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RADIO BROADCASTS
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FORTY-FIRST PARLIAMENT
FIRST SESSION—FOURTH 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
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 Nationals—Senator the Hon. Ronald Leslie Doyle Boswell
Deputy Leader of The Nationals—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
Nationals Whip—Senator Julian John James McGauran
Opposition Whips—Senators George Campbell, Linda Jean Kirk and Ruth Stephanie Webber
Australian Democrats Whip—Senator Andrew John Julian Bartlett

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(1) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.
(2) Chosen by the Parliament of Victoria to fill a casual vacancy vice Hon. Richard Kenneth Robert Alston, resigned.
(3) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
(4) Chosen by the Parliament of Tasmania to fill a casual vacancy vice Susan Mary Mackay, resigned.

**PARTY ABBREVIATIONS**

AD—Australian Democrats; AG—Australian Greens; ALP—Australian Labor Party; CLP—Country Labor Party; FF—Family First Party; LP—Liberal Party of Australia; NATS—The Nationals

**Heads of Parliamentary Departments**

Clerk of the Senate—H Evans
Clerk of the House of Representatives—I C Harris
Secretary, Department of Parliamentary Services—H R Penfold QC
HOWARD MINISTRY

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

(The above ministers constitute the cabinet)
HOWARD MINISTRY—continued

Minister for Justice and Customs and Manager of Government Business in the Senate
Senator the Hon. Christopher Martin Ellison

Minister for Fisheries, Forestry and Conservation
Senator the Hon. Ian Douglas Macdonald

Minister for the Arts and Sport
Senator the Hon. Charles Roderick Kemp

Minister for Human Services
The Hon. Joseph Benedict Hockey MP

Minister for Citizenship and Multicultural Affairs
The Hon. John Kenneth Cobb MP

Minister for Revenue and Assistant Treasurer
The Hon. Malcolm Thomas Brough MP

Special Minister of State
Senator the Hon. Eric Abetz

Minister for Vocational and Technical Education and Minister Assisting the Prime Minister
The Hon. Gary Douglas Hardgrave MP

Minister for Ageing
The Hon. Julie Isabel Bishop MP

Minister for Small Business and Tourism
The Hon. Frances Esther Bailey MP

Minister for Local Government, Territories and Roads
The Hon. James Eric Lloyd MP

Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence
The Hon. De-Anne Margaret Kelly MP

Minister for Workforce Participation
The Hon. Peter Craig Dutton MP

Parliamentary Secretary to the Minister for Finance and Administration
The Hon. Dr Sharman Nancy Stone MP

Parliamentary Secretary to the Minister for Industry, Tourism and Resources
The Hon. Warren George Entsch MP

Parliamentary Secretary to the Minister for Health and Ageing
The Hon. Christopher Maurice Pyne MP

Parliamentary Secretary to the Minister for Defence
The Hon. Teresa Gambaro MP

Parliamentary Secretary (Trade)
Senator the Hon. John Alexander Lindsay (Sandy) Macdonald

Parliamentary Secretary (Foreign Affairs) and Parliamentary Secretary to the Minister for Immigration and Multicultural and Indigenous Affairs
The Hon. Bruce Fredrick Billson MP

Parliamentary Secretary to the Prime Minister
The Hon. Gary Roy Nairn MP

Parliamentary Secretary to the Treasurer
The Hon. Christopher John Pearce MP

Parliamentary Secretary to the Minister for the Environment and Heritage
The Hon. Gregory Andrew Hunt MP

Parliamentary Secretary (Children and Youth Affairs)
The Hon. Sussan Penelope Ley MP

Parliamentary Secretary to the Minister for Education, Science and Training
The Hon. Patrick Francis Farmer MP

Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry
Senator the Hon. Richard Mansell Colbeck
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, Shadow
  Minister for Indigenous Affairs and Shadow
  Minister for Family and Community Services
Deputy Leader of the Opposition in the Senate and
  Shadow Minister for Communications and
  Information Technology                    Senator Christopher Vaughan Evans
Shadow Minister for Health and Manager of
  Opposition Business in the House          Julia Eileen Gillard MP
Shadow Treasurer                           Wayne Maxwell Swan MP
Shadow Attorney-General                     Nicola Louise Roxon MP
Shadow Minister for Industry, Infrastructure and
  Industrial Relations                      Stephen Francis Smith MP
Shadow Minister for Foreign Affairs and Trade
  and Shadow Minister for International Security
Shadow Minister for Defence                 Robert Bruce McClelland MP
Shadow Minister for Regional Development   The Hon. Simon Findlay Crean MP
Shadow Minister for Primary Industries,     Martin John Ferguson MP
  Resources, Forestry and Tourism
Shadow Minister for Environment and Heritage,
  Shadow Minister for Water and Deputy
  Manager of Opposition Business in the House
Shadow Minister for Housing, Shadow Minister
  for Urban Development and Shadow Minister
  for Local Government and Territories      Senator Kim John Carr
Shadow Minister for Public Accountability and
  Shadow Minister for Human Services         Kelvin John Thomson MP
Shadow Minister for Finance                 Lindsay James Tanner MP
Shadow Minister for Superannuation and
  Intergenerational Finance and Shadow Minister
  for Banking and Financial Services
Shadow Minister for Child Care, Shadow Minister
  for Youth and Shadow Minister for Women
Shadow Minister for Employment and Workforce
  Participation and Shadow Minister for Corporate
  Governance and Responsibility

(The above are shadow cabinet ministers)
| Shadow Minister for Consumer Affairs and  
| Shadow Minister for Population Health and  
| Health Regulation | Laurie 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 Small Business and Competition | Joel Andrew Fitzgibbon MP |
| Shadow Minister for Transport | Senator Kerry Williams Kelso O’Brien |
| Shadow Minister for Sport and Recreation | Senator Kate Alexandra Lundy |
| Shadow Minister for Homeland Security and Shadow Minister for Aviation and Transport Security | The Hon. Archibald Ronald Bevis MP |
| Shadow Minister for Veterans’ Affairs and Shadow Special Minister of State | Alan Peter Griffin MP |
| Shadow Minister for Defence Industry, Procurement and Personnel | Senator Thomas Mark Bishop |
| Shadow Minister for Immigration | Anthony Stephen Burke MP |
| Shadow Minister for Aged Care, Disabilities and Carers | Senator Jan Elizabeth McLucas |
| Shadow Minister for Justice and Customs and Manager of Opposition Business in the Senate | Senator Joseph William Ludwig |
| Shadow Minister for Overseas Aid and Pacific Island Affairs | Robert Charles Grant Sercombe MP |
| Shadow Parliamentary Secretary for Reconciliation and the Arts | Peter Robert Garrett MP |
| Shadow Parliamentary Secretary to the Leader of the Opposition | John Paul Murphy MP |
| Shadow Parliamentary Secretary for Defence and Veterans’ Affairs | 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 Industry, Infrastructure and Industrial Relations | Bernard Fernando Ripoll MP |
| Shadow Parliamentary Secretary for Immigration | Ann Kathleen Corcoran MP |
| Shadow Parliamentary Secretary for Treasury | Catherine Fiona King MP |
| Shadow Parliamentary Secretary for Science and Water | Senator Ursula Mary Stephens |
| Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs | The Hon. Warren Edward Snowdon MP |
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The DEPUTY PRESIDENT (Senator the Hon. John Hogg) took the chair at 12.30 pm and read prayers.

BUSINESS

Consideration of Legislation

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.31 pm)—I move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

- Defence Legislation Amendment Bill (No. 1) 2005
- Protection of the Sea (Shipping Levy) Amendment Bill 2005

Senator BOB BROWN (Tasmania) (12.31 pm)—I have looked at the reasons for urgency that the government has put forward for these three bills. The Tax Laws Amendment (2005 Measures No. 5) Bill 2005 is one that has been debated, one could say, to completion. But the other two bills that the government is asking for us to exempt from the cut-off in no way qualify. The fact is that the Defence Legislation Amendment Bill (No. 1) 2005 and the Protection of the Sea (Shipping Levy) Amendment Bill 2005 ought to have been brought before this place months ago. They are dealing with and catching up with legislation that was passed decades ago. There is no good reason in the paper put forward by the government for exempting these bills from the cut-off.

Let us remember that the cut-off is there so that when bills are brought before the Senate the Senate can go to the community and get feedback. What we are seeing here is the government using its numbers to effectively abolish that rule, which enables the public to have input on pieces of legislation which have very often been steamrolled straight through the House of Representatives. The cut-off rule is a much valued rule. It does not prohibit money bills or important bills from being dealt with expeditiously in this place. But it is meant to allow the people of Australia to have input. This is being clearly flouted by the government on this occasion.

It is important to speak up about it. I do not believe these bills should be exempt from the cut-off rule. It is bad practice. It is undemocratic. It goes against the form of this Senate, and the government should think again. If the government is going to repeatedly do this, we will be taking repeated opposition to it. I herewith say that the Greens do not support this legislation, except in the matter of the bill that I have mentioned.

Question agreed to.

Rearrangement

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.34 pm)—I move:

That intervening business be postponed till after consideration of the government business order of the day relating to the Defence Legislation Amendment Bill (No. 1) 2005.

Question agreed to.

DEFENCE LEGISLATION AMENDMENT BILL (No. 1) 2005

Debate resumed from 17 August, on motion by Senator Ellison:

That this bill be now read a second time.

Senator MARK BISHOP (Western Australia) (12.34 pm)—The Defence Legislation Amendment Bill (No. 1) 2005 makes a number of amendments to defence legislation, principally dealing with personnel matters. I will proceed to outline those key amendments. First, there is an amendment to be made to the Defence Force Discipline Act to
update its provisions for the inclusion of amendments to the Australian Capital Territory Criminal Code. Second, an amendment is proposed that will bring the age limits of naval cadets as set out in the Naval Defence Act into line with those for Army and Air Force cadets. Third, it makes some minor technical changes to the terminology of ‘investigating officers’, and removes some redundant provisions with respect to legislative instruments legislation. Fourth, it removes the current superannuation retention bonus for those who opt to re-sign for another five years after 15 years service.

In large part these are relatively non-controversial matters, but they have implications for current policies. The policies most relevant are those concerning military justice, recruitment and retention. Today I want to take the opportunity to make some detailed references to those policies. The first amendment, for all intents and purposes, is simply intended to keep the Defence Force Discipline Act up to date. Because that act imports provisions from the Australian Capital Territory Criminal Code for disciplinary purposes, it necessarily needs to be constantly reviewed. At present, it has clearly fallen behind, meaning that it is inadequate in many areas and arguably ineffective. To the extent that this amendment brings the Defence Force Discipline Act into line and makes it consistent, we support the amendment.

However, there is an important point to be made in this context. To some extent, this amendment assumes that the status quo with respect to the Defence Force Discipline Act will remain unchanged into the future—that is, that breaches of defence discipline and criminal law will continue to be investigated and prosecuted by ADF authority. The Senate Foreign Affairs, Defence and Trade References Committee in its report on military justice, however, strongly recommended that this current arrangement be altered. The committee recommended that all responsibility for breaches of civilian and criminal law be investigated and prosecuted by civilian police not defence police—that is, within Australia.

The incorporation of the Criminal Code of the Australian Capital Territory into the Australian Defence Force for disciplinary purposes overseas, however, we view as necessary. In those cases, the provisions of the Criminal Code become the main authority for prosecuting offences. If the government accepts that recommendation, there may be implications for the way in which the Defence Force Discipline Act provides for non-defence criminal offences. But until the government responds to the committee’s recommendation we do not know. In those cases, the incorporation of the provisions of the Australian Capital Territory Criminal Code is of course important. To that extent, we regard this amendment as a housekeeping exercise necessary for maintenance of the status quo, but it might require fresh examination after the government announces its response to that Senate committee’s report.

While on the subject, it is worth reiterating the committee’s recommendations. The committee recommended that the management of defence disciplinary matters be separated from the investigation and prosecution of criminal matters. Essentially, it was viewed as an exercise of expertise and efficiency. One of the great criticisms made in the committee’s report was the poor standard of investigation of criminal offences by defence authorities. In short, this was seen as a matter of low levels of skill and expertise over time.

The committee considered that, given the low frequency of such offences, it was and would continue to be difficult to develop and retain investigatory skills within the Austra-
lian Defence Force. In a world of rapidly increasing specialisation and outsourcing where appropriate, the committee was of the view that a better job could be done in the future by the civilian authorities, the civilian police. That, by the way, is not proposed to absolve ADF members from defence discipline in any way. The committee simply sought to bring greater expertise and efficiency into the process. It sought to have defence disciplinary management confined to breaches of defence discipline which are most relevant on a daily operational basis.

That was, as we all know, the unanimous view of that committee. It is a clear separation of function and in effect is no different to the operation of any part of civil law affecting ADF personnel as private citizens. If eventually the commission of a crime is proven, then of course Defence has a clear prerogative to consider that offence and behaviour in light of its own standards. That continues to be a separate issue. We certainly trust that the government will give this recommendation careful consideration in the ensuing weeks. Should it agree with the committee, we presume there will be a need to re-examine the relevance of the particular amendment before the chamber today.

The second amendment—consistency of age provisions for cadets across Army, Navy and Air Force—is sensible. In our view, this is simple housekeeping. I do, though, want to mention a related matter also referred to by the Senate Foreign Affairs, Defence and Trade References Committee in its report on military justice. This concerns the duty of care owed to cadets, many of whom are minors, by cadet instructors, staff and more senior personnel within the appropriate ranks of the defence services.

The particular case highlighted by the committee was the tragic suicide of Air Cadet Eleanore Tibble. But for the failure of proper processes, she might still be alive and with us today. The saddest thing about this case is the well-worn causes of inadequate guidelines and instruction manuals, lack of familiarity, poor training and inadequate codes of conduct. Too often the response made to those shortcomings is that the procedures have been reviewed and rewritten and will be adequate into the future. Too often the bureaucratic response is taken as closing the file, but, sure as eggs, another failure will occur in the future.

At the heart of these matters there is really only one issue, and that is the issue of the duty of care. It is about the duty of care to everyone within the services—seniors and juniors, not just cadets. If they are minors, one makes the obvious point that the duty of care is even more onerous, hence the committee’s great concern. It is not just about manuals and processes. One has to say that it is about attitudes and culture—the things that guide the manuals and processes in the carrying out of the function. I therefore urge the government to respond in full to the committee’s recommendations for the institution of better processes and for added resources in this area. Until the special duty of care for minors in particular is fully heeded and the culture of care is properly instilled and made routine, normal and automatic, one fears that more tragedies, like that which occurred with Ms Tibble, are inevitable.

Finally, I wish to address the other key amendment in this amending bill—that concerning the retention bonus. This bonus was introduced back in 1991. It provided for one year’s salary to those members of the ADF who switched superannuation schemes to the then new MSBS and who, after 15 years of service, opted for a further five years of service within the relevant arm. It was only available to medically fit officers above the rank of major and, for other ranks, to those above the rank of sergeant. It was initiated at
the time that entry to the DFRDB superannuation scheme was closed to new applicants. It was provided only to those who transferred to the new scheme, the MSBS. The point was to encourage longer serving experienced personnel to stay on in the services and resist the temptation at that time to leave.

The DFRDB scheme, with its pension and part commutation to a lump sum, was considered to be an attractive option. The DFRDB had an immediate pension entitlement after 20 years of service, with an option of commutation of part of that to a lump sum. The bonus was a condition of transferring to the MSBS. As such, we are of the view that it must be honoured for the small number who remain in service and have not yet exercised their option. To remove it now would be a case of patent unfairness. That is why this amendment grandfathers the bonus for all personnel currently serving. Therefore, it will not become redundant for some time yet.

The review of the Australian Defence Force remuneration in 2001 by Mr Nunn considered this bonus in some detail. Nunn noted that there were several problems with the bonus. First, during downsizing exercises, retention bonuses encouraging people to stay for five years by definition contradicted offers of redundancy. Some who resigned got the bonus and were then offered a redundancy package. Others were not made an offer because they had been paid the retention bonus. Additionally, retention policy began to focus on keeping particular skills rather than having widespread and general application. The bonus contradicted that policy as well. For those who undertook a return of service obligation, this was not served concurrently but, rather, at the end of the five-year retention period.

Naturally, this series of inconsistencies produced friction and was a source of continuing dissatisfaction within various ranks of the defence forces. More importantly, it is fair to say that it interfered with targeted retention and the flexible management of skill, often referred to in subsequent public inquiries by officials of the defence department. That, of course, varies widely across the services. The one size fits all MSBS retention bonus proved to be quite counterproductive, though it must be conceded that it did have a narrow purpose at the time it was brought in back in 1991.

This brings me to policy with respect to retention. The particular provision, though historical, has proven problematic for the reasons identified in Mr Nunn’s report some years ago. That is not to say that, in the future, retention bonuses might not be a relevant tool in retaining skill, going back to the original root cause of dissatisfaction. This, however, should never again be a general policy and it should be highly targeted at areas of need. Perhaps it should also be determined in advance that such bonuses might have, if necessary, ad hoc application. Perhaps they should be more related to the labour market circumstances of the time and not categorised and treated as an ongoing condition of service. More flexibility in this respect is clearly needed. This was openly discussed and conceded by officials at the last round of estimates in May.

As mentioned in the minister’s speech, these circumstances will vary considerably between the services. Accordingly, we support the amendment, but at the same time we encourage continued attention to employment and retention incentives where there are serious shortfalls which affect the effectiveness of the ADF. I add that this is not a new problem, as some increasingly seek to argue. Recruitment and retention in the ADF has long been a problem. As a proper examination of the statistics shows, in the last nine years there has been little change achieved in
recruitment targets. The excuse of a tight labour market, whilst convenient, particularly in the last two or three years, does not fit a proper trend analysis of the statistics in this area.

In a nutshell, we believe it is appropriate for the government to make careers in the ADF more attractive. I have spoken on this recently at some length in this place. Certainly on this side we are prepared to give proper consideration to anything that is practical. However, we are sceptical of bandaid fixes and measures which fail to address intrinsic problems. We have come to the view that this issue of retention and recruitment in the ADF, particularly in areas of skill shortages, is now a structural problem and needs to be identified as such and addressed as such. We particularly want the terrible image of the failed military justice saga fixed and fixed properly and permanently into the future. We are of the view that that is a serious challenge to government. It affects the way the ADF operates and is in turn a serious test of leadership. It is a real test of how serious the government is about having the ADF turn over a new leaf and get serious right through its ranks about the people it employs and who seek to give service to this country. Having a mantra of 'people, people, people' sounds great, but, as we have said before and as others have said in a different context, the proof of the pudding in this debate will be in the eating. We support the bill as before the chamber.

Senator BARTLETT (Queensland) (12.50 pm)—I speak on behalf of the Democrats on the Defence Legislation Amendment Bill (No. 1) 2005. We also do not oppose the legislation. In effect it makes a range of differing amendments to a few different acts and all of them are fairly minor in themselves. It is appropriate to speak to the legislation, firstly, to put our position on the record and, secondly, to reinforce some of the comments that Senator Bishop made. It is appropriate, particularly with Minister Hill in the chamber, to reinforce the strong necessity for a very prompt, comprehensive and hopefully positive response from the government and the Defence Force to the recommendations of the inquiry into military justice by the Foreign Affairs, Defence and Trade References Committee.

I was a member of that Senate committee. I was a participant as fully as some others, but I was certainly able to do so sufficiently to be convinced that there is a serious need for significant change. That is not being said as a way of trying to beat up on particular people. It is simply trying to ensure that we do get a better system of justice, both more efficient and more sensitive, I might say, to human reality as well as, of course, providing justice, which is what the system is supposed to be about. It does not do that in some cases at the moment. Clearly we can do it better. It is an important issue and it needs a comprehensive, serious and prompt response.

The military, by definition, is always going to be an area of activity that is very tough. It needs to be tough. We are asking people to do things, or be prepared to do things, that nobody else in the community is expected to do. For that type of task, obviously you need to be able to deal with some difficult circumstances. But we do need to make sure we still get that balance right. It is always difficult but we have to continue to
try, because we are still dealing with human beings and we need to ensure that they retain their humanity—particularly, of course, when we are dealing with new recruits and with cadets.

Senator Bishop mentioned the tragic example of Eleanore Tibble. It is appropriate to mention this in this debate, particularly because part of this legislation deals with Navy cadets. That case is mentioned a lot—partly, of course, because it was so tragic; secondly, because it was so clearly avoidable with just the tiniest modicum of basic recognition of somebody as a human being; and, thirdly, because whilst the specific circumstances are unique, sadly the broader surrounding facts are not. We need to learn from cases like that. I think it is particularly important for the parents of people who have gone through that to feel that at least people have paid attention and have acknowledged that serious mistakes were made and that changes will be made to try to minimise the chances of somebody going through that again. Nobody can ever guarantee that tragedies will not happen, but we certainly have a duty of care to try to minimise the chances.

Because this legislation amends the Military Superannuation and Benefits Act, I would also like to take the opportunity with the Minister for Defence in the chamber to repeat the Democrats’ longstanding concern that there is still discrimination on the grounds of sexuality in the Defence Force and, particularly, discrimination with regard to superannuation for same-sex couples. The Senate would be aware that this is an issue the Democrats have raised a number of times in a number of different areas of Commonwealth law: the defence and veterans area is just one of those. It should be emphasised, particularly now that thankfully we have a situation where gay and lesbian people are openly allowed into the military, that we should be ensuring they have the same rights and entitlements as all other people in the military.

I will not go through the litany that we have gone through many times in this place before, but the fact is that if you are a person in the military and you are being transferred—for example, to another part of the country, as happens quite frequently—and you are in an opposite-sex relationship, the costs of transferring your partner are paid and other assistance is available to them. That does not apply if you are in a same-sex relationship. Similarly, if you are killed in the line of duty—and we are rightly looking at expanding the areas where women can be involved in active duty—and you are in an opposite-sex relationship, your partner has a range of entitlements, access to counselling, and all sorts of recognition of the special sacrifice they have made and the special difficulties they are going through. That does not apply if you are in the Defence Force and you are prepared to make that supreme sacrifice for your country but you just happen to be in love with and in a partnership with somebody of the same sex. That is unacceptable and it is well overdue for that to change.

The Democrats repeat our urging of the defence minister to do what he can to make that change happen. Some of the changes in this legislation are specifically done in recognition of the need to try to improve our ability to retain people in the defence forces and to attract people there in the first place. That is a laudable goal. Surely one of the key things you can do to try to attract and retain people is to ensure that they know that they will have equal rights. You have a section of the community that knows its members will not be treated fairly, they will not be treated equally and that they will be treated with discrimination. That is a pretty strong disincentive for them to either join up to or stay in the various defence forces. It is in the government’s interest and it is in the commu-
nity’s interest to make these changes—as well as, of course, on the basis of the principle of equality of individuals.

We make those comments here. This is not really the sort of legislation to which it is appropriate to move amendments to try to get equal entitlements for same-sex couples with regard to superannuation; otherwise, we probably would have done so. Having taken advice, we believe it is not really suitable to do that, but it is appropriate to once again make those points. They are ones that we will continue to emphasise. Although, sadly, Brian Greig is no longer a senator here, I do not think any senators should kid themselves that it was only a concern of his. It has been a longstanding concern of the Democrats since before Senator Greig was in this chamber and it will continue to be a concern for us now that he is sadly no longer here, because it is a matter of equality for human beings regardless of their sexuality. Having made those comments, and hopefully with the minister having taken them on board, we indicate our preparedness to support this legislation.

Senator HILL (South Australia—Minister for Defence) (12.58 pm)—I thank honourable senators for their support for the Defence Legislation Amendment Bill (No. 1) 2005. Matters raised might be described as more incidental to the bill than relating to specific provisions, but I accept recruitment and retention as obviously a very important issue and a top of mind issue in relation to the government’s defence planning. On military justice, the government has committed itself to respond promptly to the Senate committee’s report and to treat its recommendations with proper respect. That process is well advanced and I hope that recommendations from me will be considered by the government as a whole in the near future. In relation to Senator Bartlett’s comments on superannuation and same-sex couples, I do note what he has had to say, as he has requested.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2005

BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT (CONSEQUENTIAL AND TRANSITIONAL) BILL 2005

In Committee

Consideration resumed from 5 September.

BUILDING AND CONSTRUCTION INDUSTRY IMPROVEMENT BILL 2005

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The committee is considering Democrat amendments (1) to (3) on sheet 4646 revised, moved by Senator Murray.

Senator MARSHALL (Victoria) (1.00 pm)—I asked the minister last night whether he could give me a specific answer to the question: will any industrial action that may have been legal on or after 9 March this year become illegal after the passing of this bill?

Senator ABETZ (Tasmania—Special Minister of State) (1.01 pm)—The answer is that, potentially, that is right. At this stage I am not willing to comment on any particular situations. The purpose of making legislation retrospective, or giving it a particular starting date, as we have—namely, 9 March 2005—is to ensure that any behaviour after 9 March, or that commencement date, is deemed to be illegal for the purposes of the legislation.

Senator MARSHALL (Victoria) (1.02 pm)—I understand the second part of your answer. The first part did try to go to my question, and I think you have acknowledged
that some industrial action that would have been legal at the time will now be illegal with the passing of this legislation. Why can’t the minister tell me what that industrial action would be?

Senator Ferris—Oh!

Senator MARSHALL—Senator Ferris says, ‘Oh!’ as if that were a terrible question. Here we are considering retrospective legislation that will affect at least 270,000 building workers, as the original definition stood. The definition has expanded, and I will be asking the minister in a moment to tell me how many extra employees will be caught up in the expanded definition. But a substantial amount of people have potentially been taking legal action at a point in time and then, without their knowledge, without this government doing anything to inform any of those people, the government retrospectively makes those things illegal. Somehow Senator Ferris thinks that this is an unreasonable thing for me to ask about. I do not think it is unreasonable whatsoever.

Senator Ferris—I didn’t say that.

Senator MARSHALL—Senator Ferris, the whingeing and whining and the moaning because I ask a question of the minister indicates that sort of attitude from you. It discredits you and really reinforces the arrogance that this government shows when dealing with this sort of legislation. Minister, can you detail, given that you have indicated that there will be some industrial action—

The TEMPORARY CHAIRMAN—Senator Marshall, direct your questions, if you have them, through the chair. Would you be kind enough to do that?

Senator MARSHALL—Yes, I would be, clearly. Through you, Mr Temporary Chairman, will the minister detail what industrial action is now going to be illegal under this bill that was not illegal on 9 March? He has indicated that there is some. I am asking him to detail what that is.

Senator ABETZ (Tasmania—Special Minister of State) (1.04 pm)—First of all, can I say, as I had occasion to in question time yesterday, there ought to be a standing order against verbalising. Senator Marshall sought to verbal Senator Ferris, and I think the record needs to cleared up on that. In relation to the legislation, it stands to reason that, when you introduce new legislation which introduces new penalties et cetera, the law will change and then people who conduct behaviour from the day of the commencement of the legislation may well fall foul of those provisions in the legislation. There is nothing different about this, other than that the commencement date is the date the government announced—namely, 9 March 2005—and the activities would already need to have been unprotected industrial action. It was made known on 9 March 2005. I am now being asked what activities and particular examples—

Senator Marshall—Not examples; what action.

Senator ABETZ—Read the legislation, and the legislation tells you. It is quite clear. I am not going to reread all the clauses and subclauses. Those on the other side oppose this legislation because they say that it is anti-union and all that sort of stuff. We heard all of that yesterday and we will undoubtedly hear all of that again. I think Senator Marshall and those opposite do know what the provisions of the legislation are and what it is designed to weed out. I simply remind the Senate that this legislation has arisen as a result of the Cole royal commission, which exposed a culture of lawlessness and illegality in the building and construction industry. As a government we are trying to clean it up, and those opposite, in
the ALP in particular, are running a campaign to try to protect that culture which Royal Commissioner Cole exposed.

Senator WONG (South Australia) (1.06 pm)—The minister put a proposition to this chamber and I just want to correct the record. We do not protect lawlessness. We do not support criminality. It is outrageous to make that assertion in this place. We say that this Building and Construction Industry Improvement Bill 2005 is not the way forward to deal with the issues in the building industry. We say that putting in retrospective legislation that specifically targets one union and one set of workers, rather than ensuring that the provisions of the Workplace Relations Act are properly policed, is not the way forward. We say that this piece of legislation is driven by this government’s blind hatred of a particular union and the knowledge that it can politically attack a certain group of building workers because it believes it is politically able to do that. That is what this bill is driven by. It is not driven by sensible public policy or a desire to clean up the building industry.

Turning to the issue of retrospectivity, the issue that we are discussing currently, the minister says, ‘Read the legislation and that will tell us what action was unlawful.’ Let us be really clear what is being proposed here. What is being proposed is making action, which previously was not illegal, retrospectively unlawful. What is being proposed by this government is to make action taken by an employee, or in fact an employer, retrospectively unlawful. It does not have to be something outrageous. It may be a dispute over health and safety, because there are different provisions when safety issues are raised in this legislation. It may be action which, at the time it was taken, was not contrary to law, and action which under the Workplace Relations Act—the primary industrial relations regulatory mechanism in this country—was not unlawful. That is what this government is proposing on the basis of some broad diatribe about what is happening in the building industry. It is not on a specific issue that this needs to be retrospective. Even if we accepted your arguments, Minister—which we do not—about the need for specific target penalties for this sector which substantially extend beyond those applicable to other sectors of the work force, nothing that has been put by this government to the Senate inquiry or in this chamber today in this debate explains why retrospectivity is so important.

We are not just talking about making something retrospectively problematic or some retrospective operation; we are talking about very significant penalties. This act introduces a new statutory concept of unlawful industrial action for the building and construction industry as opposed to the protected and non-protected action which can be taken under this government’s legislation in the Workplace Relations Act. Clause 38 of the bill that we are debating prohibits a person from engaging in an unlawful industrial action. It is a grade A civil penalty and the penalties are up to $110,000 for a body corporate and $22,000 for an individual. I spoke yesterday about how that is substantially greater than the penalties which currently exist under the Workplace Relations Act. The government is saying that we are going to retrospectively deem activities, which may have not been unlawful previously, as being unlawful. We are also going to increase the penalties applicable to the action.

Senator Marshall—He does not know what that is.

Senator WONG—Senator Marshall points out that the minister and the government do not know what that action is. We wait with bated breath for some indication of the events or the issues which are so impor-
tant that they require this parliament to over-
ride the principle against retrospectivity in
cases particularly of penalty provisions.
These are significant penalties. The simple
proposition is that the government are saying
that something that was not unlawful should
now be made unlawful, that something that
was within the law should now be exposed to
prosecution. They have not put forward to
this chamber or in their arguments about the
bill any cogent reason as to why retrospec-
tivity in respect of the unlawful industrial ac-
tion has to be imposed.

Senator MURRAY (Western Australia)
(1.11 pm)—We are considering my three
amendments moved jointly to make the
Building and Construction Industry Im-
provement Bill 2005 applicable on the day
on which the act receives royal assent rather
than the due date in the bill of 9 March 2005.
It is important to separate out the issues of
retrospectivity from the issues that the bill is
considering. There are many Australians—
employers and individuals—who might sup-
port the bill in terms of what it is trying to do
but would not support retrospectivity be-
cause of the principle that is being corrupted
here. I think that a very important point to
make is not to mix the two issues up to-
together. What Senator Marshall and I previ-
ously, and now Senator Wong, have focused
on—Senator Marshall in particular by giving
a numerical figure to those potentially af-
affected—is the potential numbers and nature
of organisations, employees and employers
who could be affected adversely by retro-
spectivity. That is an entirely different issue
from the issue of what the bill is intended to
do in the first place, which is to set up an
industry-specific regulatory environment.

All sides of parliament have a view on
that. My view is well known and it is in my
speech and in my minority report. But even
if I were to be a strong supporter of an indus-
try-specific regulator—which I am not—I
would still remain very opposed to the retro-
spective nature of this law. It offends a long
tradition of principle established by all par-
ties in this parliament that we should not
support laws which adversely affect indi-
viduals and organisations by making unlaw-
ful what was previously lawful and by apply-
ing penalties which are in excess of those
which applied at the time. The example is
often given of the reintroduction of capital
punishment where somebody who was not to
be hanged previously was then to be
hanged—retrospectively because you have
changed the law. That would just be abhor-
rent. In fact I suspect the High Court would
overturn it. That is the extreme example of
what can happen in the circumstances. So I
am really concerned that the government
should seek to do go down this path and I
think it is to their discredit on this occasion.

Senator ABETZ (Tasmania—Special
Minister of State) (1.15 pm)—To respond to
Senator Murray first: we had a discussion
about this last evening and we were all
agreed that, as a matter of principle, we did
not necessarily like retrospectivity in legisla-
tion. But we were all, in fact, agreed that
there were occasions on which we had voted
for, or supported, an element of retrospec-
tivity in legislation. So it is not a situation of,
‘There shall never be any retrospectivity.’
That is not the position, as I understand it, of
any party in this place. Having debunked
that, the question then is: on what occasion
should legislation be retrospective?

Senator Murray—Yes.

