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SITTING DAYS—2005

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

- **CANBERRA** 103.9 FM
- **SYDNEY** 630 AM
- **NEWCASTLE** 1458 AM
- **GOSFORD** 98.1 FM
- **BRISBANE** 936 AM
- **GOLD COAST** 95.7 FM
- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 747 AM
- **NORTHERN TASMANIA** 92.5 FM
- **DARWIN** 102.5 FM
FORTY-FIRST PARLIAMENT
FIRST SESSION—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 Boyle 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
Leader of the Family First Party—Senator Steve Fielding

Printed by authority of the Senate
## Members of the Senate

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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

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

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
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
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<td>Leader of the Opposition</td>
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 pm and read prayers.

COMMITTEES
Selection of Bills Committee
Membership
Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (12.31 pm)—I seek leave to move a motion relating to the membership of the Selection of Bills Committee.

Leave not granted.

BUSINESS
Rearrangement
Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (12.31 pm)—I seek leave to move a motion to vary the hours of meeting and routine of business for today.

Leave not granted.

Suspension of Standing Orders
Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (12.31 pm)—Pursuant to contingent notice standing in the name of the Leader of the Government in the Senate, Senator Hill, I move:

That so much of the standing orders be suspended as would prevent me moving a motion to provide for the consideration of a matter, namely a motion to give precedence to a motion to vary the hours of meeting and routine of business for today.

The motion that I am seeking to move in relation to the variation of hours today is a motion which would allow the hours of meeting to be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm. The routine of business would be such that from 7.30 pm the Senate would consider government business order of the day No. 1, the Trade Practices Legislation Amendment Bill (No. 1) 2005, and the question for the adjournment of the Senate would be proposed at 11 pm. That is the motion that I am seeking to move in relation to the Senate’s sitting hours for today.

I wish to move that motion because the government has a legislative program which is extremely important, and the Trade Practices Act is part and parcel of that program. We have made it very clear to the public of Australia that we have an agenda for legislative reform. We now have only three more Senate sitting weeks after this week. It is therefore essential that we move things along.

Since we returned to the Senate in this financial year we have seen a marked change in the amount of time devoted to government business. We have seen a reduction of on average about half the hours per week that would normally be devoted to government business. This has been as a result of long debates in relation to referral of matters to committees and disallowances. Debate on the allocation of questions in question time alone disposed of the opening day of the Senate in August. There have been various procedural motions, in particular in relation to the Telstra bill. As I recall, a substantial part of the debate on that bill was on procedural matters. We have had lengthy debate on a number of issues.

Business of the Senate takes precedence, and the government fully acknowledges that there are important matters dealt with in the business of the Senate. But in this financial year we have seen a marked reduction of time for government business, largely due to the increase in Senate business. We also have had two particular days which did not involve government business—VP Day, 15 August, and the day last week for condolences for the Bali bombings, which was for
condolence motions only. We lost further
time because of those two days, although we
are well aware of the reasons why we took
that course of action.
When we look at the transaction of busi-
ness and the progress of legislation, what we
see is a marked decline in the hours of gov-
ernment business. That is largely due, as I
told, to an increase in Senate business. This
has happened only in this financial year.
When the Senate was reconstituted—the new
Senate, if I can put it that way—we made
comparisons with the average amount of
time allowed for government business in
previous years. This government have been
elected to carry out our reforms, platforms
and policies and we have before us a de-
manding program. Therefore, we need to sit
for more hours. We have sought leave. That
leave has been refused—but not by every-
one, I note.
Senator O’Brien—Your own side didn’t
refuse it.
Senator Ellison—I do not think the
Democrats or Senator Fielding refused leave
when that request was made. What senators
have to realise is that one of the main roles
we have is as legislators. That is a core busi-
ness of this Senate. We have to legislate if
we are to live up to our responsibilities to the
community. If that requires more time, then
we should sit for more time. That is precisely
what this motion is all about: getting down to
business and getting down to progressing
legislation.
Senator Ludwig (Queensland—
Manager of Opposition Business in the Sen-
ate) (12.36 pm)—I am not sure whether that
was in fact a confession, but I will take it as
such. What the government has just con-
fessed is that it is completely unable to man-
age its own affairs. What you have heard
from the Manager of Government Business
in the Senate is that from 1 July he has been
incapable of managing the chamber to ensure
that the legislative business of the chamber
goes forward. That is what he has admitted
to. Self-criticism is always interesting to lis-
ten to. This is yet another unprecedented ac-
tion by this government to push through its
legislative agenda. It wants to throw out the
way we have always managed this chamber
in the past. We have always managed this
chamber by cooperating to ensure that gov-
ernment business is dealt with in a proper
and meted way.
What we have now, and it is not even near
the end of the year, is the government trying
to use its numbers—and probably success-
fully—to make us sit tonight. All that really
demonstrates is that the government has been
unable, unwilling and incapable of managing
its own program. What we have is a motion
that the hours of meeting shall be 12.30 to
6.30, we will have a dinner break and then
we will go to 11.40 tonight. Why? Because
the government cannot manage its program.
When you look at it, it is not surprising. In
the 10 weeks since the Howard government
took control of the Senate, Labor has com-
piled a list of 10 things—and now it is going
to expand to 11—that the government have
done to the Senate. I suspect the government
will try to gag me, because they will not
want to listen to what I am going to say to
them. First, they looked at question time and
reduced the number of non-government
questions. This week we had an unprece-
dented day when four questions were dealt
with, because they will not want to listen to
what I am going to say to them. Then they
looked at question time and reduced the num-
ber of non-government questions. This week
we had an unprece-
dented day when four questions were dealt
den day when four questions were dealt
with, because this government do not want to
have scrutiny of their ministers or their legis-
lation. We then had the unfortunate inci-
dent of the Senate being given the finger by one
of its own. The third thing was an attack on
the Clerk of the Senate by Senator Abetz.
The fourth thing was a senator saying that
inquiries are stupid. Mr Kevin Andrews said
that there would be a Senate inquiry into the
industrial relations legislation but, after that
was put out on 17 August 2005. Senator Brandis told a private meeting of coalition MPs that he could not believe what he had heard, branding the strategy as stupid.

The fifth thing was the Senate inquiry into the Telstra sale bills, which was a complete whitewash by this government. They pushed the legislation through in one week. Labor and the minor parties proposed a month to have an inquiry. Did this government agree to that? No. Senator Boswell, who is sitting in the chamber, was the beneficiary of that. He was pleased to be able to go to his meeting on the Saturday having already sold Telstra so he would not have to listen to his own constituents complain about what he had done.

The sixth thing was the cut-off. There was an exemption to the cut-off, which ensures that we can deal with bills in a proper way. The government threw that out the window. They then coupled that with a gag. They sought to ensure that a gag would be done as well. That was not usually done in this house, but it is now a matter of course. It is now easily done by the government. It is part of the armoury of things that they are now going to do. It is a very sad day to see the government stooping so low and saying: ‘This is how we’re going to ensure the Senate works. We’re just going to bludgeon it, push legislation through and make sure there is no scrutiny.’

The seventh matter was privileges. The Howard government’s next attack on the Senate went to the heart of its power so as to ensure that the truth is not told to committee inquiries. That was the seventh thing they did. The eighth matter was the guillotine. The ninth was the gag. Then we had the move to the committee stage of the Telstra debate, where they passed five bills by 6.30 that night. That is what is done by this government.

Now we have another matter—we have 11 now. We have the government saying: ‘If we want more hours, we’re just going to come in here, give you no notice and, as you walk in the door, tell you we’re going to sit tonight because we forgot or we didn’t know that we really needed some legislation or a couple of extra hours, or we think that you’ve had enough time on another matter and we want you to do this instead. So let’s just up-end the show and deal with it this way.’ This is the 11th thing that they have now done to us. Members of the government should hang their heads in shame, and all those senators who support this should think carefully about what they are setting themselves up for.

(Time expired)

Senator BOB BROWN (Tasmania) (12.41 pm)—The government is now moving, without reference to the Greens for sure and, I suspect, most other individual members, to have the Senate sit late tonight. As Senator Ludwig has just said, it is a case in point of government mismanagement that that suddenly has to be dropped on the Senate. Of course, it does not come from the senators—it comes from the Prime Minister’s office, from which we are seeing the process of the rubber stamp that the House of Representatives is to the executive now being twinned with the rubber stamp of the Senate. What we are really looking at here is the government doing the least it can with the numbers it has to put through the maximum amount of legislation and so on within the same confines of time. We are faced with industrial relations legislation which is going to be sledgehammered through the Senate in the coming weeks without proper public debate, under a hail of millions of dollars of advertising by the government, whether the community likes it or not, and without the proper functions of watchdog and review that this Senate has held and been responsi-
ble to the Australian people for providing for the last century.

On the matter of refusing leave, there was a point yesterday after question time when I had a simple request for a one or two minute reply to a failure by the minister to produce evidence about the interlinks between the Bush administration and the Howard government before the deportation of Scott Parkin, a peace campaigner who was wrongfully deported from this country without any proper debate and with a fit-up of a so-called ASIO report being released to the public, probably from the chief law officer’s office. That needed comment but, when I got up to say that the government should really respond and that the minister has an obligation to respond to the Senate on such a matter, leave was refused.

Now the government comes in here today and wants leave to debate this matter. I should have got a proper answer from the Attorney-General about a matter as important as this dangerous slide to the removal of basic freedoms and rights, in particular free speech, in this country. The government needs to be providing the information to the Senate instead of refusing leave. If we were having a debate on matters like that and the government was opening up to and being honest with the Australian people, it might be a different thing.

When it comes to getting progress here, just two weeks ago I introduced a truth in labelling bill to the Senate. Mr President, you will remember that, because you support truth in labelling for farmers and their goods going onto supermarket shelves—I read that in your brochure. The government could have facilitated a determination to get that legislation through and into law. What did it do? It simply added to a filibuster that ensured we got no result at all.

In other words, the government is quite content to turn private members’ time—an essential component of the Senate—into a waste of time by preventing there being a result. It then says: ‘But the Senate is not spending all its time on government business. We can insult the Senate in the same way as we do the House of Representatives.’ And Senator Ludwig is right: we are going to see the gag and the guillotine frequently used in here to prevent debate, because the government has a majority of one. All the government members will be a part of that—every single one of them. They say they are in favour of free speech. They say they are in favour of the responsibility of parliament and that they are right behind democracy but, when it comes down to it, we will see their vote used against all those things.

The process today with this motion is simply to have an extra amount of sitting time tonight so that the government does not have to have another week of sitting. Where is the motion from the government to bring us back next week to debate these matters, to give them the time they deserve? The government does not want that because the executive now sees this Senate as a rubber stamp. It has the numbers. It will dishonour the Senate. It is not into the business of review. The committee system is going to be sidelined. We saw the farce of a committee as far as Telstra was concerned, and we will have another one as far as industrial relations is concerned, as this government, as I said, sledgehammers its way through the Senate before Christmas. (Time expired)

Senator BARTLETT (Queensland) (12.46 pm)—Just to put the current debate into context, the Senate is debating whether or not to allow the suspension of standing orders so the minister can move a motion to enable the Senate to sit for longer hours tonight to progress debate on the trade practices legislation. There are a number of com-
peting issues here, and I think it is important to draw them out. I would like to draw attention to a few comments that the minister made, because I think they will need to be remembered for some of the debates down the track.

The minister said that we should remember that our core business here is as legislators. I was making that very same point just yesterday, as well. The context in which I was making that point was in the Senate’s attempt to have a committee inquiry into the wide-ranging welfare changes that are being proposed—an attempt that was thwarted by a vote of government members. It is our core role here to be legislators. Amongst all the debating, point scoring and posturing that happens, we actually make laws that come out of this chamber and that impact on every single member of the Australian community and many other people as well. We do not put enough time, energy and thought into those laws—there is no doubt about that—and neither do those who observe and report on the proceedings in and around this place. They do not put enough thought into the actual content and consequences of the laws, as opposed to all the posturing that goes on around them.

So I welcome those words from the minister, but I put it to him and to his government to hold true to those words when the Senate is trying to genuinely ensure the proper examination of huge areas and issues that have massive significance for the Australian people, whether it is the welfare changes, industrial relations changes, terrorism laws, changes to the Electoral Act or a whole range of other things that need to be properly scrutinised, not just by us but by the public.

The reason why we have had more time than previously taken up on business of the Senate is that, in the past, when we moved to have Senate inquiries—like the one yesterday into welfare issues and Senator Fielding’s one into the impact on the family of changes in work practices—the motions would have normally gone through just on the voices and with a nod, because there was a recognition that they should be examined by committees. What we have had since the government has had control is a refusal to agree to and allow some of those inquiries to happen. So, naturally, time that did not need to be spent before, because it was agreed by everybody, now gets taken up in having to debate and put the case as to why that inquiry should be allowed and how wrong the government is to prevent it. Without having done the analysis myself, I suggest that that is a large reason why there has been a lot more business of the Senate time taken up than before the change in numbers.

Having said that, the trade practices legislation itself is quite significant. The Democrats are very strongly opposed to components of it, and I know that some on the government side, as well, have been opposed to at least aspects of it. I am interested to hear the contributions of people like Senator Joyce, Senator Boswell and Senator Brandis on that legislation. I would like to get to the committee stage of the debate, beyond the second reading debate, so that we can look at the detail and look at specific parts of it. To that extent, I am not opposed to the idea of extending the sitting hours to enable the debate to progress to the committee stage.

It is a fact that we have a much larger number than usual of speakers on the speakers list for this bill. We have 18 speakers on the list that I can see before me. I suggest that it would be possible to have that number reduced and people could explore the points more effectively and hold the government more accountable in the committee stage of the debate. I can understand, in the context of this specific bill and the stacking of the speakers list, that it was a desire of the gov-
ernment to open up some more hours to enable that piece of legislation to progress, much as I have some opposition to some components of it.

But I do make the point that the government cannot have it both ways: it cannot hold up this noble principle of the senators’ key role as legislators one moment and then do the disgraceful bulldozing through of legislation that it has already shown with Telstra and undoubtedly is planning to do with other issues as well. It cannot keep stopping Senate committees from doing what they are meant to do, which is to properly examine legislation and to allow the public a proper opportunity to have input into key policy issues that affect the entire Australian community. (Time expired)

Senator CONROY (Victoria) (12.51 pm)—I rise to speak on this motion on Senate hours, which is just another example of the government’s callous disregard for Senate process and its intention to steamroll the debate. I know Senator Bartlett and Senator Ludwig have already made reference to this but, having lived through the Telstra debate, it is important to recount exactly the abuse by this now arrogant and out-of-control government that has had the numbers delivered to it by the National Party.

I am glad that Senator Boswell is in the chamber again today because I would like to make reference to a particular interview that Senator Boswell did on the 7.30 Report. He was specifically asked, just before parliament recommenced with the government’s new majority in the chamber, ‘What do you think about some of the suggested changes to Senate procedures?’ Senator Boswell courageously went on the record and said, ‘I think the Senate works pretty well at the moment and I would be pretty comfortable with things staying the way they were.’ It is all there on the 7.30 Report.

But the very next day Senator Boswell came marching into the chamber like your typical National Party drone to do the bidding of the Liberal Party. He voted immediately to roll us and give the government more questions and more time in question time to ask itself questions. That is right. They did not vote for there to be greater scrutiny of the government, which is the role of the Senate according to the Constitution. The founders and great upholders of the Constitution in the Senate, the Liberal-National coalition, actually took questions off the opposition and gave questions to themselves.

The true farce of that particular little game that was played was demonstrated last week when the opposition in this chamber in question time received not seven, not six, not five but four questions. Four questions was all the opposition was allowed to ask the government. What sort of democracy is it when the government parties conspire to so reduce accountability and scrutiny and will tolerate a situation where the opposition of the day is allowed to ask the executive government four questions? At least the Prime Minister in the other chamber allows an hour and a half and anything up to 20 questions. You may get some cute response from the government, saying, ‘You get your supplementary questions, so you’re really getting eight questions when you have four, Senator Conroy.’ But that still does not come close to what the Prime Minister is prepared to allow, in all fairness, in the other chamber. So shame on those National Party senators and shame on Senator Boswell for supporting that previously. Shame on Senator Boswell for supporting this.

In the Telstra debacle the government demanded that they get this bill passed by the parliament as a matter of urgency, then they turned around and cancelled a week of parliament because they had no business. They
rammed through the Telstra bill and gagged the debate. They gaggled many speakers on both sides of the chamber. They played favourites, though, to make sure that their new darling for the day, Senator Joyce, got his chance to speak. He was jumped up the list. Senator Fielding did not get a go. At least half-a-dozen senators on this side did not get a go. Then, in the worst excess of arrogance that we have seen in this chamber so far, the government turned up and, in the limited 2½ hours in which the opposition and the minor parties were allowed to question the minister on the detail of the bill, they filibustered the committee stage of the bill. It was a disgrace.

What do we see now? This is another trumped-up motion that talks about extra hours because this government and the minister on the other side of the chamber are fundamentally incompetent in managing this chamber. He could not actually manage to lodge a resolution yesterday, so he has to come in here, suspend standing orders and go through this whole palaver to force this through. The government are so incompetent they could not even do it yesterday. That is what is happening here—a combination of arrogance and incompetence. The more incompetent they get, the more arrogant they are going to have to be as they brazenly ram—(Time expired)

Senator BOSWELL  (Queensland—Leader of The Nationals in the Senate) (12.56 pm)—I rise to join the debate on the motion to extend Senate hours. There seems to be a conflict in the Labor Party. First they accuse us of not giving them debating time and then, when we try to give them extra debating time, they do not want it. In Senator Conroy’s contribution a few seconds ago he went out of his way to say: ‘We’re not getting a fair go. We don’t have any debating time. You’re using the guillotine.’ Then, when we propose extra hours so that we do not have to do those things, you would think it was the end of the world and democracy was finished.

Senator Conroy, you lost. The people decided that they wanted a bigger majority over on this side of the chamber, not over on that side. The people have made that decision. You can only blame yourselves for that. You went to the polls and we went to the polls. We said what we were going to do, you said what you were going to do, and the people made a choice. They decided that the majority of senators would be on this side of the chamber. So do not be a bad loser. Just accept the will of the people. Do not be a bad loser and come in here crying crocodile tears all the time. You lost because you did not have the policies, the leadership and the guns in the front row where you are sitting. That is why you lost. Do not come in here and blame the National and Liberal parties for not giving you a fair go. If you want to go with the process of the lower house in question time, we can accommodate you on that. Questions there are divided fifty-fifty. All the Independents take the questions off the Labor Party.

Senator O’Brien—They do. You have done that now.

Senator BOSWELL—They do—that is right. If you want to proceed down that path, I can accommodate you. If you want the same processes that you are saying the Prime Minister is giving, you can be accommodated. We will split the questions fairly down the middle and all of the Independents—the Greens, the Democrats and Senator Fielding—can take your share of the questions. If that is what you want, we are very happy to accommodate you.

I have been in this place a lot longer than most people have. I have heard the same thing from the Labor Party and from the National and Liberal parties. I have heard it from everyone. When the time came that we
were near the end of a session, the Labor Party used the gag when in government. Do not say that you did not. I was sitting here when we were crying the same cry as you: ‘Give us a fair go.’ Then we got in and we used the gag. It is part of Senate process. Anyone who knows anything about process knows that. I would just point to today’s speakers list. There are 15 speakers on the trade practices bill. That is good.

Senator Ludwig—Don’t you think it’s important?

Senator BOSWELL—I think it is very important, but I think you have overstacked this speakers list because you want to extend the time. If you want speakers on these lists, then let us have a bit of extra time. I understand there have been some negotiations and some accommodation but you are two-faced: we give you extra time to accommodate your speakers and then you cry foul. Wake up, guys. The decision was made, the people spoke, they wanted a majority on this side of the parliament and we got it. Accept your loss. Come back in three years and try again.

