who have been turned away or who are discharged from hospital too soon, or simply do not know or accept that they are ill. There is great anguish, particularly for parents and other carers, when their son or daughter harms themselves or threatens to suicide because the pain of their illness is too much to bear. Parents tell stories about how they knew that their son or daughter was suicidal and likely to take their own life and yet their pleas for assistance and for medical services to stop that happening fell on deaf ears and those people ended up going through with the act in the depth of their illness.

These parents do their best to protect their sons and daughters but, as I said, the awful truth is that they are too often unsuccessful and the deaths that those young people experience are usually very violent ones. In other words, they step in front of a train, hang themselves or overdose with drugs like sleeping tablets, none of which they do as a result of any incitement or counselling on suicide. It is very easy to kill yourself in this violent manner if that is what you are on about.

What is this bill about? Like my colleague I think it is about stopping people from discussing the cause of voluntary euthanasia. It is about stopping those who want the freedom to end their lives because they are terminally ill or because they have reached the end of their useful lives as they define it. It
stops these people from finding non-violent ways to end their lives. It stops them from talking with others about how they might do this.

We had a very long euthanasia debate in this place some years ago when the Northern Territory were stopped from allowing their citizens to have control over their deaths. Territorians who wanted the right to die with dignity at a time and in a manner of their own choosing were stopped by this parliament from doing so. That did not stop the awful rate of suicide. It did stop people from achieving a peaceful death. I think my colleague is right in saying that people will object to this legislation and continue doing it. They will flout the law because it is an ill-considered and bad law.

Because I am a strong proponent of people’s right to die with dignity and for them to be players in determining how they will die, I attract a lot of correspondence from people who think likewise. I want to read one letter that I have received in relation to this bill from someone who recognised that the right to die with dignity and euthanasia generally was what was being attacked by this legislation. This woman says:

I am in remission with ovarian cancer. I come from a family of five, four of whom have major heart defects. Two have died and two have had heart surgery. Recently I asked in emergency that my records be marked ‘Do not resuscitate.’ The doctor refused, saying I would need counselling prior to this action. I told her that I was conversant with the Medical Treatment Act of 1988 in Victoria and asked again, to no avail. Given my options, I would much rather die quickly of a heart attack than slowly with secondary cancer. It is because of these types of stonewalling that people have stepped outside the square. I am a very strong advocate for a hastened death for people who see their lives as having no purpose other than pain, loss of dignity and death regardless of treatments. I believe strongly that I represent the public face of activism on behalf of those less able to help themselves. Numerous overtures to all members of state parliament have failed to produce one positive sign that anyone gives a sh!— and ‘sh!!’ means ‘shit’, obviously— about us. We can’t even get living wills enforceable by law. Palliative care is not an option for some people. They need the knowledge that a peaceful pill is possible to end their suffering if and when it is needed. I just know that under this bill I will be a criminal eventually. My five grandchildren will have to know many years hence that I take this stand today to protect their wellbeing in years to come. That advocating a hastened death is treated the same as terrorism is really scary stuff. Please leave the discreet work that some sites undertake alone. Thank you.

We were told in the debate on euthanasia that those laws were the slippery slope to killing off old people we no longer value, saving the state money in medical treatment and allowing greedy and malicious family members to get rid of people for their inheritance or because they were simply a nuisance. I suggest this is a slippery slope for free speech. What will we see next from this parliament? Will crime writers be stopped from writing novels about murder? Will films that show theft be banned? Will cops-and-robbers movies also be banned because in them will be some violence, demonstrations of illegality, murder and shooting and so forth? Is this another slippery slope against our freedoms and liberties in this country?

Where will we go from here? If we are not allowed to talk about voluntary euthanasia amongst ourselves, on the internet or over the telephone, where will this go next? What else will we not be allowed to discuss? What else will we not be able to contemplate? What happens to those people who will continue to advocate euthanasia in this country? And why should they not do that—that is what they are asking.
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This is a ridiculous bill. Sadly, I think it is going to pass. That would seem to be the indication that we have had so far. It is not going to be a conscience vote, sadly. It masquerades as the kind of bill which will help us to solve the very serious rate of suicide in this country, but that is not what it is about. It is not going to make a scrap of difference to the number of people in this country who take their lives when they should not—who take their lives because they are unwell or for a whole range of reasons that should have been solved by other means, whether that is through the health service, providing the homeless with accommodation or providing young people with support at certain times of their lives. There are a whole range of ways in which we could tackle suicide but this bill is not going to do that. This bill is fairly and squarely targeted at voluntary euthanasia and any discussion about it, and it should be condemned.

Senator BROWN (Tasmania) (11.36 pm)—I commend Senator Greig and Senator Allison for their speeches on the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005. I do not think this is the time or place for this debate to be taking place. It has been relegated to the last night of the sittings, but it has very deep and considerable ethical, moral and personal ramifications. For the reasons that have been so cogently put forward, the Greens will be opposing this bill as well.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.37 pm)—I seek leave to incorporate Senator Harradine’s speech.

Leave granted.

Senator HARRADINE (Tasmania) (11.37 pm)—The incorporated speech read as follows—

I rise to speak about the Criminal Code Amendment (Suicide Related Material Offences) Bill. Suicide is a serious problem in Australia. More than 2,200 people commit suicide each year. That’s more than the annual road toll of over 1,500 deaths per year that we see regularly reported on the television news.

The World Health Organisation states suicide is “...a huge but largely preventable public health problem, causing almost half of all violent deaths and resulting in almost one million fatalities every year...”

The World Health Organisation reminds us that “deaths from suicide are only a part of this very serious problem. In addition to those who die, many more people survive attempts to take their own lives or harm themselves, often seriously enough to require medical attention. Furthermore, every person who kills himself or herself leaves behind many others—family and friends—whose lives are profoundly affected emotionally, socially and economically. The economic costs associated with self-inflicted death or injuries are estimated to be in the billions of US dollars a year.” To help tackle this problem the Federal Government introduced this bill to stop pro-suicide groups promoting suicide or providing information or material on how to commit suicide using the Internet, email or telephones. The bill is consistent with research that says one of the most effective ways of reducing the suicide rate is to limit people’s access to the means of suicide.

Legislators have a responsibility to protect the community, for the common good. It is important to ensure that those who are vulnerable are encouraged to seek help rather than end their life. Laws such as the bill under consideration educate society that there is value in the life of every human being, and that special care should be provided to those who are vulnerable for any number of reasons.

Dr Philip Nitschke, complained to the Legal and Constitutional Committee that what he called “rational adult Australians” will not be able to access information to commit suicide. But his position is not consistent.

Dr Nitschke is on record saying suicide pill information should be provided to all who want it—not just rational adults. He said: “Someone needs to provide this knowledge, training, or recourse
necessary to anyone who wants it, including the depressed, the elderly bereaved, the troubled teen.”

And who decides who is “rational”? Nitschke, of course. Not that he goes to much trouble to check. Rather than seek the opinion of a psychiatrist, he says “common sense is a good enough indicator”.

Yet depression—a treatable condition—is one of the major factors driving the suicide rate.

Whether a patient is suffering from depression or not is a matter for expert medical assessment. The World Health Organisation says “depression plays a major role in suicide and is thought to be involved in approximately 65-90 per cent of all suicides with psychiatric pathologies”.

Undiagnosed depression is a major danger for suicidal people. Depression is more difficult to detect than many other health conditions because those suffering the condition are often unaware of their illness. Yet it is ignored by providers of do-it-yourself suicide information. Research shows people with suicidal thoughts, but who are ambivalent about committing suicide, can be encouraged on Internet chat sites to take their life.

Vulnerable people see in suicide advice an endorsement of their disordered thinking. They see a justification for committing suicide rather than seeking the help they need.

Compassion is not giving someone information on how to commit suicide. Compassion is looking to the reasons they want to take such desperate action. It is addressing pain, depression, loneliness or fear. It is helping them with their mental health, physical illness or substance abuse.

There’s no dignity in being told you’re right to want to commit suicide because your life is awful.

The proposed laws are necessary because they target those who prey on the despair, depression, sadness or loneliness of others. But the legislation is not enough in itself. The Government must also address the health, social and personal factors which drive people to consider suicide.

Let’s tackle the problem of people committing suicide rather than trying to increase the numbers.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.37 pm)—in reply—The Criminal Code Amendment (Suicide Related Material Offences) Bill 2005 is designed to protect vulnerable people who can be targeted over the internet by people who do not want to espouse a cause or to argue free speech or a policy or anything of that sort but who intend that a vulnerable person should take their own life and are inciting them to do so. That is, of course, a different aspect to the discussion of the question of euthanasia. Indeed, the bill itself has a proviso that it should be a defence for anyone that they are engaged in free speech or advocating a point of view in relation to euthanasia. I want to make that very clear and it is important that the government make that clear, because we do not want to limit freedom of speech.

But there is evidence in relation to suicide that people who are in a vulnerable position are being encouraged to take their own lives. Unfortunately, that does happen, and a variety of means are used to achieve that end. This is but one measure to try to protect people who are vulnerable to those sorts of people who, with malintent, want to encourage them to end their lives—that is a very different question to the discussion of euthanasia and to advocating a position on that issue. This bill sets out to achieve that.

There are amendments, which I will address later in more detail, which I think take up the Senate Legal and Constitutional Legislation Committee’s recommendations. But I will just note that it is important that we approach this matter in a very rational way, without emotion. I would just remind the Senate of that. Suicide is a very emotional topic, and Senator Greig has pointed to the situation where, to take one particular case, a third of gay and lesbian youth, he says, attempt to or successfully commit suicide—I think that was the percentage he mentioned. That is indeed a tragic situation, and the government is totally committed to reducing the
rate of suicide in this country, and particularly so for young people. I commend the bill to the Senate.

Question put:
That this bill be now read a second time.

The Senate divided. [11.45 pm]
(The Acting Deputy President—Senator HGP Chapman)

Ayes........... 38
Noes........... 9
Majority....... 29

AYES
Barnett, G. Brandis, G.H.
Buckland, G. Chapman, H.G.P.
Colbeck, R. Collins, J.M.A.
Coonan, H.L. Crossin, P.M.
Eggleston, A. * Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Fierravanti-Wells, Fifield, M.P.
Forshaw, M.G. Hogg, J.J.
Humphries, G. Johnston, D.
Kirk, L. Knowles, S.C.
Lightfoot, P.R. Ludwig, J.W.
Lundy, K.A. Marshall, G.
Mason, B.J. McLachlan, J.E.
Moore, C. O’Brien, K.W.K.
Patterson, K.C. Santoro, S.
Scullion, N.G. Sherry, N.J.
Stephens, U. Tchen, T.
Troeth, J.M. Watson, J.O.W.
Webber, R. Wong, P.

NOES
Allison, L.F. Brown, B.J.
Cherry, J.C. Greig, B.
Lees, M.H. Murray, A.M.
Nettle, K. * Ridgeway, A.D.
Stott Despoja, N.

* denotes teller

Question agreed to.
Bill read a second time.

In Committee
Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.49 pm)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 21 June this year. I seek leave to move government amendments (1) to (6) inclusive on sheet RC207 together.

Leave granted.

Senator ELLISON—I move:

(1) Schedule 1, item 1, page 3 (line 17), after “incites”, insert “committing or attempting to commit”.

(2) Schedule 1, item 1, page 3 (line 20), after “incite”, insert “committing or attempting to commit”.

(3) Schedule 1, item 1, page 3 (line 23), after “incite”, insert “committing or attempting to commit”.

(4) Schedule 1, item 1, page 4 (line 20), after “incite”, insert “committing or attempting to commit”.

(5) Schedule 1, item 1, page 4 (line 23), after “incite”, insert “committing or attempting to commit”.

(6) Schedule 1, item 1, page 5 (line 8), after “incites”, insert “committing or attempting to commit”.

These amendments will insert the words ‘committing or attempting to commit’ after the words ‘counsels and incites’ and before the word ‘suicide’ in proposed sections 474.29A(1)(b), 474.29A(1)(c)(i), 474.29A(1)(c)(ii), 474.29A(3)(c), 474.29A(3)(d) and 474.29B(1)(b)(i).

These sections will now apply to material that counsels or incites committing or attempting to commit suicide. The Senate Legal and Constitutional Legislation Committee recommended that the aforementioned paragraphs be amended to read ‘counsels or incites another person to commit or attempt to commit suicide’. The government has accepted this recommendation with one minor amendment. It would be inappropriate to
include the words ‘another person’ within this provision. The internet is notoriously anonymous and there is a possibility that courts may read this phrase to require the defendant to have a specific person or class of persons in mind for an offence to be committed. This is not the intent of these provisions.

The phrase ‘counsels or incites committing or attempting to commit suicide’ addresses concerns raised before the Senate committee that counselling services such as Lifeline may inadvertently be caught by the original phrase ‘counsels or incites suicide’. Indeed, they are engaged in the business of counselling against suicide. We do not want them to be caught. The amended wording acts to clarify the definition of the term ‘counsels’. In the context of these offences, the term ‘counsels’ is intended to have a narrow meaning. It will cover the encouragement or urging of a person to commit suicide and the giving of advice or assistance directed at the actual commission of suicide. It should be noted that these amendments result in a broadening of the bill in that the offences now capture material that counsels or incites the attempted commission of a suicide. It is important to remember that these offences do not require a person to actually attempt or commit suicide. It is sufficient if the material counsels or incites committing or attempting to commit suicide and the person intends to use the material to counsel or incite committing or attempting to commit suicide.

The inclusion of the reference to an attempt to commit suicide is to ensure that it is not open to a defendant to avoid conviction on the basis that the relevant method of suicide would not work in practice. The Senate committee also recommended that a requirement be inserted into the bill that as soon as practical after the end of 12 months from the date of the bill’s commencement the Attorney-General cause to be laid before each house of parliament a comprehensive report on the operation of proposed sections 474.29A(3) and (4). The government does not accept this recommendation. However, I will undertake to report back to the Senate committee on the operation of these new offences 12 months after these provisions come into force. That will provide the committee with the opportunity to assess the operation of sections 474.29A(3) and (4). That undertaking acts as an alternative to the recommendation of the Senate Legal and Constitutional Legislation Committee that there be a review, and I make that undertaking on behalf of the government. I commend the amendments to the committee.