Senator ABETZ—I agree, and Senator
Murray is agreeing with that and I thank him
for that. Therefore the question is: is this
matter sufficiently serious as to warrant ret-
spectivity? As I said last night, I can un-
derstand that that is an individual judgment
that individuals will make and come down
on either side of the debate. To take up and
debunk Senator Wong’s point on this legislation, asserting that this is because of a hatred of a particular union, can I simply indicate that a former Liberal government introduced retrospective legislation against people who had enriched themselves in a way that was deemed to be completely and utterly immoral and at the expense of the Australian taxpayer—with the bottom-of-the-harbour tax schemes. On that occasion we took on, if you like, an element of the wealthy end of town because of the seriousness of their activities. On this occasion we are now taking on a particular trade union. What that goes to show is that we in the Liberal Party are willing to take on, without fear or favour, those that offend against the basic standards in such a way that retrospectivity is deemed appropriate by us. We do not like using it, we wish that it was not necessary, but every now and then it is required. I simply point to that previous example where a Liberal government introduced retrospective legislation against those who had sought to unfairly enrich themselves at the expense of their fellow Australians. This is not us conducting a campaign against the trade unions or an element of the trade union movement. It is about having fairness in the building and construction industry. I would remind senators of the Cole royal commission which found a culture of illegality and unlawfulness, and we as a government believe that should be overcome.

I can understand that Senator Wong, as a former CFMEU employee, would be passionate about this. Before coming to parliament she was on the payroll of the CFMEU. Good luck to her. But before she starts asserting that we are doing this because of our hatred for the CFMEU, she in fact might like to declare her interest in the CFMEU prior to entering into this debate. Let me simply say that the CFMEU has in it an ‘f’ word that the Labor Party never likes to use. Of course, that is the forestry component of the Construction, Forestry, Mining and Energy Union. Can I say that the forestry union was very supportive of us at the last federal election and we appreciated its support. So do not suggest, in any shape or form, that we are trying to pursue the CFMEU with this legislation. What we are seeking to do is pursue illegality by employers, unions or workers to ensure that this culture changes.

Senator Wong says, ‘We want to get rid of illegality; we want to get rid of all the things that are bad in the industry, but this particular legislation is not the way forward.’ Can I ask Senator Wong: if all the amendments are carried, would you vote for the legislation? She is strangely silent. Of course she would not. She would still oppose the legislation even if all the amendments were carried. So where is her alternative approach? There is none. As a former paid official of the CFMEU she is doing their bidding in this place. That is fine, we all come from different backgrounds, but I think those listening in to this debate should be aware of that.

In relation to retrospectivity and the need for it, I indicated the reasons last night but for Senator Wong’s benefit I will put them on record again:

The decision to designate 9 March 2005 as the date of effect was taken to ensure that industry parties—industry parties can be both sides of the equation—did not take advantage of the time between the bill’s introduction and its passage to engage in unlawful or antisocial conduct of the sort identified by the Cole royal commission.

That is the reason we are doing it, so do not say no reason has been offered. A reason has been offered. I can understand that those opposite might reject that reason. That is fine. That is what this debate is about. But do not come in here suggesting that no reason has been proffered. What is really being said is that no reason has been proffered as to convince those opposite—such as Senator Wong, who used to be engaged by the
CFMEU. Can I indicate that I doubt that any legislation of this kind would ever be to the liking of those opposite.

Coming back to Senator Murray’s points, I understand what he says about retrospectivity. I think we are all agreed that sometimes it is necessary, so it is an on-balance proposition, and on balance we fall in favour of retrospectivity. I can understand that the Democrats, on balance, are against retrospectivity. I understand that that is the divide between us and I hope we can put it to a vote.

Senator GEORGE CAMPBELL (New South Wales) (1.22 pm)—I wish to respond to the comments just made by Minister Abetz because it is typical of this minister to get up in this place trying to offer an argument that has no basis in truth whatsoever. He went back to a set of circumstances that occurred in the mid-1970s to try to justify why the government is applying retrospectivity to the Building and Construction Industry Improvement Bill 2005. I do not want to go into a lot of detail about the issue of retrospectivity. Senator Murray dealt with it at some length in his minority report and I support the arguments he put to the committee at that time and I still support the arguments. There is no justification for retrospectivity on this occasion.

The events in 1975 that Senator Abetz talks about arose out of, again, a witch-hunt by a Liberal coalition government on a trade union, that is, the painters and dockers in the mid-1970s. They thought it was an easy mark—there was criminality associated with that organisation in one particular state and some notorious events occurred around that time. They thought it was an easy way to attack the trade union movement, and the Prime Minister at the time, Mr Fraser, called a royal commission. I happened to be a participant in that commission because I was a union official who represented workers on the waterfront. I represented my union in that commission.

Senator Abetz, if you want to be honest with the Australian people, the difference between the circumstances of 1975, the white shoe brigade and the bottom-of-the-harbour tax schemes, and the circumstances of today is that those people in 1975 were in breach of the tax laws. There was special legislation, certainly, introduced to wrap them up but they were breaching tax laws and that is what the royal commission found. They were in breach of the law at the time. We did not introduce, and Prime Minister Fraser did not introduce, legislation which put new tax laws in place retrospectively. He did not do that. He introduced legislation in order to corral the people who had breached the tax laws of the time. There is a difference between doing that and taking people in this industry who have acted legally, in accordance with the law, for the past six months and saying that what they did six months ago, which was lawful under the law of that time, is now unlawful and they are subject to penalty. That is a radically different approach from what occurred in 1975.

You shake your head, Senator Abetz. I suspect that you have not even gone back to look at it. I suspect that you have not gone and checked the facts. You have just manufactured an argument which you thought looked reasonable, would sound reasonable to the Australian people and was the basis for justifying your actions in respect of this bill.

Of course, Labor will oppose this bill irrespective of whether the amendments are carried or not. That has always been our position. We have never at any time said that we believe this bill to be necessary. We have argued consistently in here against it because there is a Workplace Relations Act and there are penalties under that act for unlawful activity. It is open to any employer organisation...
to pursue action under that act if they believe unions are engaging in unlawful activity. In the same way, there is the opportunity for unions to pursue action under that act if they believe employers are acting illegally or pursuing unlawful activity.

Why do we need a special set of legislation to deal with this industry that is not applicable to any other workers in the country? A worker in the building industry, taking into account the definition, could be someone who runs a soft furnishing factory somewhere providing curtains, blinds or carpets to a high-rise building. The scope of this legislation is horrendous in its potential application. We suddenly say that they are different in form from any other worker in the country. Let us take an example. You have a sheet metal worker who works for a firm in Ingleburn. The firm is making airconditioning equipment that goes into the cottage industry, into housing. They are not captured by this legislation, so they are acting quite lawfully when they do whatever they do, and they are covered by the Workplace Relations Act. If that same worker makes a piece of airconditioning equipment and installs it in a high-rise building he is captured by this law. The reality is that there are thousands of workers who are in that situation every day. In the morning they could be installing a piece of airconditioning equipment in someone’s house and in the afternoon they could be working on a high-rise building. An electrician—my friend Senator Marshall was an electrician many years ago—may be in a variety of industries during—

Senator Murray—They are not workers; they are contractors.

Senator GEORGE CAMPBELL—Some of them are workers. Senator Marshall was a worker.

Senator Murray—The point is it applies to employers as well as—

The TEMPORARY CHAIRMAN (Senator Lightfoot)—I suggest you continue your private meeting outside.

Senator GEORGE CAMPBELL—Senator Murray makes a valid point. Electricians can be both workers and contractors because of the form of definition that is used. But they can work in a variety of industries during the day. This is a nightmare for workers who are going to have to operate under this system because they will never know when they have trod on the by-line or the side line, when they are in play or when they are out of play. I suspect that a lot of workers are going to find themselves in a position where they are breaching the law in ignorance. That is not only bad legislation and bad law, it is an impossible position to put any citizen in—where they find themselves in a position of breaching the law in ignorance. That is exactly what this government is doing with this legislation if it is passed by this chamber.

Senator MARSHALL (Victoria) (1.30 pm)—Again Senator Abetz ducked my question, so let me remind him of it because I think it is an important question. Earlier on in the exchange, he indicated that there were forms of industrial action that would have been legal between 9 March and today which, after the passing of that legislation, will be illegal. I do not know what they are. He suggested to me that if I read the legislation I would know. I have read the legislation and, quite frankly, I do not know.

If Senator Abetz knows that there is some form of industrial action that is going to be legal today and illegal after the passing of this bill, he ought to be able to tell us what it is. He is relying on the fact that a press release put out on 9 March said that everyone—the hundreds of thousands of people that this legislation is going to affect—should know what they are doing and
whether it is legal or not. He does not seem to be able to tell us and I suspect it is because he does not know either. If he does not know, the advisers next to him do not know and cannot tell him and he cannot advise this chamber, how can he expect the hundreds of thousands of workers who are going to be covered by this bill to know? How can he expect them, by making this sort of legislation retrospective, to understand what sort of action they were taking?

I think it is absolutely incumbent upon this government to tell us what form of action is going to be changed in its status by the passing of this bill. I think that is the very least he can do. If he does not know and the department cannot tell us then he should advise us honestly of that situation so that at least may be some defence for those people who were expected to know. I do not really know how this government expects them to know. But that is what happens when you apply retrospective legislation. There is an expectation that people should know the changing status of the law. It is a big call, but it is a call this government has made. So maybe the minister could answer my question: what form of industrial action that is legal today, or between 9 March and today, will be made illegal with the passing of this bill?

Senator ABETZ (Tasmania—Special Minister of State) (1.33 pm)—It will come as a surprise to listeners and anybody in the Senate to know that this bill contains only 78 clauses. If Senator Marshall had read the bill as he has asserted, he did not even get halfway, because clause 36 of the bill outlines that industrial action that does not meet the requirements for protected action will be unlawful. Protected action is only available in the context of negotiating a single business agreement. It is all there in black and white in the legislation. Senator Marshall has embarrassed himself, unfortunately, with his question.

In relation to the stiff penalties and the reason for particular legislation for this industry, the royal commission in fact made recommendations to that effect. It highlighted the belief amongst the construction industry participants that breaking the law does not have any real consequences. This has resulted in an industry plagued by unlawful conduct. To change this culture it is necessary to make the penalty regime appropriate to the circumstances of the industry. The maximum penalty under the Workplace Relations Act 1996 is $33,000 for a body corporate or $6,600 for an individual. These are relatively small amounts when compared with the value of building and construction projects.

Unlawful conduct must attract serious consequences if the rule of law is to be restored as the foundation of workplace relations practices in the construction industry. For example, one head contractor, on being told of the maximum penalty—it was then $10,000—responded: ‘Ten thousand dollars? I will call my secretary in with the petty cash tin to take care of it now.’ That is the sort of culture that those opposite, unfortunately, are defending by their actions in this debate.

Senator WONG (South Australia) (1.35 pm)—Yet again we have a minister who refuses to answer the specific issues and deal with the debate. There are some senators in this place whose contributions are characterised by an understanding of the policy issues or the legal issues before them and a discussion of those is what characterises their contributions to the debate. There are others who like to act as one of those players on a football field who goes after the player and not the ball. I will leave it to the audience to work out which category the minister falls into.
It is interesting that the minister had a go at Senator Marshall for not having read the bill. He said that, if you read section 36, that tells you what unlawful industrial action is. Actually, unlawful industrial action is dealt with in section 37. Section 37 defines ‘unlawful industrial action’. It makes reference to the issues of industrial motivation and constitutionally connected action. It provides that such action is obviously not excluded action, which, as the minister did correctly point out, is either action taken in furtherance of an AWA or is protected action under the Workplace Relations Act.

The reason the minister cannot answer Senator Marshall’s question is that the government does not know. What the government has done is put in place a broad definition of ‘unlawful industrial action’—a new statutory concept that is not in place under the Workplace Relations Act. It has created far greater penalties in relation to this unlawful industrial action concept that it has now introduced for the purposes of the building industry and it has made it retrospective.

The minister will say, ‘Why won’t Labor support this bill?’ if this is not passed. There are two issues here. Firstly, as Senator Murray correctly points out, there is the issue of retrospectivity and in what circumstances it is appropriate for a government or a legislature to pass retrospective legislation. Is it appropriate, when you are imposing penalties in relation to action which previously was not unlawful, to make it retrospective? Clearly that is not the way we approach most legislative tasks. The minister keeps saying that there are times when retrospectivity is appropriate, and there are, but they are generally associated with either remedial legislation—legislation to fix up something which the parliament has passed; it may be beneficial legislation—or legislation such as tax laws where there is a clear public policy argument for making the legislation retrospective, subsequent to the announcement of what the tax scale should be.

Secondly, the minister keeps being asked by Senator Marshall and other senators: ‘What is the action which will now be rendered unlawful that was not?’ The minister keeps being asked to explain why this should be made retrospective. His only response to the latter question is a continued diatribe about unlawfulness in the building industry and the accusation that if Labor do not support the retrospectivity argument then we somehow support lawlessness in the building industry. That is a very interesting non sequitur—one that the minister feels compelled to make—that does nothing other than demonstrate the paucity of his argument.

We have indicated that we are opposed to these bills because we do not believe that they will assist in the satisfactory resolution of issues within the building and construction industry. We are, in general, opposed to creating specific industrial jurisdictions for specific industries. We are specifically and particularly opposed to retrospective penalties and increased penalties being applied to one sector in excess of those applied in another sector. We are concerned—and Senator Marshall has raised this—about the definition of ‘construction industry’ being so broad that employers and employees who have not previously been considered part of the industry are now covered by the provisions of this bill. We are also concerned about the restrictions on collective bargaining and the right to strike, and about the arguable breach of Australia’s ILO conventions.

That is a thumbnail sketch of some of the reasons why Labor are opposed to these bills. Given that we are discussing an issue of retrospectivity, it would be good if the minister, instead of simply accusing those opposite of somehow supporting lawlessness—which is not true—could come up
with a cogent argument as to why we ought to make legislation retrospective to render unlawful actions which were previously within the law and to substantially increase the penalties for engaging in those actions. In his previous contribution I think the minister conceded by implication that this legislation is about taking on a particular trade union. We welcome that concession.

The minister made reference to the bottom-of-the-harbour tax evasion schemes and said that there we had a situation where someone unfairly enriched themselves and therefore retrospective legislation was required. I have to say I am not across the detail of the bottom-of-the-harbour tax evasion issue. I have read about it. Obviously I was fairly young at the time. I think I was in Malaysia at the time. It does seem interesting to me that the analogy is drawn between people enriching themselves unlawfully at the expense of taxpayers and employees seeking to advance their industrial interests. That is what this unlawful industrial action talks about. It talks about people ‘advancing industrial objectives of an industrial association’, ‘disrupting the performance of work’ and various other things. Some of those things, arguably, would be able to be regulated under the Workplace Relations Act.

Why is it that the minister believes that there is some argument that connects people who are evading tax with employees who are furthering their industrial interests and somehow that is the basis for justifying retrospectivity? It is not a justification for retrospectivity. We say that the government should reconsider the commencement date of this legislation. The point put by Senator Murray, and a point I also made in this debate, is this: even if one agreed with the contents of this legislation, which Labor do not, one would need separately to be convinced of the need for the retrospective introduction of penalty clauses. Really, when you are infringing a principle against retrospective penalisation of the actions of citizens, you need an argument that is a little more cogent and weighty than a general diatribe about lawlessness in the building industry—which everyone in this chamber would not support.

Senator ABETZ (Tasmania—Special Minister of State) (1.43 pm)—Talking about diatribes, I take Senator Wong back to the former Labor government taking specific action against a particular trade union called the BLF. It is funny that that has not been raised before by those opposite. Even the Labor government at that time saw the need to take specific action against a particular union because of allegations of corruption et cetera. I think we know the very sordid history of the BLF. I think it would be fair to say that the Cole royal commission exposed similar allegations. It would not surprise me if certain elements of the BLF had simply regrouped in the new CFMEU, but I dare say that is a matter of speculation.

Suffice to say that, after hearing the evidence, an independent royal commissioner—so it is not my diatribe—determined that there was a culture of illegality and lawlessness within the building industry. We believe that ought to be cleaned up. Suggestions have been made that to clean that up you need stiffer penalties to deal with that particular culture. That is the proposition we are putting to this parliament. Ultimately, it is for a vote. I think we have now bounced the ball backwards and forwards sufficiently.

I know that Senator Wong and Senator Marshall do not like my answers, but that does not mean that their questions have not been answered. What I think is shown is that they disagree with my answers and they disagree with the government’s reasons. That is fine—that is what happens in debate. But to make the bald assertion that their questions have not been answered is patently false and
will be shown to be so in the *Hansard*. The fact is that we believe that there is a need to start this legislation on 9 March to ensure that industry parties do not take advantage of the time between the bill’s introduction and its passage to engage in unlawful or antisocial conduct of the sort identified by the Cole royal commission. I can understand that former CFMEU officials and other trade union officials in this place would disagree with that. I accept that and I understand it. But, just because you disagree, that does not mean that the point has not been engaged by the government. I suggest that, given the time, we might in fact move to the vote.

Senator MARSHALL (Victoria) (1.46 pm)—That is a good try. We get constant rhetorical flourishes from the Special Minister of State, but I cannot see how he has answered the questions. Just for the record, let me ask the questions again before I go on to debunk some of his arguments about justification for retrospectivity. Minister, in case you are confused about what questions have been asked—because I cannot see how you have attempted to answer them—tell me: what form of industrial action that is currently lawful or that currently falls within the definition of protected action may be rendered unlawful by the bill? Will those taking part in such action be retrospectively subject to sanctions and greater penalties under this bill? Think about that, and maybe your advisers can give you some advice as well.

You have talked about how there is some general acceptance and said, ‘We do not like retrospectivity but it is a fairly regular occurrence.’ I think there is a significant difference in what we are talking about, and I want to explore that for a moment. The department went to some pains to demonstrate to us that there were significant precedents. They advised the committee that there were over 100 bills with retrospective effect that had been noted in reports of the Senate Standing Committee for the Scrutiny of Bills. But, as Senator Murray rightly pointed out during the committee hearings, the vast majority of those bills either had a beneficial effect, made technical amendments or related to taxation measures.

At the time, the departmental officers conceded that there were only four bills that imposed penalties retrospectively—and that is what we are talking about. They relied on those four bills as precedents. One of those bills was the Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002. At the time, the Scrutiny of Bills Committee wrote to the Attorney-General expressing the view that retrospectively declaring something to be a crime would establish an unfortunate and undesirable precedent. At the time, the Attorney-General wrote back to the Scrutiny of Bills Committee—and the committee has put this in its report, and that has been tabled in the Senate—and gave an assurance to the committee and to the Senate that that bill would not be used as a precedent.

I ask the minister: why did the department use that bill as a precedent, given the assurance from the Attorney-General that it would not be used as a precedent? What status can we then give to assurances given by government ministers? We understand that the executive arm of government very regularly overturns assurances given by ministers. We do not have to go back too far to the rock-solid guarantee that was given to Minister Abbott to defend the Strengthening Medicare program, on which you spent tens of millions of dollars on advertising. We could also go to the core promises of Prime Minister Howard that became non-core promises after an election in similar circumstances. I think it is a new low when departmental officers can overturn assurances given by ministers. That is a sign of a fairly arrogant government.
Why does the department simply ignore assurances given to the Senate by the Attorney-General? What confidence can we have in further assurances given to the Senate by government ministers?

Senator ABETZ (Tasmania—Special Minister of State) (1.50 pm)—For the benefit of Senator Marshall—and it is a bit tedious, I confess—who asks about what industrial actions will be not allowed, as I indicated to him, he should have started at section 36, which talks about unlawful industrial action and what it means.

Senator Wong—Why do you have to do that? Haven’t you got anything better to say?

Senator ABETZ—Senator Wong, I wish you wouldn’t play the person but instead listen to the answers being given. It is not very becoming. Section 37 talks about the definition of—

Senator Wong—How many women are there on the Tasmanian Senate ticket? Remind me—it is a number between zero and six.

The TEMPORARY CHAIRMAN (Senator Watson)—Order! Senator Abetz, continue with your answer.

Senator ABETZ—Thank you. I received the highest vote ever in Tasmanian political history! The definition of unlawful industrial action—

Senator Wong—You did not have a quota. There were lots of women on your ticket!

Senator ABETZ—To have scored that sort of vote, Mr Temporary Chairman, as you would know, undoubtedly a large number of Tasmanian women would have voted for me. That certain elements of the feminist class do not like the fact that people like me attract such a lot of support—

Senator Wong interjecting—

The TEMPORARY CHAIRMAN—Order!

Senator ABETZ—Clause 37 of the bill is entitled ‘Definition of unlawful industrial action’ and states:

Building industrial action—which is previously defined in clause 36—that is why I referred Senator Marshall to clause 36 beforehand—is unlawful industrial action if:

(a) the action is industrially-motivated; and

(b) the action is constitutionally-connected action; and

(c) the action is not excluded action.

That is the legislation. Then you go back to clause 36 to find out the definitions of ‘constitutionally connected action’, ‘excluded action’, ‘industrially motivated’ and ‘building industrial action’. So it is quite clear. All that Senator Marshall has to do is in fact read the legislation and all his questions will be answered for him.

Senator MARSHALL (Victoria) (1.53 pm)—Despite Senator Abetz’s rhetorical flourish, he has ducked the question. It was the minister who told us that some industrial action that is legal today is going to be rendered illegal after the passing of this bill. That was the question I asked him, and he cannot tell us what it is. And then he goes through the bill and says, ‘It is all in the legislation.’ I have read all that, and the reason I asked you that question, Minister, is that I could not work it out. I could not work out what form of industrial action becomes illegal. This is the purpose of the committee stage. You were able to tell me quite clearly that there was some, and when asked what that was, you did not know and you referred us to bits of the legislation which relate to different other bits of the legislation as if that were an answer. That is no answer, Minister; that is no answer at all. That is just your try-
ing to grasp at straws and trying to impress people by picking up the bill and going to different clauses. I do not know what that is supposed to prove. Minister, if you cannot answer the question, if you do not know the answer and you want to correct what you said earlier, why don’t you simply do that instead of going on with that sort of gobbledegook?

Senator ABETZ (Tasmania—Special Minister of State) (1.54 pm)—It looks as though I will have to read it into the Hansard for the benefit of Senator Marshall. Then those listening in can understand that Senator Marshall, whilst having been directed to where the answer lies, unfortunately simply cannot comprehend what the legislation says. It says:

building industrial action means:

(a) the performance of building work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to building work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:

(i) the terms and conditions of the work are prescribed, wholly or partly, by an industrial instrument or an order of an industrial body; or

(ii) the work is performed, or the practice is adopted, in connection with an industrial dispute (within the meaning of subsection (4)); or

(b) a ban, limitation or restriction on the performance of building work, or on acceptance of or offering for building work, in accordance with the terms and conditions prescribed by an industrial instrument or by an order of an industrial body; or

(c) a ban, limitation or restriction on the performance of building work, or on acceptance of or offering for building work, that is adopted in connection with an industrial dispute (within the meaning of subsection (4)); or

a failure or refusal by persons to attend for building work or a failure or refusal to perform any work at all by persons who attend for building work;

but does not include ...

I can keep reading until two o’clock, but I think it is pretty clear now that it is all in the legislation. I just could not believe, and that is why I was not grasping, Senator Marshall’s question. He asserted that he had read the legislation, but he could not come to grips with it. That is quite obvious and I can understand that. So that is why I am happy to read quite large slabs of it into the Hansard, so that people who want to follow this debate can have an understanding of what we as a government are seeking to do. We are, without apology, seeking to clean up the building and construction industry.

I remind those opposite that even a Labor government in either 1986 or 1987 found the need to deal with the Builders Labourers Federation. They deliberately had them de-registered. It was a particular action against a particular union because of illegality. And now a royal commission has determined that there is a similar culture within the building industry again, which I suppose might beg the question whether or not certain elements of the BLF have now found themselves in the CFMEU. Unfortunately, that same culture that existed under the BLF seems to have re-emerged within the CFMEU. As a government concerned about the welfare of this country we want to clean that up. The building and construction industry represents about seven per cent of GDP. Seven hundred thousand people are employed in it. It is vitally important that the illegality and unlawfulness that were disclosed by the Cole royal commission be weeded out, and it is a pity that those opposite have admitted that even if the Democrat amendments were to be passed they would still oppose the legislation. And
what is their way forward? They have no proposals of their own to put forward.

Progress reported.

QUESTIONS WITHOUT NOTICE

Telstra

Senator SHERRY (2.00 pm)—My question is to the Minister for Finance and Administration, Senator Minchin. I refer to table 3 on page 10.4 of Budget Paper No. 1, which shows Telstra sale proceeds for each financial year over three years beginning in 2006-07 at $11.28 billion. Can the minister confirm that these sale proceeds are based on a share price of $5.25? Does the minister still stand by the government’s own budget figures, which were released less than four months ago?

Senator MINCHIN—The government has for some time provided in the budget papers for the possible sale of Telstra and the consequences for the budget of such a sale because it is government policy to sell our remaining shares in Telstra. Therefore, certain assumptions must be made and are reflected in the budget. We have repeatedly stated that what is in the budget is an accounting assumption for budgetary purposes and does not reflect in any way any decision as to what price the government might receive for its shares or any decision about the structure of the sale or any other matter. For the purposes of budget preparation we have made an accounting assumption—without any government decision having been made as to how in fact Telstra would be sold and at what price—that it would be sold in three tranches and at a price that has been derived without much effort.

I stress that that price of $5.25—and I have said this on many occasions, as have Senator Coonan, the Treasurer and the Prime Minister—is not a target price for the government’s sale. It does not reflect any decision about a price that the government would accept or seek in relation to Telstra’s sale, nor have we made a decision that we will sell in three tranches.

The government’s clear position is this: we seek the legislative authority to enable the executive to make a decision as to whether or not to sell its shares. We do not have that particular luxury. We are denied at the moment by law any authority to sell. We seek the legislative authority to be able to make a decision as to whether or not we sell. As I have said on many occasions, if the parliament grants us that authority then it would be my intention to come back to the cabinet in the first quarter of next year with advice based on professional expert advice as to whether or not the government should proceed to a sale in the course of 2006 and under what circumstances. But I stress that the assumptions in the budget papers do not reflect any government decisions and do not reflect in any way a target price.

Senator SHERRY—Mr President, I ask a supplementary question. The projections or forecasts are based on $5.25 a share. Given that the Telstra share price is $4.30 as of lunchtime today, a drop of approximately 18 per cent since the budget, when will the government adjust its projection of sale proceeds down to a more realistic level? When will the budget papers actually reflect reality? Does the minister agree that, as the Financial Review today described, the sale process is ‘beginning to resemble one of those John Cleese management training videos’? When is the minister going to take some responsibility for the government’s mismanagement and correct the projection of sale proceeds that are included in this year’s budget?

Senator MINCHIN—I can only repeat what I said: they are merely accounting assumptions for the purposes of budget preparation and do not reflect any government decisions. The $5.25 to which you refer is
actually based on the price back in 2002 when this assumption was first introduced into the budget and it is merely indexed by the growth in the ASX, which is seven per cent per annum. Obviously, the Telstra share price has not reflected that in total. The great tragedy is that the Labor Party have cost Australian taxpayers $54 billion. By their denial of our authority to sell all our shares at the time of T2, they have denied shareholders $54 billion. The federal government is worth $54 billion less than it otherwise would be because of this idiotic ideological opposition to the further sale of Telstra.

**Political Fundraising**

Senator BRANDIS (2.05 pm)—My question is to the Special Minister of State, Senator Abetz. I refer the minister to the new phenomenon in Australia of an online web site dedicated to ongoing fundraising for political campaigning. What claims have the founders made and what steps is the government taking to ensure that such activity complies with Australian law?

Senator ABETZ—I thank Senator Brandis for his question and note his ongoing interest in electoral matters, including the excellent work that he does on the Joint Standing Committee on Electoral Matters. Australian politics has recently seen the emergence of the web site GetUp!, an ALP and Greens internet front which aggressively solicits donations it purports to spend on advertising. The founders of GetUp!, Australians Jeremy Heimans and David Madden, have repeatedly claimed to have established the failed Win Back Respect campaign during last year’s US election. According to the *Australian*, Madden and Heimans claim they are duplicating the model they created in the last US presidential election, which raised $5 million to finance a television campaign with their self-produced ads. Those same individuals recently established Purpose Campaigns. The Harvard University Institute of Politics web site states that the Win Back Respect campaign spent $4.5 million trying to defeat George Bush. But—and it is a big ‘but’—interestingly and damningly, both the US Centre for Public Integrity and campaignmoney.com calculate expenditure of only $1.2 million by the Win Back Respect anti-Bush campaign.

Given this information, the obvious question now is: how do Heimans and Madden account for the missing millions—the difference between the $5 million they claim to have raised and the $1.2 million shown as being spent? Disturbingly, these same operators have now established themselves in Australia as GetUp! which then raises the question: are GetUp! more scam than spam? Are GetUp! spending a few dollars on homemade ads and creaming off the profits, as it appears they did in the United States? Interestingly, Heimans and Madden have now changed GetUp!’s web site to say they only helped to start Win Back Respect, but only after questions about whether they broke US electoral laws.

Finally, I note that two days before Heimans, Madden and Amanda Tattersall, a professional activist for the New South Wales Labor Council, registered GetUp! Ltd, Heimans and Madden registered Purpose Campaigns Pty Ltd in Australia. By its own admission, Purpose Campaigns offers ad-making and other political services to so-called progressive campaign groups. Given the latitude of the conflict of interest clauses in GetUp!’s constitution and the open-ended remuneration afforded its directors, the Australian people should be told not only how GetUp! spends donations but who has put up its claimed $1.5 million seed funding.

*Senator Bob Brown interjecting—*

Senator ABETZ—Do not get so anxious, Senator Brown. I will get to it. I urge Labor
wannabes Bill Shorten, Evan Thornley and the other remaining members of GetUp!’s advisory board to answer these questions. For Senator Bob Brown’s benefit, I can indicate I have already referred GetUp! to the Australian Electoral Commission for investigation, and today I referred these and other issues to the Australian Competition and Consumer Commission.

Senator Faulkner interjecting—

The DEPUTY PRESIDENT—Senator Faulkner, Senator Conroy is on his feet!

Telstra

Senator CONROY (2.10 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. Can the minister confirm that she was advised by Telstra in a private briefing on 11 August this year that Telstra has received 14,300,000 fault calls and that over 14 per cent of all lines have faults? In light of this briefing, why did the minister mislead the Senate on 16 August by stating that services were ‘well and truly adequate’ when she was informed five days before of the serious problems with the Telstra network? Will the minister now apologise to the Senate and the Australian people?

Senator COONAN—As I said yesterday in response to a question from Senator Conroy, while Telstra is partly owned by the government, it is a company subject to the Corporations Act 2001, its day-to-day activities are managed by the board and management, and, like any other publicly traded company listed on the stock exchange, it is required to comply with certain obligations, including the listing rules and the continuous disclosure obligations. Telstra is also required under the act to inform the minister of significant events or proposals that the company might be considering. As I said yesterday and repeat today, the government is not going to comment on the details of any confidential discussions or briefings that Telstra provides.

As to whether services are adequate, what I have said on many occasions is that the government’s standard—the benchmark of adequacy—has initially been the response to the Estens inquiry. Thirty-nine recommendations were made by the Estens inquiry, and the government has agreed to implement all of them. That was the last telecommunications inquiry that was undertaken, and the government has responded positively to every single one of its recommendations. The final recommendations are, of course, to be enshrined in legislation over the next days and week.

The government appreciates that as new technology becomes available it becomes necessary to continue to install new equipment and to encourage innovation and competition in telecommunications. That is why this government has announced the largest telecommunications package that this country has ever seen, and it has done it in the interests of ensuring that no Australian is left behind when it comes to having access to decent telecommunications services that are provided not only by Telstra but now by up to 100 other telecommunications service providers, thanks to the government’s competitive environment.

So the government will be implementing all of the Estens recommendations. That will ensure that services according to that benchmark are well and truly adequate. However, the government has gone further than that. In fact, about eight weeks ago I announced a further $50 million for the HiBIS broadband program. That will take us to about January, then the government will have coming on stream $1.1 billion to ensure that, going forward, services will continue to be adequate. So, no, Senator Conroy, there is no need to apologise. If anyone needs to apolo-
gise it is the Labor Party, who were prepared to leave Australia and telecommunications stranded when they corporatised Telstra. They set up a cosy duopoly between Optus and Telstra. They wimped out on all the tough decisions. They made no plans for rural and regional Australia. The Labor Party’s shambolic approach to this is really what should be apologised for. They are an absolute disgrace.

Senator CONROY—Mr Deputy President, I ask a supplementary question. Is the minister aware that, on this basis, according to Telstra there are currently 141,680 telephone lines in Australia with faults? How can the minister possibly describe Telstra’s services as being ‘well and truly adequate’ when there are faults on 141,680 lines? Is there anything the minister is not prepared to say to force through the government’s extreme privatisation agenda?

Senator COONAN—Thank you to Senator Conroy for yet another opportunity to let me know that what the government have put in place as part of the regulatory regime is a network reliability framework that requires Telstra to remediate badly performing exchanges and to fix lines. The consumer framework provides essential safeguards that this government has put in place in the absence of the Labor Party having put in even one of these safeguards for consumers to ensure the telecommunications services work, let alone that they be adequate. We in this government care about telecommunications services. We have the largest package—a $3 billion package—to make sure that they stay adequate into the future.