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

The Senate divided. [1.05 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes…………… 36
Noes…………… 32
Majority……… 4

AYES
Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Chapman, H.G.P. Colbeck, R.
Coonan, H.L. Eggleston, A. *
Ellison, C.M. Ferguson, A.B.
Fielding, S. Fierravanti-Wells, C.
Fifield, M.P. Heffernan, W.
Hill, R.M. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Minchin, N.H. Nash, F.
Parry, S. Patterson, K.C.
Ronaldson, M. Santoro, S.
Scullion, N.G. Trood, R.
Vanstone, A.E. Watson, J.O.W.

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Campbell, G. *
Carr, K.J. Conroy, S.M.
Crossin, P.M. Evans, C.V.
Faulkner, J.P. Hogg, J.J.
Hurley, A. Hutchins, S.P.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
Milne, C. Moore, C.
Nettle, K. O’Brien, K.W.K.
Polley, H. Siewert, R.
Stephens, U. Sterle, G.
Stott Despoja, N. Webber, R.
Wong, P. Wortley, D.

PAIRS
Campbell, I.G. Forshaw, M.G.
Ferris, J.M. Ray, R.F.
Payne, M.A. Sherry, N.J.
Troeth, J.M. Murray, A.J.M.

* denotes teller

Question agreed to.

Rearrangement

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (1.08 pm)—I move:
That a motion to vary the hours of meeting and routine of business for today may be moved immediately and have precedence over all other business today until determined.

And I move:
That the question be now put.

The PRESIDENT—The question is that the question be now put.

The Senate divided. [1.12 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes………….. 36
Noes………….. 32
Majority………. 4

AYES
Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Chapman, H.G.P. Colbeck, R.
Coonan, H.L. Eggleston, A. *
Ellison, C.M. Ferguson, A.B.
Fielding, S. Fierravanti-Wells, C.
Fitfield, M.P. Heffernan, W.
Hill, R.M. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Minchin, N.H. Nash, F.
Parry, S. Patterson, K.C.
Ronaldson, M. Santoro, S.
Scullion, N.G. Treeth, J.M.
Trood, R. Watson, J.O.W.

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Carr, K.J.
Crosin, P.M. Conroy, S.M.
Faulkner, J.P. Evans, C.V.
Hurley, A. Hogg, J.J.
Kirk, L. Hutchins, S.P.
Lundy, K.A. Ludwig, J.W.
McEwen, A. Marshall, G.
Milne, C. McLucas, J.E.
Nettle, K. Moore, C.
Polley, H. O’Brien, K.W.K.
Stephens, U. Siewert, R.
Stott Despoja, N. Sterle, G.
Wong, P. Webber, R.

PAIRS
Campbell, I.G. Forshaw, M.G.
Ferris, J.M. Sherry, N.J.
Payne, M.A. Ray, R.F.
Vanstone, A.E. Murray, A.J.M.

* denotes teller

Question agreed to.

The PRESIDENT—The question now is that the precedence motion be agreed to.

Question agreed to.

Senator Ludwig—On a point of clarification: what is the step we are now taking?

The PRESIDENT—We have now given precedence to the minister to move his motion.

Senator Ludwig—Precedence has been given. I do have an opportunity to speak to the hours motion itself, provided it is not gagged by the minister. We are now proceeding to the substantive motion.

The PRESIDENT—We are now going to the motion that the minister wants to put.

Rearrangement

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (1.16 pm)—I move:

That, on Tuesday, 11 October 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 order of the day no. 1 (Trade Practices Legislation Amendment Bill (No. 1) 2005); and

(c) the question for the adjournment of the Senate shall be proposed at 11 pm.

And I move:

That the question be now put.

The PRESIDENT—The question is that the question be now put.

The Senate divided. [1.18 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes………….. 36
Noes………….. 32
Majority………. 4
AYES
Abetz, E.  
Barnett, G.  
Brandis, G.H.  
Chapman, H.G.P.  
Coonan, H.L.  
Fielding, S.  
Fifield, M.P.  
Hill, R.M.  
Johnston, D.  
Kemp, C.R.  
Macdonald, I.  
Mason, B.J.  
Minchin, N.H.  
Parry, S.  
Ronaldson, M.  
Scullion, N.G.  
Trood, R.

Adams, J.  
Boswell, R.L.D.  
Calvert, P.H.  
Colbeck, R.  
Eggleston, A. *  
Ferguson, A.B.  
Fierravanti-Wellis, C.  
Humphries, G.  
Joyce, B.  
Lightfoot, P.R.  
Macdonald, J.A.L.  
McGauran, J.J.  
Nash, F.  
Patterson, K.C.  
Santoro, S.  
Troeth, J.M.  
Watson, J.O.W.

NOES
Allison, L.F.  
Bishop, T.M.  
Brown, C.L.  
Carr, K.J.  
Crossin, P.M.  
Faulkner, J.P.  
Harley, A.  
Kirk, L.  
Lundy, K.A.  
McEwen, A.  
Milne, C.  
Nettle, K.  
Polley, H.  
Stephens, U.  
Stott Despoja, N.  
Wong, P.

Bartlett, A.J.J.  
Brown, B.J.  
Campbell, G. *  
Conroy, S.M.  
Evans, C.V.  
Hogg, J.J.  
Hutchins, S.P.  
Ludwig, S.J.W.  
Marshall, G.  
McLucas, J.E.  
Moore, C.  
O’Brian, K.W.K.  
Siewert, R.  
Sterle, G.  
Webber, R.  
Wortley, D.

PAIRS
Campbell, I.G.  
Ferris, J.M.  
Payne, M.A.  
Vanstone, A.E.

Forshaw, M.G.  
Sherry, N.J.  
Ray, R.F.  
Murray, A.J.M.

* denotes teller

Question agreed to.

The PRESIDENT—I now put the question that the motion moved by Senator Ellison to vary the hours of business be agreed to.

Question agreed to.

Rearrangement

Senator KEMP (Victoria—Minister for the Arts and Sport) (1.21 pm)—At the request of Senator Ellison, I move:

That, on Wednesday, 12 October 2005, the Senate meet at 10 am, enabling senators to attend a commemorative service honouring the victims of the October 2002 terrorists attacks in Bali.

Question agreed to.

TRADE PRACTICES LEGISLATION AMENDMENT BILL (No. 1) 2005

Second Reading

Debate resumed from 10 October, on motion by Senator Coonan:

That this bill be now read a second time.

Senator CONROY (Victoria) (1.21 pm)—I would like to continue my remarks from last night on the Trade Practices Legislation Amendment Bill (No. 1) 2005—I had about a minute-and-a-half to go. I was in the process, believe it or not Senator Boswell, of saying something nice about the National Party last night before I was rudely interrupted by the chair asking me to finish. I want to finish off what I was saying, which was that for once the National Party had actually stood up and represented their constituency in this chamber. They had stood up to big business and they had stood up to the government. That deserves some acknowledgment. I know that the National Party are one of the prime movers in standing up on the issue of third line forcing. It is a disappointment that they have not stood up on a number of other things but there is still a chance today in the debate.

In concluding, this bill has been a sorry tale of four years of government inaction and incompetence. I know that that will come as a surprise to you particularly, Senator George Campbell, but this government has spent four years incompetently stumbling around on this bill.
I made a number of points yesterday; I will not reiterate them in my remaining few seconds. I did want to finish my speech by acknowledging the good work of Senator Boswell and the National Party on this particular point in this particular bill. There are some other biggies in here that we hope to see you demonstrating your independence on and not just behaving like lap-dogs for the government.

Senator HUTCHINS (New South Wales) (1.22 pm)—I rise to speak on the Trade Practices Legislation Amendment Bill (No. 1) 2005. This particular piece of legislation has been lauded by the government as a win-win scenario for small business. The small businesses that I speak to, however, tell me that nothing is further from the truth. They tell me that if this bill becomes law as it is proposed then their firms will become engaged in a race to the bottom with their competitors. This bill denies small businesses and independent contractors the right to be represented by a trade union as their agent. This government, which uses the rhetoric of choice in everything it does, denies choice when ordinary Australians want it most. It says one thing and yet does another.

I would like to go into some detail on this bill before considering how it uniquely disadvantages lorry owner-drivers by denying them the choice to be represented by the Transport Workers Union, a representation that they have enjoyed for over a century. This bill was introduced with much fanfare before the last election. It had all the bells and whistles of being a win for small business. For the first time ever, small businesses would be able to bargain collectively within the production chain for products and services. This was sound pro-competition policy. It was designed to weaken the stranglehold that large corporations use to stifle competition and innovation from their smaller competitors. The bill would change the collective bargaining rules to give small businesses real savings in the provision of their core goods and services. It would remove inefficiency and allow real competition with the big end of town. But that is not the end of the story.

When the government returned, flush with the arrogance that victory can bring, it reintroduced this bill with one crucial addition. Embedded in the text of the bill—inconspicuously, bordering on coy—was section 93, which removed the ability of any trade union to act as a bargaining agent for the purposes of the legislation. In effect, it hogtied all those sound reforms designed to increase efficiency to a cheap attempt to score a political point.

Most small businesses I know are fiercely protective of their interests. They have to be to remain competitive. They also believe in protecting their economic freedom. This place should recognise that choice. It is small businesses’ choice about how they wish to go about trading in the marketplace. That is why I was so amazed that this government would seek to deny those businesses their choice to be represented by a trade union should they so wish. That decision is totally removed from any principles of freedom of association that those on the other side of this place tend to crow about so often. That is the difference between the reality and the rhetoric. That is the difference between saying that you believe in small business and actually doing something about it. That is the difference between making good policy and making policy to attack unions. Surely it is the choice of small businesses who they want to be represented by a trade union?
Lorry owner-drivers are going to be put at extreme disadvantage by this arrangement. I have some experience in this industry having been the head of the New South Wales TWU for some years. Whilst the TWU is a registered union in New South Wales, it is also a registered bargaining agent under the New South Wales system. There are thousands of owner-drivers across Australia. The TWU has been representing them since the 1920s. Owner-drivers are at a significant disadvantage to their larger competitors when it comes to bargaining power. In New South Wales alone there are 12,000 owner-drivers who are represented by the TWU. Driven by their desire to shift costs such as super and other entitlements, many companies no longer engage drivers who are not incorporated entities. This is on top of the fact that many drivers have taken on much of the risk in this industry through purchasing their own rigs and all the running costs that involves, including complying with driving hours, load limits and truck dimensions.

The simple fact is that owner-drivers simply do not bargain other than through their union. New South Wales legislation allows the making and registration of collective non-union agreements between owner-drivers and transport operators. On inspection of the commission files, not one single non-union agreement exists. By contrast, 173 agreements have been negotiated on a collective basis with the TWU and transport operators. I remind this place that the parties are free to negotiate without the TWU’s involvement. To date, that margin is 173 to zero.

Owner-drivers are contract operators who take substantial risks in entering the transport industry. Many have ongoing and stable relationships with their employer, and many take direction and branding from that operator as if they were employees. Employees and owner-drivers in this industry operate out of the same yard. You would not know the difference except that some are owner-drivers. The big difference, however, is that these owner-drivers have in some cases paid hundreds of thousands of dollars to enter the industry through goodwill payments. No employee in any other industry is under such an onerous burden. It is no surprise that these liabilities weaken the bargaining power of these operators. In the absence of collective representation, individual operators would be caught in a race to the bottom in a desire to keep their business afloat. Given that large companies are increasingly unwilling to take the risk of buying the trucks necessary for the transport on which consumers rely, these companies seek to minimise costs by paying their truck drivers as little as possible and trying to shift the costs to individuals in the lorry owner-driver section.

The New South Wales system recognises the commercial risks taken by owner-drivers and the needs of transport operators. This bill seeks to take that away from them. In New South Wales owner-drivers are protected by sets of union bargained instruments at both the industry sector and enterprise levels. Many of these arrangements are long term. Moreover, it is not as though these arrangements are determined on demand from one party or another. These contract determinations are established in consultation with companies, industry groups and, most commonly, the New South Wales Road Transport Association. There is simply nothing about this relationship which indicates that the role of trade unions is untoward in representing these independent contractors.

But I am not the only person who agrees with this assessment. The New South Wales Road Transport Association, the main employer group, is also on the record in supporting the New South Wales system. Put simply, the government has even managed to put some of its own employer groups offside.
in relation to this legislation. What is more, this broad industry support for the current arrangement has created strong bipartisan support for trade unions to be able to represent independent contractors. The system was reviewed and retained not once but twice in New South Wales under the Greiner and Fahey governments and even expanded to cover the incidence of goodwill payments. The Greiner government in 1994 even legislated in the Industrial Relations Amendment (Contracts of Carriage) Act to give legislative protection to goodwill payments.

Let us look at what some members of that government thought about the vulnerability of owner-drivers in that industry. The former Leader of the Opposition, Kerry Chikarovski, who was the IR minister at the time, said:

... the Government recognises the difficulties that can arise from the practice, found in some parts of the transport industry, whereby lorry owner-drivers pay goodwill premiums for the right to obtain work from a principal contractor. The Government appreciates the financial predicament of lorry owner-drivers who have made a large investment in such premiums and then find their contracts terminated without compensation.

The hard-nosed police minister, Ted Pickering, had this to say about lorry owner-drivers:

They are the salt of the earth, very hard-working people, who often find themselves in extraordinarily difficult commercial circumstances. One could only be absolutely struck by the terrible circumstances in which they found themselves. Whilst one could take the view that in a hard, commercial, laissez-faire world it is ‘buyer beware’ and they should have known better, I took the view that the circumstances were unjust and unfair.

So why is it that the people opposite cannot recognise what their state colleagues did well over a decade ago: that goodwill payments in particular distinguish owner-drivers as a unique group of contractors—contractors who need representation by their trade union, the TWU?

The government has not advocated a reason why this system needs changing. It has, in effect, nothing to say to those operators who are quite happy with the current arrangements—which, I venture to say, would be most of them. So we now have a situation where the government is out and about denying choice to independent contractors—its doyen only a few years ago. Plainly and simply, the government is denying these operators choice. It is denying a system that works for these parties simply because it is has a grudge against trade unions.

So let us look at the curious arguments the government has proposed for this rather incredible state of affairs. The first rather strange argument is one offered by the Parliamentary Secretary to the Treasurer, the member for Aston. In his second reading speech the member said:

The ACCC will have particular regard to the government’s intention that the collective bargaining provision not be used to pursue matters affecting employment relationships ... the act is not for the pursuit of employment entitlements.

This is all very interesting given that the government were making political capital during the election as to how they are the party of independent contractors. It appears that contractors are only valuable to the government when their interests coincide. Rather than listening to contractors and representing their concerns, the government will only take them on board when there is a picture opportunity in the offing. The fact is these people are either employees or contractors, and in any case it is up to them to bargain collectively using a trade union if they so wish.

The second argument made by the government is that the Trade Practices Act should not be used as a means of going beyond the ever-decreasing number of allow-
able matters in agreements made under the Workplace Relations Act. Unfortunately this reasoning does not stack up either. You have to have an agreement under this bill that does not deal with independent contracting arrangements altogether. You could have an agreement to collectively bargain for the supply of pens to newsagents—that is not an allowable matter under the Workplace Relations Act. It is up to the parties to negotiate the content of their agreements. You could have a solicitor or anybody else make agreements containing things totally removed from the act, but a trade union is persona non grata, despite this being totally irrelevant to the purposes of the bill. Once again, it is a very black comedy where this government is denying choice to independent contractors to determine their own affairs.

The safety implications of this bill are nowhere near as confused as the government’s stance. Unfortunately, lorry owner-drivers have been put in this predicament before. In the 1960s, Tooheys breweries decided to replace their owners-drivers with the carrier Alltrans. Alltrans wanted to make its profits through volume rather than through individual loads. There was a major dispute at the time and in the end the brewery carters were taken on by Alltrans as lorry owner-drivers but their rates and conditions were set by the Transport Workers Union. Indeed, it was in that period that the beginning of goodwill came into that industry. The effect was to galvanise the union at that stage into extending its protection to contract carriers. The late Sir Robert Askin—probably the most successful conservative leader in New South Wales in the last century—recognised this problem when he said:

Such unscrupulous employers have arranged contracts with persons who are, to all intents and purposes, employees, with the view to avoiding their legal obligations as employers as regards wages, holidays, long service leave and such matters. This leads to cut-throat competition in the industry and breaks down standards, and is not in the public interest.

This protection had previously operated under the ‘deemed’ employee provisions of section 88 in the old Industrial Relations Act in New South Wales. This ability was used to secure wins for lorry owner-drivers in the face of competition during the 1960s. Yet by 1963 six separate employer groups had joined forces to stop the TWU representing owner-drivers in the bailee taxi drivers’ dispute of that era. The legal battle lasted six years, involved two appeals to the Privy Council, four separate cases before the New South Wales Supreme Court and an inquiry by the full bench of the commission into section 88. The commission was damning in its criticism of the employer groups, stating:

The spectacle of an industry expending its funds prodigally to thwart the will of the Legislature by resort to any point that a lawyer’s ingenuity can devise is not a very edifying one.

Now, nearly half a century later, the same old lawyers’ tricks are being used by the same old forces to deny representation to owner-drivers.

The result of collective owner-driver agreements in New South Wales is that drivers are adequately remunerated for the function they play and the risks they bear. As I have said, few other businesses have such high entry costs. Drivers assume huge amounts in goodwill payments and the costs of their vehicles. They hardly engage in work for wages alone. Rather, they recover all the costs included in the engagement of this contract, including labour. It is not surprising that the Quinlan report and the House of Representatives inquiry report entitled Beyond the midnight oil: managing fatigue in transport noted the connection between speeding, unsafe practices, long driving hours and poor pay and conditions. Rolling back the collective bargaining arrangements
that protect cost recovery by lorry owner-drivers will create incentives for these practices.

By making workers accept lower pay and conditions, this government offers them a false choice between losing their business—and often mortgages and families—and engaging in unsafe work practices. I have known a number of owner-drivers. Tony Mathews, who drives for Express Freight, says:

Without this structure there would be no rules, no level playing field. The situation would be just like line haul, drivers taking drugs and doing crazy hours.

Paul Walsh, whom I have known for over a quarter of a century, told me:

If goodwill were removed there would be no benefit to be an owner driver. The value of their investment would be immediately wiped out.

Paul Dewberry, who started as an owner-driver at 21, says he knows people in the following situation:

In Victoria ... who have had their contracts terminated ... they will be out on the street as they can’t get back their goodwill payments.

This is all because the government wants to strip away their choice to select who represents them. Bobby Hayden, whom I have known for a long time as well, is a brewery driver at Tooheys and was involved in the dispute in the 1960s. His goodwill payment was about $400,000. He says:

Most drivers within the brewery are using the goodwill factor as their retirement benefits ... by the time they pay everything off it’s the only thing left .... It’s what you’re working for ... if there was no goodwill you’d have to restructure everything .... You wouldn’t be able to retire.

This bill is just another example of how this government says one thing and does another. It stands behind rhetoric of choice but denies choice to ordinary independent contractors when they need it most. It says to lorry owner-drivers, who have been represented by the TWU for nearly a century, that they cannot have that choice anymore and that government knows better. It is another example of the government standing for nobody except the big end of town.

I remind Senator Boswell, who I know is about to follow me in this debate, that a number of these men and women are conservative voters. They have been very active in the last few months in making representations to their conservative MPs, whether Liberal or National. I know that one of them is on the fundraising committee for the member for Warringah, Tony Abbott, and has been lobbying Tony Abbott. I know that a number of drivers have been to see Jackie Kelly, the member for Lindsay. In fact, only the other week they said that they believe that if this legislation is passed in the current form they will have to hand in the keys to their trucks. They tried to hand in the keys to their trucks to Jackie Kelly but, as I understand it, she would not receive them.