Senator LUDWIG (Queensland) (11.53 pm)—The Labor Party support the amendments moved by the government. We also accept the government’s undertaking in the spirit in which it is intended. The Senate Legal and Constitutional Legislation Committee took the opportunity of going through the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005 in detail and receiving submissions from various parties. One of the greatest concerns about this bill was getting the right balance in ensuring that freedom of political communication is not diminished in any way as a consequence of this bill dealing with the issue of suicide. One of the objectives was not to strike a balance but to ensure that the bill has the twin goals that (1) political communication is not diminished and (2) the issues associated with suicide that are reflected in this bill are adequately dealt with.

There is the ability to give law enforcement agencies sufficient power to try where they can to eliminate or reduce the incidence of offences under the bill. Concerns that the Senate Legal and Constitutional Legislation Committee found were whether or not this bill would meet the intended purpose,
whether unintended consequences might flow and whether or not the outcomes provided for in the bill will in fact be realised. That is why one of the recommendations went to ensuring that the bill be reviewed within 12 months and to ensuring that those objectives that I mentioned earlier are met. The government has made an undertaking to allow and ensure that there is a review. The Labor Party accepts that undertaking in the spirit in which the government provided it.

The government has picked up the other amendment from the Senate Legal and Constitutional Legislation Committee, and we thank the government for doing that. That highlights the work that the committee has done more generally, because this is not the only bill on which the government has heard from the committee and then picked up—if that is the right expression—the recommendations that have been proposed. This has happened in other areas where the Senate Legal and Constitutional Legislation Committee has operated. In the last couple of days we have heard from the government in respect of the telecommunications interception legislation where a significant body of amendments was accepted that came from recommendations of that committee. I think it highlights the strength of the committee and the strength and ability of the chair, Senator Marise Payne, to ensure that there is proper scrutiny of legislation and to impress upon government the need to listen to the recommendations of the committee and to recognise that through the committee process we can have improved outcomes.

We are also comforted by the belt and braces approach that the government adopted in this bill. It is worth coming back to where we started, because the issues in this bill were originally part of a—perhaps omnibus is not the right word—bill in the last parliament prior to its prorogation. The bill went to the Senate Legal and Constitutional Legislation Committee and did not get through—if I can use that shorthand expression. The new parliament then sent the bill back to the Senate Legal and Constitutional Legislation Committee to finish its review of the legislation. In his earlier submission, Professor George Williams of the ANU suggested a belt and braces approach to ensure that freedom of political communication would not be diminished. That was picked up by the government in its second iteration and the work of Professor Williams should be recognised to ensure that this bill will not reduce or take away the implied freedom of political communication. I think that has been achieved in this bill.

More importantly, the bill will attempt to ensure that law enforcement agencies do have at their disposal sufficient powers to try to rein in some of these issues. I think I mentioned during my second reading contribution that when you look at the statistics available on youth suicide, while you can understand that in some quarters there may be an argument for some organisations to seek some freedom on this issue—the examples of young males who are prone to suicide and young females who are prone to suicide attempts and the number that do in fact commit suicide—you will come to a position where you will do anything you can to improve survival, to ensure that people do not commit suicide and to make available counselling or other mechanisms. I think the legislation commends itself. We support the amendments moved by the government.

Senator GREIG (Western Australia) (12.00 am)—Notwithstanding the fact that we oppose this bill, we do support these amendments in the sense that they make a bad bill better. We support them because they change the wording in six different provisions from ‘material which directly or indirectly counsels or incites suicide’ to ‘material which directly or indirectly counsels or in-
cites committing or attempting to commit suicide’—so it is a grammatical change, if you like, but it has an impact.

Essentially, they provide further clarification and they arguably narrow the scope of the bill. This is because there is arguably a difference between counselling or inciting suicide generally and counselling or inciting the committing of suicide more specifically. As I explained in my speech during the second reading debate, we Democrats are concerned about the potential impact of this bill on voluntary euthanasia organisations. These amendments will certainly not alleviate those concerns entirely, but they will improve the situation and they certainly provide more legislative clarity. On that basis, we support them.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.02 am)—I move:

That this bill be now read a third time.

Senator BARTLETT (Queensland) (12.02 am)—I am sorry to delay things, because of the hour, but I think it is necessary to just speak briefly on the Criminal Code Amendment (Suicide Related Material Offences) Bill 2005. I oppose the bill, but my personal reasons for doing so are slightly different from those of my colleagues in terms of their attitude towards euthanasia organisations. Frankly, I think this whole issue has been approached from all sides as a bit of a black-and-white issue. Suicide is not a black-and-white issue. If anything, it is an unremittingly black issue. In that context, I think we are all stumbling around in the dark figuring out how to deal with individuals’ blackness. Some euthanasia organisations do not recognise some of that either.

I oppose the bill, firstly, because it will not work and, secondly, because I think it actually does take a black-and-white approach to some of the sites that do talk specifically about suicide. Some of them can actually assist some people but they can also be harmful to other people. It is complex, it is messy and this sort of black-and-white stuff just does not work. I do not think we should kid ourselves that it does. I thought it was important to put my view on the record as an individual one rather than as a party based one. I still oppose the bill, but for somewhat different reasons to those that have been outlined.

Question agreed to.

Bill read a third time.

MIGRATION AMENDMENT (DETENTION ARRANGEMENTS) BILL 2005

Consideration of House of Representatives Message

Message received from the House of Representatives returning the Migration Amendment (Detention Arrangements) Bill 2005, informing the Senate that the House has disagreed to the amendments made by the Senate, and requesting the reconsideration of the amendments.

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

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.04 am)—I move:

That the committee does not insist on its amendments disagreed to by the House.

Senator LUDWIG (Queensland) (12.04 am)—As we indicated in the debate, the amendments were defeated in the House. The amendments included one of a technical nature. We thought the government might
have had the opportunity to have a better look at it to improve the otherwise incremental improvement in the migration detention regime but they unfortunately failed to see the sense of that belt and braces approach. Let us hope that their view is right; perhaps I am wrong in relation to that technical amendment, or the Labor Party is, I should say.

However, I would like to put on record a couple of things. We indicated that we would not insist on the amendments because it was in the interests of ensuring that even this incremental change will make some difference, some improvement, to the migration detention system—notwithstanding Senator Vanstone’s or Mr Ruddock’s position as the current minister and previous minister, notwithstanding the cultural issues that seemed to have been alluded to during this debate, notwithstanding the maladministration that so characterises this area and notwithstanding the inability of the minister to call a royal commission into what would otherwise only be described as a shambles. The department is in crisis and is leaderless, in our view. It has not had a minister with the strength of character to see that there were problems that needed to be addressed and to understand that those issues needed to be dealt with quickly, concisely and openly in a transparent way.

I would like to also take this opportunity to say that the real significance of this bill is that it reflects a major change, but not of the government; I do not think the government has really changed that much in this issue. It does, I think, reflect a major change in community opinion in Australia. We are finally seeing the middle ground of genuine, caring, decent, honest Australians who are starting to assert themselves and who understand that this is a debate that should not divide. This is after years of appalling vilification of asylum seekers by the government, which could only be described as thinly veiled appeals to, I guess, an underlying racial prejudice that might exist.

We have had years of hearing about cases of talkback radio throwing itself into the debate with gusto, which was unnecessary, to bring about a position where you start hearing people talk about things that we had thought we had put behind ourselves as a nation—where people say things like ‘sink the boats’ or ‘shoot them’. After years of that abuse, denigration and name-calling, I think we have come to a new position. The Prime Minister uses the words ‘tilting point’ with regard to a number of issues. I go back to the older style language and say we have come to a watershed. Maybe it is not quite a complete dam but, as a nation, I think we are starting to at least look at the debate and come to a better position about the issues rather than the emotive matters that might underpin them.

We can start to look at this government in the light of what it did in respect of the hysteria it created around 2001. Thankfully, the Labor Party have maintained a consistent line in this area throughout. We have not agreed with the government. We have got a different position. We have put together a policy which reflects a concern but which also maintains that this area should be open and transparent and that government should be accountable. This latest revolt by the backbench only illustrates how strong this sentiment is becoming and how much community attitude is changing in this area, and it is pleasing to see that at least. We can reflect on how much Mr Georgiou has progressed this issue and, in truth, how little he then settled for in this area.

If we put that aside for the moment, we are in a position where I think we can move forward and we can look at how we can ensure that there is fairness. We will have the
ability, as Senator Bartlett knows, in the Senate Legal and Constitutional References Committee migration hearings to argue our position from the Labor Party’s side, and I am sure Senator Bartlett will take the opportunity to argue for his position. Our positions are not always concordant, we are not always singing from the same sheet, but I think we do share the same interest in ensuring that there is fairness in the migration area. But it is still a long way until we get back to what was once a bipartisan approach to this issue.

It is really quite an incredible journey when you go back to where settlement services were significantly progressed, when you go back to the late Al Grassby and see how he sought to ensure that migrants from all walks of life would be welcomed into our country, resettled and able to find employment and come to see Australia as their home. Then you go through into the reports and the progress we have made. You can track it clearly from Al Grassby through to the Galbally report under Fraser and to Hawke and to Keating, right up to the global diversity conference in 1995, where we had by and large maintained a bipartisan approach on immigration, settlement services and multicultural affairs. All of that fell apart under Howard. We had the rise of Hansonism. We had Mr Howard almost putting on this Aussie bush hat image of saying, ‘We’re back to colloquial Australia.’ That divide started there and that rift between what we saw as the way forward and what Howard did got wider and deeper.

I think we have come a little bit back to where we can realistically look at how we can start to rebuild some of these bridges to ensure that all Australians can feel that Australia is in their heart and is their homeland. One of the things the Liberals and the coalition need to be aware of is that Australia does not only belong to them but belongs to all of us. This backbench revolt, if we want to call it that—or perhaps a storm in a teacup—demonstrates that there is community interest in ensuring that there is fairness in the system. Rather than delaying it too much longer in talking about some of those issues, I will take the opportunity during the Senate Legal and Constitutional References Committee hearings to progress some of those issues.

Senator BARTLETT (Queensland) (12.13 am)—The Democrats will not insist on those amendments either. As I made clear in my contribution to the second reading debate and during the committee stage, we have quite serious concerns about some of the principles contained in this legislation and some of the expansions of a power that we believe has already been shown to have significant problems in how it operates. But we are not going to stand in the way of legislation that will enable some people to be released from detention—either by being released into community detention, in which case technically they are still in detention, or by being granted a visa more easily than they currently can be. I think it is bad law the way it is being done, but I am certainly not going to be accused of holding up a mechanism that allows that freedom to happen.

There are a couple of comments I would like to make along the way, though. Senator Ludwig mentioned the Senate Legal and Constitutional References Committee, which has just received a reference to examine a range of the issues to do with decision making about visas, detention, deportation and administration of the Migration Act. He talked about how he would be able to put his position and I and the Democrats would be able to argue our position in that committee. I am not sure I know what he was saying in relation to that, but I would like to put it on the record that I am not looking at that inquiry as a process to argue my position; I am looking at it as a way to get information, to
get more facts on the table and to give the opportunity to the public to contribute information and put forward their viewpoints. That will inform my position and then I will argue it.

I hope that all of us will engage with that, and I am sure we will—at least from the non-government side—in a genuine attempt to look at these issues. I do believe that, beneath all the political arguments about this, we want a system that works better. There are clearly major problems at the moment. Despite all the attacks I have made—quite valid attacks, I believe—on this government and indeed on the opposition for their approach and their policies in this area, I have repeatedly acknowledged that this is a very difficult area. It is always going to be hard. If as much as possible we can work to try and find an approach that will work better, that will help us deal with some of the issues that are a bit more ephemeral, about culture, that have been talked about. If we can approach this inquiry with that mindset, then it will increase the chance of getting a more constructive result.

Having said that, I do have concerns that this government opposed the setting up of this inquiry. There are undercurrents around the place at the moment—and we will find out one way or the other in a couple of months—about committees being removed, references committees being collapsed back into legislation committees, and some inquiries that the government do not like being cut short. I do not know if that will happen or not, but the government actually opposed this inquiry being set up—an inquiry that quite clearly there are compelling good public policy reasons for installing, however much the government might find it embarrassing. The fact that the government opposed it, and indeed called a division in the forlorn hope that they might get lucky and jag an Independent or two on their side and stop it happening, does not fill me with confidence that they will approach this in a constructive way. It is a politicised area at the moment and that does make it harder. I appreciate that. But, if we can all approach it as much as possible with a genuine attempt to grapple with some of the issues and look seriously and openly at what some of the problems are, then it will be better for the whole country.

Over the years, I have become more immersed in the migration area and have gained a fuller appreciation of just how pivotal it is to the future of Australia and indeed to the here and now of Australia. The migration area in all its aspects and the migration law and how it operates are key. The migration area is one of the most critical public policy areas. I think people underestimate how important it is, perhaps because so much of the debate is focused on what is actually a very small part of it. The asylum seeker area is a tiny part in terms of numbers of people, but the failure to address that issue in a proper way, in a way that accords with decent administrative practices and the rule of law, has infected like a cancer the entire Migration Act and the administration of it, and that affects our entire country and our country’s future. It is important and I do hope we can approach that committee inquiry with that in mind, and I hope the government can do likewise.

Let us look at what is in this legislation, even aside from community detention—which is another one of the strange word plays that we have in the migration area: for the purposes of the Migration Act, people are still considered to be in detention even as they are wandering freely around the streets. It is a bit like the excision zone, where people might be in Australia but, for the purposes of the Migration Act, they are not in Australia. There are a couple of people in Maribyrnong detention centre at the moment
who have been there for a couple of months but are technically not in the migration zone of Australia; they are here on transitory visas and are still sort of technically in Nauru. These are the sorts of absurdities and legal fictions that have been put, one on top of the other, throughout the Migration Act to get around different situations, different court rulings, different bits of public pressure. The big catch-all escape hatch is the ministerial discretion.