Opposition senators interjecting—

The DEPUTY PRESIDENT—Order! Senator Macdonald is entitled to be heard in silence when giving the answer.

Senator IAN MACDONALD—Thank you very much for that, Mr Deputy President. The Labor Party show a remarkable lack of interest in anything outside the capital cities or the union movement. I am very delighted that Senator Joyce has asked me a question about farming Australia, about rural and regional Australia, because I think in the last six or seven months I have not had one question from the other side about farming or rural and regional Australia. There is nobody capable over there. Nobody is interested from the Labor Party. What an indictment of the Labor Party and their lack of interest.

Senator Joyce draws attention to the recent ABS figures of Australian international trade in goods and services for the month of July. They were released last week. They do show—as you quite rightly mention, Senator Joyce—an increase of $354 million in exports to a total of $15 billion. Importantly, rural exports increased by $13 million, driven largely by the increase in cereal grains exports reflecting a return to improved conditions in farming lands in some areas. Drought is still a very limiting factor, but that $13 million increase in rural exports is particularly important to communities and...
businesses in rural and regional Australia, as one in four jobs depends directly on exports.

I am asked what the Australian government have done to improve and support rural exports. We have done quite a lot. The best thing we have done, of course, is keep the big picture heading in the right direction, keep the economy going forward and keep conducive conditions there for business—and, of course, all farmers are businessmen. As well as that we have introduced new export facilitators on the ground in the United States. There have been eight export hubs created in regional Australia—for example, in Bundaberg and Bega. As well as that we have established a number of new web sites for businesses in rural and regional Australia.

Senators might recall a question Senator Joyce asked me a couple of weeks ago where I made reference to 10 trade commissioners going to a field day in Gunnedah in New South Wales, joining our colleagues there—Senator Heffernan, Senator Nash, Senator Fierravanti-Wells and Senator Sandy McDonald, the Parliamentary Secretary to the Minister for Trade—where we assisted rural exporters in exporting overseas.

The Australian government have done a lot for country Australia that has also helped with rural and regional exports. We have been very proactive in the free trade area. That has meant big things for rural exporters. We are also looking at a new free trade deal with China, the world’s largest potential market. As well as that, the list of things that the Howard government have done to help rural Australia is limitless. We have put money into the Great Artesian Basin to protect that very precious water supply. We have had better telecommunications, as Senator Coonan has just mentioned, particularly for rural Australia. We have had drought relief. We have put a lot of money into weed control, something that costs Australian farmers some $4 billion annually. We have put a lot of money into the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality. We have put a lot of money into packages like the sugar packages to help with exports. We have kept unemployment low, inflation low and interest rates low. All of that has helped.

By contrast, the Labor Party have done absolutely nothing. We are never quite sure what their trade policies are about. They show no interest whatsoever in rural and regional Australia or farming matters. If we had listened to Labor, we would not have a free trade agreement with the United States or anywhere else at the moment. (Time expired)

**Telstra**

**Senator HURLEY** (2.21 pm)—My question is the Minister for Communications, Information Technology and the Arts. I refer the minister again to her private briefing with Telstra on 11 August this year. Can the minister confirm that its work force is ageing, it has not invested in training new workers, it has failed to replace obsolete equipment in its network and its IT systems are not capable of supporting new services? In light of Telstra’s refreshing honesty, I ask again: does the minister stand by her claim in the Senate on 16 August:

... it is fair to say that services are well and truly adequate.

**Senator COONAN**—Thank you to Senator Hurley for the question. Yes.

**Senator HURLEY**—Mr Deputy President, I ask a supplementary question. I refer the minister to recent media reports suggesting that Telstra is planning to slash its range of services by up to 80 per cent in a plan to reduce costs for privatisation.

**Senator Hill**—I raise a point of order, Mr Deputy President. I put to you that this is clearly a second question; it is not supple-
mentary to the answer that was given in any way, shape or form. It is therefore obviously out of order, and I invite you to rule accordingly.

Senator Chris Evans—On the point of order: first of all, the questioner has not had a chance to get the question out. But the fact that the minister makes a short response does not rule out a supplementary question. The minister provided a substantial response. She said yes, and therefore there are matters that can arise from that answer. One does not have to have four minutes of drivel to warrant a supplementary answer. I encourage the minister in future to keep her answers short. But, on the point of order, there is no point of order because it is quite in order to ask a supplementary question.

The DEPUTY PRESIDENT—There is no point of order. Continue with your question, Senator Hurley.

Senator Hurley—Does the minister approve of Telstra planning to slash its current range of services to Australian consumers and freeze the development of future products in order to prop up its share price for privatisation?

Senator Coonan—I cannot for the life of me see how that arises out of my earlier response, but what I will say in response to Senator Hurley is that the Labor Party need to get their stories straight on where they stand with Telstra. Do they want services in the bush or don’t they? Do they actually seriously suggest that what the government has announced is not an appropriate package to ensure that services not only are adequate but will continue to be adequate into the future? The Labor Party have got to stop making stunts of this kind, with their leader going around holding up tin cans to his ear in a phone box that was decommissioned three years ago by Telstra because no-one was using it. The Labor Party need to work out where they stand on Telstra and ask a sensible question.

Law Enforcement: Regional Security

Senator Ronaldson (2.24 pm)—My question is to the Minister for Justice and Customs, Senator Ellison. Will the minister update the Senate on the Australian government’s cooperative approach to improving law and order in our region?

Senator Ellison—This is indeed a very important question from Senator Ronaldson which, of course, relates to Australia’s mission in the Solomon Islands, to PNG and to East Timor. Recently, I visited Papua New Guinea with the Minister for Foreign Affairs, Mr Alexander Downer. The purpose of our visit was to put on track our enhanced cooperation program. As we know, there has been a decision in the Supreme Court of New Guinea—the Wenge decision—which resulted in the withdrawal of the Australian Federal Police from that country. We have now put a proposal to the government of PNG that we deploy up to 30 Australian Federal Police officers. They will provide capacity building for the Papua New Guinea police, and of course the target will be corruption. We are looking to boost the anti-corruption directorate in the PNG police and to assist them in setting up their own independent corruption commission, which even their Prime Minister has supported. They have been looking to have legislation.

As well as that, we have officials working there in the Attorney-General’s Department, Treasury, Finance and other departments—we have some 37 Australian officials doing an outstanding job. As well, we have four customs officers assisting with border control measures. This is the most ambitious program ever embarked upon by Australia in relation to our partnership with PNG. In fact, in the region, it is the most ambitious partnership ever engaged in between two coun-
tries. This is vital not only to the interests of Papua New Guinea but also to Australia. What we have here is—

Senator Conroy—Leave him alone, Bossie!

The DEPUTY PRESIDENT—Senator Ellison, as I said about another question that was being asked of another minister, is entitled to be heard in this chamber. Senator Conroy, if there are other parts of this chamber that you want to occupy yourself with, leave it till later.

Senator Conroy—Senator Boswell is standing over Senator Joyce!

The DEPUTY PRESIDENT—That is not germane to question time. Senator Ellison is entitled to be heard in peace and quiet.

Senator ELLISON—I mentioned the Solomon Islands. We recently had the second anniversary of our regional assistance group. That is a very important group, consisting of the Australian Federal Police, Australian defence forces and police from the South Pacific region. I note Senator Minchin attended that celebration recently. We have seen fantastic results in the Solomon Islands in relation to that program by our police and defence personnel. Some 7,000 arrests have been made. We have seen a return to law and order which simply was not previously there in the Solomon Islands. Of course the people of the Solomon Islands support very strongly our presence there, and we will continue to see the job through to ensure that it is fulfilled successfully.

It is of note that recently we saw 150 officers who have now entered the Royal Solomon Islands Police academy. That is a great step forward in capacity building for the Solomon Islands police force. That is what we want to see: we want to leave behind the capacity of the police force to train their own personnel so that they can then go on to carry out those vital policing duties that will see law and order prevail into the future. We are there for the long haul and we are experiencing great success. It is a tribute to the Australian men and women who are serving there.

I also mentioned East Timor. We continue to serve with the United Nations there and we have our own program of assistance with policing. Of course the job there is not yet done, and we will continue to help in that essential capacity building for the police in East Timor. So in the region to our north we are engaged in vital activity in ensuring that law and order is returned and will continue.

Immigration: Asylum Seeker

Senator Nettle (2.29 pm)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs and it relates to the botched deportation of an asylum seeker from Australia last Wednesday which saw the asylum seeker that the government was trying to deport returned to Australia after the intervention of the United Nations. Minister, is this the first time that the government has been caught red-handed breaching an interim request from the United Nations Human Rights Committee not to deport an asylum seeker? How much taxpayers’ money has been spent on this botched deportation?

Senator VANSTONE—By way of introduction to my answer, I refer the senator to the Palmer report and, in particular, to page 57, where he says:

Immigration detention policy is an emotive subject. But overstatement does not make a case and confuses constructive reform.

I quite specifically draw Senator Nettle’s attention to that because I do not know how many times she has fallen for that trap.

Senator Bob Brown—That’s your opinion.

Senator VANSTONE—Yes, that is my opinion. I was asked the question and I am
given my opinion, if that is all right with you. I know yesterday that you sought to be the President. You would like a whole lot of roles in life, but if you do not mind I will try to answer the question that your colleague has asked me.

The DEPUTY PRESIDENT—Senator Vanstone, address your answer to the chair.

Senator VANSTONE—Secondly, I draw the senator’s attention to a press release put out by the UNHCR, welcoming the return of the Palestinian man, welcoming the government’s decision to revoke the removal and, in fact, pointing out that Australia’s reconsideration of the case followed the provision by the UNHCR on Saturday of ‘significant new country of origin information’. In other words, the new country of origin information, agreed by the UNHCR, was not provided until Saturday. I think that is something that the senator might reflect on: the UN is working in cooperation with us in this matter.

It is true, as I am advised, that in early 2004 there was an attempted removal of this man which was aborted. There was then an appeal or claim put in to the United Nations relevant committee, and that claim still sits there. I note that some people say that processing of claims for asylum seekers should be dealt with more promptly. It gives me the opportunity to point out—and I will be raising this with the UN—that they have had this claim since 2004 and it is now September 2005. We cannot allow a process whereby the simple putting in of a claim to a UN committee means that you can stay in Australia indefinitely, until the UN committee gets to look at it.

I also point out that, slightly different from what she has put in her question, Senator Nettle’s assertion on radio today is that the government has been caught red-handed—it adds a bit of colour, I suppose—breaching the International Convention on Civil and Political Rights. That is not my view. The decision to refer complaints and allow that process is a voluntary one. They do not have the force of law—in other words, it is the case that a UN committee could make a recommendation and a country is not in fact obliged to take note of that recommendation. A country is not obliged to do that. So we voluntarily subject ourselves, the nation, to that kind of assessment. If we do not agree with the assessment, that will be made public and there will be a public debate about it, and the government of the day will have to answer the case. But it is not true that the committee’s decision, if it ever makes one, has the force of law. We have a process for deciding, when there is an interim measures request, to proceed with removal, which requires not only me but the Attorney-General and I think the Minister for Foreign Affairs to agree. In this case, having had the matter since early 2004 and it now being September 2005, and the proper processes having been followed under Australian law, we decided to proceed. (Time expired)

Senator NETTLE—Mr Deputy President, I ask a supplementary question. I thank the minister for confirming that those ministers decided to ignore the interim request not to deport the man. Minister, can you confirm whether or not this is the first occasion on which the Australian government has ignored an interim request by the Human Rights Committee which said, ‘Do not deport this man until we finish dealing with his case’? Is this the first time that you have deported someone whilst you had in place that interim request? Is it not also true that to ignore that interim request, to breach and to deport him, is to breach this request which falls under the First Optional Protocol of the International Convention on Civil and Political Rights? That is why I make the claim that you were caught red-handed deporting someone
against an interim order which said, ‘Do not deport him.’ To breach that order is to breach the International Convention on Civil and Political Rights. (Time expired)

Senator Patterson—The light didn’t come on; it was a very long minute.

Senator Vanstone—I heard Senator Patterson say, ‘The light didn’t come on.’ I am not sure whether she meant with respect to the clock or Senator Nettle’s brain! That might have been ungracious, Senator Nettle; I take that back unreservedly. I understand your interest in this matter. It is just frustrating that you consistently overstate or misstate the case in order to suit the case that you want to put. I refer you back to my earlier answer. I believe that answer is correct. As to whether this is the first time, I am not sure. I will take some advice on that and get back to you.

Pensioners

Senator Barnett (2.35 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 how the Howard government’s strong economic management is delivering record assistance to Australian pensioners? Is the minister aware of any alternative policies?

Senator Patterson—I thank Senator Barnett for his question. We acknowledge the enormous contribution that older Australians have made to this country and to the way of life that we now enjoy. We have put in place a range of initiatives to support them. When you run a strong economy, you can give something back—more money in people’s pockets and better access to concessions. I am pleased to announce today that from 20 September pensioners will get an ongoing boost in their pension payment, together with the payment of the second instalment of the utilities allowance and the telephone allowance for eligible telephone subscribers. This is worth up to $83 extra for pensioners this month.

As announced in the last election, the government is now paying the utilities allowance to people of age pension or veteran pension age receiving income support. The September instalment of the utilities allowance has increased due to the increases in the consumer price index and it will be $50.60 for a single person or for an eligible couple combined. It is an important allowance, an important part of the Howard government’s commitment to provide additional assistance to seniors and older Australians with utility bills such as electricity and gas.

It is in sharp contrast to the Victorian Bracks government’s mean and nasty measure in taking away a concession for car registration that means they have ripped $270 million out of the pockets of pensioners when those pensioners could ill afford to pay for their car registration. The Labor Party in Victoria has ripped that out of pensioners’ pockets. You see quite significant differences between the states in the concessions they give to pensioners across the country. Pensioners with a telephone will this month receive their quarterly payment of $20.40 for a single person or an eligible couple, and the telephone allowance provides help for eligible subscribers maintaining a telephone service.

The third increase for pensioners is the increase from indexation. I am pleased to announce that there will be a further $12 increase in the maximum rate of the single pension per fortnight from 20 September. The maximum partnered pension will increase by $10.50 a fortnight to each member of the couple. Since March 1996 single and partnered pensions have increased by almost 40 per cent. Part of this increase is due to the
fact that the Howard government has guaranteed through legislation that the maximum single rate of the pension will be set to at least 25 per cent of male total average weekly earnings.

When you have been around this place long enough you have a history of Labor’s policy and promises. They promised three elections in a row to increase pensions by male total average weekly earnings. What did we see? Nothing. We saw no action on the part of Labor. They promised to take all pensioners out of the tax system and the day after the election’s results were out the then minister came out and said that they had made a mistake. One day after the election results were announced the then minister came out and announced a change of mind. What did they do for pensioners? They said, ‘We will treat unrealised capital gains on shares as income for the purpose of pensions.’ It was totally unworkable. We told them that it was unworkable and they went ahead and did it. That is the sort of policy that pensioners got from the Labor Party but because we have indexed pensions by male total average weekly earnings, single pensions increased by over $50 per fortnight and partnered pensions by $43 per fortnight more than they otherwise would have under Labor’s indexation policy. That means that pensioners each and every fortnight get $50 more for single pensioners and $43 each more for partnered pensioners than they would have under Labor’s indexation. (Time expired)

Telstra

Senator O’BRIEN (2.40 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. Is the minister aware that Telstra shareholders have lost an average of $190 million a day in shareholder value since Sol Trujillo was appointed as the CEO of Telstra? In the face of this performance, does the minister stand by her decision to approve the appointment of Mr Trujillo as the Telstra CEO? Does the minister stand by her comments to this Senate that Mr Trujillo is ‘an outstanding CEO’ and, further, that Mr Trujillo is ‘doing a fine job’?

Senator COONAN—Thank you, Senator O’Brien, for your question. Yes, of course, Mr Trujillo is a very fine executive and he needs to continue to look at the operational side of Telstra. He needs to leave the regulatory side to the government—

Senator Conroy—Will he speak to you?

Senator Carr—Don’t you think he should have left the knuckledusters at home?

The DEPUTY PRESIDENT—Order! Senator Conroy and Senator Carr!

Senator COONAN—He needs of course to focus on Telstra’s core business. The situation with Telstra is that the government—

Opposition senators interjecting—

Senator Hill—Mr Deputy President, I rise on a point of order. The question is from the opposition yet the interjections have been constant. If the opposition wants to ask a question then they should give the minister the courtesy of listening to that answer. I ask you to bring them to order. It has been happening constantly today and I think it is about time, with respect, that you intervened.

The DEPUTY PRESIDENT—I have heard your comments, Minister.

Senator COONAN—The government will be introducing a package of reforms to enable the government to get rid of its overhang in the biggest company in Australia—and that is long overdue. Indeed, the source of all the problems that Telstra has comes down to the fact that it cannot really operate competitively while it has an overhang of government ownership. While it has a majority of government ownership Telstra is seri-
ously inhibited in what it can do. If the Labor Party were serious about what they are putting forward today in both the House and the Senate, they would get behind the government’s plans—

Senator Conroy—He’s not speaking to you, is he?

The DEPUTY PRESIDENT—Order, Senator Conroy!

Senator COONAN—to divest itself of majority ownership in Telstra so that it can continue to make the investment that it is necessary for Telstra to be competitive—

Honourable senators interjecting—

The DEPUTY PRESIDENT—Order! Senator Coonan is entitled to be heard in the quiet of this chamber as she gives her answer. That is common courtesy.

Senator COONAN—Telstra will never achieve its full potential until it can act as a privatised organisation, one that is free to raise capital, to make proper management decisions in the interests of its shareholders without having to have reference to the government in the decisions that it needs to make. If the Labor Party were really honest about their position they would acknowledge—as they did when they privatised the Commonwealth Bank, as they did when they privatised Qantas—

Senator Patterson—And CSL.

Senator COONAN—and CSL, as Senator Patterson says, and as they privatised everything that moved, and did it by stealth—that this government has taken the policy decision to privatisate Telstra now to four elections and the government has been returned on that very clear policy. It is quite different from the Labor Party that privatised by stealth.

It is about time that the Labor Party, instead of worrying about what is happening with Telstra now, get behind the government in its desire to be able to release Telstra from the burden of government ownership so that it can get on with making the investment, get on with providing services for Australians and so that it can be competitive along with 100 other telecommunications providers in a properly regulated competitive environment that this government has had the courage to put in place. We have not wimped out on the decisions like the Labor Party have. We have faced up to what is going to be in the interests of consumers and in the interests of the telecommunications industry.

Senator O’BRIEN—Mr Deputy President, I ask a supplementary question. I note that the Minister declined to endorse Mr Trujillo as continuing to do a fine job and had a number of criticisms of his performance, but is the minister aware of recent media reports that indicate that the Telstra board is supportive of the tactics of Mr Trujillo? Given that the Telstra AGM is scheduled for October, as the majority shareholder—contrary to the minister’s wish—is the Minister satisfied with the performance of the board and, in particular, its chairman, Mr McGauchie? As the minister represents the Australian people as a shareholder, will she express a view on the question and not dodge this one?

Senator COONAN—I do not dodge any questions. I have not noticed myself actually stepping back from questions. What this government will do is continue to make the case that what is important for the long-term interests of the Australian taxpayer, the Australian consumer and the telecommunications industry, is that we privatisate Telstra. We know the Labor Party would do it in a second if they were in government. They could not just stand there and do nothing; they would privatisate Telstra along with all of the other things that they would privatisate, but they would do it by stealth.
Mr David Hicks

Senator STOTT DESPOJA (2.46 pm)—My question is addressed to the minister representing the Attorney-General. I ask if the minister is aware of comments that have been made by a number of people, specifically the Law Council of Australia, that recent changes that have been made to the US military commission process are ‘totally inadequate’ and basic flaws still exist? Are the minister and the government completely satisfied that the process as amended will now allow David Hicks to receive an open and fair trial?

Senator ELLISON—I am aware of the Law Council’s comments in relation to Mr Hicks. Of course, the Australian government has maintained an ongoing interest in this matter. We have not only visited Mr Hicks but also, of course, there has been the recent inquiry in relation to alleged maltreatment of Mr Hicks which we have monitored closely. That report has not produced any evidence of any maltreatment in relation to Mr Hicks. The government is satisfied that the military commission process is appropriate. Military commissions have a very long history, going beyond World War II in fact into the 19th century. They have long established practices. The proposal for Mr Hicks has all the normal features of a criminal trial with the onus of proof beyond a reasonable doubt being on the prosecutor. We have obtained concessions from the United States in relation to the privileged communication between Mr Hicks and his lawyers and also, from the outset, that the death penalty would not apply, because that was the first concern that we had. As well as that, there will be observers for the hearing. As I understand it, the Law Council has sent an observer to Guantanamo Bay. You will recall that the proceedings were delayed somewhat by a proceeding on the mainland of the United States in the Supreme Court which challenged the validity of the military commission. Of course the decision has been made that the process does have validity and will continue. So we can, hopefully, now get back to the issue of the trial of Mr Hicks and it proceeding without delay. That was something which the Attorney, the Prime Minister, the Minister for Foreign Affairs and I have raised on visits to Washington. We are satisfied that the military commission process is an appropriate way to proceed. It does have established procedures which have the features of a criminal trial in Australia. We have to remember that this is in another jurisdiction and that Mr Hicks was apprehended in the field of conflict in circumstances which were unusual. The military commission approach is one that we have endorsed.

The government will continue to monitor the situation closely. Mr Hicks has had a vigorous defence from the counsel appointed to him. I think Major Mori established that when he came to Australia. I think he came on two occasions, carrying out investigations which were for the purposes of defending Mr Hicks. He was vigorous in his defence of Mr Hicks and quite acerbic in his comments in relation to the prosecution by the United States. That came from a military officer in the United States Marines, from memory. When I visited their legal section in Washington, I was impressed by their independence and the way they carry out the defence of people that they are to appointed to defend. In fact, the rules of the commission state that the defence must conduct a rigorous defence of the person concerned.

Senator STOTT DESPOJA—Mr Deputy President, I ask a supplementary question. I thank the minister for his answer and ask him to clarify that when he says these are established procedures that the government says are appropriate and that the government has endorsed, to use the minister’s language, does that mean that our government thinks it
is appropriate that these commissions cannot give a guarantee that they will preclude the use of evidence that is obtained under coercion? Does the government think it is appropriate for commissions to operate without an independent judiciary in charge of the commissions, without rules of evidence and without an independent appeal process? Given that these aspects and deficiencies of the commissions have been denounced almost universally, is it the case that our government thinks that that is appropriate?

Senator ELLISON—As I mentioned, the burden of proof, which is a rule of evidence that applies, is on the prosecution to a standard of beyond reasonable doubt. There is a presumption of innocence; there is a right to cross-examine. In relation to any evidence which is adduced by the prosecution, I understand that challenge can be made by the defence concerned. It is always a question for a tribunal hearing the matter as to the probative value of that evidence and its admissibility. That will be determined by the tribunal, which is made up of legally qualified people, I understand. That tribunal can make that judgment in the context of the court hearing. The admissibility of evidence is something which is open to our courts, and the burden and standard of proof under our laws of evidence are, as I say, features of our criminal jurisdiction which are contained in the military commission rules.

Telstra

Senator CONROY (2.53 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. Can the minister confirm that the government intends to allow Telstra to write the rules for the local presence plan and competition framework that will apply post privatisation? Can the minister also confirm that these rules will not be finalised by Telstra’s new management for a number of months? Is it not true that senators voting on the sale legislation this sitting will have no idea of what these rules will look like at the time of the vote? Why is the minister desperately trying to rush through legislation for the sale of Telstra before the details of the regulatory regime have been finalised?

Senator COONAN—I am happy to confirm that Senator Conroy is wrong on most of those contentions except that operational separation will be enforced as a licence condition and some negotiations in relation to some parts of the licence conditions are ongoing but the principles of operational separation will be clearly spelt out in the legislation. Senator Conroy will even have an opportunity to have a look at that in the committee stage. The principles of operational separation are very clear and they certainly will not be allowing Telstra a totally free hand in writing its own rules. Obviously, it is a model that has been developed with Telstra’s cooperation, which is one of the reasons why it will not affect Telstra’s long-term interests. It has obviously been developed as a voluntary process with Telstra’s close cooperation. In fact it formalises a lot of the things that Telstra already does by way of accounting separation and other regulatory approaches.

Senators will have an opportunity to properly scrutinise what operational separation is all about. It is a reasonable measure to ensure that Telstra treats its competitors fairly. It is something that I would have thought the Labor Party would have encouraged rather than criticised. What we on this side of the chamber in the government want, in the interest of all Australians and in the interest of lower prices and better services for consumers, is to ensure that there is a proper regulatory environment into which Telstra will be sold to get rid of the government overhang so that the government will then be able to regulate
in a fair and appropriate way for all telecommunications providers.

**Senator CONROY**—Mr Deputy President, I ask a supplementary question. Can the minister confirm that under her proposed regulatory regime the minister will have absolute discretion over the form of the operational separation framework and that the ACCC will be excluded from the process? If this is the case, why is the minister trying to cut the ACCC, an independent regulator, out of the process? Does the minister intend to simply negotiate a closed door deal over regulation with Telstra once the government has the authority for the sale?

**Senator COONAN**—Senator Conroy should stop listening to leaks and stop taking briefs from people peddling total nonsense. Obviously, the ACCC has to have an enforcement role.

**Great Barrier Reef**

**Senator TROOD** (2.56 pm)—My question is to the Minister for the Environment and Heritage, Senator Ian Campbell. Will the minister inform the Senate of the environmental health of the Great Barrier Reef under the management of the Howard government? Is the minister aware of any alternative policies?

**Senator IAN CAMPBELL**—Thank you to Senator Trood, a Queensland Liberal senator who has taken an interest in the Great Barrier Reef. Although the Great Barrier Reef does face a number of threats—global warming; fishing, which the government has brought under control with the Representative Areas Program; and the quality of the water in the reef lagoon due to nutrient and sediment flow-off from activity in the hinterland of the reef. In fact a report that I will release today shows that not only is the environmental performance of the reef improving in many areas because of the environmental policies pursued by this government over nine years, but also there is an intrinsic link between the environmental health of the reef and the economic health of the economy around the Great Barrier Reef Marine Park.

The Access Economics report that we have commissioned to look at the economy of the Great Barrier Reef Marine Park area shows that the industry in the reef, mostly from tourism but also from fishing, recreational fishing and a range of other important activities, is valued at just under $6 billion and employs 63,000 people. The economic performance of this world renowned environmental icon shows an intrinsic link between good environmental management and good economic outcomes. Many of the senators from Queensland, both Liberal Party and National Party, will know that looking after the Great Barrier Reef and ensuring that the marine park is a true multiuse park with sustainable fishing and access for recreational fishermen is good environmental management and is linked to the economic performance of that area.

Senator Trood asks whether there are any alternative policies. There was an alternative policy put forward by the Australian Labor Party prior to the last election. Against the background of a coalition government—first under Senator Hill’s leadership as environment minister and then under Dr David Kemp’s leadership as environment minister, followed, of course, by my own entry into that portfolio—we did in fact hold an anniversary for the Great Barrier Reef Marine Park Act. You would know that, Mr Deputy President, as a Queensland senator. The act was put into place by former Prime Minister Gough Whitlam, who I invited to the function, and it was supported by former Prime Minister Malcolm Fraser. We celebrated with Senator Hill and David Kemp this glorious achievement of 30 years of environmental management—bipartisan up to the last elec-
tion, I might say—at the reef headquarters in Townsville last week.

At the last election Labor announced that they would tear up the boundaries and the 33 per cent protection that this government gave the reef. They said they would review the boundaries, tear up the boundaries and throw open the protection that was put in place by the coalition government. The coalition government stands by the protection of the reef. It stands by the structural adjustment package we put in place to help out the fishermen and the recreational and land based businesses. We call on the Australian Labor Party, Mr Beazley and Mr Albanese to tear up the Latham policy and stand by the historical protection that the Great Barrier Reef has received from the coalition in government.

Telstra

Senator WEBBER (3.01 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. Can the minister confirm that, despite the gross mismanagement of the government’s plan to sell Telstra to date, it still intends to rush the sale through parliament in the next two weeks? Can the minister confirm that the government intends to give the Senate communications legislation committee just six days to review the five pieces of legislation that make up the sale package?

Honourable senators interjecting—

The DEPUTY PRESIDENT—Order! There is general noise on both sides.

Senator COONAN—I thank Senator Webber for her question. I have forgotten what it was now with all of that noise! The situation with the sale of Telstra is that the normal processes of the Senate will be followed. The only thing I really wish to add in answer to Senator Webber’s question, in the interests of brevity, is that the only party that has comprehensively mismanaged telecommunications in this country is the Labor Party. They do not have a clue. They do not have a policy.

Senator Sherry—After 9½ years you come up with that excuse?

The DEPUTY PRESIDENT—Order, Senator Sherry!

Senator COONAN—I know this always gets them very excited. They do not like the fact that they dropped the ball on telecommunications and presided over a cosy duopoly. They wimped all of the tough decisions and they have left it to this government to clean it all up, have a vision and actually deliver a $3 billion package in the interests of Australians both now and into the foreseeable future.

Senator WEBBER—Mr Deputy President, I ask a supplementary question. In the interests of following due Senate process, I refer the minister to her comments on 17 October 2004 that the government would not abuse its Senate majority to force through unpopular legislation such as the sale of Telstra. At the time, the minister stated:

... we have to take a very measured approach ...

Senator Hill—Mr Deputy President, I rise on a point of order. This is an interesting little speech, but it is certainly not a supplementary question. It is a bit cheeky to seek a supplementary question five minutes after the hour; nevertheless, because we are not an arrogant government, we allow more than reasonable opportunity. The reciprocation should be little less abuse of that opportunity. But perhaps the honourable senator might attempt to ask a supplementary question to at least nominally come back within the standing orders.
**Senator Chris Evans**—Mr Deputy President, on the point of order: this is a perfectly legitimate supplementary question. There is no point of order. Senator Hill may regard it as ‘cheeky’ for the opposition to ask questions, but that reflects his arrogance and the fact that he reduced the number of opposition questions that are allowed. He has allowed us some questions and we are very grateful for his indulgence. But he is so arrogant and out of touch that he refuses to allow questions. Senator Webber is within her rights to ask a supplementary question until Senator Hill moves to change the standing orders.

**The DEPUTY PRESIDENT**—There is no point of order. Senator Webber, you have 32 seconds to conclude the asking of your question.

**Senator WEBBER**—Thank you, Mr Deputy President. At the time, the minister said:

... we have to take a very measured approach ... and that—

... rather than rushing to sell Telstra, we’ll take our time.

Can the minister inform the Senate why she has now abandoned this position and is attempting to rush through this extremely significant legislation?

**Senator COONAN**—I do not quite know how I can gently point this out to Senator Webber: it has taken nine years to get this legislation to the point where we can now actually get rid of the government’s overhang in Telstra. The Senate will follow due process.

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

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

**Telstra**

**Senator CONROY** (Victoria) (3.06 pm)—I move:

That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Coonan) to questions without notice asked today relating to Telstra.

What a complete and utter fiasco. I think it has been best summed up by Michael Sainsbury today. In talking about Mr Trujillo, he said:

On the upside he has cracked open the conspiracy of silence that has shrouded Telstra for half a decade.

I hope you do stay, Senator Joyce. I hope you are not dragged out of the chamber like you were during question time and on previous occasions. There he is, being dragged out again. Michael Sainsbury continued:

It is a conspiracy that had the tacit consent of government, Telstra’s board and management and the global investment banks. The aim was to get Telstra ready for sale in an orderly manner and keep the company’s share price as high as possible.

Things were humming along OK until Trujillo’s arrival. With no hand in glove relationship with Canberra he has made public, frank and honest comments about the state of the telco’s business, and it’s not pretty.

Is that not the truth? Mr Trujillo, upon opening up Telstra’s books when he arrived, discovered that Telstra had gone out of its way to underinvest in its network, deliver a second-class service and not provide cutting-edge technology to the Australian public. He also discovered that it could use its money to buy back its own shares, engage in high-dividend payouts and, on top of that, special dividend payouts. This is a policy carried out with the connivance of the government for one reason and one reason only: the govern-
ment wants to keep Telstra fattened up for sale. It has engaged in all of these policies, designed to make sure that Telstra’s share price is inflated, so that it can get as much as it can when it flogs off Telstra.

But the honesty of Mr Trujillo has ripped the fig leaf off John Howard and Minister Coonan. He has exposed the situation for what it is. The document that I sent to the Stock Exchange today blows the whistle on the conspiracy. A couple of weeks ago, on 11 August, Mr Trujillo handed to the Prime Minister a document that blew the whistle. It was a document that said: ‘We are paying dividends out of reserves and borrowings. This is unsustainable.’ The Telstra board has said that it is unsustainable to keep propping up the share price in the way this government has wanted it to do. The government knows this is the case. It knows this is the board’s view. And what has the government done? Nothing.

Mum and dad shareholders out there today are watching their share price tank because this government is sitting on information that should be in the marketplace. It has been leaked to journalists. It has been given to the major shareholder. It has been leaked around to some institutions. That is why the share price is tanking—that and the information supplied by Telstra yesterday about some of its revenue forecasts. That is what has happened. But has there been a statement to the Stock Exchange so that mum and dad shareholders can get the same fair go that others are now getting? The government, John Howard and the Minister for Communications, Information Technology and the Arts, are sitting there mum. This is a disgrace. While the share price is falling, the wealth of mums and dads in this country is suffering, because this government cannot afford to have the truth exposed that it has been engaged in propping up the price of Telstra’s shares just to flog it off.