As I said, a number of these men and women are not natural Labor voters. They are politically conservative. They have been radicalised by the government’s attempt to take away from them the opportunity to be represented by the people of their choice from an organisation that has represented them on and off for over a century. If that happens through this bill, if the amendments moved by Senator Conroy are not carried by this parliament and if the ideological obsession of the government carries through and denies trade unions the opportunity to be part of that choice, I predict that a lot of people who have been significant coalition supporters will not vote that way in the future. It is on your heads—particularly on yours, Senator Boswell. You can rightly claim credit for a lot of this bill. It is up to you now to see whether or not you can be persuaded by the
arguments that will be advanced by this side over the next few hours.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (1.42 pm)—A number of small businesses have been waiting for the Trade Practices Legislation Amendment Bill (No. 1) 2005 for a number of years. There is no doubt that a number of farmers groups will want this legislation passed, as will some peak bodies of small business organisations like motor vehicle traders, newsagents and dairy organisations. This was brought about by John Anderson, and me to a lesser degree, when we tried to balance the market power between the big players and the small players. John Anderson launched collective bargaining in his policy speech before the 2001 election. That process then went through the Dawson review, which has led to this bill, which introduces a simpler collective negotiation. The bill introduces a crucial new reform which will help small business and farmers and will make cheap and simple the notification process for collective bargaining.

Before this it used to cost $7,000 to get an authorisation. Even when you got that authorisation, if one of your suppliers or one of the people you supplied to made some form of protest, that had to go to court.

It is a landmark reform: a quick and easy way for small business, farmers and representative bodies to become exempt from the law through the ACCC within 14 days. If the ACCC has not told you that it is illegal within 14 days then you can begin to bargain collectively. Collective bargaining will help to address the need of farmers and others to rebalance the market power between them and their large customers and suppliers. The new notification procedure gives small business and farmers a simple, structured process to get together to negotiate for better commercial outcomes with their large suppliers or customers in the buying of inputs and the marketing of their goods and services. Furthermore, it provides for boycotts. It is no good having collective bargaining if the other side does not want to bargain with you. That is an exercise in futility. This bill provides the opportunity for the collective group to boycott to ensure that collective bargaining works.

The notification process outlined in the bill proposes a $3 million threshold for the transaction value of the contract over a 12-month period for each member of the collective. It also recognises that businesses with a high turnover and small profit margin should have a higher transaction level, and it provides that a higher limit can be set by regulation. That is very important because some people who have a higher turnover than $3 million will need this legislation. My personal preference has been for a $10 million threshold for each collective member, with a regulation option for those who may have a higher turnover than that. I will be closely watching the practical turnout of this legislation and I will be monitoring the flexibility of that figure of $3 million. I understand that the Minister for Small Business and Tourism is soon to release a list of businesses suitable for a higher limit, and I will also be watching that.

Under the new collective bargaining regime, third parties will be able to make a collective bargaining notification on behalf of a group of small businesses that wish to bargain through a single industry body. However, the bill specifically excludes unions from representing collective groups in negotiating outcomes. It sets the ACCC an initial 28-day period—reverting to 14 days—to object to an application for collective bargaining. Then the exemption operates, and the exemption grants the collective group immunity from further action by the ACCC for a period of three years. Under the new arrangements, the onus is on the ACCC to
oppose a notification should it believe that a public benefit does not ensue. To do this it must give reasons for its objection, with a Competition Tribunal appeal available to the collective group. An amendment will be moved today by the government to ensure, in fairness, that the target of a collective bargaining notification is informed by the ACCC when a notification is lodged.

Tipping the seesaw of market power back towards small business and individual producers has long been a project of mine, one which I, along with many of my National Party and Liberal colleagues and this government, have aggressively addressed since 1996. Firstly, we did this by instituting the retailing inquiry in 1999, which led to many small business benefits, such as ACCC funded representative actions on unconscionable conduct, as well as the introduction of the retail grocery industry code of conduct and the successful retail industry ombudsman, Bob Gaussen, who does such a good job for farmers. Recently there has been an unprecedented and rapidly increasing concentration of market power not only in grocery retailers and the customers of farmers but also across many business areas like petrol, liquor, office suppliers, clothing and other retail sectors—and there are even attempts by pharmacies, which continue to be soundly rejected by The Nationals and the coalition.

Unconscionable conduct, predatory pricing and misuse of market power are other vital issues for small business and farmers, and some proposed reforms will be coming to the Senate in a separate bill to address this issue, which was raised in Senator Brandis’s report last year. I have always maintained that section 46, the misuse of market power provision of the Trade Practices Act, must provide an effective remedy for small business. There is an amendment being suggested by Senator Murray in relation to section 46. Changing sections 46 and 51 of the Trade Practices Act is something that we are very concerned about and have sympathy with, but that is not part of the debate today. The Treasurer has agreed that changes to sections 46 and 51 will be considered in a separate piece of legislation next year. Section 46 is quite a complex issue and requires significant debate.

On the bill at hand, there are some concerns that I have held in other areas than the collective bargaining provisions. This bill, if passed into law, will also affect the process for companies wishing to merge with other businesses, by introducing a voluntary formal merger clearance process and a new authorisation process through the Australian Competition Tribunal. The concern here has been that this may provide a way around certain valid ACCC objections by going straight to the tribunal. That concerns me. I was instrumental in putting the current TPA mergers test in place—that is, section 50 of the act, which says that a merger cannot take place between two companies if the result is likely to substantially reduce competition in a substantial market.

Former senator Chris Schacht and I coalesced on this, and we were able to get it through the process of parliament. It has been a tremendous success. I would like to pay tribute to former senator Chris Schacht on that change to the ACCC. There is no provision in this bill to change section 50 of the Trade Practices Act, but there is concern amongst small business, and it was originally within the ACCC, that merger tests could be in some way subverted through a new merger authorisation process instead of by the Competition Tribunal.

Mergers of certain companies are necessary and beneficial and can sometimes increase competition. But there are examples of mergers which were ultimately not in the
public interest which have been identified and prevented by the ACCC in the past. The fear was that the Competition Tribunal may have held a less stringent view on the benefits or otherwise of some of those mergers. In response to that concern, the government will be moving an amendment today that will compel the tribunal, when considering mergers, to consider evidence put to it by the ACCC, effectively making the ACCC a party to each merger authorisation proposal.

I want to make the point that these mergers, or any amendments to the Trade Practices Act, would have to have the support of a majority of the Labor state governments. So I hope that the Labor Party, whose colleagues are in power in every state and territory in Australia, do not come in here and make complaints about such mergers or changes, because their colleagues in the state and territory parliaments would have had to support them in a majority of the states. If there are charges from the Labor Party that the amendments to this bill or the changes to the Trade Practices Act are not what they want, I suggest they go and talk to their colleagues in the state and territory governments who have ticked off on them.

My colleague Senator Fielding, who sits on my right, has proposed splitting the merger proposal of this bill. My advice is that the bill can be split in the Senate, but that it is not like Humpty Dumpty—it would be put back together again as soon as it fell back into the House of Representatives. So I have had conflicting advice from the clerks of the two chambers. The Senate Clerk tells me a bill can be split; the House of Representatives Clerk tells me they will not accept it when it gets down there and will rejoin it. Having said that, I retain some concerns over these merger changes. It is not my ideal position, but I see it as the best way to provide collective bargaining for small business. As a result of negotiations within the coalition, an amendment will be moved by the government today that will maintain the per se prohibition on third line forcing in section 47 of the Trade Practices Act.

Senator Conroy generously said that it was because of my lobbying that this amendment was brought forward. I can say that I had a part in it, but there were many others that also approached the Treasurer. I congratulate the Treasurer on his decision to maintain the per se prohibition on third line forcing. The Nationals and many small businesses are grateful that he listened to us and saw the danger that removing the prohibition could have created. Third line forcing is selling to a buyer only on the condition that goods or services are bought from a third party. If the third line forcing rules were weakened, as they would have been through the unamended bill, it is conceivable that we could have reached a situation where a car dealer would sell a vehicle only if the buyer purchased their insurance from a certain company, or if they entered into a contract to service the vehicle with a mechanical shop in order to maintain the warranty. There was great concern that any weakening of the law in this area could bring back the type of unwanted business that was conducted and eliminated years ago.

Any change to the trade practices legislation brings with it a risk of upsetting a fine balance. As in the past, I am going to take a special interest in this bill. I want to make sure that any changes that are made benefit small businesses and farmers. I hope that it will encourage them in competition by giving them parity and balance in the marketplace. The bill contains an overarching benefit. It is a step forward for small businesses and farmers through the government giving them a simple collective bargaining process. With the passing of this bill, it will become the norm for farmers and small business people across a broad range of sectors to
band together to negotiate with large customers or suppliers, and big business will expect and recognise that. It illustrates the commitment of the government to empowering primary producers and small businesses and to removing impediments to continued growth and increased prosperity.

I say to the many peak bodies and individuals that worked closely with me, The Nationals and the government to achieve this outcome that it has been a long time coming. I hope you get some benefit from it. The representations and efforts, which succeeded, came from many people: newsagents, primary producers, dairy groups, motor traders, the Fair Trading Coalition and other small business bodies. It was a good campaign and I congratulate them all on participating in it. There is a lot more to do in the area of trade practice reform and it needs to be continually monitored. The result proves once again the benefits of a strong coalition listening to small business. I look forward to the benefits that will flow to all the peak bodies and farmers groups.

Debate adjourned.

QUESTIONS WITHOUT NOTICE

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (2.01 pm)—Mr President, I rise on a point of order. I want to raise with you my concern at a suggestion you made yesterday during a point of order taken on Senator Abetz’s failure to answer a question. You said:

I cannot direct the minister on how to answer a question. If you can find in the standing orders where it says anything about relevance in answers to questions, I would be pleased to see it.

As you know, Mr President, since the change in the balance of power in the Senate the opposition has been concerned that ministers have not been answering questions asked in the Senate. I would like to refer you to President Cormack’s ruling on 22 August 1973, which said:

... the Minister should confine himself to points contained in the question with such explanation only as will render the answer intelligible. In all cases the answer must be relevant to the question.

Mr President, I am raising this point of order with you to check whether or not you are seeking to create a new precedent or to over-turn President Cormack’s ruling, and in fact the advice provided in Odgers, that ministers are in fact required to answer in a way that is relevant to the question.

The PRESIDENT—I am well aware of that precedent. I am also well aware of the examination of the issues by the Standing Committee on Procedure in a report in 1994. I will keep that in mind in future.

Workplace Relations

Senator MARK BISHOP (2.02 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations in this place. Can the minister confirm that under the Howard government’s work changes bosses will be able to force job seekers to accept an individual contract or else just go and look for work somewhere else, as the Prime Minister says? Aren’t these individual contracts required to include only the bare minimum standards? Is it not the case that they can exclude overtime or meal breaks? Won’t these extreme changes give bosses the power to insist that new workers agree to contracts that tear up almost all of the prevailing award entitlements?

Senator ABETZ—I respond first by indicating to the senator that the suggestion that our reforms are somehow extreme is completely and utterly rejected. Indeed, I took the Senate through the media commentary yesterday, which showed that the Institute of Public Affairs and ACCI thought we were too soft and the trade union movement on the
other hand said that we were extreme. That places the government very comfortably in the middle and shows a balanced approach. That is something those on the other side will never understand. As a government, we are not beholden to any interest group; we are beholden to the Australian people at large. That is why, when we come down with good and balanced proposals, we get attacked by both sides.

In relation to the detail that Senator Bishop inquires about, I can indicate that, under WorkChoices, all agreements, whether collective or individual, must comply with the Australian fair pay and conditions standard. The fair pay and conditions standard will guarantee that anyone who signs an agreement will receive the appropriate minimum wage, plus entitlements to annual leave, personal carers leave, parental leave and maximum ordinary hours of work. If an Australian workplace agreement changes protected award entitlements, such as those relating to penalty rates, public holidays or meal breaks, it must do so explicitly—it must be clear to the employee that that is the case. It is up to the employee whether he or she agrees to this. In other words, it must be completely and utterly transparent, and the employee is given a choice.

A person who is negotiating an agreement will be entitled under WorkChoices to have a bargaining agent negotiate on their behalf. What those on the other side complain about is that there can be a bargaining agent who is not a trade union official. A trade unionist will be allowed, but I suspect that many workers—having seen the failure of the trade union movement over such a long period of time—will opt for bargaining agents other than trade unions.

The flexibility that will be possible under WorkChoices means that any job seeker will be able to take a job and get a foothold in the labour market while still being entitled to important protection for pay and conditions. The flexibility under WorkChoices means that employers will be able to offer jobs under arrangements that are better tailored to the needs of their enterprises. For the workers, it means that they can negotiate for and get arrangements that suit them, such as I indicated to the Senate yesterday with the example of Ms Sandra Xuereb, who was able to engage in an Australian workplace agreement which allowed her to drop her kids off at school and pick them up again after school. If required, she could also leave during the course of the day. The inflexibility of the award system would not have allowed Ms Xuereb to do that. As I asked rhetorically yesterday: what can be more family friendly than that?

Senator MARK BISHOP—Mr President, I ask a supplementary question. It arises out of the minister’s response. Don’t the Howard government’s changes mean that job seekers have no choice but to accept an individual contract if they want a job, even if it smashes long-established working conditions? Isn’t their only other option, as the Prime Minister says, to go and look for work somewhere else?

Senator ABETZ—Once again, can I indicate that the sort of extreme, inflammatory language of Senator Bishop is indicative of the Labor Party recognising that they can no longer point to examples so they have to use extreme language to try to get their message across. There is no smashing of conditions, because every condition that is not specifically mentioned in the Australian workplace agreement will in fact apply. The workforce situation is such today that, if you go to an employer, the employer may well say to you: ‘I employ people under an award. Take it or leave it.’ An employer can do that today. There is no difference to an employer saying, ‘I employ people under an Australian work-
place agreement.’ However, the big difference is that now the boss will be able to say, ‘And guess what—we can negotiate the conditions,’ whereas under the award that would not be possible. *(Time expired)*

**Workplace Relations**

**Senator Nash** (2.08 pm)—My question is to the Minister for Finance and Administration, Senator Minchin, representing the Treasurer. Given the current strength of the Australian economy, will the minister explain to the Senate the reasons why workplace relations reforms are necessary?

**Senator Minchin**—I thank Senator Nash for that very good question. Senator Nash is correct to acknowledge the strength of the Australian economy after 9½ years of our government. I think it is also correct to say that that very economic strength has led some in the community to question the need for further workplace relations reform. I think it is also abundantly clear that our current economic strength is the result of reforms begun by the former Keating Labor government, with our support, and continued by our government since our election in 1996. The Keating Labor government was mugged by the reality of Australia’s critical need for more flexible workplace relations arrangements. Our government has basically continued the process of reforming industrial relations which was commenced by the Keating Labor government.

The Australian economy will only remain strong and internationally competitive if we continue to improve our workplace relations. Our international competitors are continuing to improve their economic performance, and they are an increasing challenge to Australia in international markets. Our exporters, particularly those in rural and regional Australia, represented by Senator Nash and her colleagues in the National Party, do need more flexible, enterprise based workplace relations arrangements if they are to continue to sell their goods and services into international markets. Not only do we need to keep selling our goods and services to the world, we need to keep attracting overseas investment into Australian industry. Attracting highly mobile foreign investment, which of course is the source of much of the employment in this country, does depend on having competitive workplace relations arrangements. I note that, after the implementation of our reforms, our IR system will still be more heavily regulated than those in New Zealand or Great Britain—both countries which I note have recently re-elected Labour governments.

Our ageing population poses a real threat to the maintenance of Australian living standards, and coping with the consequences of that ageing process does require higher productivity, which in turn requires improved workplace relations. Maximising job opportunities in a nation which, despite a strong economy, still has half a million people unemployed does necessitate more IR reform. The ongoing success of our small businesses, which are so vital to job opportunities in this country, depends on the IR reforms proposed by our government. Australia’s wealth is fundamentally dependent on having a successful and profitable private sector capable of paying good wages based on increasing productivity. Australian businesses need more flexible workplace relations if they are to remain competitive, successful and generators of well-paid jobs.

The trade unions, which now represent only 17 per cent of private sector workers in this country, hate the idea of employers and employees working out their own workplace relations. Trade union self-interest dictates the scaremongering campaign which they are running against our proposals at the moment. The unions ignore the national necessity for continued improvements in our workplace
relations, which was at least recognised by the Keating Labor government, and they are totally opposed, out of self-interest, to any change whatsoever. However, the economic welfare of generations of Australians to come depends on the government’s successful implementation of what are fair and sensible improvements to our workplace relations. Terry McCrann got it right in today’s Daily Telegraph when he wrote:

THE Government’s ... industrial relations ... reforms are sensible and moderate. They are the minimum necessary for Australia to survive and prosper in the 21st century.

Workplace Relations

Senator HURLEY (2.12 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that redundancy or termination pay is not part of the new minimum standards of employment? Does this mean that under the Howard system a job seeker could be faced with a contract that does not include any entitlement to redundancy pay? Why is the Howard government allowing bosses to get rid of redundancy pay from agreements? Is this why the Prime Minister refuses to say that no-one will be worse off as a result of the changes to workplace rules?

Senator ABETZ—I welcome that question for its nonuse of inflammatory language. I am sure that Senator Hurley will be spoken to by the whip after question time for having failed in that regard. The Prime Minister had one of the proudest boasts at the last election that any Prime Minister can make, and that is that during his term in office Australian workers have enjoyed a 14 per cent increase in real wages, the employment market has increased considerably and over one million Australians now have employment in an environment of the lowest industrial dispute whatever.

In relation to the specific matters that the senator asks about, our proposals are entitled WorkChoices. People can make choices. We make no apologies that, apart from those five basics that are guaranteed by legislation that cannot be traded and those other things that are guaranteed but can be traded by workers if they so want to, it is important that workers and employers be given the opportunity to engage in those choices and actively engage with each other. As I said yesterday, the happiest workplace is in fact one where the employee and the employer can sit down together and work out the arrangements that best suit them, as individual workers and the business concerned. That is something that is an anathema to those opposite because they do not want people to have choice. They want to force them to belong to a union. They want to force them on to an award, even if it does not meet their aspirations.

Senator Chris Evans—Mr President, I rise on a point of order. It goes to the question of relevance, like the point of order that I raised with you earlier. A couple of minutes already into the answer, the minister has not addressed the question, which went to the issue of redundancy or termination pay. He has made no attempt to address the issue of redundancy or termination pay. I ask you to bring him to order and ask him to answer the question.

Senator ABETZ—On the point of order, the Leader of the Opposition in the Senate has now embarrassed himself again. He did so yesterday by asserting that the word ‘compel’ was not in Senator Wortley’s question, when it was.

The PRESIDENT—What is your point of order, Senator Abetz?

Senator ABETZ—What Senator Evans has sought to do again today is to mislead the chair, because the honourable senator has also asked why the Prime Minister could not
give a guarantee that workers would not be worse off.

The PRESIDENT—I do not believe that is a point of order. I ask you to return to the question. You have one minute and 57 seconds left to answer the question, and I remind you to be relevant.

Senator ABETZ—The question did relate to the Prime Minister’s failure, according to the honourable senator opposite, in not giving a guarantee. I have indicated to the Senate, in direct response to that question, the benefits that Australian workers have got, showing clearly—and I will spell it out so Senator Evans will understand—that Australian workers are a lot better off as a result of Howard government policies. Indeed, over a million Australian workers have now got jobs because of Howard government policies.

Senator Chris Evans—Mr President, I rise on the same point of order. The question was about redundancy or termination pay. The minister still has not brought himself to that. Despite your ruling, he has refused to answer the question. I ask you to draw his attention to the question or sit him down.