We now have in this bill the power for the minister to use his or her discretion to grant a visa to anybody in migration detention. Literally, the minister could clear out everybody in detention tomorrow and give them all a visa. She is not going to; indeed, I would not argue that she should, because some people are there for short purposes prior to deportation for valid reasons. But this gives sweeping power. It is not even implying bad faith, although you can argue that from time to time. It is literally inevitable, if you give a minister, Commonwealth officer or any official carte blanche power without having any appeal mechanism, any real review mechanism or even any mechanism for transparency about how that power is used—why it is used in one case and not another—that you will get injustices, inconsistencies and a corrosion of the integrity of the Migration Act. We have seen all this in committee inquiries before.

I cannot believe that I am using the phrase ‘the integrity of the Migration Act’ because that is the one the government always use. They say, ‘We’ve got to do this to maintain the integrity of the migration regimes.’ It is one of Philip Ruddock’s favourite phrases. He used to say it every day as soon as he got out of bed. But it is true: you need to have the integrity of the Migration Act. This stuff undermines the integrity of it—this wide-sweeping carte blanche power to dish out a visa when you feel like it. It is a reality, but it is still not a desirable reality to have visas being granted on the basis of public and political pressure. It reinforces the perception that you have to go to the media, you have to create public opposition to what the government is doing and you have to create public sympathy for a particular person. That is not the way to grant visas.

Apart from anything else, it is unfair for the person. It can be incredibly traumatising to be suddenly thrust into the public spotlight and have your individual life circumstances ripped apart from every side as people make a judgment about whether or not you deserve to stay here. It is not the way to do things. But that is actually what this is encouraging. It is going to encourage more of this because people know that the minister can do anything to anyone in detention. They can all get a visa now, so everybody is going to be clambering left, right and centre. We will need to put more staff on to deal with it. It all comes back to one person: the power rests in the hands of one person and it cannot be delegated. One person has been given that absolute power without proper transparency.

I heard Senator Troeth talking about transparency. It may seem nice and transparent to table things in the parliament and say that you have used it but, having seen how it operates, we know now that it is not transparent. The lack of transparency and the lack of any idea about how or why this power is used are farcical. That undermines faith in the integrity of the system. I am all for the integrity of the migration regime. Having heard Philip Ruddock talk about it for so long, I have adopted the mantra. I just wish the government would adopt the reality. In that way, I believe that this bill goes down a bad path, and I feel very uncomfortable, in that respect, supporting it. But if it is the only way, and it is the only way at the moment, and the only path that is open for people to
be released from detention, then I do not think we have any alternative.

But we should all be wary. We all know, of course, that the political tide can turn, particularly if the government puts its mind to it. In the same way as these powers can be used to loosen up and become more compassionate, they can also be used to crack down. The same problems apply with the lack of legal rights, the lack of scope for appeal and the lack of transparency. It is all fine in theory. Most people do not worry about transparency and appeal rights if they are being doled out in a nice, compassionate, cuddly way. But when they are being applied in the other way—cracking down, putting people back into detention, denying visas and all those things—then concerns arise. But it is too late then. That is the broader concern I have with the process here.

The whole matter was only finalised and agreed on less than a week ago. It was some time on Friday afternoon in the negotiations between the Prime Minister, Mr Georgiou and others. It was rushed into this place in legislation that appeared on Tuesday. It was rushed through here, with some questioning and some extra elucidation, on Thursday—less than a week later. We have heard tonight that the guidelines are still being sorted out as to how some of these powers are going to be used, not that the guidelines are legally enforceable; we cannot appeal about how the powers are used or not used anyway.

So it is bad law in lots of ways, and the rushed nature of the process adds to the apprehension I have. But that is the situation. It does seem that the government is reacting to ever-growing political and public pressure about this. I have just heard tonight that a large number of Iranian detainees have had discretion exercised under section 48B, which allows them to reapply for their protection visas. The general assumption is that they will all—or mostly—be successful. That is a hell of a messy and roundabout, non-transparent and almost arbitrary process, but if it gets them visas then I guess it is better than not. But the process is such a mess, and that is why we have such a mess at the moment in the whole migration area, as in some of the cases that have come to light publicly and—quite frankly, as I am sure the department and the minister well know—in some cases that have not come to public attention as yet but undoubtedly will. This is built on what is almost a national hysteria for control at all costs in the area of migration. We do need control and we do need a coherent regime, but we do not need some psychotic and obsessive mania for control at all costs. The result of that is a ridiculously over-complex and over-regulated, inconsistent, badly administered and politically infected migration regime with a lot of bandaids stuck over all the gaps and the bits that keep falling off the side. This legislation is another big bandaid. As I have said a couple of times, it is a bit like the emperor’s new clothes—nobody wants to acknowledge that the whole thing is a facade: they just keep putting on one more imaginary coat over another to try and keep kidding people that it is all okay.

It is clearly not okay and it not going to become okay until we take off the blinkers and have an honest look at it. That is something all of us from all sides need to do—those of us like me and others who advocate strongly and continuously for more rights for people need to do so with the realistic recognition that it is a difficult area which has its constraints. But clearly we have got it wrong at the moment, and until we can get that initial recognition that we have got it seriously wrong from both the major parties then we are going to be back here again and again. It is just as well I find it interesting and enjoy these speeches and discussions and hearing other people’s points of view. But what
would be even more enjoyable than these sorts of ongoing discussions and debates would be having a Migration Act that was functional and worked properly, and I am sure that DIMIA officials would prefer that as well, so let us try and get that instead.

Senator NETTLE (New South Wales) (12.28 am)—The Greens will not be insisting on these amendments passed by the Senate, which were opposition amendments. This is essentially because we do not think they are worth insisting on. They support an ongoing system of mandatory detention. They support discriminatory temporary protection visas. They continue to support the holding of innocent people in Nauru. We are not going to insist on them.

Senator Bartlett has already talked about some of the concerns that have been raised in the debate on this particular bill, including the excessive amount of ministerial power that has been given to the minister and the way in which that will almost inevitably lead to abuse of that power. This piece of legislation sees no fundamental changes to the system of mandatory detention but does provide opportunities for some individuals to be released from detention, but not because there has been a systemic change—it is not an across the board; there are still many people in detention. I spoke with one person tonight who has been in detention for five years. There is nothing in this legislation that indicates that he will be able to be released.

There are some improvements in this bill, and I think that some congratulations need to be given to the people all around the country who have been involved in the campaign that has led to the small improvements that we see this legislation. First and foremost, congratulations go to Mr Georgiou, to the other members of the coalition backbench who have played such an instrumental role in this campaign and to the senators in this chamber who have indicated that they are prepared to stand up for compassion and humanity in these issues.

But most importantly support needs to go to all the people in the community who have been advocating for changes to the system of mandatory detention, some of them since 1996 and some of them since 1992. It has been their pressure and their voices in our newspapers, on talkback radio, in people’s workplaces and in chats in cafes that have led to the changes in this legislation today. I think it is really important that we pay tribute to that groundswell of support within the community for more compassion and humanity and for relabelling ourselves as a welcoming country.

I think it is worth acknowledging people such as a woman I met who has been up in the public gallery. She flew over from Perth three days ago and she has been moving back and forth between the Senate and the House of Representatives to watch and to engage in this debate. Clearly it is something that she feels passionately about so she has been involved and come along to hear the debate. They are the sorts of people it is worth acknowledging in this debate because, if it was not for their contribution, commitment and passion, we would not be seeing coalition backbenchers prepared to stand up and fight for changes, some of which we are seeing in this legislation. I want to acknowledge their contribution in shaping the bills that we are debating today.

Question agreed to.

Resolution reported; report adopted.
TELECOMMUNICATIONS
LEGISLATION AMENDMENT
(REGULAR REVIEWS AND OTHER
MEASURES) BILL 2005
Second Reading
Debate resumed from 20 June, on motion by Senator Coonan:
That this bill be now read a second time.
Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.32 am)—I am not sure whether Senator Conroy has summed up, but I will be brief. I would like to thank senators who have made a contribution to the debate. The Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005 is an important step forward in terms of protecting the delivery of high-quality telecommunications services into the future.

This legislation forms part of the government’s response to the regional telecommunications, or Estens, inquiry. Senators would be aware that this inquiry made 39 recommendations in relation to regional telecommunications, all of which the government accepted. A number of the recommendations related to what Mr Estens described as future-proofing, and this legislation relates to these recommendations. The bill does two things: it establishes a requirement on all future governments to conduct regular independent reviews of regional telecommunications services and it ensures that a local presence plan prepared by Telstra can be approved as a condition of Telstra’s licence.

The Howard government has a proud record when it comes to improving telecommunications services in regional Australia. We have overseen the introduction of full telecommunications competition, we have developed tough legislated consumer safeguards and we have provided necessary targeted assistance which has led to marked improvements in regional telecommunications in recent times. The highlight of the government’s assistance is the Higher Bandwidth Incentive Scheme, which formed part of the response to the Estens inquiry. We can say without question that consumers in regional Australia have never had better telecommunications services, they have never had greater choice of provider and they have never had stronger safeguards.

Looking to the future, we want to make sure this continues, which is what this bill is about. Trying to predict the precise future telecommunications and communications needs is impossible. Not only does technology change at a rapid pace but so do expectations and legitimate needs of consumers. What we are putting in place with this legislation is a mechanism which ensures that services do not slip backwards but continue to improve in the future. Under this legislation all future governments will have to initiate regular independent reviews of regional telecommunications services. Importantly, the legislation sets the framework for the reviews rather than trying to predict precisely what they should consider or, indeed, when they should occur. What we have said is that they must occur at least every five years, but if it is clear that they should be conducted more frequently then the legislation allows this to occur. This seems to be a point lost on many.

In terms of scope, the reviews quite deliberately focus on the adequacy of services for rural, regional and remote Australia. This is for good reason. It is not because we are ignoring metropolitan Australia; it is because we recognise that rural, regional and remote Australia is at greater risk of missing out on the benefits of new technologies. I am aware that a series of amendments are proposed by Labor which the government will be opposing—we think they would have the effect of totally undermining the bill. Under Labor’s
proposed approach there would be no review mechanism specifically looking at regional Australia; instead, the supply of services across Australia would be caught up in a perpetual cycle of reviews. The legislation also sets out that the reviews must be independent of government and that governments must respond to the reviews. There will simply be no excuse for governments to ignore these reviews.

The second part of the legislation relates to Mr Estens’s recommendations about Telstra maintaining a local presence. Telstra’s Country Wide model has been a great success both for Telstra and for the communities it serves. We know how important it is to have local people in local communities able to deal with local issues. The bill provides a mechanism to allow Telstra’s local presence plan to be approved by the minister or the regulator. One of the great myths put about during the debate was the suggestion that somehow we were trying to develop a local presence plan in secret to avoid parliamentary scrutiny. This is wrong. We have always said the requirement to prepare a local presence plan will be set out in a licence condition, which is a disallowable instrument. The plan itself will be developed by Telstra. This was in fact the approach recommended by Estens. But in preparing the plan we will require Telstra to undertake public consultation.

Regional telecommunications services are something that we do take extremely seriously. We feel that the bill is targeted to meet these concerns and issues and to respond to the Estens recommendations as we said we would. This bill helps to demonstrate our ongoing commitment to regional telecommunications services. 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 CONROY (Victoria) (12.38 am)—To save time, I seek leave to have my speech incorporated in Hansard.

Leave granted.

The speech read as follows—

Labor is moving a number of amendments to the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill 2005. Disallowable instrument. Labor’s first amendment (items 1 and 2) is designed to have the effect of making any Local Presence Plan made by the Minister under this Bill a legislative instrument. As mentioned in my second reading speech the Minister currently has the power under existing legislation to develop a local presence plan and impose a condition on Telstra’s carrier licence requiring it to comply with it. If the Minister were to do this, the local presence plan she developed would however be a disallowable instrument subject to the scrutiny of both houses of parliament.

The Bill before the Chamber however, would have the effect of allowing the Minister to approve of such a plan by way of a ‘decision of an administrative character’. This would circumvent parliamentary scrutiny for any local presence plan that Telstra is required to comply with Parliamentary scrutiny of any mandatory local presence plan is an important check on its contents.

Members of parliament, especially members from rural and regional Australia, ought to be able to have a say on the adequacy of the contents of any local presence plan developed by the Minister. Members of Parliament ought to be able to represent the views of their constituents with respect to the adequacy of any local presence plan in servicing the needs of their constituents. It would be an arrogant government that would seek to avoid this scrutiny.

Making any local presence plan developed under this bill a disallowable instrument subject to par-
liamentary privilege was a recommendation endorsed by Telstra, the government members of the Senate committee examining the provisions of the bill and the ALP members of the committee. Labor would therefore expect the government’s support for this amendment.

Composition of review committee Labor’s second set of amendments (items 3 through 7 and 11 through 13) relate to the composition of the Telecommunications Independent Review Committee. Labor believes that there are serious doubts that the framework for the TIRC provided for in this bill will result in the formation of a genuinely independent review panel.

Given the government’s history of stacking out ‘independent’ boards, Labor believes there is scope for excluding certain groups of people from membership of the TIRC.

Currently the review committee may include members of Telstra or its subsidiaries, subject to the restriction that they cannot constitute a majority of the committee.

Labor believes that the committee may perceive a lack of independence in the conclusions of the committee if it included an officer or employee of any carrier or carriage service provider.

As such, we are moving an amendment prohibiting officers or employees of a carrier or carriage service provider from being a member of the TIRC.

This would not preclude carriers from involvement in the review process, carriers would still be able to provide expertise, support and advice to the committee.

However, they would be excluded from membership of the committee.

Terms of reference of review committee Labor is also moving amendments (items 8 and 9) designed to broaden the terms of reference of the TIRC’s reviews in an attempt to improve its outcomes.