What Mr Burgess has said may be harsh words. They have definitely upset the minister and the Prime Minister. In fact, things are so bad, I understand, that Mr Trujillo and Minister Coonan are not speaking. Instead of phoning the relevant minister about the fact that they were going to make a Stock Exchange announcement, who did Mr Trujillo phone? Senator Minchin. He did not ring Senator Coonan, the prevailing minister. They are not even speaking, things are so bad. Because Mr Trujillo continues to tell the truth: Telstra have not done the job. We have 141,000 phone lines in Australia with faults. Is that up to scratch? The Prime Minister and the minister for communications say that services are adequate; services are up to scratch. Five years of rhetoric has been blown away. (Time expired)

Senator EGGLESTON (Western Australia) (3.11 pm)—Senator Conroy talks about the government’s conspiracy to sell Telstra. Well, it is some conspiracy. This has been on the agenda for nine years. This legislation has come to the Senate twice before. There have been two very extensive inquiries into the sale of Telstra. It has not exactly been a secret that this government was going to sell Telstra, Senator Conroy. It has been on the agenda of the Howard government since it was elected in 1996. So, far from being a secret conspiracy, it has been one of the most open and well-known policies of the Howard government.

The reason for wanting to sell Telstra is very simple and very clear, and that is that the government do not need to own it to regulate it. We are providing a very comprehensive set of regulations which will provide for a very effective telecommunications service to the people of Australia and, in particular, will protect the interests of the people in regional Australia as part of the package for this sale. Furthermore, the government consider the sale of Telstra to be in the inter-
...ests of the company, its shareholders, the wider telecommunications industry and, as I have said already, most importantly of all, the people of Australia.

There are a number of reasons for supporting the sale of Telstra, which Senator Conroy, I am sure, is well aware of. Firstly, the private sector is much better placed than the government to make judgments about the risks of share ownership. Secondly, it will allow Telstra to realise its full potential as one of Australia’s most important companies in the information age and to make operational and investment decisions on the same basis as its competitors, such as Optus and AAPT. Thirdly, as I have said already, it will remove the inherent conflict of interest that exists when the government has the job of setting the rules for all phone companies while at the same time having a direct financial interest in the biggest one of all.

That is the case for selling Telstra. It is a very good case and a very sensible case. When he was Labor communications minister, Kim Beazley corporatised Telstra and required Telstra to act like a private company. Now we are making it a private company so that it can realise its full potential in the market and provide adequate services, good services and even better services to the people of Australia.

One of the great achievements of the Howard government in telecommunications has been the deregulation of the telecommunications industry. When we came to office there was one telco. There are now over 100 telcos providing services to the Australian people, offering competition and offering a diversity of services. As a result of that, better services and lower prices are being provided to the people of Australia. Telecommunications prices have dropped dramatically as a result of competition.

In particular, the people of regional Australia are much better off than they ever were under Labor. Labor had no real interest in the people of regional Australia but, as a result of the programs that the Howard government has introduced, such as Networking the Nation and encouraging competition, telecommunications services in the regions are certainly much better. In particular, we now for example have Optus offering satellite based broadband across the whole of this country, so no-one anywhere in this country should be without access to broadband. Telstra, through Telstra Country Wide, has responded to that competition and it has greatly improved its services in the regions. In contrast, the ALP’s record in government on telecommunications was particularly appalling. It was very bad and Australia was a long way behind. Let us take the next step, and do it quickly, and make Telstra a fully privatised company so that it can operate in the marketplace and can offer better services to the people of Australia.

Senator HURLEY (South Australia) (3.16 pm)—I think Senator Eggleston nailed the noble aim: you do not need to own Telstra, or any telecommunications company, to regulate it. Senator Coonan, the Minister for Communications, Information Technology and the Arts, referred to that in her answers to questions. She said that Telstra will be held to its service guarantees. But that is exactly the problem that the current CEO of Telstra is highlighting: if Telstra is held to those service guarantees and to the regulations that the government has announced, its share price is going to drop and it is going to go broke. The government has to be held accountable for that.

The government might have noble aspirations but they are not going about fulfilling them very well. They might have had nine long years during which they wanted to sell Telstra but they still have not managed to get
the sale process right. They are facing a number of questions to which they do not seem to have the answers. There are questions about whether to put in regulations which are sufficient to buy The Nationals’ vote on this or whether to help ordinary Australians who are currently shareholders in the T2 package by having lighter regulation of Telstra.

Another question is: do they expose Telstra to true competition or keep some monopoly there so that the Telstra share price is held up and they get the kind of sale price that they want for their own shareholding? They have questions like whether they enshrine the separation in legislation or whether they succumb to pressure to put it in regulation to give the company more flexibility down the line. The key question, and the reason why the Labor Party has consistently opposed the sale of Telstra, is: do they sell Telstra and lose control of the company or do they keep control of Telstra and keep control of vital infrastructure and vital communications technology in this country?

They are the kinds of questions that they appear to have not been able to resolve. That is a result of continuing mismanagement and of trying to prop up the share price of Telstra while dealing with National Party objections. They are talking about enforcing regulation and they are talking about enforcing service guarantees, but their policies have reduced Telstra to a state where Telstra are saying that it is almost impossible to fulfil those because the service is so run down, because the equipment is so old, because the workforce is ageing and because Telstra have failed to replace obsolete equipment. Telstra have also put themselves in a position where they are not able to innovate as well as they would like because of both their run-down equipment and their ageing workforce.

For the minister to say that services are well and truly adequate is laughable. The new CEO of Telstra, Sol Trujillo, has well and truly exposed that. The minister chooses to deny it. She chooses to try to push ahead to retain control of Telstra by regulation and by apparently wanting to put a couple of directors on the board, and yet still sell the government’s shareholding in Telstra and expose it to privatisation. It is impossible to do everything that the government says it wants to do. The government is promising all of these conflicting things because it wants National Party support in this chamber to sell Telstra. The National Party appear to have rolled over on that and to be supporting the sale, even though it will disadvantage people not only in regional areas but also right around Australia. That is well illustrated by the fact that people in this chamber will not see the details of the regulations that are meant to control Telstra before they are required to vote on the sale. (Time expired)

Senator HUMPHRIES (Australian Capital Territory) (3.22 pm)—I will make one concession to Senator Hurley in this debate. She obviously believes that Labor have taken a quite different approach to this issue at this point in time. But had Labor been re-elected back in 1996, we would not be having this debate today, because they would have sold Telstra a long time ago, like they sold the Commonwealth Bank, Qantas Airways, the Commonwealth Serum Laboratories and so forth. It would have been long gone by now, and we would not be having this debate.

Let us look at some of the arguments that have been put forward in today’s question time by the opposition. They say that Telstra services are inadequate and that the fact that 140-odd thousand phone lines at any particular point in time are experiencing service difficulties proves that Telstra services are inadequate. I will say a couple of things about that. First of all, in a country where
there are 20 million people, and probably about as many mobile and fixed phones, it would not be particularly surprising that that number of phone lines at any given point in time might be experiencing service difficulties. That is no great revelation, I would have thought.

In arguing as they have done today that the services provided by Telstra are inadequate, the fact is that the opposition are ignoring the clear evidence about what Australians think about the services that Telstra offers. Only three weeks ago in this place the opposition were quick to point to opinion polls which demonstrated that Australians did not want the government to sell Telstra. Fair enough. There was fairly clear evidence in that opinion poll on that question. I concede that. But that same opinion poll—I think it was by Newspoll—also indicated something else about what Australians thought of Telstra—that is, they thought that the standard of service being offered by Telstra was pretty good. That was the view of both metropolitan and country Australians, and it was a view quite consistently held around the country irrespective of the region. Australians felt that there was a high-quality service being offered by Telstra.

That does not gel with what has been said today in the course of this debate and in the course of question time today; it gels with a campaign which is designed to run down Telstra and to talk down its shares. I have to say it is a matter of great discredit to the Australian Labor Party that in that respect it runs along the same pathway and indeed holds hands with some elements of Telstra’s management who at the present time are apparently going to some pains to put pressure on the government by talking down the value of Telstra shares to get a better deal out of the rest of Telstra.

That is a shameful position for the opposition to take, and a pretty discreditable one for the management of Telstra to be taking as well. To be quite frank, I think that for an executive of the level of the gentleman from Telstra to talk down the value of Telstra shares in the way that he did this week is pretty disgraceful. The fact is that the reason for that reaction from Telstra—I am not sure what the reason for the reaction of the Labor Party is—is that they do not like the conditions that are being imposed on them by the federal government as a precursor to privatisation. They do not like the requirement to provide services into regional and rural Australia at the standard which Australians have come to expect around the country. They do not like the idea that there are limits on foreign ownership. They do not like the idea that they are expected to provide for directors on their board that have experience in regional and rural Australia’s problems. But these are the requirements that the government will unequivocally place on them, because we believe that standards must be set.

We also believe that the most important standard to be set is that government should get out of the business of closely controlling all the elements of one particular player in the marketplace—that is, Telstra—and get back into the business of regulating the whole of the marketplace on an even-handed basis. That is the job of government. We are not doing that job properly if we have one of those players, albeit the biggest player, sitting there as an asset of the Commonwealth government. It is a clear conflict of interest, and our plans will remove that conflict of interest and create the proverbial level playing field. (Time expired)

Senator WEBBER (Western Australia) (3.27 pm)—I am pleased Senator Humphries acknowledges that part of this debate has to be about standard setting, because in her answers today the Minister for Communica-
tions, Information Technology and the Arts revealed that the Howard government has no intention of guaranteeing a decent level of telecommunications service to the Australian people. Although the minister wants to ram the highly controversial full privatisation of Telstra through the parliament in record time, the regulations that will govern its competition—

Senator Hill—Nine years!

Senator WEBBER—Yes, record time: six days consideration for five pieces of legislation. It is record time, Senator Hill. Although that is what the government aims to do, the regulations that will govern its competition with other service providers will not be ready for some months. Yet again, we see the government rushing through with half the job but not coming forward and setting out those standards for all of us to see. What is more, those regulations will be drafted with the assistance of Telstra—the same Telstra that is baulking at the government’s supposed requirements.

This is an absolute recipe for disaster. Telstra’s directors have mounted an aggressive campaign for lax regulations. As has been referred to by Senator Conroy, Phil Burgess, who heads Telstra’s regulatory unit, reportedly told an audience at the National Press Club that Telstra was so heavily overregulated he would not even recommend the stock to his mother. It will be interesting to read that assessment in the T3 prospectus when it comes time for the sale! Telstra’s directors are strongly opposed to providing a decent minimum level of service, and they are strongly opposed to regulations that guarantee that service. These are the people who will do a secret backroom deal with the minister on regulation; that is, of course, after the National Party has sold out on its constituents. The National Party will vote for the privatisation of Telstra without knowing how it will be regulated. What a disgrace.

It is all well and good for the likes of Senator McGauran to tell the press that the regulations will be made here in parliament and in the Senate and not outside in the boardroom. But the regulations are going to be drafted with the assistance of Telstra, and we have learnt today that what Senator McGauran has said is not the case. The parliament and the Senate will ram through the sale of Telstra before the regulations are ready. The National Party will pat itself on the back for squeezing out a few measly dollars for infrastructure and then a couple of months down the track Telstra will draft the regulations.

But it is not just the Queensland Nationals and not just Queenslanders, nor is it just Australians in rural and regional areas, who will suffer when Australia is privatised. We have read in the newspapers this week that Mr Sol Trujillo plans to slash services by up to 80 per cent, a plan that will affect all Australians. Mr Trujillo also plans to slash as many jobs as he can. The result will be even worse customer service and even worse responses to complaints and problems, and that result will be felt by all Australians. In my home town of Perth the situation is particularly dire. The West Australian on 22 August this year quoted one of Australia’s leading telecommunications analysts as saying:

To be honest, the situation in Perth is worse than regional Australia—
it is a pity that Senator Eggleston is not here to hear this—
there are more suburbs in Perth that have greater problems with getting good quality broadband ...
I would say that perhaps even as much as half of Perth does not have a network that can be upgraded to good quality services, and an enormous amount of investment is needed to make that happen.
We need to make sure that that National Party money does not all go to Queensland but that some of it comes to the West. The expert concluded by saying that not only do many suburbs of Perth suffer from broadband black spots—Canning Vale, Maylands, Wanneroo, Hamersley, Beechboro, Doubleview and even Fremantle, just to name a few—but that:

... Perth is one of the country’s black spots
A city of over a million people is one of the country’s black spots. Perth is a capital city that has suffered from nine long years of underinvestment in infrastructure to the extent that telecommunications experts say that the whole metropolitan area is a black spot—all of the capital city of Perth. That is an absolute indictment of Telstra and of the Howard government. And we are not even talking about the problems facing rural and regional Western Australia. (Time expired)

Question agreed to.

Mr David Hicks
Senator STOTT DESPOJA (South Australia) (3.32 pm)—I move:

That the Senate take note of the answer given by the Minister for Justice and Customs (Senator Ellison) to a question without notice asked by Senator Stott Despoja today relating to the United States military commission process.

In particular, I wanted to know if this government endorses the changes that have been made to the commission process and whether or not the government considers the commission process to be appropriate—a process which still has, I believe, a number of huge deficiencies in providing a fair and transparent trial for David Hicks, an Australian citizen. I have to say I am very concerned to hear that the government believes that these commissions comply with so-called established practice and that they are considered appropriate. Yet, as I pointed out in my question and certainly in my supplementary question to the minister today, there are aspects of the commissions which are still very concerning.

One of the most significant concerns that I and many others who have commented on this process have is that the rule changes to the commission do not preclude the use of evidence obtained through unlawful coercion—that is, torture. I am wondering if our government really believes that information obtained under torturous conditions or as a consequence of torture or coercion—whatever terminology you choose to use—is acceptable.

A number of prominent Australians—lawyers and organisations, including, as I quoted today, the Law Council of Australia—have identified flaws in this process. They genuinely believe that our country is settling for conditions in relation to our citizenry—in particular David Hicks—that other countries such as Spain, for example, have not agreed to. England is another example. The Law Council of Australia has described the changes as trivial and illusory. They do nothing to bring the military commission anywhere near an acceptable justice standard.

Tomorrow in this place—and I am not going to pre-empt a decision of the Senate—I will move a motion on this issue. I am pleased to say that it is co-signed by the Greens and the Australian Labor Party. It will be an opportunity to truly test the government’s position on this. That means people in government who believe in the rule of law, who believe in justice and who believe in transparent and accountable judicial processes will have a chance to vote on this issue and to demonstrate to the naysayers, the critics, the lawyers and the academics who have identified flaws in this process how they genuinely feel about this particular military commission and the changes that have been
taking place. The government, in my opinion, has gone out of its way to approve the changes and to approve the military commissions at every turn. This is in the face of contrary opinions from some of the world’s leading military and legal experts.

Under the new rules, classified evidence can be withheld from the accused unless doing so would deny him a full and fair trial. The Pentagon still remains the arbiter of that evidence. Human Rights Watch has said that this change may mean very little as long as there is no judicial review of the proceedings by a civilian court. Human Rights Watch has said that the commission hearings held in 2004—to which it sent observers, I might add—highlighted serious deficiencies in the military commission’s process and in the US military commission member’s understanding of the laws of war and the basic principles of criminal justice. Of the recent changes, Human Rights Watch has said that the military commissions:

... still deprive the accused of independent judicial oversight by a civilian court and deprive defense counsel of the means to prepare an effective defense, among other problems.

The Law Council has pointed out:

... findings of fact and the appropriate sentence will be determined solely by the non-lawyer members of the military commission. The presiding officer will rule upon questions of law but the admissibility of evidence may be over-ruled by the non-lawyers.

That is very significant but of particular significance is the concern that I raised about torture.

It is also significant that the minister today entirely failed to address that particular issue in his response to me. Surely this issue provides the government with some concern, particularly given the numerous revelations of torture and other mistreatment by US personnel at Guantanamo Bay and other detention facilities outside the United States. I acknowledge that Australia and our government stood up to that and said it was unacceptable. If it is unacceptable for it to go on, surely it is unacceptable for any evidence that may have been obtained as a consequence of torture or coercion—whatever you want to call it—to be used in these military commissions. I want our government to stand up and say it is unacceptable and insist on changes to the commissions. *(Time expired)*

Question agreed to.

PETITIONS

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

Abortion

To the Honourable the President and members of the Senate:

This petition of citizens draws to the attention of the Senate that the majority of the Australian population believe that the decision about whether or not to terminate a pregnancy should be up to the women concerned and her doctor. Furthermore, this majority is growing. The majority pro-choice public opinion should, in a democracy, be reflected in the law and government policy. That means:

(i) all criminal and other laws that codify/limit abortion access should be repealed, so that abortion is not subject to more restrictions than any other medical procedure; and

(ii) abortion services should be made freely available through the public health system, with full Medicare coverage for terminations.

Your petitioners, therefore, demand that the House reject any attempt to limit Medicare coverage of abortion.

by Senator Hogg (from 71 citizens).

Petition received.
NOTICES

Presentation

Senator Heffernan to move on the next day of sitting:
That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Wednesday, 14 September 2005, from 4 pm to 6 pm, in relation to its inquiry on the administration by the Department of Agriculture, Fisheries and Forestry of the citrus canker outbreak.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) expresses its profound sympathy to all Australians and their families who have suffered as a result of Hurricane Katrina; and
(b) extends its sincere condolences and deepest sympathy to the American people in the aftermath of Hurricane Katrina.

Senator Ellison to move on the next day of sitting:
(1) On Monday, 12 September 2005:
(a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm;
(b) the routine of business from 7.30 pm shall be government business only; and
(c) the question for the adjournment of the Senate shall be proposed at 11 pm.
(2) On Tuesday, 13 September 2005:
(a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm;
(b) the routine of business from 7.30 pm shall be government business only; and
(c) the question for the adjournment of the Senate shall be proposed at 11 pm.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) 9 September 2005 is International Foetal Alcohol Spectrum Disorders Awareness Day;
(ii) foetal alcohol spectrum disorders are arguably the leading cause of preventable disability in childhood in western civilisation, yet they are potentially 100 per cent preventable, and
(iii) foetal alcohol spectrum disorders have an incidence similar to spina bifida and Down’s Syndrome, yet are barely recognised in the public; and
(b) calls on the Government to:
(i) provide resources to conduct research into the disorders,
(ii) promote awareness of the effects of prenatal exposure to alcohol, and
(iii) develop national guidelines in relation to alcohol consumption during pregnancy as part of the national alcohol strategy.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) 10 September 2005 is National Gynaecological Awareness Day,
(ii) that the overall number of new cases of gynaecological cancers is projected to increase by 15 per cent between 2001 and 2011,
(iii) that each year more than 3 500 women in Australia are diagnosed with gynaecological cancers, and
(iv) that the human papilloma virus (HPV) is strongly linked to the incidence of cervical cancer and is the most common sexually-transmittable infection in developed countries; and
(b) calls on the Government to:
(i) offer direction in the area of gynaecological health, including examining the need for enhanced screening for HPV, and
(ii) promote public awareness of ways to prevent, detect and treat the range of gynaecological conditions.

Senator Allison to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) the Coalition Government, in 2001, enacted a mandatory maximum limit on inclusion of ethanol in all grades of petrol of 10 per cent, and
(ii) as a result of this mandatory limit, Australia is unable to cater for flexible fuel vehicles now on the market which are designed to run on up to 85 per cent ethanol; and
(b) calls on the Government to:
(i) release the overdue findings of the Biofuels Taskforce appointed by the Prime Minister (Mr Howard), and
(ii) remove the existing mandate limiting the amount of ethanol in petrol to 10 per cent, and mandate instead a minimum 10 per cent biofuel in all Australian fuels.

Senators Barnett, Chapman, Stephens and Polley to move on the next day of sitting:
That the Senate—
(a) recognises:
(i) the extent and gravity of world poverty and the urgency of tackling this situation,
(ii) that the most impoverished countries cannot escape the cycle of poverty without assistance, and
(iii) that two-thirds of the world’s poor are actually in Asia, (rather than Africa);
(b) acknowledges recent efforts by the Australian Government including increases in the Australian overseas aid budget and special support for those in need following the December 2004 tsunami;
(c) supports the Millennium Development Goals agreed to by the Australian and other governments in 2000 which specifically included a set of eight goals to be achieved by 2015 as follows:
(i) halve extreme poverty and hunger,
(ii) achieve universal primary education,
(iii) promote gender equality and empower women in all levels of education,
(iv) reduce child mortality by two-thirds,
(v) reduce the maternal mortality ratio by three-quarters,
(vi) halt and begin to reverse the spread of HIV/AIDS, malaria and other diseases,
(vii) ensure environmental sustainability by:
(A) integrating the principles of sustainable development into country policies,
(B) reversing the loss of environmental resources,
(C) halving the proportion of people without access to clean water or adequate sanitation, and
(D) significantly improving the lives of at least 100 million slum dwellers by 2020, and
(viii) develop a global partnership for development based on fairer international trade, financial and governance systems; and
(d) urges the Australian Government to recommit itself to the achievement of those goals.

Senator Fielding to move (contingent on the order of the day for the adjourned debate on the second reading of the Trade Practices Legislation Amendment Bill (No. 1) 2005 being called on):
(1) That so much of standing orders be suspended as would prevent the succeeding provisions of this order having effect.
(2) That the Trade Practices Legislation Amendment Bill (No. 1) 2005 be divided into two bills, as follows:
(a) a Bill for an Act to amend the Trade Practices Act 1974, to provide for
merger clearances and authorisations and for other purposes; and

(b) a Bill for an Act to amend the Trade Practices Act 1974, and for other purposes.

(3) That the first bill consist of the enacting words, clauses 1, 2 and 3 and Schedule 1 of the original bill; and that the second bill consist of Schedules 2 to 12 of the original bill.

(4) That the following amendments be made to the first bill:
(a) title, amend the title as shown in paragraph (2)(a) of this order; and
(b) clause 2, page 2, omit table items 3 to 6 inclusive.

(5) That the following amendments be made to the second bill:
(a) title, insert the title as shown in paragraph (2)(b) of this order;
(b) after the title, insert the words of enactment;
(c) after the words of enactment, insert the following clauses:

1 Short title
This Act may be cited as the Trade Practices Legislation Amendment Act (No. 2) 2005.

2 Commencement
This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)
Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

(d) renumber the Schedules as Schedules 1 to 11.

(6) That the bills as amended by this order be printed.

(7) That further consideration of the bills be ordered of the day for the next day of sitting.

Senators Allison and McLucas to move on the next day of sitting:

That the Senate—

(a) recognises that the United Nations (UN) Secretary General’s report on achieving the Millennium Development Goals, In larger freedom, calls on governments to ensure universal access to reproductive health services;

(b) acknowledges that in January 2005 the Prime Minister (Mr Howard) reaffirmed Australia’s commitment to prioritise and fund the Program of Action of the International Conference on Population and Development, which calls for universal access to sexual and reproductive health care by 2015;

(c) recognises that access to sexual and reproductive health is also a critical strategy towards achieving gender equality and women’s empowerment, the third of the Millennium Development Goals; and

(d) calls on the Government to articulate its commitments to sexual and reproductive health at the 60th UN General Assembly held in New York from 14 September to 16 September 2005.

Senator Chris Evans to move 12 sitting days after today:


Senator Chris Evans to move 12 sitting days after today:


Senator Chris Evans to move 12 sitting days after today:


Senator ELLISON (Western Australia—
Minister for Justice and Customs) (3.38
pm)—I give notice that, on the next day of
sitting, I shall move:

That:

(a) the following bills be introduced:

Telstra (Transition to Full Private
Ownership) Bill 2005, and

Telecommunications Legislation
Amendment (Competition and Con-
sumer Issues) Bill 2005; and

(b) the provisions of paragraphs (5) to (8) of
standing order 111 not apply to these bills
allowing them to be considered during this
period of sittings.

I also table a statement of reasons justifying
the need for these bills to be considered during
these sittings and seek leave to have the
statement incorporated in Hansard.

Leave granted.

The statement read as follows
—

**TELSTRA (TRANSITION TO FULL PRIVATE OWNERSHIP) BILL**

**TELECOMMUNICATIONS LEGISLATION AMENDMENT (COMPETITION AND CONSUMER ISSUES) BILL**

**Purpose of the bills**

The Telstra (Transition to Full Private Ownership)
Bill allows for the full sale of Telstra and neces-
sary consequential amendments.

In relation to the Telecommunications Legislation
Amendment (Competition and Consumer Issues)
Bill, changes to the telecommunications regula-
tory regime will be made to maximise the regula-
tory regime’s capability to respond to market
developments and emerging networks as well as
changing consumer needs. The bill improves in-
vestment certainty and the operation of the tele-
communications specific anti-competitive con-
duct and access regulations. It also introduces an
operation separation framework to provide
equivalence and transparency of Telstra’s whole-
sale and retail operations. The bill improves the
Australian Communications and Media Author-
ity’s power to respond to consumer interests,
makes amendments in relation to the require-
ments for Industry Development Plans, and
makes a range of other minor amendments in-
cluding to the numbering plan regime.

**Reasons for Urgency**

The bills are part of a package of measures relat-
ing to the further privatisation of the govern-
ment’s remaining shareholding in Telstra and
future proofing of telecommunications services in
regional, rural and remote Australia.

Passage of these bills is therefore necessary to
ensure that these measures are in place before
1 January 2006 to provide the necessary regula-
tory framework to “future proof” telecommunica-
tions services in regional Australia.

(Circulated by authority of the Minister for
Communications, Information Technology and
the Arts)

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

That the Senate—

(a) notes that:

(i) the peaceful forest blockade in Wan-
della State Forest on the far south coast
of New South Wales has been in place
for 3 months,

(ii) there is no record of this forest being
logged,

(iii) the forest is habitat for the Powerful
Owl, a nationally threatened species,
and

(iv) the catchment provides drinking water
for Eurobodalla Shire; and

(b) congratulates those participating and sup-
porting the blockade for their brave efforts
to protect our forests, threatened species
and drinking water.

**Postponement**

The following item of business was post-
poned:

Matter of privilege notice of motion no. 1
standing in the name of the Chair of the
Finance and Public Administration Refer-
ences Committee (Senator Forshaw) for today, proposing the reference of a matter to the Committee of Privileges, postponed till 7 September 2005.

PANCHEN LAMA

Senator STOTT DESPOJA (South Australia) (3.40 pm)—I move:

That the Senate—

(a) notes:

(i) the significance of the Panchen Lama as the second most important spiritual leader in Tibetan Buddhism,

(ii) that in 1995, following his identification as Panchen Lama by the Dalai Lama, the then 6-years old Gedhun Choekyi Nyima and his family have disappeared from public view, and

(iii) that for 10 years their safety and well-being have remained unconfirmed; and

(b) urges the Chinese Government to:

(i) reveal the whereabouts of Gedhun Choekyi Nyima and his family, and

(ii) allow for independent verification of his and his family’s safety and well-being.

Question agreed to.

SUICIDE

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.40 pm)—I, and also on behalf of Senator McLucas, move:

That the Senate—

(a) notes that:

(i) every year more than 2,500 Australians die from suicide, with estimates suggesting that there are at least another 30 attempts for each person who dies,

(ii) suicide is a complex event in which desperate people see death as a way to escape their overwhelming pain and anguish, and

(iii) ignorance and insensitivity continue to contribute to societal stigma concerning mental illness and suicide;

(b) condemns the Minister for Health and Ageing (Mr Abbot) for failing to understand the level of pain being experienced by people who contemplate suicide; and

(c) urges the Prime Minister (Mr Howard) to:

(i) categorically condemn the remarks made by the Minister for Health and Ageing in relation to Mr John Brogden, and

(ii) require ministers to demonstrate appropriate knowledge, understanding and compassion in relation to their portfolios.

Question negatived.

GENETIC PRIVACY

Senator STOTT DESPOJA (South Australia) (3.41 pm)—I move:

That the Senate—

(a) acknowledges research by the Centre for Genetics Education on attitudes to predictive genetic testing as a part of the Australian National University’s Australian Survey of Social Attitudes;

(b) notes that the research reveals many Australians oppose genetic testing for insurance and employment purposes due to concerns about potential discrimination;

(c) notes that the Government has not yet released its response to the Australian Law Reform Commission (ALRC) report no. 96, Essentially yours: The protection of human genetic information in Australia; and

(d) calls on the Government to respond to the ALRC’s report and implement federal laws to protect our genetic privacy and prevent discrimination.

Question agreed to.

COMMITTEES

Economics Legislation Committee

Extension of Time

Senator FERRIS (South Australia) (3.41 pm)—At the request of Senator Brandis, I move:
That the time for the presentation of the report of the Economics Legislation Committee on annual reports tabled by 30 April 2005 be extended to 13 October 2005.

Question agreed to.

DOCS

Presiding Officers and Clerks Conference

The ACTING DEPUTY PRESIDENT (Senator Ferguson) (3.42 pm)—I present the report of the 36th Conference of Presiding Officers and Clerks which was held in Samoa between 11 and 15 July 2005. I seek leave to move a motion to take note of the document.

Leave granted.

Senator FERGUSON (South Australia) (3.42 pm)—by leave—I move:

That the Senate take note of the document.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

AUDITOR-GENERAL’S REPORTS

Report No. 9 of 2005-06

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 9 of 2005-06—Performance Audit—Provision of export assistance to rural and regional Australia through the TradeStart Program: Australian Trade Commission.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Additional Information

Senator FERRIS (South Australia) (3.43 pm)—On behalf of Senator Heffernan, the Chair of the Rural and Regional Affairs and Transport Legislation Committee, I present additional information received by the committee on its inquiry into the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005.

Membership

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! The President has received a letter from the Australian Greens seeking variations to the membership of various committees.

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (3.44 pm)—by leave—I move:

That senators be appointed to committees as follows:

Community Affairs Legislation and References Committees—

Appointed—Participating members:

Senators Milne and Siewert

Economics Legislation and References Committees—

Appointed—Participating members:

Senators Milne and Siewert

Employment, Workplace Relations and Education Legislation and References Committees—

Appointed—Participating members:

Senators Milne and Siewert

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

Appointed—Participating members:

Senators Milne and Siewert

Environment, Communications, Information Technology and the Arts References Committee—

Appointed—Participating members:

Senator Milne

Finance and Public Administration Legislation and References Committees—

Appointed—Participating members:

Senators Milne and Siewert

Foreign Affairs, Defence and Trade Legislation and References Committees—

Appointed—Participating members:

Senators Milne and Siewert
Legal and Constitutional Legislation and References Committees—
Appointed—Participating members: Senators Milne and Siewert

Rural and Regional Affairs and Transport Legislation Committee—
Appointed—Participating member: Senator Siewert.

Question agreed to.

Environment, Communications, Information Technology and the Arts Legislation Committee
Reference

Senator CONROY (Victoria) (3.45 pm)—I move:

That, upon their introduction any bill providing for the further sale of Telstra, any related bill introduced in the Senate and the provisions of any related bill introduced into the House of Representatives be referred to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 10 October 2005.

If anyone needed an indication of how this arrogant coalition government, drunk with power, intends to use its newly acquired control of the Senate, today is a grim glimpse into the future. In opposing this motion, the message from the government is clear: the long established practice of ensuring that government legislation is subject to rigorous scrutiny in this chamber will no longer apply to contentious legislation. The Senate’s role in promoting transparency and accountability will be emasculated.

The purpose of this motion is quite straightforward. It is to allow the Senate a real opportunity to properly scrutinise the government’s package of five bills relating to the sale of Telstra. Yesterday Senator Coonan confirmed there would be a Senate inquiry, but it is not enough to just allow the bills to go to the Senate legislation committee. The committee must be given sufficient time to do its job, or else the whole process will simply be a farce. Perhaps that is what the minister wants. Today the editorial of the Financial Review is entitled ‘Telstra farce beyond a joke’. Let me read it to you:

The Telstra sale process is beginning to resemble one of those John Cleese management training videos in which the former Monty Python funny man shows the right way to do things by modelling all the wrong ways. But it is hardly amusing for Australia’s largest company ...

And it is hardly amusing for Australia’s democratic future. It is hardly amusing for the accountability of this chamber and the ongoing rigorous Senate accountability processes. Labor is hopeful, however, that there are enough senators in this place who recognise the importance of the legislation that the minister will introduce this week. Labor is hopeful that there are enough senators who have respect for the role that this place plays under the Constitution to scrutinise government legislation.

This chamber was not intended to be a rubber stamp, but that is what it will become if the government is allowed to get away with tactics like this. Let us just think what the government’s proposed committee reporting timetable means. The first thing it means is that there will probably only be one day of public hearings, that day being this Friday. If the legislation is introduced tomorrow, as has been suggested, members of the public and key industry stakeholders will have just one day to analyse the five pieces of legislation and make a submission to the inquiry. That is right: one day for any interested party. Whether they are an ordinary Australian citizen or the Business Council of Australia, they will have just one day to get in a submission.