Senator Hill—Mr President, I rise on the point of order. The questions being asked today are basically questions of detail to a background of a Labor Party argument that the alternative system being put is unfair. The minister is entitled, and has always been entitled, to answer the question in that context. When the minister is putting to the Labor Party, through you, Mr President, that the record of the coalition government has been one of significant increases of employment and increases in living standards, that is perfectly legitimate. It is certainly more legitimate than the answers that I received from the Labor Party over 13 years.

The PRESIDENT—Order! The minister has one minute and 16 seconds left. I have listened very closely to his answer. I do not believe that the minister has addressed the first part of the question, but I am sure in the next 1½ minutes he will get back to that.

Senator ABETZ—It is a problem for the opposition when they ask a multitude of questions, because it is open to the minister to determine which question he answers first. In relation to the first question, redundancy to a certain extent is protected by state legislation—

Senator Colbeck—Not in Tasmania.

Senator ABETZ—but not in Tasmania; you are quite right Senator Colbeck. Under a Labor government they are not so protected, so I am not sure what the Labor senator from South Australia is on about. If you are employed under an award, what you have you keep. Those who seek to negotiate outside of the award arrangements can trade on all these issues, including redundancy, termination and, indeed, any other factor. And that is what we are on about: we are on about WorkChoices, which allows employers and employees to sensibly negotiate these issues.

Senator HURLEY—Mr President, I ask a supplementary question. Don’t the government changes mean that workers who lose their job through no fault of their own will get nothing to help them keep their head above water while they look for a new job? Isn’t this what the Prime Minister says they should do if they are not happy with the pay and conditions in their current job? Given the widespread acceptance of redundancy pay as a minimum standard of employment, why wasn’t it included in the Howard government’s minimum standards?

Senator ABETZ—Before the honourable senator talks about workers getting nothing when they lose their jobs, she might like to talk to Senator George Campbell about the 100,000 jobs he presided over that were lost as a result of trade union activity. And they
are not my words; they are the words of former Labor Prime Minister Paul Keating. Workers in Australia have the basics secured and protected by legislation for the first time ever. We have the Fair Pay Commission standards, and we also have, at the end of the day, should worst come to worst, like it did for those 100,000 workers Senator George Campbell presided over, the social security system.

Workplace Relations

Senator PARRY (2.21 pm)—My question is also to the Special Minister of State, Senator Abetz, representing the Minister for Employment and Workplace Relations. Will the minister further outline to the Senate how the government’s new workplace relations system, WorkChoices, will benefit and strengthen the rights of workers on Australian workplace agreements? Would the minister inform the Senate of any alternative policies?

Senator ABETZ—I thank Senator Parry, who reminded us in his first speech that he is both a former employee and a former employer, and he brings both perspectives to this debate. In question time yesterday Senator Wortley asserted that the Office of the Employment Advocate had endorsed an agreement for a Baker’s Delight employee which allegedly underpaid the employee. Senator Wortley’s claim was false. The Office of the Employment Advocate did not endorse the agreement. It never applied.

Just as much, the Office of the Employment Advocate did not endorse a supposed agreement of Tancred Fresh in Rockhampton, which the Labor Party and especially Mr Smith were hawking about the place yesterday. In fact, the supposed agreement that Labor asserted to be an endorsed AWA was no more than a proposal, which the Office of the Employment Advocate rejected and did not allow to operate. Mr Smith went onto ABC Radio fessing up and admitting as much. I would invite Senator Wortley to do the same. This is unfortunately what the Australian people are facing—these false examples being put out into the public domain to scare people. When you start examining the detail, you find out that the Mr Smiths and, we hope, Senator Wortleys will come back and apologise.

Yesterday I used the example of Ms Xuereb, whose AWA allows her to drop off and pick up her children around work hours. I could just as easily have used the example of the Western Australian Meat Marketing Cooperative at Katanning, where another shift from 9 am to 3 pm also allows mothers to drop their kids off at school, go to work and then pick them up after school. I ask again: how much more family friendly can you get? As I told the Senate yesterday, and I will repeat it again, workers’ rights on AWAs will actually be strengthened under WorkChoices, with a ‘what you have got, you can keep’ provision. These are things like public holidays, rest breaks, incentive based payments and bonuses, annual leave loadings, allowances, penalty rates and shift and overtime loadings.

I know those opposite have been waiting for the ‘Who said it?’ Somebody said this: ‘Our view on workplace agreements is that it is not the course we favour.’ Another person, I assume, said this: ‘You can’t wander around cancelling contracts.’ Then another one said, ‘AWAs will disappear. That’s a good thing. That’s what we want.’ Guess what? Those three people were one and the same person. Guess who it was! It was Mr Beazley—flip, flop, flip—and all in the one interview with Laurie Oakes on Sunday. Only Mr Beazley would be able to change his position three times in the one interview.

At the end of the day, Mr Beazley knows that he should not be wandering around the
countryside trying to cancel contracts. He knows that in his heart. But the problem is that the trade union officials will not allow him to actually say it and do it. That is why he has this dilemma with his conscience. He flips and flops and flips. Of course, the Australian people well remember his promise on rollback and tax reform, which has come to naught. I suggest to the Australian people that that is exactly what will happen with workplace changes. Mr Beazley knows that, when these reforms are introduced, they will be for the benefit of the Australian people.

Workplace Relations

Senator McEWEN (2.26 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that the Howard government will let employers stop the pay and conditions negotiated in any agreement that has been terminated before a new agreement is negotiated? Under the new system, won’t workers lose the benefits under the terminated agreement and just fall back onto the minimum standard? Given the likely large difference between agreements and the minimum standard, will this mean that workers have their wages cut and their conditions taken away from them? Can the minister explain why the government is giving employers the power to pretend that an agreement never existed as soon its technical expiry date has passed?

Senator ABETZ—Mr President, those opposite have sought to criticise the government’s campaign in informing the public. In fact, they have complained about this glossy booklet that I have on WorkChoices. Can I simply refer the honourable senator to pages 51, 52 and 53 of the booklet and all of her questions will be answered.

Senator McEWEN—I suggest that the senator read page 21 of his glossy booklet. Mr President, I ask a supplementary question. Did the government seriously consider the impact on low-paid workers of the new powers to terminate agreements when it announced these changes? Is it the case that many workers in poor bargaining positions will find themselves significantly worse off as a result of this change? Isn’t this just another reason why the Prime Minister refuses to say that no-one will be worse off as a result of his workplace changes?

Senator ABETZ—We have a repeat of the question asked by the previous honourable senator about the Prime Minister’s guarantees. It is quite clear, despite what Senator Evans was trying to say, that this is in fact a Labor Party tactic. The simple fact is that the Australian workers know that there are now over one million more jobs as a result of our policies. They know that their pay packets are a lot bigger in real terms because of our policies. They know that there is less industrial disputation because of our policies. That is why the workers of Australia more and more are embracing the coalition parties as representing what they want for themselves and their families. Part and parcel of that is WorkChoices—being given a choice in the workplace. Part of the package includes what is on pages 51 to 53, to which I have already referred the honourable senator.

Money Laundering

Senator FERGUSON (2.29 pm)—My question is to the Minister for Justice and Customs, Senator Ellison. I ask: will the minister update the Senate on measures being taken by the Australian government to combat money laundering and terrorist financing in our region?

Senator ELLISON—I thank Senator Ferguson for a very important question in the environment we find ourselves in today, especially in the war against terrorism. Australia has a strong history in the fight against money laundering, both internationally and
domestically. It is nothing new to say that money laundering is the lifeblood of organised crime and, of course, terrorism. We have been working in the region to counter the financing of terrorism and transnational crime. We co-chair the Asia-Pacific Group on Money Laundering. In November this year we will be playing a major role in an anti-money-laundering workshop in Malaysia. There will be regional representation there from Indonesia, Malaysia, the Philippines, Thailand and, of course, Australia. As well, AUSTRAC, our financial intelligence unit, has been working with countries in the region to strengthen their capacity building, especially Indonesia. This has been a crucial aspect of our fight against terrorism. We have announced that in our terrorism legislation package, which will come into the parliament soon, and as a result of the COAG agreement we will deal specifically with aspects of terrorist financing and will be targeting such things as remittance dealers. We will have a remittance dealers register and will be dealing with charitable organisations.

We have also announced that by November we will have released an exposure draft on the 40 revised FATF recommendations which will be out for discussion for a period of some four months. We will look at having legislation introduced into parliament in the first half of next year. In doing that, we have consulted widely, both with the financial sector and with those groups who are new to financial transaction reporting—people such as accountants, real estate agents and jewelers. We have said that we will deal firstly with the financial sector, those who are involved in financial advice, and then we will move onto the second tranche and deal with those people who have not been as well versed in the reporting of transactions, especially suspicious transactions.

With these reforms we will be looking to cover aspects such as identification of customers, reporting of suspicious matters and high-value transactions, the reporting of politically exposed persons and the maintenance of rigorous anti-money-laundering and counter-terrorism-financing programs within the financial sector. I am pleased to say that we have had remarkable cooperation from the financial services and, in fact, as a result of the meetings we have had with them, they support the release of the exposure bill and the measures which we have announced in principle—

Senator Conroy interjecting—

The PRESIDENT—Order, Senator Conroy!

Senator ELLISON—that that we will pursue. It is essential that we have the private sector onside in relation to this. We cannot fight money laundering as a government on our own. We need the cooperation of the state and territory governments and, of course, the private sector. We are resolute that we will not impose an undue burden of regulatory provisions on the private sector. We are after effective provisions which, at the same time, allow our financial sector to operate freely in the marketplace and be competitive internationally. Australia’s stand on anti-money-laundering provisions is one of historical fact and one which we will continue to pursue as a government.

Workplace Relations

Senator ALLISON (2.33 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. In justifying the further deregulation of the labour market at the expense of work and family balance the Prime Minister has compared Australia to the United Kingdom, arguing that the UK has less labour market regulation than Australia. Is the minister aware that the UK has far greater work and family protections for working families than Australia does? Is the
minister aware that workers have the right to request flexible working hours and have six months government funded paid maternity leave? Can the minister indicate whether the government will implement similar regulations in Australia alongside their supposedly family friendly IR package?

Senator ABETZ—The United Kingdom has a far less regulated employment market then we do in Australia. All commentators acknowledge that. Indeed, if we look at Europe, the three countries that have the highest rate of unemployment are Germany, France and Spain. Which countries have got the most regulated work forces? It is those three countries. It is interesting that in the United Kingdom they had that great Prime Minister Margaret Thatcher. Margaret Thatcher introduced a lot of these workplace reforms.

Senator Conroy—That’s too much information.

Senator ABETZ—Senator Conroy says it is too much information. What he should have done is wait for my next bit. Mr Blair won government on the promise of a Kim Beazley type roll-back. But did he do a roll-back? No, he did not. Indeed, he said to the very first trade union congress he addressed after becoming Prime Minister, ‘Equality and fairness in the workplace begins with the opportunity of a job.’ That is why he would not wind back the Thatcher reforms. Just as reality mugged Mr Blair in the United Kingdom, we on this side are hopeful that reality might mug Mr Beazley, as it did with GST and tax reform. Remember all the terrible stories about GSTs from all around the world and how it would devastate the Australian economy? Instead, it has grown. We have grown employment, real wages have gone up and industrial disputation is at its lowest point ever. Exactly the same predictions are now being regurgitated by those opposite.

Bereft of ideas, they just regurgitate those same old assertions about the employment situation and our workplace relations reforms.

It is a pity that the Australian Democrats are trying to jump on board with the Labor Party, because there once was a time, with Senator John Siddons and others, when the Australian Democrats actually did look after, and were concerned about, small business. This is one sector in the community that has been asking for work choices—as indicated by Tony Steven of the Council of Small Business Organisations of Australia, COSBOA. He has indicated that small business welcomes these changes because of the benefit to them. And where has the employment growth in this country been? It has been in the small business sector.

In relation to balancing family and work commitments, could I indicate that we as a government have been doing exceptionally well in that area. I have used the example of Ms Xuereb. I think Katanning—or however one pronounces that wonderful place in Western Australia—

Senator Adams interjecting—

Senator ABETZ—Thank you, Senator Adams. If anybody wants to know how to pronounce it in Western Australia, Senator Adams will tell you, and my apologies to the residents if I have mispronounced it. In Katanning they have what is called a ‘mothers shift’, determined by the workers so that the mums can take their kids to school and take them home from school. Those are the sorts of family-friendly workplaces that we in Australia are able to achieve and will continue to achieve with WorkChoices. (Time expired)

Senator ALLISON—Mr President, this is not exactly a supplementary question. You will notice that the minister made no attempt whatsoever to answer that question, so I
must ask it again and I will make it plain this time. Will the government introduce the right to flexible working hours and will the government introduce six months paid maternity leave or will the minister continue to pick and choose examples from overseas in misleading the Australian public about these so-called reforms?

Senator ABETZ—I was accused by those opposite of providing too much information in my answer and now I am being criticised for not providing enough. Chances are that I have the balance right yet again, like the government have with workplace relations, where people from both sides are criticising us.

Senator Allison—Mr President, I raise a point of order. The minister is misrepresenting me. I asked for an answer to the question; I did not ask for more details. I do not need more details. The minister should answer the questions that were raised.

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

Senator ABETZ—I was referring to an interjection from Senator Conroy, so I was not even seeking to misrepresent Senator Allison.

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

Senator ABETZ—Everybody knows that the Howard government has delivered a $3,000 baby bonus for Australians. That has been very well received. You can give people paid maternity leave and you can give baby bonuses. There are many ways of dealing with these issues and I think the Howard government has dealt with this issue in a very sensible manner. I am asked about flexible working hours as well—exactly right; that is what we as a government want to achieve: flexibility in the workplace.

DISTINGUISHED VISITORS

The PRESIDENT—I draw the attention of honourable senators to the presence in the President’s gallery of two delegations from the United States of America. The first is from the Australian Political Exchange Council—young political leaders—and the second is a delegation led by Delaware Governor Ruth Ann Minner, President of the Council of State Governments. On behalf of all senators, I wish you a very warm welcome to Australia and, in particular, to our Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Alpine National Park

Senator McGAURAN (2.40 pm)—My question is to the Minister for the Environment and Heritage, Senator Ian Campbell. Will the minister advise the Senate how the Australian government plans to create a greater national park that balances the sensitive environmental needs of the park with preserving the 170-year tradition of cattle grazing in Victoria’s high country?

Senator Carr interjecting—

Senator IAN CAMPBELL—the audible groan from Senator Carr when the words ‘mountain cattle grazing’ were mentioned absolutely tells you where the Labor Party stands on a 170-year old tradition of mountain cattlemen taking their cattle from the plains in the lowlands up to the highlands to the alpine regions every summer to graze. Of course, Senator Kim Carr would have been in bed with his comrades in the Victorian state parliament when they wanted to shut down this iconic Australian heritage.

Senator Carr—And what have you done about it?

Honourable senators interjecting—
The PRESIDENT—Order, Senator Carr! Senators on both sides of the chamber will come to order. The minister has the call.

Senator IAN CAMPBELL—This morning in Melbourne I launched a $15 million plan not only to build a greater Australian alpine national park, joining together the alpine national parks of Victoria with the Kosciuszko National Park—from the ACT right through New South Wales and down into Victoria—but also to give the best environmental protection to the alpine environment that has ever been seen in this country. It is important to protect the environmental values of the alpine region and it is also important to balance that with Australia’s vital national heritage: The Man from Snowy River, the intrinsic value of the Drizabone, RM Williams, the Australian horses going up those mountains that have been—

Honourable senators interjecting—

The PRESIDENT—Order! Senators on my left and senators on my right, come to order. The minister has the call.

Senator IAN CAMPBELL—Of course, all Australians know this, but our American friends would know this as well, that when we had the opening of the Sydney 2000 Games, what was the opening—

Senator Conroy—Mr President, I raise a point of order. The minister is answering his own Dorothy Dixer. The Sydney Olympics had nothing to do with his question.

The PRESIDENT—There is no point of order.

Senator IAN CAMPBELL—Even Senator Conroy would know that at the opening ceremony of the Sydney Olympics there were hundreds of horsemen wearing Drizabones and carrying the Australian flag over their heads, riding Australian horses. This demonstrated to not only Australians but also the rest of the world that the intrinsic cultural heritage of riding into the high country and grazing the cattle there is very much a part of the Australian cultural texture that the Labor Party in Victoria—

Senator Allison—Mr President, I raise a point of order. The minister is misleading the chamber. The man from Snowy River did not round up cattle in the high country; they were brumbies. He is misleading both the chamber and the Australian public in suggesting otherwise.

Honourable senators interjecting—

The PRESIDENT—Order! I remind all senators that this is a serious question. I ask the minister to return to the question.

Senator IAN CAMPBELL—Senator Allison, one of those great friends of the mountain cattlemen, no doubt, should understand better than most that brumbies continue to be a concern in the alpine region, as do feral pigs and deer. This $15 million plan deals with managing cattle sustainably in the Alps to ensure that virtual electronic fencing, movable electronic fencing, conventional fencing and rehabilitation of the bogs and the fens can go hand in hand with maintaining Australia’s cultural heritage. There is no reason why the Victorian government, if it reopens its eyes and looks at this issue, cannot do what we are doing all around Australia, and that is managing—as Senator McGauran knows well—sustainable agriculture in the—

Opposition senators interjecting—

Senator Carr interjecting—

The PRESIDENT—Order! Senator Carr, come to order.

Senator IAN CAMPBELL—The Labor Party squeal like a stuck feral pig. They would rather appeal to a handful of Green preferences in the suburbs of Melbourne and destroy the lives of people who have been up in those mountains for generations droving their cattle. We can balance the environment
and we can balance Australia’s cultural heritage, and I plead with the Australian Labor Party to realise that we now live in the year 2005 and that there is modern technology we can bring to bear to protect our environment and not destroy Australia’s cultural heritage.

Workplace Relations

Senators CHRIS EVANS (2.46 pm)—My question is directed to Senator Abetz in his capacity as the representative of the Minister for Employment and Workplace Relations. I refer the minister to the question asked by Senator McEwen earlier about the impact on workers’ conditions when an agreement expires and whether it is true that they then revert to minimum conditions. In answer to Senator McEwen, the minister referred to pages 51 to 53 of the government’s new IR system booklet, WorkChoices. I refer the minister to those pages, which are in fact about unfair dismissal and termination, and in no way answer the senator’s question. I do not know whether he deliberately tried to mislead the Senate or whether he just does not have an answer. Will the minister answer the question about what happens to people’s conditions when the agreement expires? Is it true that they are then forced to revert to minimum conditions as their only legal protection?

Senator ABETZ—It was a trick for which the Labor Party fell. I wanted to ensure that they had acquainted themselves with the booklet. They are quite right; it is in fact on page 21. I commend the Labor Party for having read the booklet, and seeing that they have read the booklet Senator Evans knows the answer.

Senator ABETZ—All I will do is refer the honourable senator to the booklet, which outlines the circumstances, and remind Australian workers not to listen to the rhetoric of the Australian Labor Party but be reminded that for the first time ever minimum conditions are going to be legislated—protected by law.

Pakistan Earthquake

Senator BOB BROWN (2.49 pm)—My question without notice is to the Minister representing the Prime Minister. I refer to the $12 million to be spent on the advertising
campaign for the industrial relations laws that we have not yet seen and the $5.5 million to be given to the victims of the disastrous earthquake in Pakistan. Why is the Prime Minister spending more than twice as much on pursuing a personal interest than he is prepared to spend on four million people in our neighbourhood suffering from such a calamity and a disaster in terms of human lives and human suffering? Where is Australia’s ability to properly address this disaster in our neighbourhood? What more is the government going to do to show the fair go and the feeling that this Australian nation has towards people suffering in our neighbourhood? When is the government going to meet that disaster appropriately?