Currently the Bill provides that the RTIRC should examine the adequacy of services in rural and regional Australia.

However, evidence presented to the Senate inquiry highlighted the more general importance of the telecommunications sector to Australia’s economic performance and made a case for regular reviews with a broader outlook.

As such, Labor is moving an amendment to expand the committee’s terms of reference to permit it to consider a wider range of matters including:

- whether telecommunications services are meeting the social and commercial needs of the Australian people, and
- whether services are reasonably available throughout Australia.

Labor believes that this amendment would encourage the committee to take a more holistic approach, producing better outcomes for the Australian telecommunications sector.

Time frame for reviews Labor’s final amendment (item 10) is designed to address the most high profile shortcoming of this Bill, the fact that it only requires that reviews be held once every five years.

As I mentioned yesterday, for the most rapidly changing industry in Australia, five years is far too long a time frame for the conduct of these reviews.

New services are constantly emerging in the telecommunications sector.

To force Australians in rural and regional Australia to wait 5 years for access to these services would leave them at a significant competitive disadvantage to metropolitan based Australians.

The inadequacy of this five yearly review requirement was recognised by numerous witnesses at the senate inquiry into this bill, including most forcefully the NFF.

The last time the government introduced legislation of this kind it indicated that it was willing to accept a 3 yearly review time table.

The government senators’ own report on this bill recommended that the review period be reduced to three years.

On this basis, Labor believes that shortening the review period to three years would be in the best interests of consumers in rural and regional Australia and as such we are moving an amendment to give effect to the government senator’s report.

Senator CONROY—by leave—I move:
(1) Schedule 1, item 1, page 3 (lines 15 and 16), omit “of an administrative character”, substitute “by written instrument”.

(2) Schedule 1, item 1, page 3 (after line 16), after subsection 66(2), insert:

(2A) A decision made by written instrument in accordance with subsection (2) is a legislative instrument.

(3) Schedule 1, item 2, page 3 (lines 25 and 26), omit the definition of RTIRC, substitute:

TIRC means the Telecommunications Independent Review Committee established by section 158R.

(4) Schedule 1, item 3, page 4 (lines 2 and 3), omit the definition of RTIRC Chair, substitute:

TIRC Chair means the Chair of the Telecommunications Independent Review Committee.

(5) Schedule 1, item 4, page 4 (lines 6 to 8), omit the definition of RTIRC member, substitute:

TIRC member means a member of the Telecommunications Independent Review Committee, and includes the TIRC Chair.

(6) Schedule 1, page 3 (line 19) to page 11 (line 8), omit “RTIRC” (wherever occurring), substitute “TIRC”.

(7) Schedule 1, page 3 (line 19) to page 11 (line 8), omit “RTIRC” (wherever occurring), substitute “TIRC”.

(8) Schedule 1, item 6, page 4 (lines 15 to 19), omit “regional” (three times occurring).

(9) Schedule 1, item 6, page 4 (line 21) to page 5 (line 2), omit subsections 158P(1) and (2), substitute:

(1) The TIRC must conduct reviews of the adequacy of telecommunications services.

Note: TIRC means the Telecommunications Independent Review Committee established by section 158R.

(2) In reviewing the adequacy of services in accordance with subsection (1), the TIRC must have regard to:

(a) the extent to which those services meet the social, industrial and commercial needs of the Australian people including those in regional, rural and remote parts of Australia, for telecommunications services; and

(b) whether those services are equitably and reasonably available throughout Australia for all people who reasonably require those services, including whether those services are:

(i) significant to people in regional, rural and remote parts of Australia; and

(ii) currently available in one or more urban parts of Australia; and

(c) the extent to which the objects of the Telecommunications Act 1997 are being achieved; and

(d) the extent to which the long-term interests of end-users of telecommunications services are promoted.

Note: Section 152AB of the Trade Practices Act 1974 sets out the requirements for the “promotion of the long-term interests of end-users”.

(10) Schedule 1, item 6, page 5 (lines 4 to 8), omit “5 years” (twice occurring), substitute “3 years”.

(11) Schedule 1, item 6, page 7 (line 7), at the end of subsection 158T(2)(b), add:

; or (c) competition policy; or

(d) economics; or

(e) consumer protection; or

(f) Australian industry; or

(g) public policy; or

(h) the needs of community organisations.

(12) Schedule 1, item 6, page 7 (lines 8 to 12), omit subsection 158T(3), substitute:
(3) The Minister must ensure that the TIRC Chair and TIRC members are not persons covered by subsection (4).

(13) Schedule 1, item 6, page 7 (lines 14 and 15), omit paragraphs 158T(4)(a) and (b), substitute:

(a) an officer or employee of a carrier licensed under the Telecommunications Act 1997 or a subsidiary of such a carrier;

(14) Schedule 1, item 6, page 10 (after line 30), after paragraph 158ZD(1)(b), insert:

(ba) the Productivity Commission;

(bb) the Department of Transport and Regional Services

Senator CHERRY (Queensland) (12.39 am)—The Democrats will be supporting Senator Conroy’s amendments for the reasons I set out in my speech in the second reading debate. In the interests of time, I shall not add to that speech at this stage.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (12.40 am)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

FAMILY LAW AMENDMENT BILL 2005
Consideration of House of Representatives Message

Consideration resumed.

House of Representatives message—

(1) Schedule 1, item 136, page 34 (lines 25 to 27), omit “may make such order that it considers just and equitable in the circumstances, including”, substitute “must make such order as it considers just and equitable in the circumstances, for”.

(2) Schedule 1, item 136, page 34 (line 28) to page 35 (line 6), omit paragraphs 66X(2)(a) and (b), substitute:

(a) if the purported order was of a kind referred to in paragraph 66P(1)(a) or (b)—the repayment to the maintenance provider, by the person to whom the amount or amounts referred to in subparagraph (1)(b)(i) of this section were paid, of an amount up to, or equal to, that amount or the sum of those amounts; or

(b) if the purported order was of the kind referred to in paragraph 66P(1)(c)—the return to the maintenance provider of:

(i) the property referred to in subparagraph (1)(b)(ii) of this section; or

(ii) an amount up to, or equal to, the value of that property.

The court may only order the repayment of an amount that is less than the amount, or the sum of the amounts, referred to in subparagraph (1)(b)(i) of this section, or the return of an amount that is less than the value of the property referred to in subparagraph (1)(b)(ii) of this section, in exceptional circumstances.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.40 am)—I move:

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

Senator LUDWIG (Queensland) (12.41 am)—Labor would have preferred the amendment to part 14 that we made in this place on Tuesday. However, we appreciate that the amendment moved by the government goes some way to meeting our concerns that the courts have the discretion in these cases involving mistaken paternity. In these circumstances, given the remainder of
the Family Law Amendment Bill 2005, which contains sensible and important changes to the Family Law Act, Labor will support this bill this morning.

Question agreed to.

Resolution reported; report adopted.

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 1) 2005-2006

APPROPRIATION BILL (No. 1) 2005-2006

APPROPRIATION BILL (No. 2) 2005-2006

APPROPRIATION BILL (No. 5) 2004-2005

APPROPRIATION BILL (No. 6) 2004-2005

Second Reading

Debate resumed from 21 June, on motion by Senator Abetz:

That these bills be now read a second time.

Senator GEORGE CAMPBELL (New South Wales) (12.43 am)—I seek leave to incorporate the speeches on the second reading of Senator Sherry and Senator Webber.

Leave granted.

Senator SHERRY (Tasmania) (12.43 am)—The incorporated speech read as follows—

I rise to speak on the Appropriation Bills.

This provides an opportunity to reflect on the Government’s performance particularly on financial matters.

There are two issues on which I would like to focus: Financial mismanagement of Government programs and dishonesty of the Government as to the financial sustainability of programs.

In doing so it is quickly apparent that not only is the Government incompetent but that it can’t be trusted.

During the course of Senate estimates, I questioned the Department of Finance and administration at length of the budget and costing process.

The Department confirmed that it must approve all program costings.

It also confirmed that it had resumed their monitoring expenditure on a program level—something that had been abandoned in 1999.

It seems remarkable that Finance—which once describes itself as the Chief Financial Officer of the Government—ever ceased monitoring program expenditure. How many CFO’s of public companies would keep their jobs if they did not monitor how company money was spent?

They advised that updated program expenditure is provided by agencies on a monthly basis.

What is clear is that the Department of Finance—as it should—has the capacity to detect very quickly when program expenditure is running ahead of estimates.

After this general discussion, we then turned to the specific issue of the Medicare Safety Net.

Finance advised the committee that yes, the Medicare Safety Net was one of the programs whose cost is monitored by Finance.

Finance was involved in costing the program from its beginnings in April 2003.

At that time the scheme was estimated to cost $67.1 million over four years.

Finance indicated it had approved the Department of Health and Ageing costing of $199.2 million for the expanded scheme announced in November 2004 based on a $500 threshold for concession card holders and $1000 for all others.

Officers were also generally quite forthcoming on the assumptions underpinning the forecast.

The Department was also in prepared revised costings when relevant thresholds were amended in the Senate to $300 and $700 respectively.

The program came into effect on 12 March 2004.

A Press Release from the Minister for Health and Ageing indicated that the Government expected that “450,000 will benefit from the Medicare Safety Net in any one year, costing $266 over the four years”.

A further Press Release from the Health Minister on 9 April 2004 stated that 34,000 individuals or families had accessed the scheme in its first
month of operation, 80 per cent through the lower thresholds.

At the Senate hearings Finance confirmed that the costings did take account of proportion of people who would access the scheme through the two different thresholds —clearly a key assumption underpinning the cost of the scheme.

However, they were unable to advise what had been assumed and whether the 81 per cent was consistent with the assumption.

After the luncheon adjournment, Departmental officials clammed up saying they were not going to comment publicly on assumptions.

At that time Senator Minchin intervened stating:

“...the Department is quite properly not prepared to engage in a dialogue with you about the details of the way in which it costs this or any other policy.”

This is an extraordinary statement: the Department responsible for approving costings is not prepared to reveal to Parliament the assumptions upon which the costings were based.

This is particularly the case when the assumptions made were clearly well wide of the mark.

We know this because when the budget was presented on 11 May 2004—a little over a month after the Health Ministers Press Release—it provided for additional funding for the safety net of $241.3 million.

The Department confirmed that this brought the total cost of the scheme to $547 million over five years.

Finance also approved this costing.

On 28 June 2004, we had yet another Press Release from the Health Minister boasting that in just three months 415,000 people had accessed the scheme as compared to the 450,000 forecast for the whole year.

Costing Government programs is clearly a difficult task but the assumptions underpinning were hopelessly inaccurate.

The Department was asked whether this had been picked up in the monthly review of program expenditure.

They indicated they had “started to look at the estimates” and there were “indications” that the costs were increasing faster than estimated.

Another press release from Mr Abbott arrived on 23 August 2004.

650,000 people were had accessed the scheme after five months—200,000 more than the initial full year projection of 450,000.

Officials indicated that by that time they “were in close consultation with the Department of Health and Ageing and we were looking very carefully at the numbers”. They also advised that:

“Towards the end of August it did become clearer that the program was increasing faster than we had estimated at budget time.”

However, they went on to say “...on 31 August at 5 o ‘clock the caretaker period commenced. We worked with Health and Ageing to get the revised estimates, which we got and validated on our system on 2 September. The caretaker period had commenced and we were not in a position to advise the Minister of that change.”

They did however state that they “had discussions with his office at officer level, prior to...the caretaker period.”

They indicated that there were 2 or 3 telephone discussions prior to the commencement of the caretaker period on 31 August.

At that time they said they did not “know the real magnitude of the change “but knew it was “significantly greater.”

The Finance Minister recalled that he was aware of the content of these discussions stating:

“My recollection is that my personal staff indicated to me the gist of the conversation they had had with Finance, indicating there may be some increase in the cost of the safety net.”

However, he noted that there had been “no piece of paper, no formal briefing

He then went on to say
I do not like relying on what to me at that stage amounted to hearsay. “

“It was not actionable information.”
How are those remarks to be interpreted?
Hearsay is defined as
“Unverified information heard or received from another.
“Not actionable” would suggest quite simply that no action was taken.
So it would seem that the Minister had been advised of conversations between his office and the Department about an increase in the cost of the Medicare safety.
However, he testified to the Committee, it was hearsay and was not information on which any action could be taken”.
It was not actionable information, the Minister testified, and so presumably he took no action.
That would mean, I suppose, he did not make any telephone calls.
And presumably, according to his testimony, he did not write any letters.
However, just to be sure, I did ask the Minister whether he had written any letter about the matter.
Specifically, I asked him whether
“...as Finance Minister, did you write to the Prime Minister or any other Ministers regarding the cost of the Medicare safety net before the election was called on 31 August...”
It would seem entirely proper that, as Finance Minister he would have considered advising key Ministers that he had the department may have identified what they termed a “significant” increase in the cost of a key component of the Government’s health policy.
In fact, if he was doing his job, he should at least have alerted the Prime Minister that he had reason to believe that the cost of a program that was central to the Government’s health policy and to any future election campaign was advised at a rate that was unsustainable.
The Minister had said that the information was not actionable.
It therefore curious that when the Finance Minister was asked whether he wrote to the Prime Minister or any other Ministers regarding the cost of the Medicare safety net before the election was called on 31 August he responded:
“I am not sure that I would want to comment one way or another on my correspondence with other Ministers”.
It is curious why the Minister wouldn’t answer the simple question. He had described the advice as “hearsay” and “not actionable”.
If that is the case why would he have any problem with saying “no I did not write to the Prime Minister.”
If on the other hand he thought “well its such a key program that I should let the Prime Minister know that we have preliminary advice that there has been a significant increase in the cost”? Of course when the Government broke its election promise and lifted the thresholds on the Medicare Safety Net after the election he they were not aware before the election that the cost of the was blowing out.
But if that is the case, the Finance Minister shouldn’t have any problem with saying he didn’t communicate with the Prime Minister Department of Finance concerns that there was a “significant blow-out in the cost of the scheme”.
So in summary
Finance is able to monitor program expenditure on a monthly basis. The Medicare Safety Net is one of the programs monitored.
There were “early indications” that the cost of scheme that the cost of the scheme was blowing out in June 2004.
There was evidence there was a “significant” blow out in the cost in August.
This was communicated by the Department of Finance to the Minister’s staff by “two or three” telephone calls in the final days before 31 August.
The Minister of Finance says his staff told him about the verbal advice. He described it as “hearsay” and “not actionable”.
Nonetheless, he refused to say whether he wrote to the Prime Minister on the matter before the election was called on 31 August.
The question which lingers is why he won’t say?