There will be no time to properly advertise and make the community aware that they have a chance to make a submission. That is right: before you can make a submission,
you have got to know there is an inquiry. How are people even going to find out there is an inquiry if submissions have to close by Friday morning when the hearing is on? This is a farce. The committee will be given just six days to assess all the evidence and report back to the Senate. It should be self-evident to any reasonable person that six days is not a long time to consider such a fundamental measure as the sale of the dominant telecommunications carrier and the establishment of a new competition regime.

This is legislation which will have major implications for the telecommunications industry and for the economy in general for years to come. I have tried to get the message out whenever I have been appearing publicly, saying: ‘If we make the wrong decisions now—if we just make short-term, cheap political decisions now—we will stuff up this industry and the economy of this country for a decade at least. If we get this wrong—if we rush and get it wrong—those will be the consequences.’

The process proposed by the government not only treats the Senate with contempt but also arrogantly curtails the rights of the people to have their voices heard. The government does not want to give any member of the public or any stakeholder in the telecommunications industry the opportunity to scrutinise the legislation, to prepare a submission and to give evidence. The fundamental question that the minister must answer in relation to this Senate inquiry is: what is the rush? You have heard Senator Minchin, the Prime Minister and the Treasurer say, ‘Well, actually, there are no plans to sell Telstra until next year’—that is four to five months away—even if it is passed today. There is no intention by this government to proceed with the actual sale for four or five months.

In the Australian stock market at the moment, due to a combination of government ineptitude, ministerial ineptitude and managerial belligerence, we have seen the Australian share price of Telstra tank. I hope, Mr Acting Deputy President, you do not have Telstra shares, for your sake. I hope anyone listening or anyone in the gallery today does not have Telstra shares, because this government is engaged in an absurd process that is driving down the price of Telstra. What is worse, it is engaged in a cover-up of information that is market sensitive. I have sent information to the Stock Exchange today which has been touted around by Telstra to journalists and institutions that reveals significantly market sensitive information.

It is like the share buyback. There was a proposed share buyback as part of T3. The share buyback appeared in the newspapers a few days ago—it said it had been cancelled. There was no statement to the Stock Exchange. It had been rumoured and it had been in the newspapers for a week or two. At some stage you are going to have to ask yourself: ‘Is the Stock Exchange awake?’ Serious decisions by the largest, most profitable company in this country are being made and leaked to journalists. Australia has corporations laws that require continuous disclosure. The way we find out what is going on is: a couple of weeks after the first leak, a major story appears confirming the share buyback—and no-one says a word. This is material information. What is the Stock Exchange doing? What is the government up to? Why is the government participating in a process that is dudding Australian mums and dads who have Telstra shares? They sold them T2 at $7.40. As the price plummets towards $4 today, you would have to be feeling pretty sick if you got sucked in by the government a couple of years ago to buy T2 shares.
The fundamental question remains: why the rush? After all, Senator Minchin has said that the government has no intention of selling its 51.8 per cent share of the company held in public ownership in the near future. Most senators know the answer to this question. Most senators know what is going on. The legislation has to be rushed through this parliament because it is simply an embarrassment to the government. With each day, new revelations come out about the true state of Telstra and how it has been run down by this government. This government has not been focused on improving telecommunications services. Rather, its concern has been about fattening up the Telstra cow for sale, pure and simple. The Telstra briefing that the government received on 11 August makes clear that over the last five years Telstra has underinvested in the network. This is not the Labor Party making this allegation; it is not the Greens; it is not the Democrats. This is the chief executive of Telstra. Michael Sainsbury, referring to Mr Telstra in the *Australian* today, makes the following very relevant points:

On the upside he—

that is Mr Trujillo—has cracked open the conspiracy of silence that has shrouded Telstra for half a decade. It is a conspiracy that had the tacit consent of government, Telstra's board and management and the global investment banks. The aim was to get Telstra ready for sale in an orderly manner and keep the company's share price as high as possible. Things were humming along OK until Trujillo's arrival. With no hand in glove relationship with Canberra he has made public, frank and honest comments about the state of the telco's business, and it's not pretty.

That is why the Prime Minister admitted today in question time that he has phoned the chair of Telstra and told him to make Mr Trujillo and the three amigos pull their heads in. He cannot afford to have the truth out there, because what has the Minister for Communications, Information Technology and the Arts, what has the Minister for Finance and Administration, and what has the Treasurer been saying about the state of Telstra? 'It is providing a world-class service.' 'Everything is up to scratch.' Mr Howard said before the last election, 'Oh, no, we wouldn't sell Telstra unless it is up to scratch.' And what do we find today? On Telstra's own submission to the government, 141,000 phone lines in this country are faulty. Fourteen per cent of Telstra's phone lines have ongoing faults. That is not the high point; that is ongoing, averaged over the year. Why? Because they have underinvested. They have not done the basic investment.

Mr Trujillo has made it clear. We have underinvested in our network, we have not fixed the faults, we have not replaced the equipment that should have been replaced and we have not invested in the cutting-edge new technologies as other companies around the world have, like BT in the UK and Telecom New Zealand. They are investing in new technologies to guarantee their profitability into the future and to guarantee their shareholders a decent return into the future—but, no, not this company. So it is not surprising to see the Prime Minister try to put the fix in on Mr Trujillo.

Mr Trujillo has been pretty good at standing up to the Prime Minister so far, and I hope he keeps his nerve. I hope he keeps telling the truth. He does not want to be stood over by the Prime Minister of this country just because he has ripped the fig leaf and pointed out that the emperor has no clothes. That is what he has done: he has pointed out that the emperor has got no clothes. The Prime Minister promised he would not sell it until things were up to scratch, and now they are up to scratch—
well, Mr Trujillo has blown the whistle on that.

Telstra has been deprived of billions of dollars that should have been spent on network upgrades as the board pursued the government’s agenda of boosting the sale price for privatisation. It is really quite simple. You do not need to sell it; you have just got to fix it. It can be fixed very quickly in a couple of years simply by Telstra spending the money that it has been shoving out the door in its dividend payments, its special dividend payments and its share buybacks. All it had to do was spend a couple of billion dollars over a couple of years to give Australia and Australians cutting edge technology.

I am glad a member of the National Party has turned up in the chamber. Senator McGauran, welcome. Since 2003, Telstra has spent $1.75 billion on share buybacks. In the last two years, $1.9 billion has been ripped out of the company in special dividends. Small shareholders and consumers are now paying the price for the folly of the government’s privatisation obsession. The government clearly does not want a Senate process that would further expose its gross mismanagement.

Let us have a close look at the rationale that the minister has presented for this ridiculously short inquiry process. Yesterday she railed against having to have a six-month period to travel around the country. Minister, as this motion indicates, we are not proposing such a lengthy inquiry. Labor are proposing an inquiry lasting just 33 days, from the presentation of the bills to a report in the Senate. The proposed reporting date of 10 October would give the Senate plenty of time to debate and vote on the legislative package during this year’s sittings. The minister also claimed that there have been a number of inquiries into telecommunications in recent years. This inquiry is necessary to focus on the details of this package of five bills.

Senate committees have never examined the government’s proposals for operational separation. There is a very simple reason for that: the government still to this day have not announced what their proposals are. They are selectively leaking them, but what is the government’s position on operational separation? How could the Senate or any senator in this chamber have inquired into something that did not exist? To suggest that we should not have a Senate inquiry process because we have already done Telstra to death ignores the very fact that the government have a brand new policy that they intend to present tomorrow, and this chamber is entitled to have a look at it. Senate committees have never before examined the proposed changes to strengthen the customer service guarantee, addressing Senator Joyce’s concerns that people in the bush have to wait weeks to have faults repaired and services connected. In short, Senate committees have never had the opportunity to examine whether the regulatory regime, which the government are putting forward this week to constrain the 600-pound gorilla that could become a fully privatised Telstra, will have sufficient teeth to deal with Telstra after privatisation.

In opposing Labor’s proposal to give the communications committee a reasonable amount of time to do its job, the Howard government is giving a glimpse of how it intends to use its power in the Senate over the next few years. It is clear that the government wants to rein in the Senate committee system. Senator Hill, the Leader of the Government in the Senate, has appeared on television and made radio comments, saying: ‘We need to change the Senate committee process. It really is quite cumbersome. It gets in the way of government a bit.’ I thought that was the point. When he was in opposition, Senator Hill was one of the chief advo-
cates of the Senate committee process. The government will seek to use its numbers to stop Senate inquiries into allegations of maladministration or things that will cause it political embarrassment. That is something that should be of great concern to all senators.

I have made this comment before. I remember listening to Senator Boswell on the 7.30 Report a couple of months ago. Senator Boswell said, ‘I think the Senate process has worked pretty well, actually.’ Then, the very next day after Senator Boswell said that on national television, he came into this chamber and endorsed the government giving itself more Dorothy Dix questions and taking two questions off the opposition. The first act of Senator Boswell, the Leader of the National Party in this chamber, on the day after that television appearance, was to support the government by ripping questions out of question time to reduce the scrutiny.

Here is another challenge for the National Party. Today, are Senator Barnaby Joyce, the Queensland National Party and the entire National Party going to engage in an emasculation of the Senate processes? After saying that they were happy with the way the Senate worked previously, that it was a fair balance, are they going to come in here and vote down Labor’s resolution to give us 33 days to look into one of the most contentious and significant legislative proposals that this country has seen? All we are asking for is 33 days, not six months, not the furphies that you will hear from the government when they stand to speak.

The Australian public needs to be alert to the dangers posed by the government’s contempt for the proper role of the Senate in ensuring accountability. Labor will continue to voice their strong opposition to attempts to undermine the safeguards which underpin our democratic system. I urge all senators to do so, but particularly Senator Barnaby Joyce. He was the big man; he was coming here to stand up for Queenslanders and to stand up to those Liberals who think they have something special in their lunch box. Remember that, Senator McGauran—the Liberals who think they have something special in their lunch box. Senator Joyce, they certainly seem to have you well and truly under control. Senator Joyce, today is D-day: are you really here to represent Queenslanders, as you claim and as you promised, or are you just here to be another flunkey for the coalition, like Senator McGauran?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.05 pm)—I move the following amendment to the motion moved by Senator Conroy which has been circulated in the chamber:

Omit all words after “That”, and substitute:


(2) That, in examining the bills, the committee consider only the following issues:

(a) the operational separation of Telstra;
(b) the role of the Australian Competition and Consumer Commission, including:
   (i) the requirement that it consider the costs and risks of new infrastruc-
ture investment when making access decisions, and
(ii) streamlining the decision making processes including the capacity for the ACCC to make procedural rules;
(c) the role of the Australian Communications and Media Authority, including:
(i) the provision of additional enforcement powers,
(ii) improvement of the effectiveness of the telecommunications self-regulatory processes by encouraging greater consumer representation and participation in the development of industry codes; and
(d) the establishment of a perpetual $2 billion Communications Fund.”

The difference between the two motions is that whilst we refer to the same legislation and the fact that it should be referred to a Senate committee, the government’s amendment provides that the legislation stand referred to the Environment, Communications, Information Technology and the Arts Legislation Committee at whatever stage the bills have reached at the end of the time available for the consideration of government business on 8 September 2005 for inquiry and report on 12 September 2005. Paragraph (2) of that amendment provides for those issues which are pertinent to the pieces of legislation that will be introduced into the Senate, and also that will be dealt with in relation to the legislation that will be introduced into the House of Representatives tomorrow. I just refer to history in relation to the time allowed for reference. The opposition, and no doubt the Democrats and others, will say that this is an appalling situation because we have such a short term for the reference—that is, it is only a matter of days.

Senator Conroy interjecting—

Senator ELLISON—Senator Conroy was not around then, but when we look back to the previous Labor government we see that in 1985 the Superannuation Legislation Amendment Bill was sent off with seven days to report. When we look at the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Bill 1990, we find that that was sent off with seven days to report. The Australian Heritage Commission Amendment Bill 1990 had only six days.

Senator Chris Evans—We get a full three!

Senator ELLISON—It gets better, Senator Evans. You might want to listen to this. There was the Commonwealth Banks Restructuring Bill 1990. The Bills Digest said that that bill was to convert into public companies the Commonwealth Bank of Australia with the Commonwealth to retain 70 per cent ownership and control—a privatisation bill—and guess what? That bill had five days. Then we go onto the Health Insurance Amendment Bill 1991. It got three days.

Senator Chris Evans interjecting—

Senator ELLISON—Senator Evans has now pointed to the fact that what the government proposes here is exactly what the former government did. I can point to the Health and Community Services Legislation Amendment Bill 1991—four days. The Broadcasting Amendment Bill 1991, which was a big bill, got two days. Let us not beat around the bush. It is totally hypocritical for the Labor opposition to say that this is a short reference and that it breaches all precedent. You merely have to look at the practice of the previous government to see that there were numerous bills when the time of reference was seven days or less. I was part of an inquiry into the Native Title Bill, which was seven days, and in that time we had to travel around the country—in seven days. There had not been the exposure—not even near it—of the Na-
tive Title Bill, a very important bill, as there has been with the sale of Telstra.

*Senator Chris Evans interjecting—*

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! Senator Evans, you should not shout across the chamber.**

*Senator ELLISON—I remind the Senate that of course there has been extensive inquiry and examination into telecommunications bills and the sale of Telstra. Over the past five years we have had a total of four telecommunications inquiries and 11 inquiries with reports into telecommunications legislation which have been conducted by the Senate including two separate inquiries into previous Senate sale bills. Added to that, we have also had major inquiries—the Besley and Estens inquiries—in this area over a lengthy period of time. The sale of Telstra has been canvassed widely in a number of different committee forums in parliament including the Senate Environment, Communications, Information Technology and the Arts Committee report into the telecommunications regulatory regime, the powers of industry regulators, the Australian telecommunications network, and competition in Australian broadband services and, most recently, into the performance of the Australian telecommunications regulatory regime, which was tabled last month. I have been here 12 years and I do not think that I can recollect any area or any issue which has had quite the coverage of the sale of Telstra and telecommunications issues such as the ones that we are dealing with. We now have a situation where it is time to do what the Australian people elected the government to do: to see the full sale and privatisation of Telstra.

We are proposing that with the introduction of these bills we have a reference to a committee. There will be extended debating time allowed next week, and I will be moving that motion tomorrow, with late-night sittings on Monday and Tuesday—something which the previous government never did. We have done this on our own motion without any approach from the opposition. We have said that we believe there should be extended time next week. I can remember when I was in opposition and Labor was in power that we had to use whatever numbers we could get to try to get increased sitting and debating time for important bills.

*Senator Chris Evans—The difference is that we do not have the numbers, you goose!*

*Senator ELLISON—The government did not even agree to do it. I can tell you I was there, Senator Evans—*

*Senator Chris Evans—You seemed confused.***

*Senator ELLISON—No, there is no question of that. It was only on our motion that we got that increased sitting time. The government realises that we should have debate next week on this and we will be proposing extended time for that, and there is nothing unusual in that. I will put it in the context of the management of the government program. We have a legislative program which we need to meet by the end of the year. We have industrial relations legislation which we propose and we have, on my assessment, about 5½ sitting weeks of the Senate left. With the situation as it is we do not propose to leave this until the end. We do not propose to just try it as we go along. We believe that we should allocate in a responsible fashion an extended debate this sitting fortnight on the sale of Telstra legislation. When we return we can then move on with further sittings to deal with other important legislation so that we can meet our deadline of having that all in place by the end of the year. Doing it in such a fashion is responsible management of government business in the Senate.*
I would remind senators that there has been extensive coverage of this legislation and the sale of Telstra. I have pointed to the fact that we have had numerous inquiries over an extended period of time. Indeed the Minister for Communications, Senator Coonan, said that this has been canvassed over the last nine years. If anyone believes that this is a breach with the practice of the past, they are totally mistaken when you look at the time afforded by the previous Labor government in relation to references to committees.

Another point I would make is to refer to what we called the Friday committees. If anyone thinks that this is a departure from Senate practice they are sadly mistaken. When I first came into this place there were what we called Friday committees where you would see a bill introduced one week and referred to a legislation committee, it would then be dealt with by a committee on the Friday and a report would come back to the Senate the following week. That was the Friday system, as we used to call it. What we are seeing here is the use of the same system that was in place when I was an opposition senator and Labor was in power. What we are saying is that the Friday committee system is a very good one. It is efficient; it provides time for streamlined scrutiny and efficient dealing with legislation before the Senate.

As I have said, the government—notwithstanding any approach from anyone else; of its own motion—is proposing that we should allow more time next week for debate and that, indeed, under our proposal second reading speeches can continue prior to the close of government business on Thursday. That would allow more time for second reading speeches to be conducted. Of course, we believe that that gives senators adequate opportunity to put their comments on the record. Many senators already have. Let us make no bones about it—the opposition, the Democrats and the Greens have all stated their opposition to the sale of Telstra. That is a position which has been clearly made by them. The procedure that we are embarking upon is really one that will allow scrutiny of those features of the legislation that need to be looked at and—let us not beat around the bush—the issues of principle have been dealt with many times before. The opposition, the Greens and the Democrats have all made their position very clear—they oppose the sale of Telstra. So for them to say we need to have another wide-ranging inquiry to travel around the country yet again is totally disingenuous.

Senator Chris Evans—That is not the motion before you. That is a blatant misrepresentation.

Senator Ellison—What the opposition is proposing in Senator Conroy's motion is 10 October.

Senator Chris Evans—The next sitting fortnight.

Senator Ellison—I think we have reached the stage where we can adequately deal with the issues and the legislation we will have before us. We are employing the Senate Friday committee system, which was a practice which was held in the Senate for some time and was engaged in by the previous Labor government. What is more, the time period, in view of the extensive examination inquiry into this area, is not an unreasonable one because of that very issue. When you look at the previous Labor government, you had a matter of just a few days for dealing with bills, some of which had nowhere near the examination and inquiry that the sale of Telstra has had. I have just highlighted several of those but, in fact, there are several others. As I say, there were numerous bills which were dealt with by the previous government which had seven days or less for...
reference to a committee and to report back to the Senate. I have just indicated that some were in the region of two or three days. There were three days for the consideration of the partial privatisation of the Commonwealth Bank. So the opposition is being hypocritical when it attacks the length of time for reference proposed under our amendment. This is a reasonable proposition. It is one which will see the job get done; one which the government was elected to do, and if we did not we would be in breach of the trust the Australian people gave to us at the last election.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (4.18 pm)—I rise to support Senator Conroy’s motion and formally oppose the amendment moved by Senator Ellison. Today is a day when the government’s attitude to the Senate is fully revealed. This is a complete abuse of power. In the last sitting fortnight we saw the metaphor for the government’s attitude to the Senate with Senator McGauran’s contribution when he gave us the finger. Now we are seeing the realisation of that attitude in how it deals with legislation. Today the government is giving the finger to the Senate and to the Australian public.

What we have from the minister, as an amendment today, is one that says that tomorrow morning the Senate should debate a bill that the government will show us tomorrow morning. That is what he is saying—the Senate should debate a bill for the full sale of Telstra that he will show us tomorrow morning and the debate will commence straight afterwards. That is how he treats the Senate; that is how he treats the Australian public. This is democracy under John Howard. This is the arrogance and abuse of power that now represents the Howard government.

We have not seen these bills. There are five bills, apparently. I have only just seen the amendment moved by Senator Ellison; it was not shown to us prior to the debate. There are actually five bills that he suggests we ought to begin debating tomorrow morning. Tomorrow morning he will walk in here, drop them on the table and say, ‘The debate will start. Get on with it because we’ve got to finish by next week.’ So five bills that the Senate has not seen are to be debated tomorrow morning. Hopefully, we will be shown them before the debate starts, but I have no guarantee of that. That is the first point—in giving the finger to the Senate we are now to debate legislation we have not seen. So we have five bills that will come in tomorrow, be introduced and we will be asked to debate them.

The key question today is the one about whether or not the Senate gets time to consider the legislation. There is very little that I agree with Senator Ellison about. Most of what he said was misleading, some of it was downright untrue, but the key point he made was that the debate about Telstra has been a long one. I concede that. There has been a long debate. This government has been trying to fully privatise Telstra for many years. It is also true to say that the Labor Party opposes that sale—no question about that. There is merit in the argument that says the positions of the major political parties in this country on this issue are well known. But what is not well known is what is in these five bills. I have not seen them yet. The minister wants us to agree to a resolution, that we consider them, have a report on them and have them all pass, but he will not actually do us the courtesy of showing them to us yet. We have not seen these five bills. I have not got a clue as to what is in them. Neither has any other non-government senator. This is legislation we have not seen and will not see until tomorrow.
First of all we are asked to debate legislation on the same day it is introduced—five complex bills that go to the question of the sale of $30 billion worth of Australian taxpayers’ assets. While we have debated the sale of Telstra and our positions are quite clear, we do not know the detail of the legislation. We do not know what regulatory regime will be in place, what part of Telstra will be sold, how it will be sold or any of the detail as to what deals have been done in relation to the regime that will apply in a privatised Telstra. While the sale is the key issue, there are many other issues about the future regulatory regime that are vitally important to all Australians and they would expect the Senate to consider that detail, to discuss it and, quite frankly, for them to be informed about it. Part of the whole process of the Senate is to involve Australians in the consideration of legislation. But no, they have not even seen it yet.

What we have got from the government is a response to a Labor proposition. Labor knew that the fix was coming, that the abuse of power would be in place and that the government would look to smash any opposition to their proposition by rushing the bills through the parliament. But we moved, and had the support I think of the minor parties in this place, a motion, which we are debating today, that the bills be referred to the Environment, Communications, Information Technology and the Arts Legislation Committee in accordance with Senate practice and that the committee inquire and report by 10 October. We were allowing, provided the bills come in tomorrow, a month for the consideration of all the detail in the five bills and for the committee to meet to hear from interested parties and to report back to the parliament in the next sitting fortnight. If this Labor motion is carried, the committee would report in the next sitting fortnight and the parliament would be able to debate the Telstra sale bills in the next fortnight. But that is not good enough for the government. That is an outrageous expression of democracy. They will not allow that. They do not want any debate.

You have seen the chaos the government are in over Telstra. You have seen the share price in free fall. They cannot afford any debate and they cannot afford any concentration on the detail because it will not stand up to scrutiny—of that I am sure. There has been a fix put in with the National Party, people have been bought off and deals have been done. We are not allowed to see any of the detail of that. They want it banged through the parliament as quickly as possible. That is not acceptable, and I do not think the Australian public will accept it, Senator Ellison. I think they will expect more of you as a government. The arrogance and the complete out-of-touch approach of this government will start to hit a chord with the community.

We know that the government, through its amendment to Labor’s very reasonable proposition, is seeking to say that we cannot have a month to consider this and we cannot even have the luxury of considering it in the next sitting fortnight. It has to be done next week and the committee’s inquiry has to be limited to one day. The government’s amendment seeks to say that tomorrow morning, without seeing the bills, Labor and the minor parties are supposed to debate them. We are supposed to start the debate tomorrow, sight unseen, and at the end of business on Thursday, whatever happens with the bills, the committee will inquire and it will report back on Monday. The government is saying that tomorrow—Wednesday—it will show us the bills, on Friday we will be able to have some sort of cursory committee inquiry process and on Monday we have to report back and the legislation has to be debated.
What does that say to the Australian public about their opportunity to look at the detail of the bills? They will not see them until tomorrow. Any advice, suggestions or comments they have to make will have to be made by Friday. Even with modern telecommunications—even with Telstra’s modern communications standards—that is a big ask. The first time that people in rural and regional Australia will see the detail of the bills will be on Thursday but by Friday they have to have made any submission to the Senate inquiry because that is when the Senate inquiry will consider it. We have got only one working day. The government’s proposition is that the Senate has one working day to inquire into the sale of Telstra—five bills yet to be seen, $30 billion of Australian taxpayers’ assets at risk and we get one working day to examine the detail of those five bills. It is outrageous, it is unacceptable and it is undemocratic.

The arguments Senator Ellison advanced are a complete fraud. There is no precedent for this sort of behaviour. There is no support for it and it is a complete contradiction of everything the Senate has come to represent in providing examination of legislation and allowing community input into the process. Labor are not arguing for an elongated inquiry that seeks to delay the government legislation. We are happy to debate the legislation but we have not seen it yet. I am not happy to debate it when I have not seen it. I do not think that is an unreasonable proposition. I want to see the legislation, I want a proper inquiry process that does not unduly delay the legislation and I want us to then debate it properly. But we are not going to be allowed to do that.

Senator Ellison today, in addition to moving his amendment, has circulated a letter to the party leaders and whips. He has forgone the usual practice of inviting us to a meeting, a practice that has continued for many years, to discuss the organisation of chamber business. That nicety, that courtesy, that practice has been abandoned. I get a letter telling us what is going to happen. Again, there is the arrogance and the abuse of power. There is no consultation, no meeting. We are told: ‘This is what is going to happen; we run the show now. We will give you the finger whenever we like; this is how we run the show.’

Senator Ellison is going to increase the hours of sitting. Next Monday and Tuesday the Senate will sit longer hours in order to give the pretence that there is some proper consideration of the bills. He has told us that that is what is going to happen. We heard from Senator Coonan on the weekend that the bills will go through by next Thursday, like it or lump it. We know what that means: the government has committed to use the guillotine. We will not be allowed a proper debate on the legislation next week. The government is committed to having it passed by next Thursday. Therefore it will have to introduce a guillotine next week in order to ensure the passage of the legislation.

That is not because we are going to filibuster. Labor have no intention of filibustering in the debate but we do want to have a proper debate, we do want to examine the detail of the bills and we do want the Australian public to know what the government is proposing in the legislation. I have no doubt that we will lose the final vote, but that is not the point. We are entitled to have the debate, we are entitled to know the detail of the legislation and we are entitled to have it considered.

If the government had any intelligence at all, it might actually look at the feedback it gets on the legislation and consider what it might do in response to what might well be constructive suggestions. This government is too fearful. It is too racked by internal dis-
unity to allow such discussion. It has the numbers and the power, but it cannot handle the debate. It cannot handle the scrutiny. We know the government will win at the end of the day, because it bought off The Nationals. The Nationals have announced that publicly. That is fine. That is a decision for The Nationals. They will pay the price at the next election, I am sure. The point is that the Senate has a right to debate the legislation, but the government will not brook debate. It will not allow consideration. It will not allow scrutiny because it knows it cannot withstand that scrutiny.

Senator Ellison made a number of points about precedent. I concede that the development of the committee process in the Senate has changed over time. Increasingly, the Senate has used the committee process to examine legislation. It has allowed that examination to go on over a longer period of time than it used to for important bills. Sometimes we do not use the committee process at all, but on major bills we have had reasonably lengthy inquiries to look at the details. The committees have proved very useful in that role.

The legislation committee process is a way to find flaws in bills and make improvements. Governments of both persuasions have often responded to the committee process and sought to improve bills by taking on many of the suggestions provided at the committee hearings. In fact, last month, Mr Andrews, the Minister for Employment and Workplace Relations, when talking about inquiries into legislation, said:

They can be useful in terms of the detail of things that you can overlook.

That was said by a minister of this government as recently as a few weeks ago. He accepted that the legislation committee process in the Senate was a useful one.

The other major asset of the Senate committee process is that it allows for public input into legislation before the parliament. The great strength of the Senate committee process is that it allows people to appear before the committees—members of the public and members of interested organisations—to comment on the legislation, make suggestions and argue their case. As Odgers’ Australian Senate Practice states:

Most significantly, committees provide a means of access for citizens to participate in law making and policy review.

They are going to need to be very quick to get in on this one. They may see the bill on Thursday; they will have to get their submission in the same day and then be heard on Friday. They will get one day to digest five bills, which are not available until tomorrow, and provide a submission to a Senate inquiry. It is a farce. It is a rort. It is an abuse of power. This government is pretending that it is going to have a committee inquiry, but there will not be any proper inquiry. The government is too scared of the scrutiny.

One of my concerns is that those members who traditionally have been keen to protect the role of the Senate have gone to water on these issues. When referring to the question of legislation committees the other day in the party room, Senator Brandis was dismissive—a sign of the growing arrogance among the coalition, even among its backbenchers. He described the suggestion from Minister Andrews for an inquiry into the IR legislation as ‘stupid’. Senator Brandis is quoted as saying:

There’s nothing in it for us ... Senate inquiries are a free kick for the Labor Party, the media never run anything except things that are embarrassing for the Government and it won’t have any public purpose because the detail will be in the legislation for all to see anyway.

He was totally dismissive of the process, totally dismissive of the Senate’s role and
totally dismissive of the public’s right to know and involve itself. How different is that from what leading senators from the other side of the parliament were saying not so long ago? Senator Hill, now Leader of the Government in the Senate, was quoted on this issue in 1996 when he was discussing the sessional orders. He was a great advocate for the committee system in those days. He was even a small ‘l’ liberal, I understand, in those days—they are now an extinct species. When arguing in support of the committee process, Senator Hill said:

One of the advantages of taking the bill out of the chamber and into the legislative committees is that the committee can then listen to the community. A strong democracy in many ways is demonstrated by the level of contribution of the community. Certainly, the interest groups that are based in this city—the professional lobby groups and the like—become aware of these considerations by committees and do contribute. It would be good if the wider public became better aware of the process of consideration of these bills in committees and were given the opportunity to contribute.

That was said by Senator Robert Hill in 1996, supporting the committee process and supporting the public’s right to participate. He was making the point that it was largely city-centric, that we needed to widen the debate to include regional communities so that people in rural and regional areas might have a say about bills and have the opportunity to contribute. It will be interesting to see how many of the National Party constituents get to hear about these bills and get to make a submission between Wednesday and Friday morning this week. They will see the bills publicly on Wednesday and they will have to have their submissions in by Thursday. It will be interesting to see how many of Senator McGauran’s and Senator Sandy Macdonald’s constituents get to make a contribution to this process. Of course, they will not be able to. It is a fraud on the Australian public because there will not be a proper committee process.

This proposal is a fraud. It is an undemocratic move. It works against everything that this Senate has sought to establish as proper process. The Labor proposition is a solid one. It does not look to unduly delay the Senate; it allows for the community to have some input into this debate. Labor have made our position clear: we will vote against the bills at the end of the day, but we have not seen these bills. There are five bills that, sight unseen, we are supposed to debate tomorrow morning and pass through the parliament by next week. It is an outrageous attack on the Senate. It is an outrageous attack on democracy and the government will pay the price for its arrogance, because people notice that the government is losing its way. Its internal organisation is chaotic, and it is out of touch with the Australian community. It is more and more extreme in the agenda that it is running. People are noticing that this is not what they voted for. This is not what was discussed at the last election. Why this rush? The government has done the deal with the National Party. It says it is all okay. It says Senator Barnaby Joyce is under control—Senator Heffernan wanders over to him every question time. National Party senators sit close and make sure he is comfortable and protected.

So why the rush? We know why there is a rush—it is because they are not sure that they can keep certain members of the National Party under control. They know they can keep you under control, Senator McGauran and Senator Sandy Macdonald. But they are not so sure about the new ones, because they went out and promised things to the Australian electorate. The reason the government are rushing this through is that they are not sure they can control the agenda. We have seen the chaos in the government over this issue over the last few weeks. We have
seen the share price freefall. The government have lost control, so their solution is to rush the bills in, push them through and not allow any scrutiny of them, because they are worried they will not survive scrutiny. Senator Joyce might just work out that he has been sold a pup. His electors in Queensland might work out that the detail is not what they were promised. But they will not get a chance to see the detail. It is going to be rushed through.

The government are fearful of scrutiny. They are fearful of the detail being examined, so no allowance will be made. They do not accept dissenters, they do not accept criticism and they certainly do not accept scrutiny. There is no accountability by ministers and no accountability to the parliament in terms of legislation either. There are five major bills with $30 billion of taxpayers’ assets at risk, and we are to be given no time to consider the detail. There will be no opportunity for the community to participate in the debate or comment on the bills and their detail. The new regulatory regime under a privatised Telstra will not be something they will be able to examine and discuss before it is rushed through this parliament. This is an abuse of power, because the government are not sure that they can control the National Party. (Time expired)

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.38 pm)—I am surprised that it has come to this. I am surprised that the government has taken this outrageous, undemocratic and shameful action, this abuse of power, to limit the scrutiny of the government’s legislation to sell the rest of Telstra for a package that we have yet to see and to give it no scrutiny. We cannot be serious about the sort of scrutiny the government is proposing. One day of hearing is not scrutiny. One day of hearing is some sort of excuse for referring this package for any kind of reporting.

The Democrats support the ALP motion and will vote against the government’s amendment to it. I want to be clear about what the ALP’s motion does. It asks for there to be an inquiry on all of the bills that are yet to be seen and that that inquiry report back on 10 October. That is a bit over five weeks away. Three of those five weeks are sitting weeks: next week and the ones at the end of that five-week period. So we are talking about a total of just eight days—maybe 10 days, if you count the Fridays as well—of possible opportunities for examination of these bills including the advertising, advising people that the inquiry is under way, taking submissions, reading those submissions, organising hearings and then proceeding to write the report. I thought that was a tight time frame but, in recognising that this place has inquired into previous privatisations of Telstra, the Democrats can understand why you would not want to be seen to be unnecessarily extending the time frame. However, it is tight; there is no question about that.