Senator HILL—Australia has a proud record of helping those who have suffered from natural calamities. I draw Senator Brown’s attention to the recent experience with the tsunami in Asia. Senator Brown, if he reflects upon that experience, will remember that Australia was very quick to respond and, over a period of time, the extent of our contribution increased. In the end the contribution was in relation not only to relief and repair but also to assisting Indonesia, particularly, rebuild as a functioning society in those areas that were so devastated.

I know that the prejudice of Senator Brown would be such that he would not believe that we would act in a similar way in relation to Pakistan, but that is his prejudice. I say that in the context of the rather offensive way in which he put the question, which was to join it with the right of the government to communicate its policy intentions to the Australian people. There is of course no link whatsoever between those two matters, despite what Senator Brown wishes to imply.

Within hours of the news, the government had committed an initial $500,000. Senator Bob Brown should know that yesterday morning an additional $5 million was committed for medical, shelter and food relief to assist the victims. Senator Brown might know that national and international assessment reports are still being compiled. The United Nations is expected to announce a flash appeal some time today, I am told, based on their assessment of the needs on the ground and contributions to date. We—that is, Australia—stand ready to consider a further contribution once this appeal has been announced and the needs are better known. This is a terrible event that these people have suffered, but Australia, when you look to our record, has always been prepared to assist those in need in these circumstances. In this case, as in previous cases, Australia stands ready to help.

Senator BOB BROWN—Mr President, I ask a supplementary question. I remind the minister—through you, Mr President—that this disaster occurred last Saturday. Standing ready to help is totally inadequate. The relief is required now. I ask: what is the government doing towards contributing now to the relief of those suffering this disaster in Pakistan, Kashmir and India? Why has the government failed to respond on the ground in the way, for example, the Japanese, the British and the Germans have responded in Pakistan?

Senator HILL—The advice we have received from our professional advisers in this area, who may know a little more about these things than Senator Brown, is that the nature of the Australian contribution is the best way in which to help in these circumstances. Our contribution is helping the Red Cross and others to buy medical stocks, winterised tents and blankets locally and to get them most promptly to where they are needed. We take professional advice as to how best we can help in these circumstances. We have done it in this instance and we will continue to do so.
Workplace Relations

Senator HOGG (2.54 pm)—My question is to Senator Abetz, Minister representing the Minister for Employment and Workplace Relations. Will the minister confirm that under the government’s industrial relations changes the agreements and awards that apply to any business will lapse after 12 months if that business is sold? Does this mean that an agreement negotiated in good faith will be thrown out if a business is sold to a new owner? Can the minister confirm that the pay and conditions of employees who work for that business can then be cut back to the minimum standard, which means no public holidays, overtime, penalty rates, breaks, bonuses, leave loading or redundancy pay?

Senator ABETZ—I refer the honourable senator to pages 37 and 38 of the booklet, which deal with transmission of business. It was suggested in another question before by way of interjection that I might not know what was actually in the booklet. In those circumstances, I encourage those senators opposite to in fact read the last page of the document.

Senator George Campbell—Mr President, I raise a point of order. The minister, in response to a number of questions, has referred to pages of the booklet. I draw your attention to the fact that this government was so miserly it would not give members of the opposition copies of the booklet and in fact refused to distribute it to members of parliament. It still has not been distributed. I ask you to ask the minister to read the sections of the booklet that he is referring to.

The PRESIDENT—Order! That is not a point of order; it is a debating point.

Senator ABETZ—to assist those opposite, I encourage them to ring the hotline on 1800025239 or hit the web site of www.workchoices.gov.au, and all will be revealed. I am sure that Senator George Campbell is sufficiently literate to be able to look it up on the internet himself without needing a hard copy. I think it indicates, unfortunately, how behind the times the leaders of the Australian Labor Party are that they need an actual hard copy because they are not able to access the information on the internet. What it shows also is that we might have to ramp up the TV advertising to remind people like Senator Campbell of the hotline and the web site.

In relation to the question regarding transmission of business that I was asked by Senator Hogg, I indicate that, where an employee accepts employment with a new employer, the new employer must provide them with information about their terms and conditions of employment. Really, it is pretty boring, and I apologise to those listening that all I am doing is reading, straight out of the booklet, information available to Senator Hogg and others. I indicate to Senator Hogg: be careful when the question time committee is handing out questions, because if they are so good, why aren’t people like Senator Wong—

The PRESIDENT—Minister, could you return to the question.

Senator ABETZ—who represents this portfolio in this place, actually asking the questions? Mr President, you are quite right and I accept your injunction. Allow me to continue. The new employer and employees will be able to negotiate agreements including varying existing agreements to override the transferred agreements and awards. Then we are given the very helpful example of ‘Mark’. Continuing on, employees reliant on awards and the fair pay and conditions standard will have their classification wages, as set and adjusted by the Fair Pay Commission, transmitted to the new employer. The 12-month limit will not apply to these wages.
Conditions contained in the fair pay and conditions standard will apply universally and so will not need to be transferred. I can undertake another reading lesson for Senator Hogg, and I trust that there will not be a supplementary question.

**Wool Industry: Mulesing**

**Senator ADAMS** (2.59 pm)—My question is to the Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald, representing the Minister for Agriculture, Fisheries and Forestry. Is the minister aware of a campaign being waged against a practice used by merino wool producers known as mulesing to prevent flystrike? Will the minister advise the Senate of actions the government is taking to counter the claims of radical activist organisations and reassure consumers and manufacturers that Australian wool remains a humane and quality product?

**Senator IAN MACDONALD**—I thank Senator Adams for that question on wool and the wool industry. Senator Adams is a wool grower from Kojonup in Western Australia and she well understands the importance of the wool industry to Australia. Wool is an attractive and versatile material. It makes easy-care, easy-wear fabric. Wool is quintessentially Australian. It is part of our culture and it is a $7 billion industry for this country. It supports hundreds of thousands of Australians in employment and thousands of country towns. That is why I, like Senator Adams, am disgusted at the dishonest, deceptive and—if it were in Australia—illegal campaign of a group called PETA, an extreme environmental group with a suspicious agenda. The web site of PETA denigrates the fabric and the industry with lies and misinformation.

This suit that I am wearing is a 100 per cent woollen suit. It is about six or seven years old. It spends most of its time in the bottom of a suitcase, thrown in not very well folded. You take it out and hang it on a rack and within a few hours it falls out into this suit that looks as good as the day it was born. I see that most of my colleagues here are wearing woollen suits—and the females as well are wearing woollen garments. They understand how important wool is. In fact I see Senator Brown over there looking quite stunning. That looks like a woollen suit, Senator Brown.

**Senator Bob Brown**—Mr President, I rise on a point of order. I have a clarification. It is 100 per cent wool and made in Australia.

**The PRESIDENT**—That was not a point of order and you know it was not.

**Senator IAN MACDONALD**—As well as these woollen garments that we are wearing I have a beautiful woollen shirt. I do not have it in Canberra; I leave it up in North Queensland, in the tropics, because it is cool and easy to care for. My wife loves it. It is easy to wash and easy to iron. Wool is a fabulous product.

Senator Adams asked me what the Australian government is doing. Our diplomatic posts right around the world have been involved in setting up a series of meetings with retailers and industry to keep the United States, particularly, and the United Kingdom and, indeed, European customers well informed. As well, the Australian government supports research and development into a chemical treatment to the breech area. That is being researched at the moment and it may be an alternative to mulesing in the years ahead. The research and development people and the industry are working towards that. We are also looking at integrated management practices and there have been positive trials for an analgesic spray for pain relief during mulesing.

The important thing here is that mulesing is a little painful to the sheep at times but the
alternative is an excruciating, painful death from flystrike. That death is to be avoided at all costs and that is why the Australian Veterinary Association, the RSPCA and the government’s Chief Veterinary Officer all support mulesing as a process that is beneficial to the sheep and prevents that excruciating and painful death from flystrike.

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

BUSINESS

Rearrangement

Senator HILL (South Australia—Leader of the Government in the Senate) (3.04 pm)—Mr President, I advise the Senate that there will be a short memorial service tomorrow morning, 12 October, to commemorate the third anniversary of the terrorist attacks in Bali in 2002. The ceremony will be held in the eastern formal gardens and commence at 9.15 am. There will be a motion moved here this afternoon in order that the Senate might commence at 10.00 am, which would allow honourable senators who wish to do so to attend the ceremony.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Leader of the Government in the Senate) (3.04 pm)—I advise the Senate that Senator Eggleston will be acting whip while whip Senator Ferris is away unwell. Whilst we have nothing against Senator Eggleston, we hope that she will return quickly.

QUESTIONS WITHOUT NOTICE:

ADDITIONAL ANSWERS

Illegal Fishing

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.05 pm)—On 6 October I undertook to respond to a question from Senator Sterle in relation to the sighting of a vessel off the north-west coast of Australia. I have those details. I table them and seek leave to incorporate them.

Leave granted.

The answer read as follows—

I can confirm that this sighting took place and have received the following information about the sequence of events from Customs Coastwatch:

On 14 March 2005, the Coastwatch office in Broome received a report from an Australian Fishing Vessel that a Foreign Fishing Vessel had been sighted approximately 90 nautical miles from Cape Leveque.

Coastwatch diverted one of its aircraft to the area and located a vessel. The vessel was an Indonesian Type 3, with an unusual and distinctive sail, and was described by the crew of the aircraft as being underway at about five knots. The aircraft took three photographs of the vessel, and reported the sighting to the Coastwatch National Surveillance Centre.

The National Surveillance Centre contacted the Australian Fisheries Management Authority who requested a response to the vessel. Coastwatch contacted both the Customs National Marine Unit and the Navy, but there were no vessels within reasonable proximity to make a response viable.

At this time, Cyclone Ingrid was around 165 nautical miles north west of Darwin, heading South West, and in accordance with Standard Operating Procedures, Navy vessels and NMU vessels that would have otherwise been in the area and potentially available for response were either sheltering or taking cyclone avoidance action.

A flight on 15 March re-located the vessel twice, on the outwards and return legs of its patrol, and eight photographs were taken. The vessel was assessed as being underway at six knots. AFMA requested a response, but Coastwatch was advised that Navy and Customs National Marine Unit assets were still unavailable.

I am advised that one of the photos taken shows some signs of shark fins.

At this time, Cyclone Ingrid was having an effect on sea state and on flying. There were no flights in the immediate area over the next three days due to the impact of the severe weather conditions.
On 19 March, a foreign fishing vessel with a distinctive sail, similar to that of the vessel sighted off Cape Leveque, was reported to the Customs Hotline as being in distress by an Australian Fishing Vessel six nautical miles off Caffarelli Island near Derby, Western Australia.

Coastwatch advised appropriate agencies that there were no response vessels in the immediate vicinity.

AusSAR arranged for a charter vessel to bring the FFV crew to Cockatoo Island where they were met by an AQIS and a Customs Officer and transferred to Broome. The FFV was anchored and AusSAR issued a Danger to Navigation Notice advising the location of the vessel.

The Master and crew of the vessel were interviewed by a Fisheries Officer in Broome. The Master made some admissions in relation to the vessel that had been reported on 14 and 15 March. He pleaded guilty to two Fisheries offences and was fined a total of $8000.

AQIS and AFMA requested that Coastwatch continue to monitor the position of the abandoned vessel until surface assets were available to respond. Coastwatch maintained liaison with relevant client agencies until the response vessel arrived. The Customs response vessel and Coastwatch aircraft searched the area, but could not relocation the FFV. On 27 March 2005, a Coastwatch aircraft located wreckage which, on comparison with surveillance photographs, was considered to be from the vessel.

ANSWERS TO QUESTIONS ON NOTICE

Question Nos 167, 554, 557, 1065, 1088, 1095, 1096 and 1097

Senator MARK BISHOP (Western Australia) (3.05 pm)—Pursuant to standing order 74(5), I ask the Minister for Defence for an explanation as to why answers have not been provided to questions on notice Nos 167, which I asked on 8 December 2004; 554 and 557, which I asked on 20 April 2005; 1065, which I asked on 8 August 2005; and 1088, 1095, 1096 and 1097, which I asked on 16 August 2005.

Senator HILL (South Australia—Minister for Defence) (3.06 pm)—Unanswered questions on notice I expected to get several days ago and had a response to that, but I thought the Labor Party had lost interest.

Senator Mark Bishop—I gave you the courtesy of time to respond to that.

Senator HILL—I know what happened. You tried to get the call but somebody jumped in front of you the other day and you just disappeared. The answer that I prepared was that a number of the questions have been answered and are in the process. A number of them were relevant to other ministers—I was in an acting capacity—and are still with the other ministers. I am following that up. In relation to the detail I shall refer to the Hansard and see if I can find any further information.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Workplace Relations

Senator MARK BISHOP (Western Australia) (3.07 pm)—I move:

That the Senate take note of the answers given by the Special Minister of State (Senator Abetz) to questions without notice asked today relating to proposed changes to industrial relations.

I note at the outset that the Special Minister of State appeared to be unable to articulate the government’s argument in respect of the proposed changes to workplace relations in this country. His standard response was simply to refer to the help line that is to be made available. He was not willing to argue the government’s case. We ask ourselves: why is that the case?

We see today, in the presentation of the Howard government’s industrial relations manifesto, a realisation of our very worst fears. For two decades now we have been hearing the ideological ravings of the far Right theorists in this debate. They have
worried all sensible people, not just because of their rhetorical, theoretical obsession but because of the violent change they have threatened. The message has been consistent: ‘The labour market is the last remaining bastion of regulation holding this country back and it must be reformed at all costs. Workers are a cost, and they must be treated like all other inputs into the production process. They form part of the laws of demand and supply. Good workers will prosper; others are properly wasted. They can all be picked up by the social welfare system.’ That is the theoretical model and it is now incredibly close to fruition.

The Prime Minister’s ideology, held so strongly now for over 20 years, is out of the bottle—that is, that the labour market is just that: another market which should operate with the minimum degree of regulation. That is at the heart of this legislation, and people listening should not be fooled by the rhetoric. Just as with every other initiative of this Prime Minister, there is a sinister agenda with great and serious social consequences. The Telstra debate some weeks ago was another example. Surrounding the ideology of the agenda, though, is cunning and cleverly crafted spin. To the less informed and those more attracted by the superficiality of the government’s media manipulators, this works like an anaesthetic. Listen to the words carefully: ‘The safety net of the award system remains forever. Minimum wages will be fairly assessed outside the adversarial climate of the industrial relations system. We are in a period of labour shortage, and workers one and all can negotiate a better deal. There will be quantum leaps in productivity. More jobs are going to be created and unemployment will be wiped from the country forever.’ The Prime Minister makes it sound like the new El Dorado. But it is all spin. It is just as deceitful and as devious as everything else.

The analysis and the facts as they emerge are quite different; they are quite separate. The real agenda here, make no mistake, is crude politics. It is about one thing only: political advantage. It is about the old polemic of the narrow, vested interests of capital screwing down organised labour. The unions are the target and, through them, the Australian Labor Party and the overall labour movement. That is the principal agenda. The government will not rest until Australia is a one-party state, and preferably a police state at that.

The real test is to observe the Prime Minister’s manoeuvring as he dodges and weaves through his own web of deceit. The rhetoric, as we have all come to expect, is completely hollow. We have already seen major shifts. What began as a simple, deregulated model with minimal exceptions is already significantly different. The backsliding has been under way for some time. It will continue, clearly, as people realise that they have been duded again. This is not Telstra. This is not about a war overseas and out of sight. The Australian people are not going to swallow whatever is put to them. They know it affects them personally and directly. They know that, even if they have some personal market power, one day they might not. They know that members of their family, their friends and their work mates might not have the same bargaining power. They also know that the current buoyant conditions in the labour market will not remain forever. They know that one day— (Time expired)

Senator FIFIELD (Victoria) (3.12 pm)—This is really a debate about the culture of Australian workplaces today and into the future. Do we want an Australian workplace to be a place of conflict, where it is employer versus employee? Do we want it to be a place of confrontation? Do we want it to be an adversarial place? Do we want it to be a place where both employers and employees
dread going to work, know there will be conflict and know it is a hostile environment? Is that what we want? Do we want to resurrect the rhetoric of class warfare, a concept which has no relevance to modern Australia?

It is amusing that as the Labor Party tried to distance themselves from Mark Latham he somehow became their leader one day. None of them actually voted for him. None of them actually chose him. He just bobbed up as leader one day. As they try to distance themselves from Mark Latham, they are still embracing his politics—the politics of suspicion, the politics of distrust, the politics of scaremongering and the politics of class warfare rhetoric. While Labor might be seeking to distance themselves from Mark Latham, they are still singing very much the tune that he was as Labor leader.

I always find it amusing to hear Labor senators opposite purport to represent working Australians. The contemporary Labor Party swapped the cloth cap and the shop floor for the mortarboard and the ergonomic chair quite some time ago. If you look at senators opposite, you see that something like 65 per cent of them were professional trade union employees or professional political staff. There is nothing wrong with that.

**Senator George Campbell**—What were you?

**Senator FIFIELD**—I was a political staffer. But on our side of politics something like eight per cent of us worked in one of those capacities before. It has been a long while since those opposite were on the shop floor. What I find most offensive in this debate is the denigration of Australian employers. It may come as a surprise to senators opposite but Australian employers actually risk their own capital in many cases to earn a living for themselves and their families. That is right: the bosses, the employers, have families too. And the businesses that they establish— the businesses that they found by risking their own capital— actually employ Australians. Without employers you do not have employees. It is offensive that Australian employers are denigrated as bosses, as though it were a snide, insidious term—that is, that bosses, employers, people who actually provide jobs, are a negative group in our society.

Take the issue of unfair dismissal laws. If you listened to Labor senators, you would believe that employers wake up every single day and think: 'Gee, how can I sack someone today? How can I throw someone on the street? How can I put someone out of a job today?' If you listened to Labor senators opposite you would think that is what every employer in Australia thinks every morning when they wake up. But the reality is that employers know that the secret to a good business is good staff. If you are a good employee you have absolutely nothing to fear. Employers want to keep good employees; they are not going to be terminating a good employee just as a random act of bastardry. Good employees are the secret to a good business.

What we are seeking to do with these changes is recognise the fact that every business and every workplace is different. Even two workplaces in the one industry, in the one state or in the one suburb can be different and have different needs from both an employer and employee point of view. What we are endeavouring to do is introduce greater flexibility so that employers and employees together can work out the arrangements that best suit them. No-one is going to be compelled and no employee is going to be compelled to sign any agreement against their will. That is illegal today; it will remain illegal under the new workplace agreement arrangements. We are not seeking to change that in any way, shape or form.
Just as it was good policy that laid the foundations of the economic prosperity we are enjoying today, it is good policy today that will ensure that we still have a strong economy in Australia and that we still have strong businesses—businesses that are able to employ Australians. These changes seek to introduce greater flexibility to give employees greater choice and to make sure that the workplace environment reflects the needs of employees and employers.

Senator MARSHALL (Victoria) (3.17 pm)—What an incompetent performance by Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations today. We saw today an outrageous accusation against Senator Wortley in respect of the question she asked yesterday about AWAs at Bakers Delight. Senator Abetz wanted to split hairs on the issue of whether the exact agreement that Senator Wortley was talking about had been approved by the Office of the Employment Advocate. Senator Wortley made no such claim. She was talking about agreements in the exact same terms that had already been approved over 50 times by the Office of the Employment Advocate. The exact same agreement with the exact same wording was being offered to this employee. That is what Senator Wortley was talking about. The assertions that Senator Wortley made were absolutely accurate and absolutely true.