Senator WEBBER (Western Australia) (12.43 am)—The incorporated speech read as follows—
I rise to speak about the Appropriations Bills for 2005-2006.

There is something fundamentally wrong with a budget that ensures that I personally will receive a larger weekly tax cut than all the staff who work for me receive in total.

How do you construct a system that says to the low paid that six dollars a week is fair or reasonable when at the same time you say to the minority paying the top rate that 65 dollars a week is.

This Government makes much of their claims of real wage growth over the last nine years. They make this claim as a badge of honour, the vast difference between their time in office and the last Labor administration.

What they never acknowledge is that during Labor’s time in government there was a Wages Accord.

An Accord agreed between the Government and the Union Movement where wage increases where delayed for the promise of improvements in the social wage.

An Accord that delivered Medicare in return for wage restraint!

Now compare what happens.

You go to the GP and reach into your own pocket and pay 45 dollars.

You then go to a Medicare office and get 28 dollars back.

Each trip to the doctor now puts you out 17 dollars.

Effectively wiping out three weeks worth of tax cuts for each trip to the doctor!

And the real tragedy in this is that Australian taxpayers pay for Medicare.

It is called the Medicare levy.

The Government spent millions telling everyone about their new policy for Medicare and in this budget they quickly threw that promise out.

This is a Government that pretends to be concerned about Medicare and yet it slowly but surely inflicts the death of a thousand cuts.

This budget and these appropriation bills should have been the opportunity for this country to be set up for the next decade.

Instead what we got was a series of measures designed to set up the Treasurer for his run at the Prime Minister.

We see measures that are designed for no other reason than for the government to run political agendas not to build for the future.

One of the great tragedies is of course flagpoles, flag raising ceremonies and the money available to schools which conform.

The Australian flag flying at every Australian school will increase our national pride and recognise our predecessors’ efforts in building this country.

A worthwhile aim!

One that the Government has also seen fit to tie to funding.

No flag pole then you can’t apply for certain funding.

However even with this the Government cannot help itself.

They start by saying that schools can be reimbursed for the cost of the flag poles.

However the catch is that a member of the Government has to attend the flag raising ceremony for the money to be paid back to the school.

A Member of Parliament who is not a member of the Government is not acceptable.

A State Premier is not acceptable.

One wonders whether the Queen or a member of the Royal Family would be acceptable.

Under the guidelines the only person who can officiate is a member of the Government.

Of course this would be OK if those opposite and in the other place did nothing else with their time over the coming years except go from school to school to preside over these ceremonies.

The reality is that schools have incurred the expenditure and now are waiting—months in some cases for someone from Government to be able to attend the flag raising ceremony.

Thankfully in the state of Western Australia sanity has prevailed.

Once the stupidity of the current Federal policy was apparent Premier Geoff Gallop immediately moved to ensure that the flying of the Australian
flag at schools in Western Australia would not be politicised.

As the Premier said and I quote

“It is not John Howard’s or Brendan Nelson’s money that is being used to fund this worthy program—it is the Australian taxpayers’ money. It is not their flag either—it belongs to all of us”

The Western Australian Education Department is now writing to all Western Australian schools telling them that they can access state funding with no conditions attached as to who will officiate at the flag raising.

It would seem that the Federal Government could learn from the common sense approach being adopted in Western Australia.

Above all else the Australian flag should not be politicised in the way the Howard government wants.

Taxpayer’s money should not be appropriated for party political purposes regardless of how the government of the day wants to dress it up.

One of my other serious concerns with these appropriation bills is the failure to address the infrastructure of this country in two regards.

Firstly, physical infrastructure such as roads, ports and water.

Secondly, the skills shortages or the people infrastructure that are affecting the labour market and the economy’s ability to grow.

Western Australia and to a lesser extent Queensland are the engine rooms of economic growth in Australia.

The resources boom especially the long term contracts for north-west gas will continue to have a significant impact on the Australian economy for at least the next two decades.

Most resource projects fall into two main stages—construction and then operation.

Both stages generate significant numbers of jobs—high skilled and highly paid jobs.

One of the key priorities for government is to ensure that there are no constraints to the effective delivery of these projects.

What we are starting to witness and what these appropriation bills fail to do is to address these issues.

Whether it is ageing port infrastructure which is not able to efficiently handle the number of vessels requiring to be loaded or the lack of skilled labour these infrastructure constraints are starting to impact.

Recently it was announced that one of the new rigs required for the North West shelf will be built off shore because of skill shortages in Australia.

Hundreds of jobs—skilled—highly paid jobs are going off shore—not because our labour is too expensive, too inflexible, or too unionised but simply because they do not exist.

This government has been asleep at the wheel.

Skill shortages do not suddenly appear without warning.

For years this Government has committed a deception on the Australian people.

It has pretended that its new Apprenticeship scheme was supplying our future needs.

What they failed to tell anyone was that the New Apprenticeship scheme was not training large numbers of new tradespeople.

It was training large numbers of people in Child Care, in retail, in hospitality and other industries.

However it was not training record numbers of tradespeople.

Now of course when confronted with the crisis—of their own making—we got a surge of activity.

A lot like a hamster running on an exercise wheel—heaps and heaps of running and going exactly nowhere.

What did our skills shortage get from the Government.

A tool box, 24 new technical colleges and 20,000 skilled migrants!

Paying for a tool box is not a bad policy but to pretend that it will address our skill shortage is just nonsense.

24 new technical colleges—none of which will be operating before next year—none of which will produce a single trades person before the year 2010 will help but not for at least four years.
In Western Australia which will have one of the largest demands for skilled labour in the coming years there is only one technical college.

And finally we get the 20,000 increase in skilled migration.

This from the party that said we will decide who comes to this country and the manner in which they come is now throwing open the door to anyone with skills.

Do we know how this is going to work?

Are they only going to import labour in traditional trades areas or will we get 20,000 HR managers?

This of course is the problem with their policy approach.

Lots of headlines, lots of activity and making it up as they go.

I know from the people who contact my office seeking help with skilled migration that we are not talking about a huge surge in tradespeople.

This of course is the problem with imported labour.

It sounds like an efficient way to deal with skill shortages but it relies on the person wanting to come.

What about all the people who are in Australia without full time skilled employment?

What do these appropriation bills hold for them?

More of the same is what they can expect.

No national retraining scheme.

No decent scheme for adult apprenticeships.

No attempt to move the hundreds of thousands of our fellow Australians from the casual unskilled or semi skilled sector of the workforce to the highly skilled jobs needed now and in the future.

No they get more of the same and the government will source the skilled labour from overseas.

Underlying all this is of course the impact it has on wages.

Skill shortages lead to wage increases.

So while the Government wants to introduce sweeping Industrial Relations changes to maintain or increase flexibility in the labour market it may all become absolutely meaningless in the face of skill shortages.

They can legislate all they like to reduce conditions but the reality will be that employers will pay for skilled labour for simple supply and demand reasons.

You can change the regulatory settings as much as you like but in an acute labour shortage it is the employee who determines what price they work for not the employer.

So much for the party that pretends they are the good economic managers.

They are so competent as managers of the Australian economy that we face a skills shortage.

They are the competent managers and yet capacity constraints exist in our transport infrastructure.

There is also another issue that I would like to touch on and that is one that came to light during the Estimates process.

During evidence from the Bureau of Meteorology it appeared that improved weather radar using Doppler technology was being trialled in six sites around Australia.

In fact the first will be in operation in Adelaide later this year.

According to the Bureau these Doppler radars come in at about 2 million dollars per unit and they do not add significantly to maintenance costs.

They have a range of about 100 kilometres which is about half the range of existing weather radar.

The main advantage of the Doppler technology is that it allows the Bureau to detect severe weather conditions more accurately and therefore provide better warnings.

In the United States they have rolled out Doppler sites across the country.

I was surprised to find that there is no Doppler radar site planned for Perth.

Before people complain about me being too parochial I should emphasise that the area to the south of Perth is known in some quarters as Tornado Alley.

In Australia we experience cool air tornados.

Recently the primary school at Bicton was severely damaged by a cool air tornado causing over six million dollars of damage.
Thankfully for all concerned the tornado struck early in the morning well before any students or staff arrived.

Now of course no radar system can prevent the destruction of a tornado—what the new Doppler radar would do is ensure adequate warnings could be given.

I wonder what price we now put on protecting our citizens’ lives.

I would think that a government flush with cash could spend money to build Doppler radar systems around Australia.

The recent budget also included funding to allow the creation of a Tsunami Warning System in Australia with additional funding allocated to the Bureau of Meteorology and Geosciences Australia.

This new funding goes to the heart of what I am talking about.

Government using its funding to provide adequate resources and infrastructure for the betterment of everyone.

The funding in this case will in fact provide assistance to people well beyond Australia and is an indication of Australia as a good neighbour.

The main failing of this budget and of this government is that it has become narrowly focused.

A government concerned about one election win after another rather than working towards a better Australia.

Those on the other side need to understand that simply because it appears to be in their interest doesn’t mean that it is in Australia’s interest.

Senator Murray (Western Australia)

(12.43 am)—I seek leave to incorporate my speech on the second reading.

Leave granted.

The speech read as follows—

Appropriations is the end of the process. Once departmental programs and plans have been agreed, resources and needs decided on, Government budgets put down, legislation passed, then the money follows, authorised by Parliament.

Of course some things never materialise and the money is never spent, the program and plan never realised, the people never hired, the capital expenditure never made.

In the next half of this year the media pundits have been telling us that the big political items are going to be big changes to media ownership, big changes to industrial relations, and the sale of Telstra.

The first has little financial consequence for the Commonwealth budget, the second modest financial effects, but the sale of Telstra will be a huge financial issue.

All these proposals depend on their passage through the Senate on the way Government designs them.

You cannot automatically assume that the Government can presume on a Senate majority of one regardless of the proposition put.

The Cabinet will no doubt try to achieve what they will think of as the purest policy outcome, but the politics of compromise will be hovering in the background. The frontbench, the backbench, the Liberals, the Nationals, all making their claim on policy design.

Also in Cabinet’s mind will be the narrow Coalition majority of one in the Senate, a majority they will husband and protect.

The 15 new Senators are unknown in many respects, in character and ability. Two at least come with a yet-to-be-tested reputation for independence of thought and action. There may very well be others of an independent bent, or existing Senators that will show their mettle.

I for one will be trying to give those Senators some advice, particularly any Senators that promise to challenge the Government.

If you are going to change the media laws we are all more at risk than we are now. How are you going to preserve diversity? How are you going to keep owners out of editorial? How are you going to strengthen already weak journalistic independence.

Not by scrapping unfair dismissal laws, that’s for sure.

And strengthening the Trade Practices Act would do heaps for real media competition.

The sale of Telstra is a nice one to try and exert influence on.
If the Nationals are going to sell Telstra they should get something big in return, just for a change, something really meaningful.

When the Telstra (Transition to Full Private Ownership) Bill 2003 was debated I said a number of things.

I said that economists will tell you that land and labour are two factors of production. They will tell you that continual targeted investment in these factors is essential to long-term sustainable productivity and growth.

A nationalist will tell you that land and labour, our country and our people, are the essential determinants of the nation state.

Investment that starts with a preschool child takes a couple of decades to get a full social and economic return.

Investment in turning around land degradation and material environmental damage similarly take a couple of decades to get a full social and economic return. A failure to invest condemns generations to come.

That of course is what the economic rationalists are guilty of: a failure to invest adequately in our land and labour, a failure that we will be paying for over generations.

In many places our land is in large-scale crisis.

As a West Australian, I am particularly conscious of that. Among others, the National Farmers Federation and the Australian Conservation Foundation have spelt out just how much money they think is needed, and it is a huge sum.

It runs into the multibillions. It is in the national interest, if Telstra were to be sold, for some of the proceeds to be used for the long-term good of Australia and its peoples.

So the first job of the Nationals is to get a few billions to help reverse the disaster that is salinity, secure better water supplies and to restore the health of our water and land systems.

In various speeches I have said there are great dangers in contemplating media ownership reform, the sale of Telstra or an end to the four pillars banking policy without a divestiture power as a necessary safeguard.

We know from experience that market forces will not guarantee competition in highly concentrated industry sectors. Regulatory powers are necessary safeguards for efficient, effective and diverse competition.

Current divestiture provisions in the Trade Practices Act are very limited and should be expanded. We must look to the success of divestiture laws in other dynamic and productive markets such as the United States. Without them, changing current policy in key market areas such as telecommunications, media and banking raises immense difficulties.

I said that the Telstra structure argument is difficult. The necessity and practicality of vertical or horizontal separation is an issue. Certainly, divestiture provisions in the Trade Practices Act would give the ACCC power to order divestiture post sale if it thought it necessary.

There is the possibility that some of Telstra’s money could be used, for instance, in areas such as increased investment in rail—another infrastructural area badly in need of investment. The states of South Australia, Victoria, NSW and Queensland badly need fast modernised freight train services.

Speaking personally, if I was negotiating I would leave issues like the structure of Telstra, CSO’s and other obligations to whatever the Coalition thrash out.

So, what is the negotiations checklist that I will tell the Nationals to get with the sale of Telstra? In three simple points: strengthen the Trade Practices Act, get money for rail, water and land degradation, and splash out on an essential bit of social restoration.