I will read part of the government’s amendment to the motion, because I think it is instructive for us to understand what we are dealing with. The Senate Environment, Communications, Information Technology and the Arts Legislation Committee would inquire into the Telstra (Transition to Full Private Ownership) Bill 2005—which we understood was coming—the Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005, the Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill, the Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill, and the Appropriation (Regional Telecommunications Services) Bill. Those bills would be referred to that committee ‘at whatever stage the bills have reached at the end of the time available for consideration of government business on
8 September’—that is, on Thursday. So we would effectively begin debating these bills before we have referred them to the committee.

That leaves just one day, the Friday, for any form of hearing. I doubt very much whether submissions could be received by the Senate in time for a Friday hearing anyway, but should we manage to get a handful of submissions from witnesses to come in, that leaves just one day. Then, of course, there is the weekend for the committee to consider the evidence it heard at the hearing and the submissions made and to make a report that makes any sense at all by the Monday morning. That would be 12 September, as set out in the other part of the amendment. That could never be described as any form of proper scrutiny of such a massive and far-reaching bill. We are talking about the biggest privatisation move this country has ever known. There are $30 billion worth of public assets being privatised, and we are talking about a package of bills that are supposed to ‘future proof’—whatever that means; we do not know until we see the bills—services to all Australians, including those people in country areas who get inferior services at the present time, with things only going to get worse.

The Minister for Justice and Customs said, ‘This is a normal Friday committee system arrangement and we don’t need to travel around the country yet again.’ By my reading, there was not going to be much travelling around the country if a report is to be provided by 10 October in any case. As I said, we are talking about two actual weeks of non-sitting time, and it would take much more time than that to arrange a ‘travel around the country roadshow’. So it is absurd to say that this is just another minor bill that we can refer to the committee for a Friday hearing and then get on with debating the bill the following Monday. It is an absurd proposition.

The government says it has a mandate. It went to the last election saying that it would sell Telstra, that is what the people want it to do, so we should proceed with it without further ado. The minister said, ‘That’s what the Australian people want.’ I do not know about anyone else in this chamber—mind you, there are not a lot of people present in this chamber; there are only two members of the National Party and there is not a Liberal Party member to be seen apart from you, Mr Acting Deputy President Lightfoot—but every survey that has ever been done in this country about the privatisation of Telstra comes back with the same outcome. The result is that somewhere between 65 per cent and 80 per cent of Australians say, ‘Do not privatise the remainder, or even the first parts, of Telstra.’

I do not recall seeing a single ad, leaflet, document or word said by the Prime Minister or anyone else in the coalition to say, ‘Please vote for us, because we are selling Telstra.’ I am happy to be corrected if I am wrong, but I do not recall the election being conducted on the question of whether or not Telstra would be sold. I think quite a few people were surprised that the government got the numbers in the Senate, and they certainly did not anticipate that the sale of Telstra would be a result of the last election.

Let us look at why there is a need to rush this. The government says that it is not likely that the real sale will happen until next year, although the bills will go through. Of course, we would have to wait until the share price goes up. At the current time it is going down, and who knows how long it will take to go up again? And who knows how long it will take to get the Telstra executives under control so that they do not keep making statements which drive the share price further...
down? Australia does not need to pay back any debt; Australia has the lowest level of public debt in the OECD. In fact, we have got problems in this country in selling $30 billion worth of shares all at once. For that reason we understand there is a proposal—I am not sure if it is in the bills or not; we will not know until we see them—that we could put the shares into some other fund which would hold onto them and release them as and when it seems appropriate. There is no rationale, no reason, no debate at all about why the government needs to sell Telstra, other than the usual ideological bent of this government.

I do not know whether Senator Nash intended this, but last night in the Senate she said that she still has grave reservations about selling Telstra. Maybe the government needs to get in before The Nationals go weak at the knees and change their minds. I would encourage them to do that, because that would be the most sensible thing for them to do—and it would certainly give them a better chance of being re-elected the next time around. It is obvious that the government does not want to give The Nationals any grief; or at least it wants to keep the grief as short as possible, because their constituents are going to be on the phone saying: ‘What are you doing? This is crazy.’ That is obviously the main reason for getting this done in such a ridiculously short time frame.

The government does not want us to examine the detail in this package of bills, and it does not want anyone else to look at it either, lest they say something that is not very complimentary and lest they say to The Nationals: ‘You did not do a good deal. This is a lousy deal. You have sold the most precious public asset in this country, and you have sold it for 30 pieces of silver.’ Maybe it is only 10 pieces of silver, or maybe it is one piece—I do not know. It is likely that scrutiny of this package will show what a fraud this is and what an absolute dog of a deal this has been.

The government wants to get this sale through before we can question the guarantee that services to the bush have been future-proofed. I think it is an impossibility. I do not think it can be done—unless the future is the next two weeks or even the next two years. To talk about future-proofing the bush is ludicrous nonsense, and that is going to be revealed when we look at the bill that talks about future-proofing. We know Telstra services are not up to scratch. We know that broadband access in this country is pathetic. The minister keeps talking about how the uptake is greater than it is in other countries. That is because we are starting from a very low base and broadband is a pretty pathetic telephone service that sometimes get you linked up—depending on where you are—and it is very slow, very expensive, and does not compare with any of our competitor countries. Those are the reasons we have to rush this sale through: because what the government is proposing is outrageous.

I have put together a number of questions. I doubt whether we are going to deal with them in one day, but I thought it might be good to get some of them on the record right now. I would like to know what the Minister for Communications, Information Technology and the Arts meant in her remarks the other day when she said that the government will ensure services to customers in areas of market failure after full privatisation of Telstra. Maybe the minister will take this on notice and get back to us so that we can consider her answer by next Friday, when we have to consider the bills.

Are areas of market failure, as determined by the government, in rural, remote or metropolitan areas, or all three, or just one? How does that work? What is the government’s definition of ‘market failure’? There is plenty
of market failure going on around this country. To what extent does it occur, and how does the government consider that the new environment of a privatised Telstra will facilitate competition in those areas of market failure? I think this is a bit of a chuckle. Telstra must be thinking that this is a very handy cash cow that they are about to get access to. All they have to do is demonstrate that there is market failure and the government will put its hand in its pocket and hand out taxpayer dollars wherever it seems appropriate. We have got no idea what the test of 'market failure' is.

Has the government accepted that areas of market failure, however defined, are never likely to be attractive to competition? Does the government agree that the commitment to ensure services to customers in areas of market failure provides a perverse incentive for Telstra to withhold or diminish services in these areas and to impede efforts by competitors to set up service provision in these areas? Surely it does. On the reading we have got so far, that is exactly what would happen. How does the government intend to deal with the well-documented cases of Telstra pushing small competitors out of business, particularly in regional areas like Crookwell, Bungendore and Albury-Wodonga? How does the government intend to deal with excessive regulatory gaming by Telstra, whereby it effectively delays or prevents access by competitors to services?

What is the government's estimation of the effect of the proposed additional regulation on Telstra's annual profits and share price? To what extent does the government have a conflict of interest in protecting the shareholders from the cost of additional regulation, if we have it—who knows what that additional regulation would be—and ensuring consumers receive the benefits of modern telecommunications infrastructure and services? How is the government going to reconcile the mutually exclusive objectives of providing for effective regulation of telecommunications and maximising Telstra's share price?

How is the government going to ensure that the operational separation models for Telstra create incentives for Telstra to treat its retail arm and its competitors equitably? Is that in the bills? I somehow doubt it. How will the government ensure that Telstra does not operate its retail arm at a loss by charging both itself and its competitors high wholesale prices? Will the government give the ACCC divestiture powers in case operational separation fails? What were the reasons that structural separation of Telstra was not considered in the package?

Does the government agree that the fact that Telstra is vertically integrated is the single most important factor in Australia being ranked 21st in broadband penetration in this week's OECD report? How does Australia compare with other OECD countries in terms of rate of penetration of broadband as opposed to current rate of uptake, which I referred to earlier? Does the government acknowledge that Australia's rate of uptake is relatively high because we start from that very low base compared with other countries?

How does the government's definition of broadband differ from those of other countries? What is the government going to do about the obvious weakness of the anti-competitive conduct regime in the Trade Practices Act, as demonstrated by the ACCC's experience with Telstra's broadband pricing competition notice? What is the government going to do to make it easier for Telstra's competitors to get access to reasonably priced backhaul? How is the government going to ensure that people in regional areas where there is no competition receive better broadband services as stan-
... standards improve in metropolitan areas? What safeguards will the government put in place to ensure that money put aside for regional areas does not simply fall back into Telstra’s hands and cement its monopoly in regional areas? What safeguards will the government put in place to ensure that money put aside for regional areas will be applied equitably and not directed to the coalition or marginal electorates—another opportunity for rorting?

A question I did not have on my questions on notice but which I will always ask from now on, particularly in regard to very significant pieces of legislation such as the one we are dealing with now, is: has a family impact statement been done and, if so, can it be provided to all of the members of the Senate?

I think this is a sad day. It is an indication that the bill is going to be pushed through regardless of the rationale, regardless of the arguments that might be put up that counteract what the government is saying and regardless of anything that is said on this side of the chamber. I think the National Party, sold down the drain though they are going to be over this issue, are going to grin and bear it and try and get through the next few days. I am sure it is going to be difficult. I remind them to think about the gravity of this situation—the fact that we are talking about $30 billion worth of public assets and the future of telecommunications services in this country, and that those people who are most affected are their constituents. They are the people in country areas for whom services are inadequate at the present time and for whom services are not going to get any better with a privatised Telstra.

I suggest that they very carefully look at this legislation and that they do not sign off on it by next week, that they consider very carefully what is before them, because this is a matter in many cases of life or death in country areas. This is a very serious situation. It is not fair or reasonable that the government should force the Senate to deal with this legislation in such a short time frame. One day is totally inadequate for us to consider this bill. We have had lots of inquiries previously into Telstra, but none of them has dealt with a package of goods which claims so much, which claims to future proof this country against the shortcomings of privatisation. It is crucial for us to understand the implications of this bill, and one day is totally inadequate.

I urge the National Party not to vote with the government on this amendment because to do so would be very dangerous for them in terms of their own electoral support and it would be giving in to the government yet again. It would demonstrate that the Liberal Party has been able to trample on the National Party one more time. Of course, there is more to come—the bills on VSU and IR and all those other bills that the National Party say they do not quite agree with. They will be seen to be rolling over, to be giving in without a fight.

If they go back to the bush and say to their constituents, ‘Look, here are all the wonderful things that we managed to negotiate,’ those people can say: ‘Yes, but how long is this going to last? What is going to be the effect of privatisation and the monopoly that is Telstra? How is that going to improve our broadband services? What is this $100 million a year that we will get from some fund to fix up the shortcomings of Telstra? How is that going to work? We could probably eat that up in the bottom half of Queensland. How is it going to work for Western Australia and Victoria?’

I seriously urge the National Party to not support the government’s amendment and to allow this to go to an inquiry, which would give us a few days at least to invite people to
tell us what they think, to have public input that is meaningful, to let experts have a look at the package and come before us and tell us what they think about it and to have public hearings not just in Canberra, where no-one else can get to them, but in a couple of other places. I am not suggesting we travel right around the country, but at least we should give some people the opportunity to be part of the process. That is at least what this place has offered the public over many years—the opportunity to have input into momentous, important decisions that this place makes. There is no more momentous decision than the one that is before us today. 

(Time expired)

Senator LUDWIG (Queensland) (4.59 pm)—I rise to speak on Senator Conroy’s motion. It is clear that the words the government said before 1 July were a falsehood. They said they were going to ensure that there was proper debate. I am not quoting them directly, but the general thrust of what they indicated was that they were going to ensure that this Senate would run in the way it has always run. We are not even past the first couple of months. We came back in August, and the first thing this government did was change question time. The next attack is on the committee system.

This amendment that has been moved by Senator Ellison, the Minister for Justice and Customs, seeks to change the committee system. It seeks to change the entire process under which the Senate has been able to conduct its affairs—throwing light into dark corners and scrutinising and improving government legislation. Under that system, the government can take a committee’s recommendations and amend them, implement them or, if they disagree with them, debate them at a later stage during the committee stage of the legislation. The government have now said, ‘We’re going to sweep aside all of those matters. We’re not going to deal with legislation in this way anymore. We’re not going to continue with the way the Senate has worked to ensure proper scrutiny. We’re going to provide our own scrutiny.’

In wrapping up the amendment moved by Senator Ellison, the government have also said that the committee will examine the bills in a particular way—not that they will be able to examine bills in the way that might be dictated by the legislation or by the witnesses who might want to appear or by the type of information that is being sought by committee members but that:

... in examining the bills, the committee consider only the following issues:

(a) the operational separation of Telstra;
(b) the role of the Australian Competition and Consumer Commission, including——

two Roman numeral dot points——
(c) the role of the Australian Communications and Media Authority, including——

two Roman numeral dot points and——
(d) the establishment of a perpetual $2 billion Communications Fund.

If the committee decides to ask a question outside of those issues, is the big hand of government going to come down and say, ‘You can’t ask that question because it does not form part of the things that you should look at when you are examining the bills’? It is quite an outrageous proposition when you look at it in that light.

How is the government going to manage the process if a mere senator decides to ask a question that might not be able to be tied to the issues that the government are dictating should be determined by the committee? What will befall such a senator? Will the committee chair or the Liberal backbencher on the committee claim that there is an outrageous act going on, that a senator is asking a question about the bills which may not be on the government’s agenda with regard to
the issues that should only be considered? If Senator Joyce decides to ask a question outside of those issues, what will happen?

The government did not think through any of these issues very well when they looked at how they were going to manage this debate. They have not consulted with the chamber in the usual way. They have not come to the chamber and said, ‘We want to put a bill through. We clearly want it to go through. We clearly want it to go through. We know your view. We know that you also think that the legislation deserves scrutiny. We know that you might have amendments to and issues with the bill that you might want to raise.’ Usually the process comes from that and we manage the procedures rather than the debate in principle itself. But, no, the government have now started a process where we are going to debate not only the procedures that are associated with how bills are to be dealt with in this chamber but also the substantive matters when we get to those. I will have plenty to say when we get to the substantive issue but I also have plenty to say in relation to procedures.

All the Labor Party are asking for is a reasonable examination of the bills. We are not talking about the issues within the bills at this point; we are talking about a situation where, say, Senator Joyce wants to rat on Queensland and sell out his state. If he wants to do that, we cannot stop him—nor would we think it appropriate—but we can argue that he should reconsider and that he should look at the issues more closely. A committee process gives us the opportunity to throw those issues up and allows this chamber to examine those issues.

The timetable that the government have proposed is ridiculous. Minister Ellison said that there are many examples of short committees. This government said before 1 July that they would allow the processes of the Senate to proceed in their usual way—they are my words; you can correct me if you like, but the intent was there—and have now decided to hijack the way they are going to have legislation dealt with. In the amendment the government also put down what bills they wanted to deal with, how they are going to deal with them and what scrutiny they are going to have on them. They are then going to tie that to a motion tomorrow, it seems, to provide for hours and how those hours will be used by people in this chamber to listen to the debate and argue the points. They have also ensured that the bills will be called urgent bills tomorrow. There has been a notice of motion moved today. That means that the government will then be in a position—and they have the numbers—to say that the bills should be exempted from the cut-off. Exemption from the cut-off was a matter that was brought in many years ago to ensure that we would not have haste at the end of a session. But what we are now doing is having haste at the beginning of a session.

The government are taking away the ability to ensure that there is proper scrutiny during the committee inquiry stage that we are seeking to have. They are taking away the ability to ensure a reasonable opportunity to call witnesses; a reasonable opportunity for people to be aware that there is going to be a debate about these bills; a reasonable opportunity for the inquiry to be advertised and for people to provide their views; a reasonable opportunity for people to provide a submission—they have to write it first—and, if they so desire, to appear before the committee and argue the particular point that they might want to make; and a reasonable opportunity for the secretariat and the committee members to consider the issues, write the report and deliver it to the Senate so that we can consider the issues that might be part of that report.
The government have swept all of that aside. They now want the committee to provide a report in a week. In fact, it is less than a week. They want to have a second reading debate on the Telstra bills tomorrow. Then, as this amendment demonstrates, they want to send this off for inquiry by close of business on the 8th for report by the 12th. That is not even a week. The committee will have to find the time—it certainly will not be able to advertise, it will have hardly any opportunity to let witnesses know and it will have hardly any opportunity to examine even the text of the bills—and will then be required to report. It will have a mammoth job to provide a cogent report that will inform the Senate of the issues that might surround the legislation. Is it reasonable to allow the public to have a say? This process is not going to allow the public to have a say on these bills. Is it reasonable for this government to eliminate the purpose of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee, which is being able to examine the bills? I think not, on both counts.

You have to then ask: what on earth is the committee supposed to do in the short time frame that it has? As I said earlier, Minister Ellison can say that there have been short committees before, but without examining the reason for those short committees, without examining what motions were put, I think it is a short argument and a mischievous argument to put. There are occasions when there are short committees of less than a week when there is a specific issue or matter that might need to be referred or looked into. It might require an examination of only one department or statutory authority, and there may be a limited number of interested parties. It may be an issue that does not require lengthy submissions by witnesses. In that frame, in those circumstances, it might be permissible that it is a matter that the Senate can look at, consider, move and agree to have that short committee examination.

This is not one of those. This is a massive task. It is a massive change to the way the Senate has operated, because this way the government takes control of the process, throws it out the window and introduces its own mechanisms for dealing with legislation and the committee process rather than do what committees have done in the past, which is have the Senate make the determination according to the usual procedures. We did not have the debate that we are now having. We are seeking to have a proper committee set up to look at the legislation and to report within a reasonable time. Senator Ellison did not refer to those pieces of legislation or point to the fact that this debate we are now having was had then and was overborne by a vote of the government, because that is what this is going to lead to. The government is going to have to not only amend the motion but also vote our proposal for a reasonable committee inquiry down.

Senator Joyce is going to have to sit with the government and take that view and vote with them. He is going to have to say to his Queensland colleagues and his Queensland constituents, ‘What I’ve done is ensure that there will be no proper scrutiny in relation to the sale of Telstra.’ He can tell them that he has got his money, but he cannot then guarantee all the issues that are contained within the legislation, satisfy his constituency and satisfy his concerns as to whether the obligations he requested have been met. There is no third party examination. He only has himself and the government to rely on to ensure that he has got it right. If I can give him any advice, it is that sometimes third party endorsement is worth its weight in gold to ensure that you do in fact get the bargain that you bargained for.

CHAMBER
A committee adds value. It takes evidence from the public and interested community groups. It consults with the community and takes that evidence. What it does, more than anything else, when it finally reports and makes its recommendations, is cause the government sometimes to pause, look at those recommendations, take them on board and in fact move them as amendments to the legislation. A clear example of this is the Senate Legal and Constitutional Legislation Committee, which looked at the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004. With that bill, the government had not consulted with the community or relevant organisations to the extent that they should have. The result was, frankly, a poor piece of legislation. As a result of the committee process, quite a number of amendments which came from the committee’s recommendations were agreed to by both the government and the opposition to improve the bill. Yet remember that the government did not want to send that bill to a committee in the first place. Their view was that it was fine, that the legislation met their objectives. It might have met their objectives, but it was not good law. Clearly, in the end, it was much improved law as a consequence of the committee process. The bill and how it was to operate were substantially improved.

From the example I have given, and examples that will come out tomorrow, it seems that the Liberals are becoming drunk with power. It seems that they are going to use their numbers to force through their extremist agenda without proper parliamentary scrutiny. Let us be clear on what this government wants to do: deal with the second reading of the legislation while the opposition has only seen part of the legislation for perhaps hours, if at all.

This is a government determined to avoid scrutiny and accountability at all costs, and the treatment of the opposition has been not unlike the treatment meted out to other Australian political institutions like the media, the states and the Public Service. It is an increasingly unstable government, rejoicing in its abuse of power like a pig in swill. Whenever you see a government that starts to make decisions without consultation and without looking at the way the principles of this place operate, you have to ask the basic question: is the government taking advice from itself? The short answer appears to be yes. It is not consulting widely to ensure that it has got it right, because one thing is certain: in any piece of legislation, the devil is always in the detail. That is why you need a good look at whatever it is going to do.

You usually, if you are rational about these things, ask for the Senate or others to have a look at your piece of legislation to make sure you have got it right. Even at the end of that, you come back and say, ‘I wouldn’t mind having another look just to make sure that I’m not going to harm anyone or I’m not going to inconvenience anyone that I haven’t already thought I might do.’ It is the unintended consequences that will always bite you.

We also need to look at whether the government might want to try a sleight of hand in the legislation. Time will usually throw that up. It is much more difficult when they have to come back with amendments and say, ‘Look, we know we rushed it through and we know we didn’t allow much scrutiny but, by the way, we got a few things wrong and we might have to come back.’ The government will rue the day when they have to bring back amendments, if that is the case. The government will rue the day when they have to come back to this Senate and say: ‘We know what we did in September but we got a couple of bits wrong and we need to make a few amendments. We will be back because we need these amendments to en-
sure that the passage of the legislation will have its intended effect.’

It might impact upon ordinary mums and dads, it might impact upon the institutions, it might impact upon the accountants and lawyers and the battery of people who might want to get involved in the sale or it might impact upon how the company now operates. We do not know and, without some scrutiny, without some test, we might not know until that happens. At least a check would give you the confidence that you have done everything in your power to ensure that it would not happen. These things still could happen—of course they could—but at least you have put yourself to the test to ensure that the debate is open, in the public arena.

Labor want to make sure that we take the fight up to the government on this issue—on the substantive issue rather than the procedural matters that we are now arguing about—because we believe in investing in Australia and our infrastructure. We strongly believe access to services is inadequate, not only in rural and regional areas but right in the middle of our cities as well.

I have a few questions from some Queensland representatives to this parliament. How can the member for Bonner, Mr Vasta, look his electors from Wynnum-Manly straight in the face when they cannot get access to wireless broadband like their cousins down the road in Morningside? How can Minister Brough look his constituents from Caboolture and districts in the eye and tell them they can get the same service as someone who lives in Ms Gambaro's electorate next door at Chermside? Not that Ms Gambaro can rest easy. Areas like Bald Hills and Griffin in her electorate miss out on wireless broadband. How can Mr Dutton talk about Telstra when he is dudding locals from Everton Hills when electors in Everton Park get wireless broadband? How can the Gold Coast members, Mr Jull, Mr Ciobo, Mrs May and Mrs Elson, claim to be doing anything but selling out the Gold Coast, Beenleigh, Beaudesert and Boonah? (Time expired)

Senator BARTLETT (Queensland) (5.19 pm)—It is good to hear all those Queensland names echoing through the chamber. Mr Acting Deputy President, I am concerned that perhaps some members of the government might not be aware of the importance of the issue we are discussing here at the moment, so I draw your attention to the state of the chamber. (Quorum formed) I think it is important, with an issue as significant as this, that we do have some members of the government present to actually ensure that they are clear about what is being voted on. We do have a lot of new senators in this place, of course, and it is quite possible that they are basically being conned by some of the more experienced members of the government who are telling them that there is nothing significant happening here—nothing they need to worry about.

The fact is that this is extremely significant. The suggestion that what the government is proposing is some run-of-the-mill, ordinary examination is so dishonest as to be a total fabrication. It is probably fortunate that it is late in the day and we do not have any young people here; earlier on in the day, we usually have a lot of young people in the gallery to watch democracy at work. I would have to say to them if they were here watching, ‘Sorry to disillusion you, kids, but you’ve come to the wrong place,’ because there is no democracy happening here. I guess if you are going to disillusion people you might as well get the facts to them while they are young so they can deal with the harsh reality. That is the harsh reality under the new regime of this government—although, frankly, if we had some of those younger people in here, I am sure they could
make a better fist of justifying what the government is doing than Minister Ellison has made, because his justification would have to be the most lame I have ever heard. Mind you, what the government is trying to do is unjustifiable. But you would think it would at least try to pull out some valid arguments rather than some complete falsehoods.

That is the sign of a government that have clearly moved over the edge into total arrogance: they do not even pretend to be reasonable; they do not even bother to massage things in a way that at least covers them in some vague pretence of a fair go, a reasonable process, a tip of the hat to democracy. All you get is the dishonest, nonsensical pap that we got from Minister Ellison, the one contributor—we have not heard a word from any other government member and not a word from any of the National Party members who are supposedly so concerned about this issue. They cannot even come in here and explain why they are going to vote to allow this legislation to be pushed through here, basically under a cloak of secrecy, without proper examination. Maybe I am wrong; maybe they are actually going to come in here and vote to allow proper scrutiny of these five pieces of legislation.

Another way you know the government’s plans in any area will not stand up to scrutiny is when they try to rush things through without examination—when they try stunts like this. If they were genuinely confident that what they were doing was going to guarantee good services, guarantee decent competition, guarantee good prices and guarantee equity of access for rural areas, then they would be keen to have it scrutinised. All the competitors, the telcos other than Telstra throughout Australia who are desperate to have a good competition regime and a good telecommunications policy, would, I know, be cheering to the rafters if a decent package were put forward to ensure competition and to ensure universal service obligations could be delivered effectively and fairly. The government would get praise. The reason why they are going to push these bills through without any opportunity for scrutiny is that they know that is what they will not get. They know this is a quick-fix deal to stitch something up fast and push it through before anybody gets a chance to point out just how ineffective it is.

Let us remember that what we are debating here, the government’s amendment to Senator Conroy’s motion—to basically prevent any serious scrutiny of the legislation by a Senate committee—is going to be just the start of it. The government’s amendment now is to try to prevent any proper committee examination of the legislation, despite the guarantee given by Senator Coonan in question time yesterday to the Democrats and others. Next week we will have late-night sittings, next week we will have a guillotine; and again the National Party members who have been saying how concerned they are about this issue will be expected to vote with their coalition colleagues to gag debate and examination of the legislation in this chamber. If debate goes on longer than the government likes and difficult questions that it does not like are asked in the committee stage, I am sure we will get ministers not even bothering to answer. That is what is to come.

And, of course, that is what is to come just with Telstra. If this is what is happening with Telstra, we can all imagine what is going to happen with workplace relations laws, welfare laws and laws to give more tax cuts to the rich, and what is going to happen if the government has any desire to rort the electoral laws in its own favour. We will be getting the same deal. In any area where the government is doing something dodgy to rush through some ideologically extreme measure with no concern for whether or not it actually delivers good for the community,
this is what we will be getting. This is a taste of what is to come.

Let us not forget that, with this legislative package that nobody has seen yet, that is going to appear tomorrow and that we are meant to be debating straightaway tomorrow, we will be debating it without some of the regulations that will follow on. We will not see them at all until the legislation is passed and in place and it is too late to do anything about it.

The only argument that Minister Ellison put forward that had a skerrick of substance to it was the idea of a mandate—that the government went to the election with this policy, got elected and therefore should be able to do it. I do not want to get sidetracked by mandate theory, apart from noting the absurdity of suggesting that because someone gets voted into office they therefore get a blank cheque for every single dot and comma on every single page of every single policy book that they put out. Rather, I want to emphasise that that mandate argument, if it had any substance, might apply in the House of Representatives because that is the house of government—it is dominated by the government, it is controlled by the government and we are used to that sort of thing—but the Senate is the house of review. It provides checks and balances, and the committee stage is the key aspect of those checks and balances. Even if you support the government’s policy approach, you are negligent in the extreme, particularly in an area as complex as this, if you do not ensure that you properly examine what is being put forward.

We all know—if we did not know before the last couple of weeks, we sure know now—that if there is any flaw in that legislation, if there is any loophole or if there is any drafting error then Mr Trujillo and his new band of buddies from the US will be exploiting it to the max and it will be too late to do anything about it. You can almost guarantee with a package of five bills around an issue as complex as telecommunications that the government will not get it right, particularly if you look at their record. You can guarantee that that will almost certainly not be detected—and, if it is detected, not acknowledged by the government; they will not admit an error—if we take this approach of not having proper committee scrutiny.

I also go to the question of mandate and what people promised to the electorate. We heard Senator Ludwig before, detailing some of the places around Queensland, indeed just around Brisbane and surrounds, where there is a significant problem. But we all know—and, if we did not know, Senator Joyce has been telling everybody very loudly for a long time—that Senator Joyce went to the election as a Queensland National opposed to the sale of Telstra. He said, and I have heard him many times on the radio, that if it were up to him he would not sell Telstra. Well, it is up to him. It is up to you, Senator Joyce. You cannot say, ‘This will pass anyway, via somebody else.’ It will not. It is up to you, and it is your responsibility. Similarly, even if you are going to accept the passage of the legislation, it is up to you whether or not there is decent scrutiny of it.

Senator Joyce promised Queenslanders that he was opposed to Telstra. I might point out that he got elected—just—on preferences from the Pauline Hanson’s One Nation candidate, Senator Harris, who strongly opposed the sale of Telstra, and from Pauline Hanson standing as herself, who also opposed the sale of Telstra. So if you are talking mandate then there is pretty clear emphasis, at least in relation to Senator Joyce. So I would say to him, Queenslander to Queenslander—and I remember his first speech, when he came in here and talked about the maroon colour of the chamber and how it was a Queensland
takeover—‘Just a bit of that State of Origin spirit, Senator Joyce.’ I would say to him: ‘Mate’—if we are still allowed to say that—‘think of the Queenslanders. Don’t worry about the rest of them. Stand up for Queensland. Here’s your chance; stand up for Queensland.’ Queenslanders are not going to get a say if this government amendment goes through. The bills appear tomorrow. The Senate hearing will be in the terrible, dastardly southern capital of Canberra. People from rural Queensland will not get a say. They will not be able to get down here. Nobody is going to have time to properly scrutinise it anyway. Just think about how that looks.

I can tell you from experience that it is no shame to say that you have got things wrong; it is no shame to say that you have been ducked and that you have believed promises the government has given in the past. That has certainly happened to me. The government has given promises in relation to certain areas and something gets passed, and then you get down the track and it does not happen. I do not think there is any shame in saying: ‘Got that wrong; made a mistake. Shouldn’t have trusted them.’ But when it does get to be a problem is when you are warned in advance. Senator Joyce has the benefit of knowing the record of the Liberal Party in government. I know he knows the record, because I have seen him talk about it. I remember seeing him quoted in a column; I think it was by Matt Price in the Australian. He was looking through a document, saying, ‘You’ve got to check what these Liberals give you, because they promise you one thing and then you look at the fine print and it’s something else.’ He is right.

But you are not giving yourself, let alone anyone else in the country—people who have the expertise—the chance to have a look at the fine print and tell you. That is even leaving aside the fact that you are going to pass this stuff without the regulations and without being able to look at that fine print. If you are talking about fine print, that is where you really find it. That is where it gets to be a problem. I do not want to be too harsh on Senator Joyce, because I have to say that at least he had a go. We should remember that some of his fellow Nationals—Senator McGauran, Senator Sandy McDonald and Senator Boswell—have already voted to sell all of Telstra. They voted for it twice, in the last parliament. If they had their way, it would already be gone. They got nothing out of the government. At least he had a go.

Senator McGauran interjecting—

Senator BARTLETT—That is true Queensland spirit, Senator McGauran. At least he stood up and had a go. I say to him that we will back him. He can stick at it a bit further. He has a bit more to him. I saw those slightly uncharitable comments he made about Senator Boswell and how there is the way of the past and the new breed. Senator Nash is one of the new breed. It is good to see a bit of that new National breed spirit, because it does get hard to believe that you are genuine, not because you agreed to a deal in this legislation—I understand those sorts of things; you can criticise the detail—but because you do these sorts of things and then let them be rushed through without any chance to see what is going on. There is simply no way that you can say afterwards: ‘Look, I didn’t know; I got ducked. Mate, how was I to know?’ You know because you are being told, and we know that you know. You have said that you cannot trust these Lans. Well, you are sure giving them a blank cheque here.

If you vote for this government amendment, that is what you will be doing. It only takes one vote, joining with the non-government senators, to defeat the govern-
ment amendment—one vote, just one person. I say that to all coalition senators—to any of those others who have made fine speeches over the last six months about how the Senate will still be a house of review, how it will still operate properly, how people will not have anything to fear: ‘Many of us in the coalition have a genuine commitment to the Senate and its fine record of standing independent from the government and scrutinising. We will not be pushed around.’ Let us see how you go with the first chance.

Honestly, look at the amendment that Senator Ellison has put forward. Those of the five bills that will be introduced in the Senate tomorrow will be exempted from the cut-off tomorrow if no-one from the coalition shows any backbone, and debate will be started straightaway. Then, at whatever the stage they have reached at the end of the time available for consideration of government business on Thursday, which is 12.45, we will go and report on what is left.

That means that we could potentially have a debate all day tomorrow and Thursday. We will have the government accusing us of filibustering just to try to make sure we can get it to a committee hearing before it comes to a third reading vote. Or we could have the vote before Thursday lunchtime and then we could have a Senate inquiry into the bills that are already passed. It is just a joke! It is not just a genuinely serious transgression of the whole principle, concept and raison d’etre of the Senate as a house of review but also a subversion of due process. Maybe that should not surprise me, because I have spoken many times in this parliament about the subversion of due process by this government in a range of areas, but this is not a joke; it is deadly serious, particularly because of what it signals for other issues down the track.