Let us go to the detail of what Judge McCusker said about that particular AWA—the same wording and the same terms of the agreement that have been approved 50 times by the Office of the Employment Advocate. I want to quote what Judge McCusker said about the agreement that Senator Wortley was referring to yesterday. He said:

In considering this submission I leave aside for the moment the manifest disadvantage of the respective bargaining positions of a 15 year-old Year 10 student negotiating her terms with an experienced businessman. Moreover I accept it is lawful to require a new employee to sign an AWA as a pre-condition of employment irrespective of the fact this is hardly a matter of real choice from the employee’s point of view. But the plain fact is that under this AWA the respondent worker was paid grossly less than she was entitled to as a minimum under the State Award. She received in wages $4333.65. She should have received $5772.01. The AWA sought to cut her minimum entitlement by approximately 25 per cent. The appellant’s contention that the other AWAs all of which contained the same terms passed the “no disadvantage test” ... does nothing to improve its argument. Rather it shows a troubling situation. To the degree the appellant seeks relief under the equity and good conscience provision, I reject the argument.

That really puts to rest Senator Abetz’s splitting-hair argument that Senator Wortley tried to give false information to the Senate. She did not, and Senator Abetz ought to be ashamed of himself for trying to discount this appalling situation, where we see employers using their bargaining power to abuse their position and cut by 25 per cent the wages of year 10 students working for a company.

Senator Abetz then went on to let the cat out of the bag. How did he describe the reforms? As Thatcherite reforms. And here we go. Thatcher’s Australia: that is what this government is planning for this country. That is what this workplace relations legislation will do: deliver us Thatcher’s Australia. And the cost cutting? It is not just at Bakers Delight. We all know that Minister Ian Macfarlane, the federal Minister for Industry, Tourism and Resources, on the Alan Jones program at 7.50 am on 16 August this year, said:

You can never rest in this game. It is like a race where the finishing line is the end of the rainbow: it keeps moving away as you get closer to it. We have got to keep on at that. We have got to ensure that industrial relations reform continues so that we have the labour prices of New Zealand. They
reformed their industrial relations system a decade ago. We are already a decade behind New Zealand. There is no resting.

That is the agenda of this government, straight out of the mouth of the federal minister. They want to cut Australian wages to the level that applies in New Zealand. And what did we see happen in New Zealand? When they introduced the individual contracts act we saw them fall behind Australian wages by an average of 25 per cent. That is what this government have planned for Australian workers. It is no real choice. It is no choice on offer. There is no real choice when an employer says to every new employee: ‘Here is a contract that I have drawn up for you. Your option is to take it or leave it.’ That is the choice of having a job or not having a job. That is not real choice. That is not the choice that Senator Fifield, in his rather irrelevant contribution to this debate, tried to talk about. What is the choice for existing employees if you want to move on in the company, if you want a promotion or you want a wage increase? Again, you are confronted with the proposition: ‘Here is an AWA. Sign it or leave. Sign it or have nothing.’ (Time expired)

Senator SCULLION (Northern Territory) (3.22 pm)—I would like to commend Senator Fifield on what I thought was an excellent contribution. It was a contribution that I recognised straightaway as coming from somebody who is actually in touch with the Australian people. I think that is very important, because when I listen to the rhetoric from those opposite I am absolutely and totally surprised that there is anybody over there that could continue to say that they represent the Australian people. We have had Senator Bishop stand up and say, ‘This whole thing is a cunning and cleverly crafted plan.’ And of course it is, and I thank him for that commendation. But he also suggests that this is some sort of a spin. It is quite amazing that those opposite are the ones talking about spin, particularly when they are responsible for and associated with the union movement. The ACTU is—and I will use Senator Bishop’s own words—deceitful and devious. It is bad enough that they follow a process of having adverts that decry the Australian government when we have not even got the legislation yet. We have put up with that for months. Now we have an advert where an actor is effectively saying, ‘I am from the department of industrial relations and I think this is an absolute crock.’ If that is not misleading, disingenuous and devious then I do not know what is.

There are those who ask, ‘But why should we go about further reform?’ We want to continue to build this country. People need to understand that there is a cost for people, like those opposite, who sit still. I understand, Senator Marshall, that those opposite are suffering from reform fatigue at this moment. I would have to say they are the only opposition in the history of Australian politics to have suffered from this fatigue. Let me assure them that the government are not suffering from reform fatigue, because we understand the consequences of doing nothing.

Reports from organisations like Access Economics say that if the economy continued to grow by four per cent per annum over the next 20 years, as opposed to 2.4 per cent, the average Australian would be $74,000 better off. So that is the choice. The gap between the low growth of 2.4 per cent and the strong growth of four per cent can be achieved by building on the existing reforms. I am so proud to be part of a government that are on the job every day and that are active in pursuing these outcomes. We have already reformed industrial relations processes significantly. If we had not made the IR changes that we have, unemployment would have been at 8.1 per cent in 2003-04. It would not
be at the 5.8 per cent that it is now, which means that an extra 315,000 people would be out of work. That is certainly a significant issue, particularly for those people who are now in work.

Of course, there are significant issues underlying the reasons we are doing this. I will offer some comparisons as examples. Are we rushing headlong into change? Absolutely not. We have not only consulted well with Australian business, Australian employees and Australian employers but also looked overseas. We have looked at what the Prime Minister of Great Britain has introduced, which is a body very similar to the Fair Pay Commission. When we produce a car in Australia it takes about two minutes to come off the conveyor belt. That is amazing—two minutes. Australia produces fantastic workers. That is excellent. In Great Britain it is very similar except that, having introduced very flexible working conditions—very similar to the reforms we are introducing—it takes them 34 seconds to produce a car. They are enjoying the same conditions and circumstances, but productivity has increased by 75 per cent. They are the facts of the matter.

Senator George Campbell—But what are the comparable volumes?

Senator SCULLION—You can try to confuse the Australian people with disingenuousness and deceit, but it does not matter what you do, Senator George Campbell, Australians are well-informed people. That is why they are going to accept and embrace these very important reforms that we are making not only for Australian employers but also for Australian employees. WorkChoices effectively does the following. It moves us toward a simpler national system, it simplifies workplace agreement making processes, it establishes the Australian Fair Pay Commission and it does a whole range of other things, Senator George Campbell. It is going to absolutely shut down the ‘go away money’. A survey of 900 businesses found that two out of three businesses paid out or knew of businesses that had paid out ‘go away money’. Thirty-seven per cent said that paying ‘go away money’ occurs regularly, and 30 per cent said that it happens occasionally. That is because the unfair dismissal laws as they are now are unfair to employers. They need this change, Australian small businesses demand it, and the government are delivering it.

Senator McEWEN (South Australia) (3.27 pm)—I would also like to take note of answers given by Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. That was what Senator Abetz was attempting to do today, but clearly he does not have a handle on his portfolio, because on a number of occasions he gave incorrect answers while referring to the glossy document entitled WorkChoices. That document has cost the government something like $100 million to produce and advertise. And haven’t we enjoyed being bombarded by those advertisements on television night and day?

I would like to take the opportunity in the brief period that I have to assist Senator Abetz with his portfolio. I will read out a couple of sections of the WorkChoices document that he obviously could not find, did not understand or perhaps chose not to find. In relation to a question that Senator Hogg asked about transmission of business, Senator Abetz neglected to read the particular part which clearly answers the question about whether or not transmission arrangements would apply after 12 months. On page 37 the document says:

Collective agreements and AWAs transmitted to the new employer as well as award provisions will have a maximum period of application of 12 months. After that period, the employees will be
covered by whichever of the employer’s instruments is capable of applying to them. Or, if there
is no such instrument, the fair pay and conditions standard.

It is quite clear—it is there on page 37. Senator Abetz did not read that part. Apparently
he had to read the bit underneath instead, which did not answer the question at all. So I
hope that helps Senator Abetz.

When answering a question from me, Senator Abetz erroneously referred to pages
51 to 53, which Senator Evans subsequently pointed out to him. I was asking a question
about the expiry of agreements. Senator Abetz chose to refer to matters relating to
termination of employment. Perhaps that is more important to him. I read that section
about termination of employment. The only useful thing I could find there was that it
says that the government will also provide $5 million for a best practice education and
training program for employers on fair and proper employment termination practices.
That is good: the Australian taxpayer is going to provide another $5 million so that the
government can educate employers on how to terminate people’s employment. I expect
that the government will also be providing $5 million to the trade union movement to
assist those workers who are going to have their employment terminated under these
new laws with absolutely no recourse to the Industrial Relations Commission or any
other tribunal if they are sacked by an employer with less than 100 employees.

I would like to get to the answer to the question I asked Senator Abetz earlier today,
which was about the termination of agreements. Senator Abetz answered it by refer-
ring to termination of employment. He might like to read page 21, as he suggested, where
it says quite clearly:

Agreements made under WorkChoices that have passed their nominal expiry date may be termi-
nated by any party to the agreement giving 90 days written notice lodged with OEA. When an
agreement made under WorkChoices is terminated and not replaced by another agreement, the
minimum terms and conditions of employment will be those in the fair pay and conditions stan-
dard.

That is good, isn’t it? A group of workers at a workplace legitimately enter into an agree-
ment with their employer and negotiate a pay increase and some additional conditions—
perhaps some family friendly provisions—to put into that agreement. Then lo and behold,
for no reason, the employer decides that they do not want to have that agreement anymore.
Under this legislation, they can go along to the OEA, lodge a notice and say: ‘No, we
don’t want that agreement anymore, thanks. Let’s get rid of that agreement. I’ll put my
employees on the fair pay and conditions standard. I’ll get rid of all those things we
negotiated and we’ll just give them the fair pay and conditions standard.’ That means
minimum standards, minimum rates of pay, a few conditions, a bit of sick leave, a bit of
annual leave and a 38-hour week—which, as we now know, can be annualised, so em-
ployees can work any ridiculous hours that the employer wants to put on them.

Those are the real answers that Senator Abetz should have given; those are the real
answers that this government needs to give to the people of Australia. I am sure the peo-
ple of Australia will soon learn how to use that 1800 number and ring up and find out
how they are going to get duded by this government under this extreme ideological
agenda that they have been harbouring for many years. (Time expired)

Question agreed to.

Workplace Relations

Senator MURRAY (Western Australia) (3.32 pm)—I move:

That the Senate take note of the answer given by the Special Minister of State (Senator Abetz)
to a question without notice asked by the Leader of the Australian Democrats (Senator Allison) today relating to proposed changes to industrial relations.

I have heard much about this IR debate from various government ministers, particularly over this last week, and some things need to be corrected on the record. I hear the government saying that they introduced the second wave in 1996 to build upon Mr Keating’s and Mr Brereton’s first wave of 1993 reforms. What they have not reminded Australia of is that the Labor Party opposed that and that the Democrats passed it. The Democrats passed it after they put through 176 amendments. What the Democrats did to those 1996 proposals was to keep them economically effective but make them socially acceptable. That is the restraint which is not available to the Australian people anymore.

The other problem is that the government is still relying on assertion and is not providing real economic evidence, and yet it rests its whole case on economic evidence. What we know is that the current economic status of Australia is good. We know that there is low disputation, we know that there is good GDP growth, we know that there is real wages growth and we know that the economy is in good shape. But the government is unable to provide any figures, any modelling, any cameos or any documents to show how and by what means the social pain it wants to introduce will be justified by economic gains. There is absolutely no credible evidence about the economic gains that the government is offering.

If the economy is doing well and if society is going to take a hit, we have to look at society. Unless an economy is genuinely in dire straits and needs radical surgery, economic reform is not more important than social cohesion. Both are important. The reason the churches are getting into this debate is because this is turning into a question of whether society is less important than the economy and whether this is the government versus the people.

The mark of a civilised, successful first-world liberal democracy is surely not just high living standards and equitably shared wealth but that it is an egalitarian society that respects and protects the working poor and the disadvantaged and that has advanced working conditions. Our nation, Australia, is our people. It is our people who count. The social perspective is the one that really counts. Reform needs to accord with Australian values and have broad community support. This reform does not accord with Australian values and does not have broad Australian community support. It is no good the coalition thinking that this fight is between them and the Labor Party or them and the unions. This fight is between them and the people.

If we return to the main arguments, the Prime Minister keeps making comparisons with the United Kingdom, New Zealand and Germany. Anyone can pick a country to compare Australia with. Try the Scandinavian countries. Try their better record on long-term unemployment. Have a look at their regulation: it is greater than Australia’s, but they are more productive per capita, they are wealthier per capita and they produce high capital account surpluses, in contrast to our capital account deficits.

If we look more broadly and take into account social factors, Australia at the moment outperforms the majority of countries, including the United States and New Zealand. On the Economist’s worldwide quality of life index—and surely quality of life is what a country is about—which included measures of job security, gender equality and family relations, Australia is presently ranked fifth out of 111 countries. The United States, which the government so slavishly love, is
ranked 13th. New Zealand, which they seem to love even more, is ranked 15th. I believe the more radical components of the government’s IR reform will threaten our standing on measures like the quality of life index, and so do the churches. The Clayton’s Christians on the other side should pay heed, because when those conservative people stand up and say, ‘Look out!’ you had better start to look out. They are picking up a problem in their communities.

For the cost, what is the measurable benefit? The government have not produced strong evidence to back their economic assertions, and yet they seek to risk our strong economy and our social cohesion. For what? Show me the benefits. Show me the evidence. I have not seen it. Plans to reduce the real minimum wage, unfairly dismiss employees, reduce standard benefits, take away the safety net by uncoupling the relationship of awards to agreements and trading in annual leave will result in less job security. Less job security results in less consumer confidence. Less consumer confidence affects the economy. If you affect the economy, you will push up interest rates. If you push up interest rates, you will lose some of the support you get internationally. (Time expired)

Question agreed to.

PETITIONS

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

Vietnam: Personnel Missing in Action
To: The Honourable President and Members of the Senate in the Parliament Assembled:

Your petitioners wish to point out that during the Viet Nam War, 1962 to 1972, SIX Australian servicemen were either killed in action or went missing in action, and were presumed dead. Their bodies were not recovered during the War or subsequently. The names and status of these men are as follows:

- Richard Harold John PARKER: Missing in Action 8 November 1965, for official purposes presumed dead.
- Peter Raymond GILLSON: Killed in Action 8 November 1965, body not recovered.
- Michael Patrick John HERBERT: Missing in Action, 3 November 1970, for official purposes presumed dead.
- John Francis GILLESPIE: Killed in Action 17 April 1971, body not recovered.

Your petitioners wish to point out that although the US Joint POW/MIA Accounting Command in Hawaii has files on each of these cases, they are not under active investigation by the US authorities at this time.

Your petitioners wish to point out that Parker, Gillson, Herbert and Carver were killed while operating in Australian units under the direct operational control of American formations at the time they were lost.

Your petitioners wish to point out that FOUR of the SIX cases have been investigated by a group of concerned citizens and comprehensive reports covering the loss incidents and related events over the intervening years have been produced. Copies of these reports have been passed to the Australian government. In TWO of the cases, a number of potential in-country witnesses have already been identified. For ONE other case, as a result of in-country investigation in February—March 2004, the loss incident location has been pin-pointed, whereas previously the precise location had been unknown. A specific report on this investigation has been passed to the Australian government. (Relevant details regarding these SIX cases can be found at http://www.austmia.com)

Your petitioners wish to point out that further in-country work is required to fully account for these men either by recovering identifiable remains or by providing sustainable evidence to prove that
such remains are not recoverable; and, considering the circumstances and the evidence that is available, the Australian government could reasonably request the support of the US Joint POW/MIA Accounting Command to carry out further in-country work in conjunction the government of Viet Nam in respect of these SIX servicemen.

Your petitioners therefore ask the Senate to call on the Australian government to formally request the assistance of the US Joint POW/MIA Accounting Command to carry out further in-country work in conjunction the government of Viet Nam in respect of these SIX servicemen.

Your petitioners therefore ask the Senate to call on the Australian government to formally request the assistance of the US Joint POW/MIA Accounting Command to carry out further in-country work in conjunction the government of Viet Nam in respect of these SIX servicemen.

by Senator Fifield (from 900 citizens).

Petition received.

NOTICES

Presentation

Senator Marshall to move on the next day of sitting:

That the time for the presentation of the report of the Employment, Workplace Relations and Education References Committee on industrial agreements be extended to 30 November 2005.

Senator McLucas to move on the next day of sitting:

That the Senate—

(a) notes, during Mental Health Week 2005, that:

(i) a recent report commissioned by Carers Australia and undertaken by Access Economics found that 9 per cent of those receiving informal care in the community are suffering from a psychological illness, and that this equates to approximately 350 000 people,

(ii) the cost of informal care provided to people with mental illness is estimated at $2 745 000 000 per year, and

(iii) the Access Economics report states that carers of people with a psychological disability were among the most likely to need additional support in their caring activities; and

(b) calls on the Government to:

(i) recognise the significant cost savings made to the economy by those who provide informal care to people with a mental illness, and

(ii) provide greater recognition in government policy of the carers of those with mental illnesses.

Senator Siewert to move on Thursday, 13 October 2005:

That the Senate—

(a) notes:

(i) that illegal shark fishing is a major factor driving illegal fishing in Australian waters,

(ii) that most shark species are effectively extinct in the Indonesian archipelago and that this increases the pressure on Australian shark fisheries, and

(iii) with concern the declining shark numbers in Australian waters; and

(b) calls on the Government to demonstrate leadership by taking action to protect sharks in Australian waters and address illegal trade by:

(i) banning the export of shark fin products from Australia,

(ii) initiating the development of an international plan of action for sharks,

(iii) removing the exemption under the Environment Protection and Biodiversity Conservation Act 1999 of Western Australian fisheries that target large sharks for finning, and banning long-lining in western and southern fisheries,

(iv) closing tropical shark fisheries until numbers return to sustainable levels, and

(v) providing more resources for the Australian Fisheries Management Authority in joint authority fisheries in the north in order to ensure that onshore and offshore inspections are being carried out by fisheries officers and not the Northern Territory Police.

Senator Allison to move on the next day of sitting:
That the Senate—

(a) notes that:

(i) child care waiting lists for infants under 2 years of age have grown alarmingly,

(ii) 1,935 families cannot access child care in the City of Port Phillip, Victoria, an increase of 20 per cent since 2004,

(iii) more than 13,000 children across Victoria and over 174,000 Australia-wide also need a child care place and cannot get one, and

(iv) these shortages translate to approximately 160,000 women who want to work but cannot because they are unable to access child care;

(b) urges the Government to recognise through its child care funding that the marketplace is not meeting the needs of these families because of the higher cost of caring for children under 2 years of age; and

(c) requests the Government to:

(i) further reduce the fee gap;

(ii) increase capital support for community-based centres so parents can choose the centre in their local area and to meet the unmet needs that create long waiting lists,

(iii) increase subsidies for 0-2 year olds and children with special needs,

(iv) support wage increases to child care workers, and

(v) work with state and local governments to put in place:

(A) planning controls to ensure centres and services are equitably distributed, and

(B) enforce national child care standards, including the requirement of pre-school.

Senator Hill to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend legislation relating to de-
fence, and for related purposes. Defence Legislation Amendment Bill (No. 2) 2005.

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

That the following bill be introduced: A Bill for an Act to amend legislation relating to Aboriginial and Torres Strait Islander heritage protection, and for related purposes. Aboriginal and Torres Strait Islander Heritage Protection Amendment Bill 2005.

Senator WATSON (Tasmania) (3.38 pm)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move:

(1) That the Health Insurance (Obstetric Item 159999) Determination HS/02/2005, made under subsection 3C(1) of the Health Insurance Act 1973, be disallowed.


I seek leave to incorporate in Hansard a short summary of the matters raised by the committee.

Leave granted.

The summary read as follows—

Health Insurance (Obstetric Item 15999) Determination HS/02/2005

This Determination provides for the payment of Medicare benefits for the planning and management of pregnancy that has progressed beyond 20 weeks.

This Determination revokes and replaces a previous determination (HS/09/2004) that ceased to have effect on 2 September 2005. It is expressed to apply until 31 October 2005. The Explanatory Statement does not give a sufficient explanation as to why it is necessary to, in effect, extend the operation of the previous Determination for 2 months. The Committee has written to the Minister seeking advice on the reasons for the extension of the cessation date.
Variation to Licence Area Plan for Scottsdale Radio—No. 1 of 2005

This instrument varies the characteristics of the technical specification with which services in the Scottsdale Area of Tasmania area must comply. This Instrument is dated 5 August 2005.