Top of the list are all the excellent recommendations of the March 2004 Senate Economics Committee’s report into the Trade Practices Act. I’ve watched the Nationals closely on trade practices reform. They have talked the talk but never yet walked the walk.

This is their chance to show what they are made of.

The Telstra sale will be worth tens of billions. Take a few of those billions for rail, for water and for the land. There will be more than enough left for the Liberals.
If it was me I’d also take anywhere up to half a billion to meet the needs of the Forgotten Australians. Reparations alone in that report needs a sizeable sum.

Turning to the Appropriations at large—the Bills appropriate additional funds, predominantly budget commitments.

The 2004-05 Bills are unusual in that they are supplementary to the usual additional estimates bills. However, they are not unusual in that they are, to all intents and purposes, the same as the usual additional estimates bills. Some of these items include:

- $160m for transitional relief to compensate eligible entities that lost access to the FBT exemption (This includes the South Australian entities that we lobbied hard for including the Intellectual Disability Services Council, the Metropolitan Domiciliary Care, the Julia Farr Centre and the Institute of Medical and Veterinary Science)
- $35.1m for the New South Wales Legal Aid Commission;
- another $28.2m for the Australian Defence force deployment to Iraq
- $23m in increased financial contribution to UN peacekeeping operations
- $5.1m for the Kogarah Oval upgrade
- $4m to reimburse the States for the cost of providing medical teams under the Tsunami relief effort

The 2005-06 Bills deal with ‘ordinary’ and other annual services of government.

The No.1 Bill comprises the ordinary annual services.

The No.2 Bill of $7.787 billion is larger than the previous years’ appropriation of $5.187 billion largely due to higher appropriations for Defence and Transport and Regional Services Portfolio.

These Bills provide the Government with money to perform its election promises. Although we do not agree with all of the spending priorities of this Government, the Democrats were established with a principle that we would not block Government supply.

The Bills should pass.
formed as a result of mergers and takeovers of other financial institutions, the oldest being the Launceston Bank for Savings, which commenced in 1835, just 17 years after Australia’s first bank, Westpac.

To really understand the ultimate demise of Trust Bank, we must look at its history. I will start in late 1987, when Tasmania Bank was formed following the merger of the Launceston Bank for Savings and the Tasmanian Permanent Building Society. In February 1988, Tasmania Bank appointed Mr Don Adams as its first managing director. As managing director, Adams announced the establishment of a wholesale banking division and appointed a Mr Neil Moore as a general manager of the WBD. They embarked upon a substantial lending program to mainland property developers and entrepreneurs. They put a huge and expensive executive structure in place. Staff numbers were growing rapidly and expenses were rising rapidly, but there was no corresponding increase in business earnings.

By 13 May 1989, the WBD was almost exclusively writing syndicated mainland property loans. After reading alarming reports in the Australian Financial Review about some of the borrowers and receiving some internal information, Alwyn Johnson, an employee in the bank, started voicing concerns over the following: poor-quality loan applications were being put forward and approved by the board; some of these loans were equal to 30 per cent of the bank’s capital; the pricing of these loans was totally inadequate; security for the loans was of poor quality and unlikely to be of much worth if called upon; and the bank did not have adequate provision to cover a department like the WBD. Despite the public nature of the information, no-one on the board or the bank’s executive raised any concerns. Even the external auditors signed off on the 1989 accounts without even identifying the problems within the WBD loan portfolio.

In December 1989, Tasmania Bank recorded its first monthly loss in its 154-year history. In January 1990, the board continued seemingly unaware of the problems in the WBD loan portfolio. In March 1990, Mr Johnson became aware of further non-performing loans in the WBD. On 9 June 1990, Alwyn Johnson sent his first letter to then Premier Michael Field. The Premier called in the auditors in response to Mr Johnson’s letter. On 10 July 1990, the Premier appointed Dr Michael Vertigan, director of Treasury and Finance, to the board to ensure proper oversight.

In early August Mr Moore, the architect of many of the loans, announced he would leave the bank and go elsewhere. On 8 August 1990, Johnson sent his second letter to the Premier saying that the bank’s financial position was still deteriorating. On 13 August, while the auditors were in the process of uncovering the financial wreckage of the wholesale banking division of the bank, the bank’s board sent out press releases which were published in the Examiner, Advocate and Mercury newspapers, advising of Mr Moore’s resignation. They wrote glowingly of how he had successfully established the wholesale banking division and said that he would be a loss to the state. There was a loss to the state all right—but it was not Mr Moore.

Despite Mr Moore’s departure, the wholesale banking division continued to submit mainland property loans to the board and receive approval, even with the government representative, Dr Vertigan, on the board. On 22 October 1990, Mr Robert Woolley, a senior partner in Deloitte—that is, the auditors called in by the Premier—telephoned Mr Johnson at work wanting to see him urgently. Mr Woolley also phoned a Mr Peter Purtell, a
senior manager in the bank. He arranged for Purtell and Johnson to meet at Deloittes at 8 am the following day. From 23 to 28 October 1990, Johnson supplied files on the wholesale banker division and helped draft the auditor’s report to the Premier and the bank’s board of directors. On 31 October 1990, the Tasmania Bank board met and the auditors tabled their report.

Instead of the usual half-day meeting, the bank met for three days. On the second day of the meeting, the board considered three options: (1) do nothing and reject the report, (2) resign or (3) sack the managing director. They opted for option No. 3. Frankly, they should have opted for options 2 and 3, as they were all guilty of allowing the situation to develop. It took these people just 30 months to destroy one of Australia’s most profitable banks.

During the board meeting they asked Mr Woolley if the author of the anonymous letters to the Premier was a bank staff member and for Mr Woolley to reveal the identity of the person. Mr Woolley confirmed that the person was a staff member, although he refused to reveal their identity. However, the board asked Mr Woolley—I repeat: asked Mr Woolley—to pass on to the staff member a vote of thanks from the board. Additionally, Dr Michael Vertigan, the state government representative on the board, drew Mr Woolley aside and conveyed to him that, as a result of the staff member’s action, should their position within the bank become untenable, the government would be obliged to find a job for that person.

On 6 November 1990, the then Premier, Mr Field, made a statement to the parliament about calling in the auditors. The following two days saw queues of depositors outside Tasmania Bank branches waiting to withdraw their funds. In March 1991 the Premier announced the SBT takeover of Tasmania Bank, which was the formation of Trust Bank. On 1 September 1991, Trust Bank officially opened for business, with its chairman, John Harris, at that time saying, ‘The bank was launched with a single image and a determination to be a bank for all Tasmanians.’ How wrong that statement came to be.

Following the debacle of Tasmania Bank, which cost Tasmanian taxpayers at least $37 million, you would have thought some valuable lessons would have been learnt, but no. Trust Bank’s management continued with what seemed a greater fervour for incompetence than all of its predecessors. The board of the new bank were just as oblivious to the incompetent management entrenched in its new bank as they were previously. The government now had two representatives on the board: Dr Michael Vertigan and Treasury head, Mr Don Challen. Despite having witnessed the wreckage in Tasmania Bank, they raised no questions about the seriously questionable banking practices that were being applied by the bank’s management. The bank’s profits continued on a downward spiral, yet there was still no action from the board or the government. It is probably useful to consider here what managing director Paul Kemp then had to say:

We will earn Tasmania’s trust by being the best bank in the state. Our efforts will start from day one, and we intend to set standards which our competitors will have to match.

Well, it is just as well too many did not try to match them. Trust Bank started with more than 40 per cent of the Tasmanian bank deposit market, which at that time was $3.088 billion, and in excess of 30 per cent of the lending market, miles ahead of any of its competitors.

So how did this bank end up just seven short years later in a position where it was unable to continue to operate and was sold
for a mere $149 million? Was it pressure from other banks? Hardly. The big banks had a poor service reputation with the Tasmanian public, which is still the case today. The real reasons and the evidence for Trust Bank’s demise can be found in its annual reports, which with proper analysis identify myriad cases of poor management and poor board decision making. Rather than being a bank for all Tasmanians, Trust Bank continued the same way as Tasmania Bank. Trying to expand its business on the mainland, it continued to lose the confidence of the Tasmanian public and its depositor base continued to shrink to the extent that the bank, for the first time in its 154-year history, was forced to borrow money on the short-term money market—some $700 million. The net effect of this on the bank’s annual profit was some $35 million. How could the board and management of any bank allow this to happen?

In contrast, other banks of a similar size to Trust Bank were flourishing. Today, banks such as Adelaide Bank, Bendigo Bank and the Bank of Queensland all have capitalisation values of more than $1 billion. If you were to translate those values to Trust Bank, it would have given Trust Bank a value of around $1.3 billion. One can only imagine what Tasmania could have done with that sort of money.

The unfortunate thing about this financial fiasco is that many people tried to avert it, but such efforts were ignored. One person, Alwyn Johnson, was made a pariah and suffered badly, both emotionally and financially. Many of the people involved in this fiasco continue in public life today—some of them on huge taxpayer funded salaries. Don Challen, for one, is still the head of Treasury on some $300,000 per year. So taxpayers continue to pay for people who were involved in the complete maladministration of what should have been a great financial institution.

It is worth noting that some former members of parliament continue to try to deny the truth. Indeed, some—such as former Attorney-General Peter Patmore—clearly misled the Tasmanian public in response to Prime Minister John Howard’s recommendation for an independent inquiry. Dr Patmore said in the Examiner on Saturday, 15 July 2000:

Mr Johnson had been given a redundancy payment, a settlement and had his mortgage paid off and he was now trying to double dip.

Peter Patmore knew that not to be true and yet, even when he was given the opportunity to correct that, he chose not to. Many other lies were perpetrated by the likes of the former managing director of Trust Bank, Paul Kemp; the chairman of the bank, John Harris; the Finance Sector Union; and, to some extent, former Premier Michael Field.

Some of the truth can be found in the briefing note that was prepared by the state Department of Treasury and Finance for the then Premier Ray Groom. Let me demonstrate a few of the lies. Firstly, I want to go to a letter to a committee of this Senate by the chairman of the bank, John Harris. He says in part:

Let me say at the outset that, as a bank, we have no opposition to the general proposition that in genuine cases where individuals are unfairly persecuted for bringing to light matters of public interest which they have become aware of during the course of their employment there should exist appropriate mechanisms to protect the interests of such persons. The matter concerning Alwyn Johnson is not a case which falls within this category.

If you recall what I said earlier about Mr Harris’s statement, he says on the last page of his letter:

Mr Johnson was not at all a whistleblower in the sense that the problem loans which he adopts as his own were already the subject of a special audit and had been discussed by representatives of the union with the government and other employees of the bank prior to the first communication.
by him. The matter was already well at hand when Mr Johnson sought to contribute to it. That is an outright lie, backed up by his own statement of 13 August 1990. This bloke lied to a committee of this chamber, and had I, as a member of the committee, known at the time, I would have picked that up, but unfortunately it took me some time to track this down. I will seek to table all of these documents, but they are all in the public domain.

I will read about the claim of Dr Patmore. This is from the department of treasury briefing note to the then Premier, Ray Groom. It says on the last page:

The FSU conducted a meeting with Premier Field on Mr Johnson’s behalf in late 1991. The meeting resulted in the bank agreeing to participate in an arrangement to write off Mr Johnson’s mortgage as compensation. Dr Bob Brown questioned Premier Field in the parliament about Mr Johnson’s situation, following which the government withdrew from the arrangement on the grounds that it did not wish to be seen to be responding to pressure from the Greens.

This is available publicly and I would urge people to read that minute.

It is also worth noting who the bank’s board members were in 1990. I say this with no disrespect to those people, including former Premier Jim Bacon. It is very interesting that, had this bank gone under at that time, I do not think Jim Bacon would ever have made Premier of the state. I say that with no disrespect to him, but that was the circumstance that confronted this board, and it is something that the Tasmanian public ought to be aware of.

There are a number of other documents which I would like to table, including the two letters that Alwyn Johnson wrote to the Premier. They are both in the public arena. There are also some extracts from the Tasmanian parliamentary Hansard and an extract from a book which was written by Jennifer Pringle-Jones—anybody who wants to really know the history of the Trust Bank should read that book, called In Trust for 150 Years.

Finally, in respect of this issue, I would like to quote from an article in the Examiner on 12 December 1999 by the then editor of the paper, who is now in charge of the Premier’s office, Mr Rod Scott. He says:

Take Premier Jim Bacon’s comment last week about compensation for Alwyn Johnson, that it was a matter between Mr Johnson and his former employer. What a cop-out.

Mr Johnson has written to Mr Scott since he became the head of the Premier’s office and unfortunately he has never received a response. I say again that this was a sorry saga. It was very sad that Tasmania had taken away from it a very important financial institution, one that would have been very valuable to the Tasmanian public today.

I did make a valedictory speech, but in the few minutes I have left I want to thank all of the committee staff that I have worked with over the 12 years I have been here; the Senate staff and all the people associated with the parliament; all the people who work in this chamber; and, from when we had a proper Senate transport system, all of those people and those who are still there today. It has been great knowing those people. I have always appreciated all of the assistance that they have given me.

To the colleagues that are departing this place, I wish them all the best, and to those that are staying, I wish you all the best when you come back here in August. I say to the Labor Party—and I say special thanks to those who wrote some very nice words—that I hope you are good enough to win the next election, because I think it will be time for a change of government. With those words, Madam Acting Deputy President, I seek leave to table the documents that I have referred to and I conclude my speech.
Senator GEORGE CAMPBELL (New South Wales) (1.02 am)—I have had discussions with Senator Murphy on a couple of occasions about these documents and there is one document he showed me—

Senator Murphy—It’s not in there.

Senator GEORGE CAMPBELL—He assures me it is not in there. Subject to that being confirmed, I am happy for him to table the rest of the documents.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (1.02 am)—Could I ask for a further couple of seconds so we can have a look at the documents. Subject to our being happy with those, I am happy for Senator Murphy to jump up and move that they be tabled then, but there has been some interplay about the documents, so I think we ought to just clarify what is being tabled and take it from there.

Debate adjourned.