I emphasise that this is a key test. In some ways, it is actually as significant as the vote on whether or not to sell Telstra itself. That is a policy decision, and I accept that people can have different views about that but, if you are going to support a very significant and irreversible decision like that, again, I would say that it is a dereliction of duty not to do all you can to guarantee that it is being done right and that it is not done sloppily and in a rush with bits hanging off the edge or loopholes in there for Mr Trujillo and his cohorts to exploit. Even beyond the issue of Telstra, if you are genuinely going to put this forward as an acceptable process for dealing with a serious piece of legislation that is of major public concern, major public interest and which has a major personal impact on many Australians—including Queenslanders—I think that sends a very bad signal about the overall adequacy of and seriousness with which you take the parliamentary process. I think that is a bigger concern. You can always have a policy decision that you disagree with but, if you are willing to subvert the whole democratic process again and again any time you encounter a bit of political controversy or political difficulty, that is a much bigger worry. This is not just some minor procedural issue; it is a very important issue of principle as well. I urge all those members of the coalition to give these issues serious thought before they cast their votes on this motion and I urge them to oppose the government’s farcical amendment, as the Democrats will.

Senator BOB BROWN (Tasmania) (5.40 pm)—The Greens support the motion moved by Senator Conroy and will oppose the amendment surprisingly brought forward by Senator Ellison. I think Senator Ellison is one of the better ministers in the Howard cabinet and I am surprised that he would have lobbed an amendment like this before the Senate on such an important issue as
these five Telstra bills that we have not seen yet.

I am surprised, because the exercise by the government in amending rather than simply blocking the motion for these bills to go before the parliament will be seen in the community for what it is: it is frivolous; it is demeaning; it is antidemocratic; it is petty; and, as senators who have spoken before me have said, it is arrogant. It is arrogant because it simply says: ‘We’re in charge here. We’ll make serious moves to turn the business of a committee to scrutinise these bills over the coming month into a farce.’

The Australian people are very interested in the impending sale of Telstra by the government, and in the use of numbers and the support of the National Party and individual senators. Tasmania, which is the poorest state in the Commonwealth in income terms, is seen as a region. I know that there is a great deal of concern about the delivery of telecommunications services into the future and a great deal of opposition to the sale of Telstra right across the state of Tasmania. The poorer it gets, the greater the opposition. It is everywhere. Yet, I have no doubt that the six Liberal senators from Tasmania are going to deprive the people of Tasmania of the right to have input into this legislation and, certainly, to subject it to the proper scrutiny that you would expect of monumental legislation like this.

Why is it that the Tasmanian senators will vote to effectively stymie a proper inquiry? Why is it that senators on the coalition side representing regions right around this country will vote to stymie a proper inquiry? There is only one reason. There is obviously no rush to privatise Telstra because the market says that it would be foolish to rush into that anyway. The reason is that the government does not want a debate on this. The government feels vulnerable. The government feels that an extended debate on this is going to be damaging. Who do I mean when I say, ‘The government’? I mean the Rt Hon. John Howard, the Prime Minister, who is now governing through executive proclamation. That is what we have here today: we have an executive decision to override the norms of the Senate and to truncate a proper inquiry into the proposed sale of Telstra and what the impact will be on the community. If after the inquiry the Senate does not block the bills, it will try to amend them in a positive way. The Prime Minister does not want that. He is a past master at manipulating the way in which Australians get, hear and analyse the news about what the government is doing. If there is one thing the Prime Minister knows, it is that this sale is bad news out there in voter land. The polls show that. He knows that. The feedback shows that.

It is particularly touchy news when you get to the regions, where National Party senators are incumbent or, in the case of Tasmania for example, where Liberal Party senators play much the same role as National Party senators. The reality here is that the government is going to use the force of numbers, and every single one of those coalition senators, National Party and Liberal Party, is required to vote here to prevent the Senate from inquiring into these five bills.

It is a farce to say, ‘We will give you four days with a weekend intervening,’ when on Friday all MPs who are working adequately will have their diaries already filled, and on Monday morning there are political meetings. The reality is that this amendment is for a Thursday night inquiry into five Telstra bills which are going to arrive the day before. It is a complete farce. I cannot understand why Senator Ellison allowed himself to demean what is usually a very honourable contribution to the Senate by fielding this motion. I will guarantee it did not come from
him. This has come from the Prime Minister’s office or has been agreed to by the Prime Minister’s office, and it is simply the Prime Minister saying: ‘I don’t want a debate on that, thank you. The going’s tough. The stoush we’re having over Telstra is bad enough, but to put these bills up to scrutiny at this time is going to alarm a lot of people, including mothers who might have an interest in Telstra shares.’ It will alarm a great many more people who have an interest in telecommunications in this country and where it is going to. It is an absolute snub of the Senate but, worse, it is a snub of the Australian constituency by the Prime Minister and this government, and the Greens will not be supporting it—no way.

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

The Senate divided. [5.51 pm]
(The Deputy President—Senator JJ Hogg)

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AYES
Abetz, E.  
Barnett, G.  
Brandis, G.H.  
Chapman, H.G.P.  
Coonan, H.L.  
Ellison, C.M.  
Ferris, J.M.  
Fifield, M.P.  
 Humphries, G.  
Joyce, B.  
Lightfoot, P.R.  
Macdonald, J.A.L.  
McGauran, J.J. *  
Parry, S.  
Santoro, S.  
Trosth, J.M.  
Vanstone, A.E.  

NOES
Allison, L.F.  
Bartlett, A.J.J.  
Bishop, T.M.  
Brown, C.L.  
Carr, K.J.  
Evans, C.V.  
Fielding, S.  
Hogg, J.J.  
Hutchins, S.P.  
Ludwig, J.W.  
McEwen, A.  
Milne, C.  
Murray, A.J.M.  
Polley, H.  
Stephens, U.  
Stott Despoja, N.  
Wong, P.  
Brown, B.J.  
Campbell, G.  
Conroy, S.M.  
Faulkner, J.P.  
Forshaw, M.G.  
Harley, A.  
Kirk, L.  
Marshall, G.  
McLacaus, J.E.  
Moore, C.  
Nettle, K.  
Siewert, R.  
Sterle, G.  
Webber, R. *  
Wortley, D.  

* denotes teller

Question agreed to.

Original question, as amended, agreed to.

COMMITTEES

Membership

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

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (5.52 pm)—by leave—I move:

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

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

Foreign Affairs, Defence and Trade References Committee—
Discharged—Senator Nash
Appointed—

CHAMBER
Instead of dealing with some of the specific issues of enforcement of existing regulation, for example, what the government is seeking to do is to create a new bureaucracy with coercive powers and furthermore to create a new legislative framework with specific application to one sector of industry, the building industry. Moreover, the government is seeking to introduce the penalty provisions retrospectively. As I have indicated before, what that means is that actions by individual employees, possibly by unions and potentially by contractors—as Senator Murray has also pointed out, the definition would apply to subcontractors on a building site or in the building industry, which is a wider proposition—which were lawful at the time they were taken would now be deemed to be unlawful.

As yet, the only explanation we have had from the minister as to why there is such a compelling case for retrospectivity is a general diatribe about lawlessness. We on this side of the chamber say that the test should be higher for this parliament to pass legislation that renders acts which were previously lawful unlawful and exposes Australian citizens to substantial penalty provisions. As yet, we have not heard from this government a cogent defence of the retrospectivity aspect of this legislation.

Senator MARSHALL (Victoria) (5.59 pm)—Senator Wong makes an excellent point. I have a couple of outstanding questions which I put to the minister prior to the resumption of this debate. I hope I will get answers to them. To follow on from what Senator Wong said, if there is a special need for the retrospectivity, you would think that would have come out of the royal commission, given what this government has said during its rhetorical flourishes and the extreme ideological position it keeps putting before the Senate. The royal commission actually found that the number of incidents
of unprotected action in the building and construction industry was very small, especially when considered in the context of the industry as a whole.

In relation to unprotected industrial action, the royal commission found only 24 incidents around the whole country since 1999. That is the actual finding of the royal commission. Over those years since 1999, there were four incidents in New South Wales, seven in Victoria, three in Queensland, two in South Australia, seven in Western Australia and one in Tasmania. Many of those incidents of unprotected action were very short and involved stoppages of no more than a few hours and frequently involved issues to do with site working conditions.

From 1999 until the end of the royal commission, there were 24 occasions when unprotected industrial action was taken. That is the finding of the royal commission. That is hardly the case for special circumstances. That is hardly the case for this legislation and the penalties that will apply. That is hardly the case for broadening the scope of building and construction work and potentially expanding the definition of unprotected industrial action. It is hardly the case for retrospectivity as put by the government. I wanted to get the facts on the record. Facts carry more weight than rhetorical flourishes from the minister. I am waiting for answers in respect of using cases as precedents, when we have had an assurance from the Attorney-General that they would not be used as precedents.

I am waiting on these answers from the government. The Attorney-General was very clear in that assurance and the department has breached that assurance. I would like a response from the government about what that assurance means and its value. The minister may also want to comment on what the Attorney-General at the time said:

An offence would only be made retrospective after careful consideration on a case by case basis and only where there are special circumstances necessitating retrospectivity, as they were in relation to the new hoax offence.

I have advised the Senate of the occasions when unprotected action was taken over those years as stated by the royal commission. That is hardly a special case. Maybe the minister can give us some details about the special case. Again, I refer him to the assurance given by the Attorney-General that that particular piece of legislation would not be used as a precedent. I asked this before question time. He has had his advisers available since then and there is no reason why the minister cannot answer that question. I call on him to do so.

Senator ABETZ (Tasmania—Special Minister of State) (6.04 pm)—This is becoming painfully tedious. The Australian Labor Party is seeking to defend the indefensible in relation to the government trying to weed out the culture of illegality and unlawfulness which exists in the building and construction industry. That was the finding of the royal commission, something which Senator Marshall is now trying to deny. The reason I did not respond earlier was that Senator Marshall, as we have heard, has the full quote in front of him. The assurance related to criminal sanctions only and, moreover, was qualified as follows:

An offence would only be made retrospective after careful consideration on a case by case basis and only where there are special circumstances necessitating retrospectivity ...

In the debate last night, before question time today and now again, we bounce the ball backwards and forwards. In this situation, I think all parties in the Senate agree in general terms that retrospectivity should be avoided, if possible. However, we are all agreed that retrospectivity can be used from time to time—in other words, on a case-by-
case basis. When the government examined the findings of the royal commission and the culture that unfortunately exists within the building and construction industry, it made a determination and on balance it believed that it was important to have this legislation made retrospective.

When I say ‘made retrospective’, on 9 March 2005 when the legislation was tabled it was announced that it was intended that the legislation would apply as of that date, so it is not the case that the people coming into this arena were completely surprised that the government had changed its mind. People were warned on 9 March 2005 that certain conduct would become illegal from that date onwards. So the suggestion that the Attorney-General gave an assurance et cetera, as embellished by Senator Marshall, is quite disingenuous. A statement was made that said that careful consideration would be made on a case-by-case basis. In other words, no such blanket guarantee was given as was so inappropriately suggested by Senator Marshall. I thought he was being disingenuous, and then when he read the quote out himself which says ‘on a case by case basis’, he must have known that no such blanket guarantee was given and that the government would—as one would expect—consider these situations on a case-by-case basis. That is exactly what we have done and, after consideration, we believe that it is important in this area to have retrospectivity so-called.

The parts of the present bill dealing with industrial action will operate retrospectively, but they do not impose criminal sanctions. So we are talking about criminal sanctions in relation to this legislation. I accept that the Democrats come to this issue as a matter of principle, and I think Senator Murray and I had that discussion last night in relation to retrospectivity. On balance, we disagree with the Democrats’ approach, but we can fully understand their arguments. As I have pleaded on a number of occasions, let us put this to the vote and move on to the other issues that are before the Senate.

Senator WONG (South Australia) (6.09 pm)—It is not surprising that this matter does not come to a vote when what has been put by opposition and crossbench senators is not adequately responded to and your contributions are imbued with language that describes opposition senators as disingenuous and dissembling and refers to the Labor Party being shameful and various other things. It is not surprising that opposition senators feel the need to correct the record and to put our views very clearly, which I will do again. We do not support criminal activity in any form. We do not support criminal activity in the building industry or anywhere else. We do not support, as you called it, ‘a culture of lawlessness’. We are not here to defend that. We have a difference of views—

Senator Abetz—Well, then vote for the legislation.

Senator WONG—This is the problem with the illogical way in which the minister approaches this bill: he says, ‘If you do not agree with lawlessness then you have to vote for our bill.’ There is a step there that is an absolute non sequitur. There are those of us who do not believe that the Howard government’s prescription of retrospectively imposing penalties on a sector of the work force is the way to go forward. The minister says: ‘These are not criminal penalties. Therefore, it is okay.’ These are very substantial civil penalty provisions. I do not know why the
minister is shaking his head. They are substantially greater penalties than currently exist under the Workplace Relations Act. They include $110,000 penalties for bodies corporate and $22,000 penalties for individuals.

The other justification the minister uses is that people have known since 9 March. I am aware that if you spend too much time in this place, sometimes you have the erroneous view that this is the centre of the universe and that people are interested in everything that is going on here. I regret to say that I do not think the great majority of the Australian people are that engaged with the detail of what occurs in this chamber or in the other place. I certainly do not think that the 250,000-plus people who work in the building industry would have been sitting on the edges of their seats waiting to examine the detail of legislation tabled in the chamber on 9 March. Somehow, I simply do not think that was likely. So to suggest that theoretically that justifies retrospectivity is really a fallacious argument. In any event, the ALP has put on the record its views about retrospectivity and about the amendments.

Question put:
That the amendments (Senator Murray’s) be agreed to.

The committee divided. [6.16 pm]
(The Temporary Chairman—Senator HGP Chapman)

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AYES
Allison, L.F. 
Bishop, T.M. 
Brown, C.L. 
Carr, K.J. 
Faulkner, J.P. 
Forshaw, M.G. 
Hurley, A. 
Kirk, L. * 
Marshall, G. 
McLucas, J.E. 
Moore, C. 
Nettle, K. 
Siewert, R. 
Sterle, G. 
Webber, R. 
Wortley, D. 
Hutchins, S.P. 
Ludwig, J.W. 
McEwen, A. 
Milne, C. 
Murray, A.J.M. 
Polley, H. 
Stephens, U. 
Stott Despoja, N. 
Wong, P.

NOES
Abetz, E. 
Boswell, R.L.D. 
Chapman, H.G.P. 
Coonan, H.L. 
Ellison, C.M. 
Ferris, J.M. 
Fifield, M.P. 
Humphries, G. 
Joyce, B. 
Lightfoot, P.R. 
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McGuaran, J.J.J. 
Parry, S. 
Santoro, S. 
Troeth, J.M. 
Vanstone, A.E. 
Adams, I. 
Campbell, I.G. 
Colbeck, R. 
Eggleston, A. 
Ferguson, A.B. 
Fierravanti-Wells, C. 
Heffernan, W. 
Johnston, D. 
Kemp, C.R. 
Macdonald, I. 
Mason, B.J. 
Nash, F. 
Ronaldson, M. 
Scullion, N.G. 
Trood, R. 
Watson, J.O.W.

PAIRS
Crossin, P.M. 
Evans, C.V. 
Lundy, K.A. 
O’Brien, K.W.K. 
Ray, R.F. 
Sherry, N.J. 
Patterson, K.C. 
Hill, R.M. 
Payne, M.A. 
Brandis, G.H. 
Minchin, N.H. 
Barnett, G.

* denotes teller

Question negatived.

Senator MURRAY (Western Australia) (6.21 pm)—by leave—I move Democrat amendments (4) to (7) on sheet 4646 revised:

(4) Clause 4, page 4 (lines 7 and 8), omit the definition of building agreement, substitute:
building agreement means an agreement that primarily applies to building work.

(5) Clause 4, page 4 (after line 15), after the definition of building association, insert:
building award means an award that primarily applies to building work.
(6) Clause 4, page 3 (lines 16 to 18), omit the definition of building certified agreement, substitute:

building certified agreement means a certified agreement that primarily applies to building work.

(7) Clause 5, page 9 (line 1) to page 10 (line 15), omit the clause, substitute:

5 Definition of building work

(1) Subject to subsections (2), (3) and (4), building work means any of the following activities:

(a) the construction, extension, restoration, demolition or dismantling of buildings, structures or works that form, or are to form, part of land, at the site where such buildings, structures or works are to be located, whether or not the buildings, structures or works are permanent;

(b) the construction, extension, restoration, demolition or dismantling of railways (not including rolling stock) or docks;

(c) the installation of fittings forming part of buildings, structures or works which are being constructed, extended, restored, demolished or dismantled, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;

(d) any operation that is part of, or is preparatory to, or is for rendering complete, work covered by paragraph (a), (b) or (c), for example:

(i) site clearance, earthmoving, excavation, tunnelling and boring;

(ii) the laying of foundations;

(iii) the erection, maintenance or dismantling of scaffolding;

(iv) the prefabrication of major parts of buildings, structures and works (eg. precastings) carried out on-site or in a temporary facility or yard established for the purposes of carrying out such prefabrication work for the project;

(v) site restoration, landscaping and the provision of roadways and other access works;

but does not include any of the following:

(e) the drilling for, or extraction of, oil or natural gas;

(f) the extraction (whether by underground or surface working) of minerals, including tunnelling or boring, or constructing underground works, for that purpose;

(g) any work that is part of a project for:

(i) the construction, repair or restoration of a single dwelling house;

(ii) the construction, repair or restoration of any building, structure or work associated with a single dwelling house;

(iii) the alteration or extension of a single-dwelling house, if it remains a single-dwelling house after the alteration or extension;

(h) The installation and repair of equipment or machinery in existing buildings, structures or works which does not form part of the building, structure or works, for example, industrial machinery.

(2) Paragraph (1)(g) does not apply if the project is part of a multi-dwelling development that consists of, or includes, the construction of at least 5 single-dwelling houses.

(3) Subject to subsection (4), building work includes any activity that is prescribed by the regulations for the purposes of this section.

(4) Building work does not include any activity which is prescribed by the regulations for the purposes of this section.

(5) In this section:
Looking at the sets of amendments I have put and will be putting on this legislation, I think three can legitimately be classed as amendments of principle. They concern advertising, retrospectivity and appointments on merit, which is in the amendment still to come. The fourth set are the only ones which you would regard as technical or trying to alter the framework of the legislation. I am moved to do so by a great concern. The Australian Democrats believe that the major problem with workplace relations law and indeed this industry is not so much the lack of law or sufficiently strong law but the lack of enforcement and that regulation and enforcement are weak.

I was quite interested by the analogy drawn by a couple of government speakers who remarked on how well they had done with respect to the waterfront dispute. By no means am I an expert on waterfronts—I am not much of an expert on building either, apart from once being a building labourer—but the crane rates achieved were higher than I expected. The point is that that entire exercise was achieved without changing the law. It was achieved within the existing framework of the existing law.

The point was made in the royal commission and has been made in the subsequent inquiry into this legislation that many of the transgressions of law outlined in the royal commission and in other circumstances have been transgressions of the criminal law, the tax law, the Corporations Law or state laws such as health and safety laws. If all the laws, including workplace relations laws, were properly enforced and the regulators were on the case, there would be no need for this industry specific legislation. I think the royal commission did a disservice by recommending industry specific legislation rather than the Democrats’ preferred choice of the introduction of a national workplace relations regulator with the powers that go with a national regulator across all industries and the enforcement of existing law.

At this moment it is against both criminal and workplace law to use duress in a workplace, and it is against both criminal law and any other law to steal from a building site. So the idea that our laws are inadequate at present is not persuasive. The idea that they are not properly enforced at present is persuasive. I make those remarks because how the legislation is framed affects its extent or scope. In the earlier discussion Senator Marshall drew attention to the fact that the definition under which this industry specific legislation applies is very material to the individuals, the contractors, the employers, the businesses and the union and employer organisations that are affected by it. There was evidence to the committee from all quarters that the definition as laid out was too broad.

We have therefore tried to narrow the definition. I will not call our definition the AiG definition, but the Australian Industry Group was extremely concerned by the extent of the government’s definition, as were the CEPU, the CFMEU and other contributors to the inquiry. Neither do I intend, unless the minister requires it, to go in depth through the way in which I have constructed the amendment, simply because the amendment has been before all parties, advisers and shadows for quite some time and I am sure they have had adequate time to pay attention to it. That is the framework around my amendments.

Senator MARSHALL (Victoria) (6.27 pm)—Senator Murray makes a very good point about this. There is a continual and, I think, quite deliberate misrepresentation by the government that this legislation is aimed at criminal conduct and is designed to stamp out criminality, corruption, standover tactics,
thuggery et cetera. There has been a common theme throughout nearly all the contributions of government members to the debate on this legislation. One wonders whether they have read this legislation and understand what it is about, because it does not go to those issues, and they ought to know that.

This legislation does a number of things. Let me go through them. Firstly, it broadens the scope of what may be defined as industrial action and provides for penalties to be imposed for new breaches of the Workplace Relations Act and for increased penalties on current offences, and all of this is to operate retrospectively from 9 March 2005. We are talking about normal industrial relations activity. We are talking about people attending meetings that may have not been authorised by their employer without putting in the appropriate notices and those notices only having been able to go in if those meetings were part of protected industrial action.

Let me give a practical example, so people can put this legislation into context. Let us say there was a serious injury on a building site—it may have involved a forklift or scaffolding—and the members in the immediate area stop work to find out what happened, what caused the accident and whether it would affect their ongoing work and then a meeting takes place. If that meeting were not authorised by the employer—and it may not have been; the employer may not have been on site at the time—that meeting would be considered unprotected industrial action. Under this legislation, every individual who participated in such a meeting could be fined $22,000. If the union in any way had an involvement in organising such a meeting to talk about the serious accident, they could be fined $110,000. In addition to that, they could all be liable for unspecified and unlimited damages.

Most normal people in a workplace would believe that it is their right to have a meeting and discuss what happened in circumstances such as that. But this legislation makes that illegal and applies enormous fines for working people and for unions, and I think that is a most unfortunate situation. None of that has anything to do with criminality. It does not have anything to do with organised crime, thuggery, intimidation or corruption. It is simple industrial relations—the normal things that will happen day to day.

I do not expect many government senators to understand how building sites might operate. Building sites are constantly moving. We have enormous productivity in the building industry in this country. Floors go up before your eyes, services follow the floors up as the concrete is laid, the centre of activity increases, amenity sheds are moved around and toilets are moved constantly. There are often situations where large numbers of employees are left without any amenities or toilets and situations where work cannot proceed in a normal manner without a meeting to discuss some of those situations. If that meeting or discussion, which meant people were unable to work, was not authorised by the employer, again under this legislation that will be deemed to be unprotected industrial action and there would be enormous fines applied and unlimited exposure to civil proceedings for damages. That is what we are talking about—normal industrial relations on a day-to-day basis. We are not talking about the situations that the government or the minister have talked about in this area.

What is driving it? Why is there the rush and why do the government want to make it retrospective? It is simply a crude attempt to stop unions and employers renegotiating certified agreements prior to the introduction of this government’s new, extreme agenda in industrial relations. Why did the government want to do that? They wanted to do it be-
cause they thought they were going to be ready with a whole swag of legislation which was going to tip the balance completely in favour of employers. They thought they would be able to drive into the industry AWAs and that they would be able to break the unions—which has been their real agenda throughout this process. There has been no evidence to the contrary.

The unions were seeking—with employers, I must say—to provide some certainty over the next three years, given the uncertain environment which we are all about to enter into in industrial relations, given what the government had stated was their industrial relations agenda. We have not seen the details of much of that—we have seen this legislation—but we have certainly heard the principles of what they want to do. I am not surprised that both employers and unions are seeking to have some stability, at least for the next three years, and to provide some certainty about working conditions and the business environment in which they want to work.

There was never any suggestion that employers and employees, through their unions, could not renegotiate certified agreements. It is legal to do so. In fact, the parties had agreed to do so. If the parties did not agree to do so, it could not be done. It had to take both parties to agree to do so. In fact, in most instances, the parties were obliged to do so as part of their existing certified agreements. The CFMEU has been mentioned—and I know what has happened in Victoria. The bulk of the building and construction industry CFMEU certified agreements were to expire in October anyway. My understanding is that nearly all of those agreements had clauses to say that negotiations for a new certified agreement would start no later than three months prior to the expiration of the existing agreement. So there was actually an obligation on the parties to begin negotiations on a new agreement.

Why do the parties want those clauses? They want them because it is in the interests of both the unions and the employers to have some certainty in the future. If you can negotiate a new agreement before the other one expires—one ready to take over from the expiry date—there is no protected industrial action and there is a smooth transition from one agreement to the other and more certainty is provided for the employer in their ability to tender. What is wrong with that? What is wrong with providing certainty for employers and employees? It is only this government that seeks to create disputes where there are none. It is only this government that seeks to create disputes where there need not be any. This government cannot bear the thought that there may be some employees who may in some measure be protected against any onslaught the government may launch in the near future to further regulate and restrict the bargaining rights of employees and their unions.

The second effect of the bill, of course, is to broaden the definition of building and construction work, and we have spoken somewhat about that. I may not have asked the minister this directly in relation to the previous amendments, but what I want to know from the minister is: how many extra workers is it estimated by the government that the new definition will now apply to? We believe that is important, to measure the effect of this legislation. We understand its scope. We understand that there are some 450,000, maybe 470,000, employees under the old definition, and we would certainly like to know how many workers it applies to now.

Senator ABETZ (Tasmania—Special Minister of State) (6.38 pm)—I will deal firstly with Senator Murray’s amendments,
and I remind the Senate that we are dealing with definitions at the moment. The Democrats propose substituting definitions for ‘building certified agreement’, ‘building agreement’ and ‘building award’ so that they mean the respective agreement or award that primarily applies to building work. Although this approach accords with the government’s intention for the ‘building work’ definition to determine the scope of the bill, these amendments are less precise. Defining an instrument as one that primarily applies to building work introduces an element of uncertainty that may result in litigation. The existing definition of ‘building work’ is intentionally broad so that it can ensure that the problems endemic in the industry are not shifted down the contractual chain. For example, construction unions have demonstrated a willingness to target companies manufacturing products for the industry in pursuit of their industrial goals. The breadth of the definition of ‘building work’ ensures that all those involved in the construction industry, whether on site or supplying essential materials, are covered. Also, as noted in response to concerns raised at the Senate inquiry, the bill provides a mechanism for removing categories of work captured inadvertently by this legislation by regulation.

Senator Murray indicated in his contribution that he disagrees with the royal commissioner. That is fine; I think he has done that very respectfully—unlike some others in this debate—and I accept that. But, in weighing up as a government, we need to determine whether the respected opinion of Senator Murray ought to have weight over that of a royal commissioner who listened in open hearings to 171 days of evidence. Somebody with Commissioner Cole’s training and expertise, having listened to all that evidence, carries on this occasion more weight with the government in determining the approach that we have taken.

I will respond to Senator Marshall, who still seems to be in denial mode in relation to the building and construction industry. The reasons for reform are that the royal commission found that the commercial construction industry was characterised by illegal and improper payments, chronic failure to honour legally binding agreements and regular flouting of court and industrial tribunal orders, and a culture of coercion and intimidation. Those listening to Senator Marshall would have thought that what occurs in the building and construction industry is what happens on a day-to-day basis all around Australia. The findings of the royal commission, after 171 days of hearing, specifically repudiate that assertion. Indeed the report of the royal commission said, in volume 1, page 6, paragraph 17:

At the heart of the findings is lawlessness. It is exhibited in many ways. There are breaches of the criminal law. There are breaches of laws of general application to all Australians where the sanction is a penalty rather than possible imprisonment. There are breaches of many provisions of the Workplace Relations Act 1996.

We as a government believe that the economy and community cannot bear the costs of such conduct. The laws of this country must apply to all citizens whether they be union officials, employers or employees. The royal commission also noted, in volume 1, page 6, paragraph 16, that the royal commission’s findings:

... demonstrate an industry which departs from the standards of commercial and industrial conduct exhibited in the rest of the Australian economy. They mark the industry as singular. They indicate an urgent need for structural and cultural reform.

So, with great respect, while Senator Marshall comes in here and asserts that what the CFMEU does in relation to the building and construction industry is exactly what happens in workplaces all around Australia every day, that it is just normal industrial
activity, that is specifically repudiated and rejected by the royal commissioner, who spent 171 days listening to evidence in public.

If we as a government have to make a determination as to whether we listen to the opposition on this or the royal commissioner, it will not surprise those listening that we as a government have determined to follow the line of the royal commissioner who made these specific findings. That is why it is so disappointing that those opposite have unfortunately not found themselves in a position to agree with the findings of the royal commission in these areas. Indeed they ran a campaign—I recall the Senate estimates committees where campaigns were run—against the Building Industry Taskforce and those public bodies being required to clean up this culture of disgraceful behaviour within the building and construction industry.

Allow me to repeat what the royal commission found:

These findings demonstrate an industry—that is, the building and construction industry—

which departs from the standards of commercial and industrial conduct exhibited in the rest of the Australian economy. They mark the industry as singular. They indicate an urgent need for structural and cultural reform.

That is what this government is seeking to do with this legislation. Senator Marshall then suggests that this government is a government that seeks to create disputes where there are not any. Can I indicate to Senator Marshall and those listening that under the Howard government we have the lowest rate of industrial disputation ever in this country. So if we are deliberately going out and creating disputes where disputes do not exist, how does he account for the undisputed figures which show that industrial disputation has gone down under the Howard government because we have been able to deliver through our reforms in workplaces where workers have been able to get more jobs? Under Labor, one million were unemployed; now it is down to five per cent and we want to drive it down even further.

Real wages have increased. Mr Beazley recently sought to boast again how he reduced the extent of wages against GDP during the accord period—in other words, how real wages were not allowed to grow. We as a government are delighted that real wages have grown and that workplaces are happier places. I would have thought that the best measure of that would be the extent of industrial disputation. To assert that we as a government are simply trying to create disputes where disputes do not exist defies all the objective evidence. The objective evidence is that under nine years of the Howard government industrial disputation is at an all-time record low.

I was also asked about how many workers might be covered by this legislation. I suppose it is like asking, for example, when the parliaments of the various states introduced breathalyser laws: how many people are going to be covered by that? Do you make that measure the number of those who have a drivers licence or only those drivers who will be driving in breach of the breathalyser laws? Of course, that is the Australian Labor Party’s great dilemma in this. They want a number but they are not willing to say that the number must be the number of workers who are willing to engage in unprotected industrial activity.

Senator Forshaw—Who doesn’t the breathalyser law apply to? Who in the Australian community is not covered by the breathalyser law?

Senator ABETZ—I would have thought everybody without a drivers licence, unless
they are driving illegally. Of course, that is the Labor Party’s proposition. That is their starting point—that everybody is likely to behave illegally. We as a government do not take that stand.

Senator Forshaw—No, the law applies to everybody. The law is the law.

Senator ABETZ—That is the interesting thing, isn’t it? Those on the other side believe that every Australian is likely to drive without a licence. I am not sure that that applies to—

Senator Forshaw interjecting—

The TEMPORARY CHAIRMAN (Senator Chapman)—Order, Senator Forshaw!

Senator ABETZ—I have a greater regard for my fellow Australians than those sorts of suggestions from those opposite.

Senator Wong—Mr Temporary Chairman, I rise on a point of order. I am not quite sure what the minister was saying but if he just imputed that those on this side have a view about people who are engaging in criminal activity, as seemed to be what he was doing, I would ask him to withdraw it. It is clearly an inappropriate imputation.

The TEMPORARY CHAIRMAN—I think, Senator Wong, that the point being made was a point of debate rather than a point of imputation against opposition senators.

Senator ABETZ—If those opposite were offended as a result of the foolish interjections and my response, of course I withdraw. Unfortunately, it is time to report, but can I encourage those opposite to drop their union affiliations tomorrow and get on with the debate so that we can deal with this legislation.

Progress reported.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Order! There being no consideration of government documents, I propose the question:

That the Senate do now adjourn.

Ethanol

Senator NASH (New South Wales) (6.51 pm)—I rise tonight to speak about ethanol and its importance not only to rural and regional Australia but also to this nation as a whole. We have a significant opportunity to build a sustainable domestic biofuels industry in Australia, for the benefit of all Australians. There are significant benefits that stand to be delivered through the development of this industry, but there are certain impediments in the way of further development and I would like to talk about a path forward to ensure that we have industry growth and development. As ethanol is primarily produced from molasses or starch, there has been much focus on the potential benefits for the sugar and wheat producers in our rural and regional communities and the flow-on effects for those communities. As a National, my focus and concern are very much on delivering where we can to develop industry in our regional communities.

In September 2002, we saw the government introduce a domestic production subsidy to encourage industry growth. Ethanol has been used as a fuel additive in Australia for a number of decades and we want to see that continued and developed. In recent years, ethanol as a fuel additive has attracted considerable media focus; however, most of the coverage that we have seen has been negative. Regardless of the inability to substantiate negative claims on the effect of using ethanol, consumer confidence has declined substantially. Indeed, in April 2003 the government introduced a 10 per cent cap on the ethanol blend allowable in fuel. His-
torically, the four major oil companies have been reticent about purchasing and blending ethanol in their fuel mix, and that is still the situation today. As a result of the decline in consumer confidence in the product, it would appear the oil companies have been even less inclined to purchase ethanol.