The opening paragraph to the Instrument, and the Explanatory Statement, each state that the Variation was made by the Australian Communications and Media Authority on 4 August 2005. The Instrument does not contain a commencement clause that specifies a day or time for commencement. Accordingly it appears that paragraph 12(1)(d) of the Legislative Instruments Act 2003 applies; that is, the Instrument is taken to have commenced on the day after it is registered. If, on the other hand, it is intended that the Instrument commenced on 4 August, there is no assurance in the Explanatory Statement that the retrospective commencement does not adversely affect the rights of persons other than the Commonwealth. The Committee has written to the Minister seeking clarification of the commencement date of this Instrument.

Senator WATSON (Tasmania) (3.38 pm)—Following the receipt of satisfactory responses, on behalf of the Standing Committee on Regulations and Ordinances, I give notice that on the next day of sitting I shall withdraw six notices of disallowance standing in my name as follows:

Business of the Senate notice of motion no.1 for the next day of sitting for the disallowance of the Income Tax Assessment Amendment Regulations 2005 (No. 2), as contained in Select Legislative Instrument 2005 No. 75 and made under the Income Tax Assessment Act 1997.

Business of the Senate notices of motion nos 1 to 4 for 5 sitting days after today for the disallowance of the following instruments:

- Crimes Amendment Regulations 2005 (No. 1), as contained in Select Legislative Instrument 2005 No. 81 and made under the Crimes Act 1914.

Business of the Senate notice of motion no. 5 for 8 sitting days after today for the disallowance of the Student Assistance Amendment Regulations 2005 (No. 1), as contained in Select Legislative Instrument 2005 No. 123 and made under the Student Assistance Act 1973.

Senator WATSON—I seek leave to incorporate in Hansard the committee’s correspondence concerning these instruments.

Leave granted.

The correspondence read as follows—

Income Tax Assessment Amendment Regulations 2005 (No. 2), Select Legislative Instrument 2005 No. 75
16 June 2005
The Hon Mal Brough MP
Minister for Revenue and Assistant Treasurer
Suite M1.22
Parliament House
CANBERRA ACT 2600
Dear Minister

I refer to the Income Tax Assessment Amendment Regulations 2005 (No. 2), Select Legislative Instrument 2005 No. 75. The Committee raises the following matters with regard to these Regulations.

First, the Committee notes that section 17 of the Legislative Instruments Act 2003 directs a rulemaker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken particularly where a proposed instrument is likely to have an effect on business. Section 18 of
the Act provides that in some circumstances consultation may be unnecessary or inappropriate. The definition of ‘explanatory statement’ in section 4 of the Act requires an explanatory statement to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken. The Explanatory Statement that accompanies these Regulations makes no reference to consultation. The Committee therefore seeks your advice on whether consultation was undertaken and, if so, the nature of that consultation.

The Committee also seeks an assurance that future explanatory statements will provide information on consultation as required by the Legislative Instruments Act.

Secondly, the amendments in Schedule 1 to these Regulations are taken to have commenced on 1 July 2003. The Explanatory Statement indicates that this is the same commencement date as the relevant sections of the Income Tax Assessment Act 1997. However, the Explanatory Statement does not contain any assurance, in terms of subsection 12(2) of the Legislative Instruments Act 2003 that no person other than the Commonwealth is disadvantaged by the retrospective operation of these amendments. The Committee therefore seeks an assurance that no person has been disadvantaged by the retrospective commencement.

In seeking this assurance, the Committee also seeks clarification regarding the operation of subregulation 775-145.01(6). This subregulation is taken to have commenced on 1 July 2003. It provides that an entity can withdraw an election to apply forex realisation events to foreign currency, or fungible rights to receive or provide foreign currency, only if it does not appear, on reasonable grounds, that the election is being withdrawn for a principal purpose of obtaining a tax benefit. This appears to contemplate the possibility that the withdrawal of an election may, retrospectively, be found to be invalid, thus disadvantaging the entity.

The Committee would appreciate your advice on the above matter as soon as possible, but before 29 July 2005, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Secretary, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
Tsebin Tchen
Chairman

14 July 2005
Secretary
Senate Standing Committee on Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600
Dear Secretary
I refer to a letter dated 16 June 2005 from the then Chairman of your Committee, Senator Tsebin Tchen, concerning certain aspects of the Income Tax Assessment Amendment Regulations 2005 (No. 2).

The letter seeks my advice on whether consultation was undertaken in respect of the Regulations and, if so, the nature of that consultation. I can advise that extensive consultation was undertaken in respect of the Regulations.

The design of the Regulations began in April 2004 with the circulation of a Treasury discussion paper to over 50 interested persons, including members of the National Tax Liaison Group, Finance & Investment Subcommittee of the Australian Taxation Office (ATO). Eleven submissions were received in response to the discussion paper. In November 2004, a draft of the Regulations was provided for comment to persons that made a submission in response to the discussion paper, as well as members of the National Tax Liaison Group, Finance & Investment Subcommittee of the ATO. Three submissions were received in response to the draft Regulations, including a joint submission signed by six organisations.

Senator Tchen’s letter also seeks an assurance that future explanatory statements will provide information on consultation. I can advise that the Treasury has undertaken to ensure that future explanatory statements that accompany legislative instruments include information about the nature
of the consultation undertaken in relation to those instruments.

The letter seeks an assurance that no person has been disadvantaged by the retrospective commencement of the amendments in Schedule 1 to the Regulations, in accordance with subsection 12(2) of the *Legislative Instruments Act 2003*. To this end, I have enclosed a copy of a letter from the Office of Legislative Drafting and Publishing in the Attorney General’s Department, advising that the retrospective commencement date of the amendments in Schedule 1 does not contravene subsection 12(2).

As stated in the letter, the amendments in Schedule 1 permit an entity to elect to have certain currency translations dealt with in a particular way for tax purposes. The amendments invite—but in no way force—an entity to reopen translations carried out between July 2003 and the date of registration of the Regulations, and possibly to have different tax consequences applied to those that previously applied. Importantly, no past translation will be disturbed, or changed in any way, unless the entity makes one of the elections in the Regulations. On this basis, no detriment is created as a result of the Regulations having retrospective effect.

Senator Tchen’s letter also seeks clarification regarding the operation of subregulation 775-145.01(6). The letter expresses a concern that this subregulation contemplates the possibility that the withdrawal of an election to which regulation 775-145.01 applies may, retrospectively, be found to be invalid, thus disadvantaging a relevant taxpayer. As stated in the letter from the Office of Legislative Drafting and Publishing, it is possible that a taxpayer will suffer detrimental consequences as a result of making an election that applies retrospectively—including an election under regulation 775-145.01. In these circumstances, the detrimental consequences will obviously be connected to the retrospective commencement of the relevant amendments in the Regulations. However, the detriment will occur as a result of the free exercise of the election by the relevant taxpayer, which intervenes after the retrospective commencement of the relevant amendments in the Regulations.

I trust this information will be of assistance to you.

Yours sincerely

Mal Brough
Minister for Revenue and Assistant Treasurer

*Attachment*

24 February 2005
Mr Eli Berdichevsky
TOFA Unit
Revenue Group
Department of the Treasury
PARKES ACT 2600

Dear Mr Berdichevsky

**Income Tax Assessment Amendment Regulations: retroactivity**

You have asked for advice whether the proposed Income Tax Assessment Amendment Regulations, dealing with the translation of amounts into foreign or Australian currency, raise any legal concerns because the proposed amendments in Schedule 1 to the Amendment Regulations are expressed to have commenced on 1 July 2003.

2. In my opinion, the retrospective commencement does not contravene subsection 12(2) of the *Legislative Instruments Act 2003*:

(2) A legislative instrument, or a provision of a legislative instrument, has no effect if, apart from this subsection, it would take effect before the date it is registered and as a result:

(a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration would be affected so as to disadvantage that person; or

(b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

3. The proposed amendments in Schedule 1 permit an entity to elect to have certain currency translations dealt with in a particular way for taxation purposes. In its retrospective capacity, the amendments will invite—

CHAMBER
but will in no way force—an entity to reopen translations that were carried out between July 2003 and now, to re-present the details of the translations in the entity’s financial records, and possibly to have different taxation consequences applied instead of the consequences that previously applied.

4. No past translation will be disturbed, or changed in any way, unless the entity makes one of the elections mentioned in the proposed amendments. The entity is free to disregard all of the elections in relation to its past translations, and if the entity does disregard the elections then there will be no consequences of any kind for the entity (or any other entity or person).

5. On this basis, no detriment is created as a result of the proposed amendments having retrospective effect. In fact, no legal or financial change of any kind will occur as a result of the retrospective commencement. If an entity were to make an election, in relation to a past translation, that had detrimental consequences, there will obviously be a connection to the retrospective amendments; but the detriment will occur as a result of the free exercise of the election, which intervenes after the retrospective commencement.

6. I would be happy to discuss these comments further if you wish.

Yours sincerely
Leigh Schneider
Assistant Secretary
Drafting 1 Unit
Office of Legislative Drafting and Publishing
Attorney-General’s Department

11 August 2005
The Hon Mal Brough MP
Minister for Revenue and Assistant Treasurer
Suite M1.22
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 14 July 2005 in relation to the Income Tax Assessment Amendment Regulations 2005 (No. 2), Select Legislative Instrument 2005 No. 75. The Committee considered your letter at its meeting today and agrees that the information you have provided on consultation satisfies the consultation requirements under the Legislative Instruments Act.

Your letter also encloses advice from the Office of Legislative Drafting on the issue of possible disadvantage through the retrospective commencement of the amendments listed in Schedule 1. In general terms, the advice suggests that these amendments do not, of themselves, disturb transactions carried out in the past, but “invite” entities to reopen those transactions, with the possible result that “different tax consequences” will apply. Therefore, it is suggested that detriment will occur not as a result of the amendments having a retrospective effect, but as a result of the free exercise of an election, which intervenes after the retrospective commencement.

Clearly, it would be helpful to those likely to be affected if the regulations were to make clear what the consequences of a “free exercise of an election” might be—whether by way of a note to the provision itself or perhaps by way of an explanation in the Explanatory Statement. This would ensure that entities affected would be able to make a free and informed election.

The Committee would appreciate your advice on the above matter as soon as possible, but before 2 September 2005, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
John Watson
Chairman
30 August 2005
Senator John Watson
Chairman
Senate Standing Committee on Regulations and Ordinances
Room SG49
Parliament House
CANBERRA ACT 2600
Dear Senator Watson
In my letter to the Secretary of your Committee, dated 14 July 2005, I enclosed a copy of a letter from the Office of Legislative Drafting and Publishing advising the Treasury that the retrospective commencement date of the amendments in Schedule 1 to the Regulations does not contravene subsection 12(2) of the Legislative Instruments Act 2003.
Your letter of 11 August 2005 seems to accept this advice, but suggests:
‘Clearly, it would be helpful to those likely to be affected if the regulations were to make clear what the consequences of a “free exercise of an election” might be—whether by way of a note to the provision itself or perhaps by way of an explanation in the Explanatory Statement. This would ensure that entities affected would be able to make a free and informed election.’
I do not see the need for the Regulations or Explanatory Statement to be amended in the way you have suggested. The amendments in Schedule 1 to the Regulations allow taxpayers to use various methods in the translation of foreign currency amounts into Australian currency. The purpose of allowing taxpayers to use these various methods is to reduce compliance costs.
It is important to note that the retrospective aspect of the elections in Schedule 1 to the Regulations benefits taxpayers by allowing them to make elections and to choose the commencement date of those elections. By allowing taxpayers to make an election or elections with retrospective effect, the elections in Schedule 1 allow taxpayers to calculate the tax liability that would result if a retrospective election were made and then compare this with the tax liability that would result if a retrospective election were not made. Taxpayers are then able to choose which option they prefer—which may be the option that gives a better tax result. In other words, the retrospective aspect of the elections in Schedule 1 is generous to taxpayers.
It has been brought to my attention that you have recently given notice to the Senate that you will shortly move to disallow the Regulations. The Regulations have been well-received by taxpayers and their disallowance would create uncertainty and difficulties for taxpayers and the Australian Taxation Office. Therefore, in order to avoid the possibility of the Regulations being disallowed, I am prepared to issue a supplementary explanatory statement to clarify the aspects of Schedule 1 that your Committee considers unclear. However, I note that any supplementary explanatory statement will need to be technically correct—in a legal sense—and must not mislead taxpayers.
I trust this information will be of assistance to you.
Yours sincerely
Mal Brough
Minister for Revenue and Assistant Treasurer

8 September 2005
The Hon Mal Brough MP
Minister for Revenue and Assistant Treasurer
Suite M1.22
Parliament House
CANBERRA ACT 2600
Dear Minister
Thank you for your letter of 30 August 2005 in relation to the Income Tax Assessment Amendment Regulations 2005 (No. 2), Select Legislative Instrument 2005 No. 75.
In that letter you state that the retrospective effect of the elections in Schedule 1 to the regulations “benefits taxpayers” by allowing them to make elections and to choose the commencement date of those elections. Taxpayers are able to compare the tax liability that would result if a retrospective
election were made with the tax liability that would result if that election were not made, and are able to choose the option they prefer—which may be the option that gives a better tax result. You conclude that “the retrospective aspect of the elections in Schedule 1 is generous to taxpayers” and that the regulations “have been well received by taxpayers”. This indicates that the retrospective amendments cause no detriment to taxpayers.

However, in your earlier letter (of 14 July 2005) you enclosed a copy of advice from the Office of Legislative Drafting and Publishing. Among other things, this advice stated that “if an entity were to make an election, in relation to a past translation, that had detrimental consequences, there will obviously be a connection to the retrospective amendments; but the detriment will occur as a result of the free exercise of the election, which intervenes after the retrospective commencement”. This advice indicates that the procedures set up under the regulations may, in certain circumstances, cause detriment to some taxpayers. It is this apparent distinction that has prompted continuing correspondence from the Committee.

In my letter to you of 11 August 2005 I suggested that it would be helpful to those likely to be affected if the regulations (or the Explanatory Statement) in some way made clear that the consequences of a “free exercise of an election” might lead to a detrimental outcome in some circumstances. This ensures that a free and informed election is made, and avoids the risk that the regulations will subsequently be challenged in the courts under subsection 12(2) of the Legislative Instruments Act 2003 by a taxpayer who inadvertently makes an election which results in a detrimental outcome.

The Committee would appreciate your advice on this matter as soon as possible, but before 30 September 2005, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

John Watson
Chairman
(Attachment)
SUPPLEMENTARY EXPLANATORY STATEMENT
STATUTORY RULES 2005 NO.
Issued by authority of the Minister for Revenue and Assistant Treasurer

Income Tax Assessment Act 1997

Income Tax Assessment Amendment Regulations (No. 2) 2005

Subsection 909-1(1) of the Income Tax Assessment Act 1997 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

On 1 July 2003, a new regime was introduced for the taxation of foreign currency, and for rights to receive and obligations to provide foreign currency. The new regime is contained in Division 775 and Subdivisions 960-C and 960-D of the Act. In August 2004, the Minister for Revenue and Assistant Treasurer announced that regulations would be made to modify these foreign currency provisions.

The purpose of these Regulations was to reduce taxpayers’ compliance costs by allowing amounts in a foreign currency to be translated into Australian currency or an applicable functional currency using rates of exchange other than those currently prescribed in the income tax law. It was developed in consultation with industry and professional bodies.

In particular, Regulation 775-145.01 allows taxpayers to make an election to use a weighted average basis to calculate the cost of foreign currency, fungible rights to receive foreign currency, and the proceeds of assuming fungible obligations to pay foreign currency. If the taxpayer does not make this election, the taxpayer must calculate these costs on a first in, first out basis under Division 775 of the Act. The Regulation also allows the taxpayer to choose to apply this Regulation from 1 July 2003—the date from which the new regime for taxation of foreign currency began to apply.

This retrospective application of the Regulation, which operates only at the choice of the taxpayer, benefits taxpayers by allowing them to choose the commencement date of the Regulations from which they can use a weighted average costs basis and benefit from compliance cost savings.

The taxpayer can make an informed decision about whether to make the retrospective choice with full knowledge of past transactions and exchange rates. The taxpayer can compare the effects of calculating foreign currency gains and losses using a weighted average basis and the first in, first out basis. If the consequence of making the election is that it would increase the taxpayer’s liability, the taxpayer is not compelled to make the election.

Crimes Amendment Regulations 2005 (No. 1), Select Legislative Instrument 2005 No. 81

16 June 2005
Senator the Hon Chris Ellison
Minister for Justice and Customs
Suite M1.48
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Crimes Amendment Regulations 2005 (No. 1), Select Legislative Instrument 2005 No. 81. These Regulations prescribe certain laws of Queensland concerning forensic procedure as ‘corresponding law’ for the purposes of section 23YUA of the Crimes Act 1914.

The Committee notes that section 17 of the Legislative Instruments Act 2003 directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken particularly where a proposed instrument is likely to have an effect on business. Section 18 of the Act provides that in some circumstances consultation may be unnecessary or inappropriate. The definition of ‘explanatory statement’ in section 4 of the Act requires an explanatory statement to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken. The Explanatory Statement that accompanies these Regulations makes no reference to consultation. The
Committee therefore seeks your advice on whether consultation was undertaken and, if so, the nature of that consultation.

The Committee also seeks an assurance that future explanatory statements will provide information on consultation as required by the Legislative Instruments Act.

The Committee would appreciate your advice on the above matter as soon as possible, but before 29 July 2005, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Secretary, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

Tsebin Tchen
Chairman

23 September 2005
Senator John Watson
Chairman
Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Watson

I refer to the letter from Senator Tchen dated 16 June 2005 regarding the Crimes Amendment Regulations 2005 (No. 1), which prescribes certain Queensland forensic procedure laws as ‘corresponding law’ for the purposes of section 23YUA of the Crimes Act 1914.

The letter notes the requirement under the Legislative Instruments Act 2003 for consultation to be undertaken where appropriate, particularly where a proposed instrument is likely to have an effect on business. The Committee seeks my advice as to whether consultation was undertaken. Consultation was undertaken with Queensland law enforcement agencies prior to the making of the regulations. Broader consultation was unnecessary as the regulations are unlikely to have any effect on business. The effect of the regulations is to give capacity to the Australian Federal Police and the Queensland Police Service to share DNA profiles collected for law enforcement purposes, subject to a ministerial arrangement being put in place prescribing how this sharing is to occur.

The Committee correctly points out that there is now a legislative requirement for Explanatory Statements to describe the nature of any consultation or to explain why none was undertaken. Unfortunately this requirement appears to have been overlooked in this instance. I will draw the Committee’s concerns to the Attorney-General in the context of his responsibilities for administering the Legislative Instruments Act 2003.

Yours sincerely

Chris Ellison
Minister for Justice and Customs

Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 [FACS]

3 June 2005
Senator the Hon Kay Patterson
Minister for Family and Community Services
Suite MG60
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 made under subsection 1207P(4) of the Social Security Act 1991. The Committee raises the following matters with regard to this Declaration.