PETITIONS

Adoption

Senator JACINTA COLLINS (Victoria) (1.03 am)—Maybe during that delay, I can table some petitions—some in correct form, some not. These petitions concern the practice of adoption. This practice is one we have come to generally accept in society, at least to some degree, but these petitions remind us just how sensitive and contentious this process can be. There is no doubt that in the past decades mothers were sometimes coerced into giving up their children. Many of those who write to the Senate in these petitions are women, some of whom I know personally, who still grieve for the children taken from them some decades ago. Adoption practices have improved greatly, but these improvements have been implemented on an ad hoc state-by-state basis, and they have to a certain extent failed to address the serious issues arising from inter-country adoptions. These petitions call upon the Senate to establish an inquiry into adoption. The women who have organised these petitions have gone to a great degree of trouble to bring them to the Senate’s attention. I seek leave of the Senate to table these petitions.

Leave granted.

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL (No. 1) 2005-2006

APPROPRIATION BILL (No. 1)
2005-2006

APPROPRIATION BILL (No. 2)
2005-2006

APPROPRIATION BILL (No. 5)
2004-2005

APPROPRIATION BILL (No. 6)
2004-2005

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Senator Murphy is still seeking leave to have those documents tabled. Is leave granted?

Leave granted.

Question agreed to.

Bills read a third time.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

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

Crimes Legislation Amendment (Telecommunications Interception and Other Measures) Bill 2005

Statute Law Revision Bill 2005

Fisheries Legislation Amendment (International Obligations and Other Matters) Bill 2005

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:
Tax Laws Amendment (2005 Measures No. 1)
Bill 2005
Tax Laws Amendment (2005 Measures No. 2)
Bill 2005
Superannuation (Consequential Amendments)
Bill 2005
Criminal Code Amendment (Suicide Related
Material Offences) Bill 2005

COMMITTEES

Membership

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

Senator ABETZ (Tasmania—Special Minister of State) (1.06 am)—by leave—I move:

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

Employment, Workplace Relations and Education Legislation Committee

Appointed—Substitute member: Senator Fifield to replace Senator Barnett for the committee’s inquiry into the provisions of the Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005

Finance and Public Administration References Committee—


Question agreed to.

LEAVE OF ABSENCE

Senator ABETZ (Tasmania—Special Minister of State) (1.07 am)—I move:

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

Question agreed to.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Crossin)—Pursuant to order, I propose the question:

That the Senate do now adjourn.

Tasmanian Aquaculture and Fisheries Institute

Senator FERRIS (South Australia) (1.08 am)—I seek leave to incorporate Senator Watson’s speech.

Leave granted.

Senator WATSON (Tasmania) (1.08 am)—The incorporated speech read as follows—

Mr President, Hon. Senators, in Hobart in my home State of Tasmania we have 3 centres of excellence relevant to fisheries and marine studies.

There is the CSIRO Division of Fisheries, the University of Tasmania School of Zoology and the Marine Research Laboratories, the last of which have played an important role in the development of Tasmania’s wild fisheries and aquaculture industries.

With the development of these superior facilities, Hobart really has become the fisheries/marine capital of the world.

Tonight, however, I wish to focus on the impressive work being done by the Tasmanian Aquaculture and Fisheries Institute, which is based at Taroona near Hobart in Tasmania’s south.

The Institute was established in 1998 as a centre of excellence in applied aquatic research to support the development and sustainable management of Tasmania’s living marine resources and since that time has gone from strength to strength.

The Tasmanian Aquaculture and Fisheries Institute (TAFI) is a joint venture between the Tasmanian Government and the University of Tasmania. It has core programs in Wild Fisheries, Aquaculture and Marine Environment.

It also combines the research resources of the Marine Research Laboratories, the Fish Health
Unit, the School of Aquaculture and the School of Zoology.

This partnership has created a store of research and resources and has led to improved funding opportunities and an international reputation as a centre of excellence in applied marine research.

The Wild Fisheries Program is internationally recognised for its excellence in the provision of science necessary for optimising the sustainable use of marine resources.

TAFI’s research assists the sustainable development of my State’s highly valued abalone and rock lobster fisheries, as well as scalefish, giant crabs, scallops, calamari and other fisheries. Commercial and recreational fisheries play a very important role in the social and economic development of our island State.

Research undertaken by TAFI will ensure that these fisheries will be available for future generations to use.

Aquaculture is the fastest growing primary industry in Australia and Tasmania’s contribution is significant, particularly in its production of Atlantic salmon and Pacific oysters. TAFI’s Aquaculture Program supports the industry through innovative research on aquatic animal health, production of aquatic animals and the nutrition of aquatic animals. The Program also places strong emphasis on developing new species such as the striped trumpeter and the southern rock lobster.

The Marine Environment Program through its work ensures the health and proper functioning of Tasmania’s marine ecosystems, especially in light of their use by multiple stakeholders for many and diverse purposes. It provides research to support the sustainable natural resource management of Tasmania’s marine resources.

The program undertakes research on topics such as estuarine and marine habitat mapping, effects of fishing and aquaculture on marine ecosystems, introduced marine pests and marine animals and seabirds.

The Institute’s Marine Research Laboratories in Hobart have played a major role in developing Tasmania’s wild fisheries and aquaculture industries. The complex includes specialist chemical and biological laboratories, a major aquaculture facility undertaking novel research on new species. It also has a large fleet of vessels providing for various marine and freshwater research activities.

The School of Aquaculture, which is located in Launceston on the University of Tasmania campus, has an excellent reputation for both teaching and research. It has excellent research aquaculture facilities, state-of-the-art laboratories and strong links with industry that allows for work experience, scholarships and employment opportunities.

It has the largest postgraduate research program in aquaculture in Australia with a team of dedicated researchers leading in their fields of expertise. Because of this, the School can boast that its graduates are highly sought after at both the national and international levels. It is also the only university in Australia to offer undergraduate and postgraduate courses entirely in aquaculture.

Aquaculture is becoming increasingly important as global demand for fish and shellfish is increasing, while the capacity of natural fisheries is declining. Consequently, future increases in production will have to come from aquaculture, which currently accounts for 25% of the world’s seafood production.

The School of Zoology is located on the Hobart campus of the University of Tasmania and has internationally recognised research activities in marine and freshwater environments and wild fisheries. Its field training environments are such that they are the envy of zoologists around the world.

Tasmania is an ideal location in which to study zoology, offering exceptional opportunities due to its unique fauna and biogeographical history. Our State also offers easy access to pristine marine, freshwater and terrestrial habitats.

The wilderness areas, which are in close proximity, provide a natural laboratory and a unique experience for students. The University of Tasmania is also the only Australian university that has alpine habitat right on its doorstep. It also has more opportunities for underwater research than any other Australian university.

The University of Tasmania, in conjunction with the Institute also offers a course in Fisheries Science, which is the integration of studies in biology, ecology, mathematics, computing, eco-
nomics, sociology, policy and law. Fisheries scientists have specialist knowledge of marine resources and their supporting ecosystems. The discipline includes assessing and monitoring fish stocks, fisheries production and utilisation, studying the effects of fishing and investigating threatened species.

It is a very important field of study as the future of our global marine ecosystems relies on the decisions that are made by those in charge of such resources today. Fisheries scientists provide crucial advice to help build sustainable fisheries, protect endangered and threatened species, and maintain healthy and proper functioning marine ecosystems.

This program is unique as no other institution in Australia and only a handful of overseas institutions offer this course. There is a national and international shortage of people trained in fisheries science.

The Institute’s strategic plan is aimed at sustainable growth in Tasmanian fisheries and aquaculture as well as improving knowledge of estuarine and marine ecosystems. It also aims to foster the strong relationships it has with other entities such as CSIRO Marine as well as developing new international alliances. It strives for excellence, professionalism, quality, initiative and innovation. All of this is done with the ultimate purpose of ensuring the long-term prosperity of Tasmanians.

I would like to congratulate the Tasmanian Aquaculture and Fisheries Institute on the exceptional, important and unique work that it does. Its vision is for international excellence and by all accounts it is certainly achieving this. It is great to see work of this quality being undertaken by our scientists.

Retirement: Deputy Clerk

Senator STEPHENS (New South Wales) (1.08 am)—Madam Acting President, I want to seek your indulgence this evening to add an addendum to my valedictory statement, and in doing so to say:

Another (not a senator, and really far too modest)

Who’s worthy of inclusion as an honorary goddess

Is Annie Lynch, the Senate’s shy, retiring Deputy Clerk.

(I just had to add her name because I know she loves a lark.)

We think of Anne as Iris, a goddess of charm and grace

Who’s the faithful voice of Zeus, always flying from place to place—

(Let me interrupt to make a point on which I will not tarry:

That reference to Zeus is just a little joke for Harry!)

Now as a goddess, Iris is a kind of backroom gal,

Never looking for the limelight but a trusty, loyal pal

Equally beloved of mortals, heroes, and her fellow gods,

Presidents and Clerk (Procedures), even Ushers of Black Rods!

We know that gods and goddesses spend quite a lot of time Cavorting, but for Iris such behaviour is a crime.

I can’t think of any other god who works so like a beaver

(Though she’d be the first to say I must have quite forgotten Cleaver!)

In mythology, the dedicated harpies are her sisters,

And the people on our ground floor running round till they get blisters

Are the parliamentary version of those mythical winged creatures

Who have learned their job from Iris who’s the most precise of teachers.

She’s an expert on the structure of the Senate Committee System

(Did I mention she’s been with us since the heady days of Whitlam?)
And she’s written timeless works of such accessible utility
As her expose on ‘public entities’ accountability’.
And now she’s off to see the world; please, senators, stop your whimpers,
She’s earned the right to visit her old home... at Mount Olympus!
The name of Iris signals ‘hope’, while Anne’s own name means ‘grace’:
Both words convey our blessings as we wave her from this place.

Valedictory

Senator BARTLETT (Queensland) (1.11 am)—I realise the hour is late, and I cannot compete with poetry and lyricism, but I want to take the opportunity on behalf of all the Democrats and in a very united fashion from all seven of us—the three departing and the four remaining—to reinforce our best wishes to Anne Lynch in her well-earned retirement and our thanks for her extraordinarily sterling service over what is almost an inconceivably long length of time of 32 or 33 years. I spoke in the adjournment debate at an equivalent stage three years ago, no doubt annoying the people who at that stage just wanted to go home. It was about 4.25 am, so I think people should feel lucky that this time it is only about 10 past one.

Three years ago I was farewelling Vicki Bourne from the Senate and bemoaning that. This time it is much sadder for the Democrats, as we are farewelling three people. I have to say that in about 15 years of pretty intensive time spent involved in parliamentary politics, this week and the last couple of days have been far and away the saddest that I have experienced, not just for the loss of those three senators but also for the loss of many wonderful staff because of the nature of things after the last election. There was never really an appropriate moment for me, in moving out of the leadership of the party, to properly acknowledge the role of all the staff who worked with me and supported me during the very interesting period of the last 2½ years when I was leader of the party.

Many of those people showed their commitment to the party’s principles and values by staying on during the last six months, which has been a difficult period. They knew this day was going to come and they always knew it was not going to be fun, but people stayed there and kept things functional over the very important first six months of this year, not just in ensuring that we continue to be effective in this chamber but in doing a lot of very valuable work for the broader Democrats, which will stand us as a party—and indeed the electorate—in good stead as our party works together in a very clear and focused fashion on rebuilding support for us in the very important role we still have to play.

So I would like to take the opportunity to pay tribute to all of those staff. As is always a problem once you start mentioning people, you face the trouble of leaving someone out. But I have to particularly mention Daele Healy, who has been on the staff of the Democrats for quite a long time—some fantastic times and some difficult times—and has a level of commitment that is quite breathtaking. I would like to particularly pay tribute to her for her personal support for me and the broader support she provided for the party in the things we continue to try to do and the many successes and achievements we have had.

I would also like to mention Jo Pride, an incredibly professional person who continued to work very effectively and very well in some difficult times and in some very difficult positions for her personally. She continues to produce an excellent standard of work which, again, has been not just useful for the Democrats Senate team but also reflected in
better laws for the people of Australia. I would also like to mention Eleri Morgan-Thomas, who was our chief of staff over that period of time. She is an incredibly professional person who was very focused on the task at hand and made sure that everybody else remained focused.

It was a great team of people. One of the frustrations of the last few years has been that the strange, alternative universe the press gallery seemed to imagine did not match the world that the Democrats Senate team was engaged in while working very effectively in the chamber as a unit with an incredibly cohesive team of staff. The press still seem to be imagining some disunity and lack of focus. That was the major frustration of the period when I was the party leader and it is frustrating to see that nonsense being spouted again in the last week or two. They are just fantasising about stuff that does not exist. I think we can all empathise with that sort of situation. We will continue with the renewed focus we now have, because we believe it is necessary and that the work we do here in the Senate is vital for the welfare of the people of Australia. Speaking personally, I am focused on the wellbeing of the people of Queensland.

As I was looking through the Hansard at some of the valedictories from three years ago, I noticed that one of the departures then was Senator Barney Cooney. He got around the problem of deciding who to thank and who not to thank by just tabling the entire parliamentary directory, thereby thanking everybody in the building. At times like this you always mention the clerks, the chamber attendants and the Comcar drivers. But it is the people throughout the building who keep it running, and sometimes I think that it would be appropriate to just table the entire Parliament House directory and thank all the occupants for what they do to keep this building running. Keeping this building running keeps the parliament and, in many ways, democracy running. I pass on the recognition and thanks that all those people deserve, both personally and on behalf of the Australian Democrats team.

I did not have the opportunity in my valedictory speech to specifically mention all of the outgoing senators, because I wanted to focus on the three Democrat senators who are leaving, as well as Brian Harradine. I now take the opportunity to wish all the departing senators well. I did not bring all their names with me so I will try to go from memory. My fellow Queenslander Len Harris turned out to be different from what people expected and, even though he had a very different focus to pretty much everybody else, he nonetheless showed that even having a One Nation senator here was better than having a government senator, as it helped to control the Senate. He supported committee inquiries and the mechanisms for scrutiny that are so important. That reinforced my view that having people from anywhere on the spectrum to ensure that no one party controls the Senate is a preferable option. That, of course, is not the option we have coming to us soon.