I would like to point out that this is a policy that the government took to the 2001 election and I would hope therefore that there would be a very strong belief that we should deliver on that policy. An excise regime currently applies to ethanol at the rate of 38.142c per litre. Recognising the potential benefits of the biofuel industry to the nation, as I have said, the government has put in place a target of 350 million litres of biofuel production by 2010. Currently domestic ethanol production stands at 105 million litres per annum, with the industrial, pharmaceutical and fuel sectors the major users.

Ethanol has the significant benefit of being a renewable fuel. Our fossil fuel reserves are finite and our estimation is that our reserves will only last for around another 24 years. Ethanol is domestically produced and, as a renewable fuel, there is no limit on future production capacity. If we can encourage industries out in our regions to develop domestic production, I believe we need to support them wherever we can.

In terms of our balance of trade, we have an increasing trade deficit due to petroleum product imports. These figures have increased from $448 million in 2001 to around $6½ billion in the financial year 2005-06. If we can reduce our reliance on foreign oil by increasing our domestic fuel production capacity through ethanol, there are obvious benefits for the nation. Certainly, one of the benefits of the development of an ethanol industry in Australia is the potential for economic returns for primary producers as well as the economic stimulation and job growth in rural and regional communities—something that The Nationals have pushed very hard in the past and will continue to push in the future. Ethanol production would provide another market option for primary producers which would of course maximise their income returns. It would also stimulate industry development in regional Australia, with resulting job opportunities and economic growth contributing to the prosperity of our regions.

The benefits of ethanol to the environment are without question. In certain cities in the United States, ethanol is mandated specifically as a result of the environmental benefit it provides. In Australia we are becoming increasingly aware of the environment and what we can do to improve it, and we should continue to be very focused on this area. Preliminary results from a CSIRO study of May 2005 suggest there is a significant reduction in greenhouse gas emissions resulting from the use of ethanol in fuel. For each litre of ethanol produced, the study suggested that there is a 2½ kilogram reduction in greenhouse gas emissions, which is the equivalent of removing 70,000 cars from Australian roads—and the benefits of that are quite obvious.

Traffic related air pollution is a growing concern in our community. Reducing vehicle emissions through increased use of ethanol has real health advantages for Australia, particularly in cities where pollution levels are high. Ethanol is not a carrier of toxic particles found in fuels such as petrol and diesel. Minimising the use of petrol through the increased use of ethanol would be a distinct advantage in reducing air pollution in metropolitan areas.

I would like to point out too that the Australian Medical Association has come out recently very strongly supporting the devel-
development of an ethanol industry in this country. The President of the AMA said:

“The AMA is a strong advocate on initiatives related to environmental impacts on human health such as global warming …

“We are equally passionate about the impact of vehicle emissions on human health and we would encourage governments to pursue responsible measures to reduce emissions.

“The AMA considers the use of biofuels such as ethanol in petrol as a positive move.

“In our opinion, there is incontrovertible evidence that the addition of ethanol to petrol and biodiesel to diesel will reduce the deaths and ill-health associated with the emissions produced by burning those fuels …”

It is very interesting to see that the positive effects of the development of the ethanol industry are being picked up by important bodies such as the AMA. The development of this industry is not just about supporting rural and regional communities; it is also about supporting the health benefits for this nation.

Australia is lagging behind the rest of the world in recognising the significant benefits of ethanol use. Brazil and the United States are currently the world’s leading producers of ethanol. The United States has recently again shown its commitment to the industry, with its Senate overwhelmingly passing an energy bill that will significantly expand the use of renewable fuels such as ethanol. It would seem that percentage mandates for ethanol use in fuel and also clean air legislation have been instrumental in the successful uptake of ethanol use in various nations around the world. We as a government certainly need to be focused here in this nation to do what we can to ensure the development of the ethanol industry.

There has certainly been some suggestion over recent years that ethanol should be mandated. While I can certainly take on board those sentiments that are being put forward by some sectors that mandating is an option, I believe that we need to perhaps look at alternative measures to ensure the take-up of ethanol in this nation. We are now looking at a situation where we see the oil companies virtually refusing to take on ethanol. We have said, as a government, that it is part of our policy that we want to see a 350 million litre target for biofuels in this nation. To do that, we are going to need to require the oil companies to increase their take-up. If we have a requirement of 350 million litres by 2010, it seems to me fairly simple, sensible and obvious that we have an annual volumetric target placed upon those oil companies that they have to meet for each year up until 2010 so that we can indeed implement the policy that, as a government, we have taken to the people and that we have said we will follow through and implement.

What I am putting forward is that we have a volumetric target, a volumetric requirement on the oil companies that is enforceable, so that we reach our policy target of 350 million litres of biofuel by 2010.

Millennium Development Goals

Senator MOORE (Queensland) (7.01 pm)—This evening I want to make some comments about the Millennium Development Goals, known as the MDGs. I know that in the other place there have been a number of debates on this issue—not really in the sense of debates in terms of differences of opinion but more as part of a very important process of awareness raising around exactly what the Millennium Development Goals are. To understand where we are today in 2005, leading into a very important international summit which will be held in New York next week, it is important to look back just a little bit in terms of the history of where these goals came from and what has been happening across our world to try to address something that should concern
all of us—and does, I think—and that is the issue of poverty in our world community.

At a specialised Millennium Summit in September 2000, representatives of over 189 countries, including 147 heads of state and government, gathered together at the UN General Assembly and unanimously adopted the Millennium Declaration. I encourage people to go to the UN web site. I always do that, because I think people should know more about the United Nations. But I particularly encourage people to go to the web site and see what the countries of the world agreed in 2000. See their commitment, see their worry and concern about their world and see what they agreed together to work towards to ensure that every citizen of the world could live with security, health and education. Security, health and education are the key issues.

The declaration sets out a series of goals designed to focus on the major challenges facing developing countries: poverty, hunger, education, gender equality, child and maternal mortality, health and the environment. Together, countries that self-define as developed and developing have committed to the following Millennium Development Goals, and there are eight of them: the eradication of extreme poverty and hunger; achieving universal primary education; promoting real gender equity and empowering women; reducing child mortality; improving health; combating HIV-AIDS, malaria and other diseases; ensuring environmental sustainability; and developing a real global partnership for development. There is also, as part of the commitment, a commitment to good governance for developing countries. As well, for those of us who are fortunate enough to live in what is known as the developed world, there is a commitment to meet real aid requirements, reducing countries’ debt, reducing trade barriers and looking together as a world community at addressing climate change. Together, the countries of the world have a clear vision to work towards, using goals, time frames and a system of working together and communicating to make extreme poverty something that belongs to past history by 2025. Again, that is a time goal.

In the spirit of hope in 2000, people put forward these plans. They agreed to meet at different times between 2000 and 2025 to take stock of how we were going. There was another meeting in 2002, which looked at how the world was going. A lot of countries of the world put together national plans of what their goals were and how they were hoping to meet the requirements. In 2002, Australia was one of the few countries that did not produce a national plan. There were questions asked about that. Nonetheless, the government made a commitment to continue working within the process. One of the things that we need to do, as Australians, is work with our government make sure that in 2005, next week in New York, we will be able to see exactly what Australia is doing to commit to future activity to meet the goals to which we have already agreed.

The issue of world poverty has been picked up now. I think one of the really hopeful activities that we have is that there is now an international program that we have is that there is now an international program. I think it is raising its head most clearly in Australia at the moment. It is the Make Poverty History campaign. This is really linked into the international activity of all nations working together. I see there are many senators in the chamber. I see that Senator Campbell has proudly shown us his white band. There has been a campaign organised by people across Australia to make a very visible focus on making poverty history by wearing a simple white band. And it is working. Hundreds of thousands of these white bands have been distributed across Australia, and people are wearing them. This is living proof that the community is beginning to take part in what
must not be just a government commitment but must be a community commitment.

This has also been replicated by a postcard campaign. I was told today that the Prime Minister has received 10,000 of these postcards. I have not counted them and I do not know whether the Prime Minister has, but the fact is that there has been an acknowledgment of these goals within Australia through a campaign that involves NGOs, church groups and the Australian Council for International Development. There has been an education program about the issue of world poverty that involves schools, community groups and people who are just walking down the street and see a stall with information on this issue. That must be positive and must send a message to the Prime Minister, who has announced that he will be attending the summit as a world leader. It is important for us that our Prime Minister will be at the 2005 follow-up conference on the millennium goals.

I hope there will be a significant commitment from Australia at this particular summit and that we will move forward with a national plan that will link us into what is happening across the world. This national plan must not just look at international cooperation; it must look at what is happening at home as well, because those goals that I mentioned—poverty reduction, education, empowerment and health—are goals that should be considered within the Australian community as well. As a member of the Parliamentary Group on Population and Development, I was fortunate enough to attend a couple of local regional meetings in the South Pacific in the last couple of months, where we have been looking at where we are moving. There is interest in the other communities about what is happening in Australia as well as what is happening in their country.

Before I end these comments tonight—and I hope to be able to speak on these issues again this place—I want to make a particular plea that, when the countries of the world do gather in New York next week, there will be a maintenance of our commitment to the issues of women’s health and we will continue with the commitment that we have made at a series of meetings—including most recently the Beijing Plus 10 forum this year—to support gender equity. We have to make sure that the federal government stands firm on the commitments it has made to the promotion and protection of the human rights of women and girls through gender equality and women’s empowerment, including the reproductive rights of women and girls, in achieving sustainable development. These goals impact on people’s lives and, unless we really clearly address the issue of safe reproductive rights in all countries in our world, we will continue to have unnecessary illness and unnecessary death, we will not be able to meet the real goals we must have on education and other areas of health and we will not stand by the legacy that we have in Australia of strong commitment at the UN to the issue of human rights.

As a country, we have a very proud record at the United Nations. We are a signatory to the Millennium Development Goals. We now have the opportunity in 2005 to show the world and everybody in our country exactly how we are going to operate in these areas. When we gather together at the next round of meetings, there should be clear achievements in Australia about what we have done on the issue of the millennium goals within our country and also as an effective partner with other countries that have not had the same opportunities that we have had. I add my voice to those of the many people who have been sending the postcards and proudly wearing the white band. We do have the opportunity through this process to eradicate
world poverty; to make the world a better place; to ensure that the issues of security, health and education will be maintained; and to proudly be part of a better world.

**Indigenous Affairs: Aboriginal Legal Rights Movement**

Senator SIEWERT (Western Australia) (7.11 pm)—I would like to raise the issue of Indigenous land rights and whether private individual land ownership might increase economic development opportunities and address the acute housing needs of rural and remote Indigenous communities. In doing so, I wish to draw the attention of the Senate to the report entitled *Land rights and development reform in remote Australia*, which was commissioned by Oxfam Australia and undertaken by the Centre for Aboriginal Economic Policy Research at the Australian National University. This report looks specifically at the extent to which individual ownership of land is likely to boost economic development and produce better housing outcomes within the Northern Territory by examining the Aboriginal Land Rights (Northern Territory) Act 1976. This issue is an extremely important one as Indigenous Australians in remote areas are still living under appalling conditions—conditions that I was reminded of yet again during a trip to the Northern Territory last week.

That this nation’s first people continue to face such deeply entrenched disadvantage should be a source of great shame to all Australians, particularly when we consider that we are one of the only first-world countries in which the standard of living for Indigenous inhabitants has not improved dramatically over the decades. The extreme disadvantage faced by Indigenous Australians was highlighted by the release in July of the *Overcoming Indigenous disadvantage* report by the Productivity Commission. The report highlighted the growing gap between Indigenous people in this country and the rest of the Australian population in all of its headline and strategic indicators. I remind this place again, as I did in my first speech, of the quote by the Chairman of the Productivity Commission, Gary Banks, in which he said:

It is distressingly apparent that many years of policy effort have not delivered desired outcomes; indeed in some important respects the circumstances of Indigenous people appear to have deteriorated or regressed. Worse than that, outcomes in the strategic areas identified as critical to overcoming disadvantage in the long term remain well short of what is needed.

Housing is one area of particular concern for Indigenous Australians. Australia has one of the OECD’s highest rates of homeownership, with the 2001 census showing that that 70 per cent of Australian households were living in fully owned or mortgaged dwellings. This is in stark contrast to the 14.6 per cent of Indigenous households in the Northern Territory that own a dwelling or have a mortgage on a dwelling. Those of you who have had the privilege to visit some of our remote Aboriginal communities in Western Australia and the Northern Territory will appreciate the condition of much of this housing and will know that overcrowding, unacceptable dwelling conditions and homelessness are of serious concern. Furthermore, current projections for the rate of Indigenous population growth in remote areas indicate that this problem will continue to worsen.

The other serious issues considered in this report which I wish to draw to the attention of the Senate are the possibilities for Indigenous economic development. This study seeks to appreciate the aspirations of remote communities, consider economic development objectives defined by these communities, and look at some of the structural barriers to overcoming economic development activities which they face. This study also looks at overseas experience, including in
New Zealand, to see what we can learn from their experience in land ownership and economic development.

I hope that I have been able to convey to this place the importance of these issues and the need for us as representatives of this great nation to address the significant problems faced by Indigenous people and the need to look to providing sustainable development and housing opportunities as part of a program to address their great disadvantage. To this end, I seek leave to table this report, *Land rights and development reform in remote Australia*, which was commissioned by Oxfam Australia and, as I said, undertaken by the Centre for Aboriginal Economic Policy Research at the Australian National University.

Leave granted.

Senator SIEWERT—I would like to draw to your attention some of the key findings of this report. This report finds that there is no evidence to suggest that individual land ownership is necessary or sufficient to bring about the goals of increasing economic development opportunities and addressing the acute housing needs of rural and remote Indigenous communities—particularly in relation to private ownership of low-value land in remote settings. In relation to economic development, it suggests that the notion of land rights reform as the driver for economic development should be reconsidered in the light of entrenched disadvantage, cultural difference and structural factors faced by remote Indigenous communities. It highlights that Indigenous people in remote areas have a diversity of views and aspirations, that these views about development often diverge substantially from non-Indigenous views, and that a one-size-fits-all approach is unlikely to succeed. To quote the report:

> Indigenous aspirations in remote communities generally involve a smaller role for the market and a greater role for the customary economy.

The report found that there are many more important barriers to development than accessing capital—including remoteness, absence of economies of scale and historical legacies of disadvantage. It found that those arguing that inalienable title is the main barrier to raising commercial finance fail to recognise the particular features of remote Australia—including what development is possible and whether individualised land tenure is really the answer. They also fail, the report found, to consider the nature of Indigenous aspirations, including the importance of kin-based decision making, and that individualised tenure may not be necessary to or even compatible with such aspirations.

Any consideration of the manner in which land ownership can foster economic development must take into account that there are fundamental cultural reasons for Indigenous attachment to the land. Past experience in New Zealand has demonstrated that individualising land title can actually compromise sustainable economic development on Indigenous land. This shows that land fragmentation can create barriers between people and increase asset management costs, resulting in an increased burden rather than an economic stimulus. The New Zealand government is now addressing the long-term consequences of the economic marginalisation of its Maori people through innovative policy and partnerships which could provide a useful model for our nation to consider. This includes the issue of home ownership on Maori-owned land.

The report concludes that very significant structural issues must be addressed to encourage economic development and address housing needs, including: the remoteness of communities from mainstream markets; relatively low populations and population densi-
ties; the need for greater investment in education and vocational skills; poor infrastructure; and the generally economically marginal nature of most Aboriginal lands.

The report confirms that the Aboriginal Land Rights (Northern Territory) Act can provide a framework for meeting economic development and sustainable housing objectives, but argues that current levels of ministerial involvement in land decision making are excessive and burdensome. It also notes that in most cases state agency occupation of Aboriginal-owned land generally remains on a non-commercial footing, largely to the disadvantage of Indigenous interests.

The key message of the report is this:

Indigenous aspirations for development are diverse, and might well differ from those of non-Indigenous Australians; what is realistic and sustainable on most Aboriginal land certainly differs.

To this end I would emphasise to government that community consultation and control of decision-making is absolutely fundamental.

**F111 Aircraft**

Senator MARK BISHOP (Western Australia) (7.19 pm)—Tonight I wish to speak again on the subject of the government’s paltry and ill-conceived response concerning compensation for those former RAAF workers engaged on the desal-reseal project on various F111 fuel tanks. Many of those people are now quite ill. I am told that as many as 40 have already died—but that is, admittedly, difficult to confirm. The government’s response, having effectively admitted liability, is as follows. First, a lump sum is to be paid for exposure only, regardless of effect. Exposure is arbitrarily divided into two classes: one for those exposed for between 10 and 29 days, regardless of effect—a payment of $10,000; and the other for those exposed for more than 30 days, regardless of effect—a payment of some $40,000. These categories will apply strictly on days of exposure, unless people can show that there is evidence of health treatment which precluded them from working any longer. Widows and estates will be eligible, but only if the death occurred after 8 September 2001 and there is proof as to the cause of death. There will not be offsets against normal disability compensation payments and, additionally, a health treatment program is to be provided, but registration for that must be made before 20 September this year—that is, in two weeks time.

In short, this scheme is unfair in the extreme, impractical and totally ill-conceived. First, the quanta of $10,000 and $40,000 are completely inadequate. All those who have been agitating for many years expected something far more generous—and rightly so, one might say. Many of these people have lived in poverty for many years, unable to work and suffering ongoing ill health as well. Because of incomplete medical research, which does not support the necessary medical linkages, disability compensation may not be available. Further, the inclusion of any lump sum in any pensioner’s assets will result in that amount being deemed for interest earned. This can and will result in reductions of up to $800 per year in pensions paid. What the government gives as an ex gratia lump sum with one hand, it will take away with the other.

The artificial division for exposure into two categories goes beyond a simple payment for exposure alone. It divides the people affected into two groups on the assumption that those exposed for longer periods were at greater risk. It also divides people according to the nature of the work done. For example, those working on the incineration of waste are treated more beneficially than those who disposed of the material by other
means. Different places of work also come into play. In principle, obviously some will be affected by their exposure more than others. But there might be other variables. Some, for example, may have enjoyed far greater protection as they carried out their work than others. Some with lower exposure periods may in fact be sicker than those with longer periods. Some may have used different chemicals.

The criteria set out clearly attempt on several grounds to distinguish between people—all on the basis of exposure. Yet all different qualifications, by their nature, are arbitrary. Many people are going to be aggrieved at their classification. Moreover, the criteria all assume that the Defence personnel records are correct. As we know, they are often wrong and/or incomplete. There will be many disputes as to where and when people worked on the project and I forecast that these disputes will be interminable.

Page 6 of the government’s fact sheet says:

However, the study could not provide evidence as to which processes, work practices or chemicals might have been responsible for this increased risk.

Despite this lack of evidence, we have a two-tier scheme which uses the most arbitrary criteria. These criteria are a shambles. They are vague and they are arbitrary. They sow the seeds of great unfairness, dissension and complaint.

If it is accepted that there will be variable effects from exposure, why not do it properly? The ex gratia nature of this scheme fundamentally accepts liability, free of the need to prove causation. That, though, should not preclude a simple system which, while still ex gratia, determines compensation on the basis of measured disability. People’s disabilities should be rated in the same way as currently set out, with people receiving from 10 per cent to 100 per cent of the maximum lump sum, depending on their level of disability. That would be fairer. It could still be paid as a lump sum. Moreover, it would allow people to reapply for a top-up in the event their health condition worsened, as it might well do. Victims should not be shoehorned into a compensation scheme frozen in time, only to see their condition worsen over time. It seems to me that the administrative efficiency of a one-off payment is paramount to proper compensation which is fair.

It must be remembered that at the heart of this scheme is the admission of liability by the government. The government recognises that claims for disability compensation under existing compensation schemes will have limited success. That is despite the minister’s attempt to spin some false hope that some figure up to $800,000 might be available. For a small handful, it may be; for most, it will not be—and many claims will fail. The minister’s spin is grossly misleading. This new ex gratia scheme is blunt recognition that the medical science does not yet exist to support many claims.

The third element of this scheme concerns common-law suits for damages. Sometimes aggrieved ex-service personnel choose to sue the government for damages. The most notable brace of such cases were those which arose from the HMAS Melbourne-HMAS Voyager collision some 40 years ago. This does not preclude access to limited liability schemes, but there are offsets to avoid double compensation. Such action is therefore quite a desperate move, but in some cases perfectly understandable. The F111 de-seal/reseal saga is one of the latter.

For many of these affected people there may be no claim for disability compensation for exposure to chemicals alone. Given the poverty of the ex gratia payments, affected
victims understandably believe they have no choice but to sue. However, the statute of limitations will prevent their applications being heard unless they are lodged prior to 25 September. The government’s procrastination over the last 12 months in responding to the SHOAMP report has effectively cut out that option. This is a most disgraceful set of circumstances. In this context, the Attorney-General should waive any Commonwealth insistence on that limitation, and that ought to be done by public pronouncement rather than the harrowing process of case-by-case consideration.

My final criticism of this woeful package concerns the provision of health care. For those wanting access to this special health care program set up for victims, registration must be made by 20 September. That is in two weeks time. Again, this is extraordinarily bureaucratic and arbitrary. What if someone is completely unaware of their entitlement? What if they are not sick yet? They will miss out unless their compensation claim succeeds. This is an argument for the scheme as proposed by the government to be completely redesigned. As for the cancer screening and monitoring scheme—surprise, surprise—it does not yet exist.

After 30 years of exposure to the most toxic combination of nasty chemicals, the response we have is an ill-considered and unworkable scheme. Let me briefly summarise the defects. The lump sum is totally inadequate. The health treatment scheme cuts off in two weeks time. The statute of limitations for common law actions expires in three weeks. The criteria are unfair, discriminatory and illogical. Administratively, the scheme is a nightmare. Despite attempts to disguise it, there is in fact double compensation for some. Worst of all, bereaved dependants prior to 8 September 2001 have no claim whatsoever for the death of a loved one. Most importantly, there is no appeal process, except to the Ombudsman. That is not a proper administrative review. It is a grievance procedure only and it could take forever.

It should be quite clear that this scheme of compensation for the victims of the F111 deseal-reseal program is in fact nothing other than a disaster. Their needs are desperate. Their choice is take it or leave it. I therefore call on the minister and the government to take this unholy mess back to the workshop and have another go immediately.

Senate adjourned at 7.32 pm

DOCUMENTS

Tabling

The following government documents were tabled:

Customs Act 1901—Customs (Prohibited Exports) Regulations 1958—Permissions granted under regulation 7 for the period 1 January to 30 June 2005.

Health Services Australia Ltd—Statement of corporate intent 2005-08.


Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Aged Care Act—Aged Care (Residential Care Subsidy—Amount of Viability Supplement) Determination 2005 (No. 3) [F2005L02409]*.

Civil Aviation Act—

Civil Aviation Regulations—

Instruments Nos—
CASA 306/05—Direction—carriage of cabin attendant in hot air balloon [F2005L02411]*.
CASA EX40/05—Exemption—carriage of life rafts [F2005L02480]*.
CASA EX41/05—Exemption—carriage of life rafts [F2005L02482]*.
Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—AD/CAP 232/12—In-Flight Fracture [F2005L02476]*.
ADS-PUMA/63—CPI 503 Emergency Locator Transmitter [F2005L02471]*.

Class Ruling CR 2005/68.
Corporations Act—ASIC Class Order [CO 05/835] [F2005L02473]*.
Crimes Act—Select Legislative Instrument 2005 No. 200—Crimes Amendment Regulations 2005 (No. 2) [F2005L01997]*.
Customs Act—CEO Instruments of Approval Nos—
28 of 2005 [F2005L02442]*.
29 of 2005 [F2005L02443]*.
30 of 2005 [F2005L02444]*.
31 of 2005 [F2005L02446]*.
32 of 2005 [F2005L02447]*.
33 of 2005 [F2005L02465]*.
34 of 2005 [F2005L02466]*.
35 of 2005 [F2005L02468]*.
36 of 2005 [F2005L02469]*.
38 of 2005 [F2005L02477]*.
39 of 2005 [F2005L02479]*.
40 of 2005 [F2005L02481]*.
41 of 2005 [F2005L02485]*.
42 of 2005 [F2005L02486]*.
43 of 2005 [F2005L02487]*.
44 of 2005 [F2005L02488]*.

Health Insurance Act—Health Insurance (Point of Care Testing in General Practice) Determination HS/03/2005 [F2005L02305]*.
Lands Acquisition Act—Statements describing property acquired by agreement for specified public purposes under sections—
40.
125.
Life Insurance Act—Life Insurance (Prudential Rules) Determinations Nos—
National Health Act—Determination No. HIB 13/2005 [F2005L02384]*.
Product Rulings—
Notice of Withdrawal—PR 2005/98.
PR 2005/107

Indexed Lists of Files
The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended:
Indexed lists of departmental and agency files for the period 1 January to 30 June 2005—Statements of compliance—
Australian Public Service Commission.
Department of the Prime Minister and Cabinet.
Official Secretary to the Governor-General.

**Departmental and Agency Contracts**

The following document was tabled pursuant to the order of the Senate of 20 June 2001, as amended:

Departmental and agency contracts for 2004-05—Letter of advice—Industry, Tourism and Resources portfolio agencies.
The following answers to questions were circulated:

**Health and Ageing: Staff**

*(Question No. 672)*

**Senator Chris Evans** asked the Minister representing the Minister for Ageing, upon notice, on 4 May 2005:

For each of the financial years 2000-01 to 2004-05 to date, can the following information be provided for the department and/or its agencies:

1. What were the base and top level salaries of Australian Public Service (APS) level 1 to 6 officers and equivalent staff employed.
2. What were the base and top level salaries of APS Executive level and Senior Executive Service officers and equivalent staff employed.
3. Are APS officers eligible for performance or other bonuses; if so: (a) to what levels are these bonuses applied; (b) are these applied on an annual basis; (c) what conditions are placed on the qualification for these bonuses; and (d) how many bonuses were paid at each level, and what was their dollar value for the periods specified above.
4. (a) How many senior officers have been supplied with motor vehicles; and (b) what has been the cost to date.
5. How many senior officers have been supplied with mobile phones; and (b) what has been the cost to date.
6. How many management retreats or training programs have staff attended.
7. How many management retreats or training programs have been held off-site.
8. In the case of each off-site management retreat or training program: (a) where was the event held; and (b) what was the cost of: (i) accommodation, (ii) food, (iii) alcohol, (iv) transport, and (v) other costs incurred.
9. How many official domestic trips have been undertaken by staff and what was the cost of this domestic travel, and in each case: (a) what was the destination; (b) what was the purpose of the travel; and (c) what was the cost of the travel, including a breakdown of: (i) accommodation, (ii) food, (iii) alcohol, (iv) transport, and (v) other costs incurred.
10. How many official overseas trips have been undertaken by staff and what was the cost of this travel, and in each case: (a) what was the destination; (b) what was the purpose of the travel; (c) what was the cost of the travel, including a breakdown of: (i) accommodation, (ii) food, (iii) alcohol, (iv) transport, and (v) other costs incurred.
11. (a) What was the total cost of air charters used; and (b) on how many occasions was aircraft chartered, and in each case, what was the name of the charter company that provided the service and the respective costs.

**Senator Patterson**—The Minister for Ageing has provided the following answer to the honourable senator’s question:

The answer to Senate Question number 653 answers this question for the whole of the Health and Ageing portfolio.
Health and Ageing: Customer Service
(Question No. 858)

Senator Chris Evans asked the Minister representing the Minister for Ageing, upon notice, on 4 May 2005:

With reference to the department and/or its agencies:

(1) For each of the financial years 2000-01 to 2004-05 to date, can a list be provided of customer service telephone lines, including: (a) the telephone number of each customer service line; (b) whether the number is toll free and open 24 hours; (c) which output area is responsible for the customer service line; and (d) where this call centre is located.

(2) For each of the financial years 2000-01 to 2004-05 to date, what was the cost of maintaining the customer service lines.

(3) For each of the financial years 2000-01 to 2004-05 to date, can a breakdown be provided of all direct and indirect costs, including: (a) staff costs; (b) infrastructure costs (including maintenance); (c) telephone costs; (d) departmental costs; and (e) any other costs.

(4) How many calls have been received, by year, in each year of the customer service line’s operation.

Senator Patterson—the Minister for Ageing has provided the following answer to the honourable senator’s question:

The Minister for Health and Ageing is providing a detailed answer in relation to the portfolio as a whole in response to question 839.

Tourism Australia
(Question No. 924)

Senator O’Brien asked the Minister representing the Minister for Small Business and Tourism, upon notice, on 2 June 2005:

With reference to the appointment of the Managing Director of Tourism Australia announced on 15 November 2004:

(1) Would the Minister advise from whom and on what dates:

   (a) Korn Ferry International sought references about the successful candidate, either formally or informally;
   (b) the Chair, any Board member or any employee or contractor of Tourism Australia sought references about the successful candidate, either formally or informally; and
   (c) the Minister or any member of the Minister’s staff sought references about the successful candidate, either formally or informally.

(2) Would the Minister advise:

   (a) who were the referees nominated by the successful candidate;
   (b) when the nominated referees were contacted; and
   (c) who made contact with the referees.

Senator Abetz—the Minister for Small Business and Tourism has provided the following answer to the honourable senator’s question:

(1) (a) This is a matter for Korn Ferry.

   (b) Candidates are required to supply references when necessary during the employment process.

   (c) No

(2) (a) to (c) This is a matter for Korn Ferry.
Health and Ageing: Grants
(Question No. 1007)

Senator O’Brien asked the Minister representing the Minister for Ageing, upon notice, on 24 June 2005:

For each of the financial years 2001-02, 2002-03, 2003-04 and 2004-05, has the Minister, the department or any agency or statutory authority for which the Minister is responsible, made grants or other payments to business organisations and/or associations, including but not necessarily limited to peak employer groups; if so, can information be provided for each grant or other payment including: (a) the name and address of the recipient organisation; (b) the quantum and purpose of the payment; (c) the name of the program under which the grant or other payment was funded; (d) who approved the grant or other payment; and (e) whether the grant or payment was successfully acquitted; if so, when; if not, can details be provided, including action taken to recover the grant or other payment.

Senator Patterson—The Minister for Ageing has provided the following answer to the honourable senator’s question:

The Minister for Health and Ageing is providing a detailed answer in relation to the portfolio as a whole in question 988.

Aged Care
(Question No. 1026)

Senator Chris Evans asked the Minister representing the Minister for Ageing, upon notice, on 11 July 2005:

(1) Since 1 January 2000, has the department received applications for the sale of, or transfer of places from: (a) Alloa Nursing Home, New South Wales; (b) Parkview Nursing Home, New South Wales; (c) Vaucluse Nursing Home, New South Wales; and (d) Austral Nursing Home, South Australia.

(2) Can information be provided on: (a) the dates the transfer applications were received; (b) details of the applicant(s); (c) how many places were requested to be transferred; (d) the status of the application; (e) the outcome of the application; (f) the date on which the application was processed; and (g) how many places were transferred.

Senator Patterson—The Minister for Ageing has provided the following answer to the honourable senator’s question:

(1) and (2) The details of applications to transfer aged care places is protected information under section 86-1 of the Aged Care Act 1997.

Falun Gong
(Question No. 1063)

Senator Bob Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 8 August 2005:

(1) Since the year 2000, have members of the Falun Gong approached the Minister and/or the department alleging that Falun Gong members were being harassed in Australia by Chinese Government officials; if so, in what year and approximate month was the first occasion that the Minister and/or the department were approached about the allegations.

(2) Since then, on what dates have Falun Gong members approached the Minister and/or the department, alleging harassment in Australia of Falun Gong members by Chinese Government officials.

(3) Have the Minister and/or officials of the department approached the Chinese Embassy, or other officials of the Chinese Government, asking the Chinese Government to ensure that its officials
cease the alleged harassment; if so: (a) on how many occasions; (b) when; and (c) with what response from the Embassy or other officials.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) Yes. The first occasion was in early 2000.

(2) I and/or my Department have received unsubstantiated claims of harassment, in which the complainants alleged the harassment was conducted by Chinese officials, but provided no evidence. I cannot provide specific dates of these allegations as the staff resources required to collect the information cannot be justified.

Separately from these allegations by Falun Gong members, my Department is also aware of three incidents where specific, named Chinese officials were alleged to have harassed Falun Gong practitioners:

(i) on 12 August 2001, a Chinese official in Sydney was alleged to have been involved in a scuffle during a protest in front of the Chinese Consulate-General, pushing a Falun Gong practitioner and causing her to fall;

(ii) on 5 October 2001, a Chinese official in Canberra was alleged to have slapped one Falun Gong protester and to have twisted the arm of another during a protest outside the Chinese Embassy;

(iii) and on 23 May 2005, a Chinese official in Sydney was alleged to have frisked a person he believed to be a Falun Gong supporter.

(3) Yes.

(a) On several occasions.

(b) From May 2000 to, most recently, June 2005.

(c) The Chinese Embassy and other Chinese officials have, with one exception (see ii below), rejected the allegations that they were responsible for any harassment. On the incidents involving specific officials referred to above:

(i) Chinese officials claimed that the allegations relating to the two incidents in 2001 were false;

(ii) the Chinese Embassy indicated that the official involved in the 23 May 2005 incident (who was the same individual alleged to have been involved in the August 2001 incident) had acted in contravention of direct orders from Beijing not to approach or touch Falun Gong or other protesters. The Embassy advised that it intended to seek a full report from that officer’s supervisor. Circumstances, however, prevented us from taking further action in this case.