I also wish Shayne Murphy well, together with the outgoing Labor senators, particularly the long-serving ones with a lot of history, such as Peter Cook and Nick Bolkus. I did not get a chance earlier to acknowledge Susan Knowles, from the government benches. She is another very long-serving senator who has seen and been part of a lot of history. I wish her well, as I do Bin Tchen, who has not seen so much history but is someone whom I have probably had a bit more to do with on various committees.

There are a few other Labor senators going: Geoff Buckland, Jacinta Collins and Kay Denman, who has also served the chamber well over a long period of time. I
have already spoken on Brian Harradine so I will not say anymore about him. They are an amazing group of people—and I include the outgoing Democrats amongst them—who have all contributed in their own ways. I wish them all well and, as I said in my main valedictory speech, the ways people contribute to making society a better place through this chamber are often hard to measure and are certainly not properly recognised. But all of those people have contributed and that should be acknowledged. I wish them well in the next stage of their lives.

I should take the opportunity—I think I am correct—to say that Senator Watson is about to become the father of the house, another Tasmanian jumping in as the longest serving senator. I welcome him into the position as the new elder of the Senate. It says something about Tasmanians. They must be very determined and able to stick at it for long periods of time. He is another respected figure in the Senate, and I am sure he will wear that title with aplomb.

With those words, we move on to another era, a very different era. I wish all those people well who are leaving. I pass on my thanks to everybody who contributes to keeping this chamber functional and, again, special best wishes to all of those people on staff for the Democrats senators who are now moving to other things. They have made a difference—that is what it is all about—and their contributions should be acknowledged and recognised as being just as important as the rest. (Time expired)

Retirement: Deputy Clerk

The PRESIDENT (1.21 am)—On 8 July 2005, Miss Anne Lynch will retire from the Office of the Deputy Clerk of the Senate after holding that office for 17 years. Consequently, today will be her last sitting day. Anne Lynch has been an officer of the Australian Senate for over 32 years and is regarded as one of the leading parliamentary table officers not only in Australia but also amongst Westminster type parliaments in the world. In particular, Anne has formed very special relationships with parliaments of many Pacific island states during her career.

Anne Lynch has been a very effective secretary of the Senate Standing Committee of Privileges for many years and has been the Registrar of Senators’ Interests. She is held in the highest regard by all senators, regardless of their party affiliation, for promoting the best qualities of impartial, high quality and timely advice on the procedures and practices of the Senate. She has also been responsible for well over 100 reports of the Senate Standing Committee of Privileges on a wide variety of significant parliamentary privilege issues and, in particular, was instrumental in supporting the introduction of right of reply avenues in the Senate.

As I said during the reception last week, Anne has faced some health battles in the last two years but she has roundly won those battles, and so she chose to retire on her own terms. I would recommend to everybody in this place Anne’s health cure: one glass of red wine a day keeps the doctor away. But I warmly thank Anne for her exceptional support for me and seven of my predecessors as President starting with Sir Magnus Cormack. I thank her for the wise advice to all honourable senators since 1973 and I know that I speak on behalf of all senators in this place when I wish her all the very best for her future.

Honourable senators—Hear, hear!

The PRESIDENT—On those few words, this place will never be the same again.

Senate adjourned at 1.24 am
DOCUMENTS
Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]


Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—
  AD/B737/198 Amdt 1—Centre Tank Fuel Pumps [F2005L01573]*.
  AD/B737/202 Amdt 1—Centre Fuel Tank Limitations [F2005L01572]*.

Financial Sector (Collection of Data) Act—Instruments exempting registered entities from reporting to APRA—
  NPBS Securities Pty Limited [F2005L01534]*.
  SWAN Securitisation Finance Pty Limited [F2005L01539]*.

Health Insurance Act—Select Legislative Instruments 2005 Nos—
  128—Health Insurance Amendment Regulations 2005 (No. 3) [F2005L01451]*.
  129—Health Insurance (General Medical Services Table) Amendment Regulations 2005 (No. 2) [F2005L01449]*.

Imported Food Control Act—Select Legislative Instrument 2005 No. 120—Imported Food Control Amendment Regulations 2005 (No. 1) [F2005L01503]*.

Migration Act—Select Legislative Instrument 2005 No. 133—Migration Amendment Regulations 2005 (No. 3) [F2005L01493]*.

Migration Act and Immigration (Education) Act—Select Legislative Instrument 2005 No. 134—Migration Amendment Regulations 2005 (No. 4) [F2005L01502]*.

* Explanatory statement tabled with legislative instrument.
QUESTIONs ON NOTICE

The following answers to questions were circulated:

Parliamentary Departments: Overseas Travel

(Question No. 966)

Senator Carr asked the President, upon notice, on 16 June 2005:

With reference to the Department of the Senate and the Department of Parliamentary Services (and its predecessor departments):

(1) Can details be provided on the same basis as asked for in question on notice no. 1577 of 24 June 2003 concerning overseas travel by: (a) the secretary and each senior executive service (SES) officer or SES-equivalent officer for the period 1 June 2003 to 31 May 2005, and in each case, where a spouse or partner accompanied the officer, the costs paid out of departmental funds for the spouse or partner; and (b) officers below the SES level, including departmental costs of any accompanying spouse or partner.

(2) Can the President request the Speaker to provide answers to the above questions in respect of the Department of the House of Representatives.

The President—The answer to the honourable senator’s question is as follows:

(1) (a) The Clerk of the Senate (secretary of the Department of the Senate) did not undertake any official overseas travel between 1 June 2003 and 31 May 2005.

<table>
<thead>
<tr>
<th>Dates</th>
<th>Name</th>
<th>Purpose</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 Jun - 5 Jul 2003</td>
<td>Miss A Lynch</td>
<td>34 Presiding Officers and Clerks’ Conference - Tonga</td>
<td>$4,735.32</td>
</tr>
<tr>
<td></td>
<td>Deputy Clerk</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9 - 19 Dec 2003</td>
<td>Ms A Griffiths</td>
<td>Parliamentary Delegation to Japan and the Republic of Korea</td>
<td>$9,325.05</td>
</tr>
<tr>
<td></td>
<td>Secretary of Delegation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 Jul - 1 Aug 2004</td>
<td>Ms A Griffiths</td>
<td>Meetings with Congressional staff in Washington / attend Commonwealth Serjeant-at-Arms Professional Development Conference, House of Commons, Westminster</td>
<td>$11,881.20</td>
</tr>
<tr>
<td></td>
<td>Usher of the Black Rod</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23 - 27 Jan 2005</td>
<td>Miss A Lynch</td>
<td>2005 Biennial Clerks’ Meeting - New Zealand</td>
<td>$2,970.03</td>
</tr>
<tr>
<td></td>
<td>Deputy Clerk</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 Apr - 3 May 2005</td>
<td>Mr J Vander Wyk</td>
<td>Parliamentary Delegation to Russia and Italy</td>
<td>$13,086.76</td>
</tr>
<tr>
<td></td>
<td>Secretary of Delegation</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>TOTAL</td>
<td>$41,998.35</td>
</tr>
</tbody>
</table>

There was zero expenditure on spouse accompanied travel.

(b) Official overseas travel undertaken by non-SES officers of the Department of the Senate – 1 June 2003 to May 2005:
<table>
<thead>
<tr>
<th>Dates</th>
<th>Name</th>
<th>Purpose</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 Sep - 3 Oct 2003</td>
<td>Mr N Bessell</td>
<td>Parliamentary bilateral visit - Latvia IPU Assembly - Geneva</td>
<td>$15,720.65</td>
</tr>
<tr>
<td>8 - 23 Nov 2003</td>
<td>Ms R Ferranda</td>
<td>Parliamentary delegation to Thailand, Vietnam and Cambodia</td>
<td>$13,791.78</td>
</tr>
<tr>
<td>6 - 19 Dec 2003</td>
<td>Ms S Patience</td>
<td>Parliamentary delegation to Indonesia and Papua New Guinea</td>
<td>$9,170.53</td>
</tr>
<tr>
<td>18 April – 9 May 2004</td>
<td>Ms H Donaldson</td>
<td>Parliamentary delegation to the European Institutions and France</td>
<td>$17,945.36</td>
</tr>
<tr>
<td>15 -26 Apr 2004</td>
<td>Mr N Bessell</td>
<td>IPU Assembly - Mexico City</td>
<td>$14,779.93</td>
</tr>
<tr>
<td>2 - 14 May 2004</td>
<td>“</td>
<td>Canadian Parliamentary Study Program</td>
<td></td>
</tr>
<tr>
<td>27 Jun - 11 Jul 2004</td>
<td>Mr N Bessell</td>
<td>Parliamentary bilateral visit to Ukraine and Bulgaria</td>
<td>$12,989.98</td>
</tr>
<tr>
<td>11 Jul - 24 Jul 2004</td>
<td>Mr A Sands</td>
<td>Parliamentary delegation to Mozambique and Kenya</td>
<td>$14,914.75</td>
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<tr>
<td>31 Mar - 15 Apr 2005</td>
<td>Mr N Bessell</td>
<td>IPU Assembly - Manila / Parliamentary bilateral visit - Solomon Islands</td>
<td>$12,153.12</td>
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<tr>
<td>1 - 6 May 2005</td>
<td>Mr O Walsh</td>
<td>Australian-New Zealand Committee Exchange Conference in Zambia</td>
<td>$2,398.22</td>
</tr>
<tr>
<td>10 May – 3 June 2005</td>
<td>Ms A Garnett</td>
<td>Environmental Education Association of Southern Africa</td>
<td>$6,500.00</td>
</tr>
<tr>
<td></td>
<td>A/g Ass. Director, PEO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>$120,364.32</td>
</tr>
<tr>
<td>TOTAL of (a) and (b)</td>
<td></td>
<td></td>
<td>$162,362.67</td>
</tr>
</tbody>
</table>

^ Combined costs Mexico City and Canada.

* Estimates only - all invoices have not been received at the time of answering question.

There was zero expenditure on spouse accompanied travel.

The above tables do not include Senior Adviser to the President, a MOPS Act employee (SES equivalent). These officer’s travel costs, together with all departmental travel costs, are tabled by program/output group each financial year.
Attachment A—Department of Parliamentary Services—1 February 2004 to date

**DPS—Overseas travel by departmental officers**

<table>
<thead>
<tr>
<th>Date of Travel</th>
<th>Name</th>
<th>Purpose (countries visited)</th>
<th>Duration (days)</th>
<th>Accompanied by spouse at departmental expense?</th>
<th>Total Cost $</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-23/4/05</td>
<td>Hilary Penfold</td>
<td>Meeting of Chief Executives of Aust and NZ Parliamentary Services (New Zealand)</td>
<td>3</td>
<td>No</td>
<td>2,770.70</td>
</tr>
<tr>
<td>9-28/8/04 (Recreation leave 10-17/8/04)</td>
<td>June Verrier</td>
<td>70th IFLA Annual General Conference (Chile and Argentina)</td>
<td>13</td>
<td>No</td>
<td>11,569.55</td>
</tr>
<tr>
<td>15-24/1/05</td>
<td>Ros Membrey</td>
<td>Biennial Parliamentary Librarians of Asia and the Pacific (India)</td>
<td>9</td>
<td>No</td>
<td>8,050.16</td>
</tr>
<tr>
<td>27/2-6/3/05</td>
<td>Gerry Newman</td>
<td>Library Study Trip NZ Parliament (New Zealand)</td>
<td>8</td>
<td>No</td>
<td>814.43</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Meals and incidentals only NZ Parliament paid for flights and accommodation</td>
<td></td>
<td></td>
<td>2,050.30</td>
</tr>
<tr>
<td>28/5-6/6/05</td>
<td>John Lloyd</td>
<td>New Zealand Turf Conference (New Zealand)</td>
<td>7</td>
<td>No</td>
<td>13,040.63</td>
</tr>
<tr>
<td>24/4-13/5/04</td>
<td>Mirek Ciolek</td>
<td>Training for LCR Project (Germany)</td>
<td>20</td>
<td>No</td>
<td>13,040.63</td>
</tr>
<tr>
<td>24/4-13/5/04</td>
<td>Neil Pickford</td>
<td>Training for LCR Project (Germany)</td>
<td>20</td>
<td>No</td>
<td>13,820.95</td>
</tr>
<tr>
<td>24/4-13/5/04</td>
<td>Carlo Turcic</td>
<td>Training for LCR Project (Germany)</td>
<td>20</td>
<td>No</td>
<td>13,667.56</td>
</tr>
</tbody>
</table>

Attachment B—DPRS, DPL, JHD—1 June 2003 to 31 January 2004

**DPRS, DPL, JHD—Overseas travel by departmental officers**

<table>
<thead>
<tr>
<th>Date of Travel</th>
<th>Name</th>
<th>Purpose (countries visited)</th>
<th>Duration (days)</th>
<th>Accompanied by spouse at departmental expense?</th>
<th>Total Cost $</th>
</tr>
</thead>
<tbody>
<tr>
<td>26/07-09/08/03</td>
<td>Rob Johnson</td>
<td>IFLA Conference (Czech Republic/Germany)</td>
<td>13</td>
<td>No</td>
<td>13,782.00</td>
</tr>
<tr>
<td>28/07-09/08/03</td>
<td>June Verrier</td>
<td>IFLA Conference (Czech Republic/Germany)</td>
<td>11</td>
<td>No</td>
<td>13,238.00</td>
</tr>
<tr>
<td></td>
<td>Nola Adcock</td>
<td>IFLA Conference (Czech Republic/Germany)</td>
<td>14</td>
<td>No</td>
<td>15,052.00</td>
</tr>
</tbody>
</table>

QUESTIONS ON NOTICE
(2) I have written to Mr Speaker asking if he might provide the relevant information relating to travel by staff of the Department of the House of Representatives.