First, the Committee notes that this Declaration is one of three made, respectively, by the Secretary of the Department of Employment and Workplace Relations on 29 April 2005, the Acting Secretary of the Department of Education, Science and Training on 17 May 2005, and the Secretary of the Department of Family and Community Services on 26 April 2005. The title of each Declaration is identical, and the substance of each Declaration is nearly identical. The Committee considers that it would assist future reference to these instruments if they were numbered or uniquely identified. The need for such differentiation is underlined by the fact that each Declaration re-
vokes a previous Declaration that has the same name.
The Committee has also written to the Minister for Employment and Workplace Relations and the Minister for Education, Science and Training on this matter.
Secondly, the Committee notes that the declaration made by the Secretary of the Department of Employment and Workplace Relations specifies that the Declaration ceases to have effect on 30 June 2006 (clause 7). The declaration made by the Secretary of the Department of Family and Community Services makes no such a provision and the Committee seeks your advice as to whether this is an intentional omission.
The Committee would appreciate your advice on the above matter as soon as possible, but before 5 August 2005, to enable it to finalise its consideration of this Declaration. Correspondence should be directed to the Secretary, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.
Yours sincerely
Tsebin Tchen
Chairman

8 August 2005
Mr James Warmenhoven
Secretary
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600
Dear Mr Warmenhoven
I have received a letter dated 3 June 2005 from Senator Tchen on behalf of the Senate Standing Committee on Regulations and Ordinances (the committee) concerning the Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 (the instrument). Senator Tchen requested advice about the naming of the instrument, together with advice in regard to the ‘sunset’ clause that appears in the Department of Employment and Workplace Relations (DEWR) instrument, but not in the Family and Community Services instrument.
I am aware that Senator Tchen has retired from the committee and, in line with conversations between you and officers of my department, I am responding directly to you.
I note the committee’s concerns in relation to the naming of the instrument and, in particular, the fact that DEWR and the Department of Education, Science and Training (DEST) have named their own instruments identically. My department is working with DEWR and DEST towards the adoption of a convention for the naming of such common instruments, which will more clearly enable the instruments to be differentiated.
The committee has also noted that the DEWR instrument contains a ‘sunset’ clause, but my department’s instrument does not. DEWR inserted this clause for their own purposes, but my department did not see the need to do so, given that none of the several other currently existing ‘trusts and companies’ instruments have such a clause. The omission of this clause is an intentional omission.
I hope this information will assist the committee with its consideration of the instrument.
Yours sincerely
Senator Kay Patterson
Minister for Family and Community Services

18 August 2005
Senator the Hon Kay Patterson
Minister for Family and Community Services
Suite MG60
Parliament House
CANBERRA ACT 2600
Dear Minister
I refer to the Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 made under subsection 1207P(4) of the Social Security Act 1991. Thank you for your letter of 8 August 2005 responding to the Committee’s concern with this instrument. The Committee has had the benefit of your letter during its consideration of this instrument at its meeting today. As a result of this consideration, the Committee resolved to request some further advice on two related issues.

CHAMBER
First, in your letter you state that an equivalent instrument prepared by the Department of Employment and Workplace Relations contains a sunset clause "for [that Department’s] own purposes". The instrument prepared by your Department does not contain such a clause as "none of the several other currently existing 'trusts and companies' instruments have such a clause". The Committee would appreciate your advice on what those differences in purposes are, and whether such a difference in approach between Departments is desirable. In particular, is there any danger that instruments having the same purpose might come to operate for different periods of time in relation to different clients or Departments.

Secondly, the Committee would appreciate your further advice on the process for proving that a relevant trust is an excluded trust. Specifically, is a simple Declaration of compliance as an excluded trust sufficient, or are relevant trusts required to prove in some way that they comply (for example, by lodging their trust deeds)? The Committee has also written to the Minister for Employment and Workplace Relations and the Minister for Education, Science and Training on these matters.

The Committee would appreciate your advice on the above matter as soon as possible, but before 6 September 2005, to enable it to finalise its consideration of this Declaration. Correspondence should be directed to the Secretary, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
John Watson
Chairman

Dear Senator Watson
Thank you for your letter of 18 August 2005, concerning the Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 (the instrument), seeking further advice on behalf of the Senate Standing Committee on Regulations and Ordinances (the committee) about the sunset clause that appears in the Department of Employment and Workplace Relations’ (DEWR) instrument. The Committee also requests advice with regard to the process for proving that a relevant trust is an excluded trust.

I note the committee’s concerns in relation to the purposes of the sunset clause. My Department is aware that its instrument and the instrument made by the Department of Education, Science and Training (DEST) could operate for a different period to the instrument made by DEWR. Nevertheless, my Department did not consider it necessary to include a sunset clause limiting the period of operation of the instrument, as there is scope to revoke this instrument if required. My Department’s intention is for the instrument to have a continuing effect, rather than imposing a requirement to periodically remake the instrument. In developing the instrument, my Department consulted with DEWR and DEST and will continue to liaise with these departments regarding the period of operation of each department’s respective instrument.

The committee has also requested further advice regarding the process for proving that a particular trust is an excluded trust. My Department requires that a customer provides Centrelink with sufficient documentation to satisfy the delegate that a trust meets the legislative requirements for an excluded trust, for example, the trust deed.

I hope this information will assist the committee with its consideration of the instrument.

Yours sincerely
Senator Kay Patterson
Minister for Family and Community Services
Dear Minister


This Declaration is one of three made, respectively, by the Secretary of the Department of Employment and Workplace Relations on 29 April 2005, the Acting Secretary of the Department of Education, Science and Training on 17 May 2005, and the Secretary of the Department of Family and Community Services on 26 April 2005. The title of each Declaration is identical, and the substance of each Declaration is nearly identical. The Committee considers that it would assist future reference to these instruments if they were numbered or uniquely identified. The need for such differentiation is underlined by the fact that each Declaration revokes a previous Declaration that has the same name.

The Committee has also written to the Ministers for Education, Science and Training and Family and Community Services on this matter.

The Committee would appreciate your advice on the above matter as soon as possible, but before 5 August 2005, to enable it to finalise its consideration of this Declaration. Correspondence should be directed to the Secretary, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra. 

Yours sincerely

Tsebin Tchen
Chairman

5 August 2005

Mr James Warmenhoven
Committee Secretary
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Mr Warmenhoven

I refer to a letter from Mr Tsebin Tchen, former Chairman of the Senate Standing Committee on Regulations and Ordinances, dated 3 June 2005 concerning the Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005. Specifically, Mr Tchen raised the issue of uniquely identifying this and other legislative instruments made by Departments under the social security law. I thought I would write to you about this issue so that you can advise the Committee members of my response.

Following the registration of the above-named instrument, and upon the advice of the Attorney-General’s Department, the three relevant departments (that is, the Department of Family and Community Services (FaCS), the Department of Education, Science and Training (DEST) and my own Department) decided to differentiate future legislative instruments according to each Department’s focus. Following your letter, my Department sought further confirmation from the Attorney-General’s Department as to an appropriate naming convention. That Department advised that, in future, all legislative instruments made under the social security law should include the respective Department’s acronym within the title of each legislative instrument.

Taking the above-named legislative instrument as an example, the proposed convention would have resulted in it being called the Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) (DEWR) Declaration 2005.

I propose to apply this convention in the naming of new legislative instruments, including those made to deal with the expiry—at the end of 30 June 2006—of this Department’s Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005. Over time, I anticipate that all existing legislative instruments
made by me or my Department under the social security law will comply with this approach. I have also asked officers in my Department to liaise with appropriate areas in FaCS and DEST to ensure that a consistent approach is taken.

I hope this information facilitates the Committee’s consideration of the above-named legislative instrument, and meets the Committee’s future requirements.

Yours sincerely

Kevin Andrews
Minister for Employment and Workplace Relations

18 August 2005
The Hon Kevin Andrews MP
Minister for Employment and Workplace Relations
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 made under subsection 1207P(4) of the Social Security Act 1991. The Committee has had the benefit of your letter of 5 August 2005 which provided advice in relation to this instrument. At its meeting today, the Committee resolved to request some further information on two related issues.

First, the Committee notes that the instrument prepared by your Department contains a sunset clause. The equivalent instruments prepared by the two other Departments do not contain such a clause. The Committee has queried this difference with the other Departments, and the Minister for Family and Community Services advised that your Department had included this provision “for [the Department’s] own purposes. The Committee would appreciate your further advice on what those specific purposes were, and whether there is any danger that instruments having the same purpose might come to operate for different periods of time in relation to different clients or Departments.

Secondly, the Committee would appreciate your further advice on the process for proving that a relevant trust is an excluded trust. Specifically, is a simple Declaration of compliance as an excluded trust sufficient, or are relevant trusts required to prove in some way that they comply (for example, by lodging their trust deeds)?

The Committee has also written to the Minister for Family and Community Services and the Minister for Education, Science and Training on these matters.

The Committee would appreciate your advice on the above matters as soon as possible, but before 6 September 2005, to enable it to finalise its consideration of this Declaration. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

John Watson
Chairman

16 September 2005
Senator John Watson
Chairman
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Watson

Thank you for your letter of 18 August 2005 concerning the Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 (the Declaration) made under subsection 1207P(4) of the Social Security Act 1991 (the Act). I understand that the Senate Standing Committee on Regulations and Ordinances (the Committee) seeks advice about the sunset clause that appears in the Declaration made by my Department and the process for proving that a trust is an excluded trust for the purposes of the Act. I apologise for the delay in responding.

The Australian Government is actively pursuing reforms to the social security system to ensure that it provides appropriate levels of income support and incentives for workforce participation.
and self-support. Consistent with these objectives, my Department is concerned to ensure timely review of the means test treatment of community trusts. A sunset clause was therefore included in the Department’s Declaration to provide for such a review before 1 July 2006. The Department of Family and Community Services and the Department of Education, Science and Training were consulted on this decision, but decided not to include a similar provision.

I note the Committee’s concerns that the declarations might operate for different time periods in relation to different clients or departments. While my Department will need to consider remaking its Declaration by 1 July 2006 (and in doing so will engage all affected departments), I assure you that my Department and I recognise the importance of consistent administration of the social security law.

I also draw to your attention that the Department of Veterans’ Affairs has already made a similar instrument entitled the Veterans’ Entitlements (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 which has passed the disallowance period provided for by the Legislative Instruments Act 2003.

The Committee has also requested advice regarding the process for proving that a particular trust is an excluded trust. My Department requires that a customer provides Centrelink with sufficient documentation, such as the trust deed, to satisfy the delegate that a trust meets the legislative requirements for an excluded trust.

I hope this information meets the requirements of the Committee. I would be happy to assist if the Committee requires any further information about this legislative instrument; however, given the present circumstances, I ask that you give my office early notice so that I may respond to the Committee in a timely manner.

Yours sincerely

Kevin Andrews
Minister for Employment and Workplace Relations

Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 [DEST]
3 June 2005
The Hon Brendan Nelson MP
Minister for Education, Science and Training
Suite M1.24
Parliament House
CANBERRA ACT 2600

Dear Minister


First, the Committee notes that this Declaration is one of three made, respectively, by the Secretary of the Department of Employment and Workplace Relations on 29 April 2005, the Acting Secretary of the Department of Education, Science and Training on 17 May 2005, and the Secretary of the Department of Family and Community Services on 26 April 2005. The title of each Declaration is identical, and the substance of each Declaration is nearly identical. The Committee considers that it would assist future reference to these instruments if they were numbered or uniquely identified. The need for such differentiation is underlined by the fact that each Declaration revokes a previous Declaration that has the same name.

The Committee has also written to the Ministers for Employment and Workplace Relations and Family and Community Services on this matter.

Secondly, the Committee notes that the Declaration made by the Secretary of the Department of Employment and Workplace Relations specifies that the Declaration ceases to have effect on 30 June 2006 (clause 7). The Declaration made by the Acting Secretary of the Department of Education Science and Training makes no such a provision and the Committee seeks your advice as to whether this is an intentional omission.

Thirdly, each of the Declarations made by the Secretary of the Department of Family and Community Services and the Department of Em-
ployment and Workplace Relations is accompanied by an Explanatory Statement that refers to consultation being undertaken with the Department of Veterans’ Affairs, and with the other two Departments whose Secretaries have made these Declarations. In contrast, the Explanatory Statement for the Declaration made by the Acting Secretary of the Department of Education, Science and Training does not refer to inter-Departmental consultation. The Committee therefore seeks your advice on whether such consultation occurred and if so, why it is not referred to in the Explanatory Statement, or if not, why this was not done.

The Committee would appreciate your advice on the above matter as soon as possible, but before 5 August 2005, to enable it to finalise its consideration of this Declaration. Correspondence should be directed to the Secretary, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
Tsebin Tchen
Chairman

18 August 2005
The Hon Brendan Nelson MP
Minister for Education Science and Training
Parliament House
CANBERRA ACT 2600
Dear Minister


In its letter of 3 June, the Committee noted that an equivalent instrument prepared by the Department of Employment and Workplace Relations contained a sunset clause. The instrument prepared by your Department did not contain such a clause. In addition to your advice on why the instruments differ in approach, the Committee would appreciate your advice on whether such a difference in approach between Departments is desirable. In particular, is there a danger that instruments having the same purpose might come to operate for different periods of time in relation to different clients or Departments.

Secondly, the Committee would appreciate your further advice on the process for proving that a relevant trust is an excluded trust. Specifically, is a simple Declaration of compliance as an excluded trust sufficient, or are relevant trusts required to prove in some way that they comply (for example, by lodging their trust deeds)?

The Committee has also written to the Minister for Employment and Workplace Relations and the Minister for Family and Community Services on these matters.

The Committee would appreciate your advice on the above matters as soon as possible, but before 6 September 2005, to enable it to finalise its consideration of this Declaration. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
John Watson
Chairman

20 July 2005
Senator Tsebin Tchen
Chairman
Standing Committee on Regulations & Ordinances
Parliament House
CANBERRA ACT 2600
Dear Senator Tchen


I have considered your suggestion that each Declaration be differentiated in some way, and agree to my Department including a distinct identifier on future instruments.

I note your request for clarification in relation to the termination date of the Declaration. I under-
stand that the Declaration made by the Secretary of the Department of Employment and Workplace Relations specified the termination date with the aim of reviewing the operation of the instrument within a year. Following consultation with my Department, I can advise that such a provision was regarded as unnecessary for the purposes of income support payments for which I am responsible, therefore, not included.

Finally, I have considered your request for clarification in relation to inter-Departmental consultation. I understand that each of the Declarations made by the Secretary of the Department of Family and Community Services and the Department of Employment and Workplace Relations is accompanied by an Explanatory Statement that refers to inter-Departmental consultation. I can advise that such consultation occurred between officers of the Department of Family and Community Services, the Department of Employment and Workplace Relations and my Department with the aim of determining a coordinated approach to the administration of the means test provisions in Social Security Act 1991.

As such consultation occurred by way of informal correspondence, it was not referred to in the Explanatory Statement. As suggested by the Committee, future instruments will refer to inter-Departmental consultation.

Thank you for bringing this matter to my attention.

Yours sincerely
Brendan Nelson
Minister for Education, Science and Training

9 September 2005
Senator John Watson
Chairman
Standing Committee on Regulations and Ordinances
Senator for Tasmania
Parliament House
CANBERRA ACT 2600
Dear Senator Watson
Thank you for your letter of 18 August 2005, concerning the Social Security (Means Test Treatment of Private Trusts—Excluded Trusts) Declaration 2005 (the instrument), seeking further advice on behalf of the Senate Standing Committee on Regulations and Ordinances (the Committee) about the sunset clause that appears in the Department of Employment and Workplace Relations (DEWR) instrument. The Committee also requests advice with regard to the process for proving that a relevant trust is an excluded trust.

In my letter of 20 July 2005 to Senator Tsebin Tchen, in his capacity as Chairman of the Standing Committee on Regulations and Ordinances, I noted that the Declaration by the Secretary of the Department of Employment and Workplace Relations differed from the instruments made by the Secretary of the Department of Family and Community Services and the Acting Secretary of the Department of Education Science and Training in that neither of these instruments carried a termination date. I advised that such a provision was regarded as unnecessary for the purposes of income support payments for which I am responsible.

My department is aware that its instrument and the instrument made by the Department of Family and Community Services (FaCS) could operate for a different period to that of the instrument made by DEWR. Nevertheless, my Department did not consider it necessary to include a sunset clause limiting the period of operation of the instrument, as there is scope to revoke this instrument if required. The intention is for the instrument to have a continuing effect, rather than imposing a requirement to periodically remake the instrument. In developing the instrument, my Department consulted with DEWR and FaCS and will continue to liaise with these departments regarding the period of operation of each Department’s respective instrument.

The committee has also requested further advice regarding the process for proving that a particular trust is an excluded trust. Policy responsibility for the administration of the means test for social security payments lies with the Minister for Family and Community Services, Senator the Hon Kay Patterson, and accordingly I will leave it to her to address this issue.

I hope this information will assist the committee with its consideration of the instrument.
Yours sincerely
Brendan Nelson
Minister for Education, Science and Training

12 September 2005
Senator John Watson
Chairman
Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600
Dear Senator Watson
I am writing in response to your letter of 11 August 2005 on behalf of the Senate Standing Committee on Regulations and Ordinances in which you refer to the Student Assistance Amendment Regulations 2005 (No. 1), Select Legislative Instrument 2005 No. 123.
You have sought clarification on the reference to subregulation 5(D)(1), which begins with the words “for subregulation (1)”. I have been advised that this was a drafting error and it should read as “In these Regulations”. This will be corrected as soon as practicable.
Your second question related to the Secretary forming an opinion in regards to whether a person is living separately from another, or whether a person is in a marriage-like relationship. The Secretary, or her delegate, is able to exercise her powers and the performance of her functions under the Student Assistance Act 1973. Information gathering to enable a correct determination to be made is permitted under Section 343 of Division 2—Information Gathering of the Act. These activities are delegated to Centrelink.
Thank you for bringing these matters to my attention.
Yours sincerely
Brendan Nelson
Minister for Education, Science and Training

15 September 2005
The Hon Brendan Nelson MP
Minister for Education, Science and Training
Suite M1.24
Parliament House
CANBERRA ACT 2600
Dear Minister

Thank you for your letter of 12 September 2005 providing information in relation to the Student Assistance Amendment Regulations 2005 (No. 1), Select Legislative Instrument 2005 No. 123.

In its earlier letter of 11 August (ref 142/2005), the Committee sought advice as to the basis on which the Secretary would form an opinion that a person was living separately or in a marriage-like relationship. In your letter, you advise that information gathering to enable a correct determination to be made is permitted under the Act, and that this information gathering has been delegated to Centrelink. However, the Committee would appreciate your further advice as to the criteria that the Secretary will apply in analysing the information gathered through Centrelink before making a determination. Specifically, what aspects of a relationship enable the Secretary to form an opinion that it is marriage-like?

The Committee would appreciate your advice on the above matters as soon as possible, but before 4 October 2005, to enable it to finalise its consideration of these Regulations. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely

John Watson
Chairman

27 September 2005

Senator John Watson
Chairman
Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Watson

Thank you for your letter of 15 September 2005 concerning the Student Assistance Amendment Regulations 2005.

You sought further advice in relation to these Regulations as to the basis on which the Secretary would form an opinion that a person was living separately or in a marriage-like relationship. The information gathered to determine a person’s separated or marriage-like status is specified under the Definitions contained in the ABSTUDY and Assistance for Isolated Children scheme Policy Manuals. The ABSTUDY definitions mirror, and the Assistance for Isolated Children scheme definitions refer to, Section 4 sub-section 2, 3 and 3A of the Social Security Act 1991. There is no definition of separation or marriage-like relationships as such in the Social Security Act 1991. Instead, decisions must be made by having regard to all the circumstances of the relationship, including:

- the financial aspects of the relationship;
- the nature of the household’s the social aspects of the relationship;
- any sexual relationship between the people;
- and the nature of the people’s commitment to each other.

Thank you for bringing your concerns to my attention.

Yours sincerely,

Brendan Nelson
Minister for Education, Science and Training

Senator Wong to move on the next day of sitting:

That the following matters be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by the first sitting day of 2006:

(a) the likely impact of the package of industrial relations changes, titled ‘WorkChoices—A New Workplace Relations System’, announced by the Government on 9 October 2005;

(b) the likely impact of any bills introduced by the Government to implement the package of industrial relations changes, titled ‘WorkChoices—A New Workplace Relations System’; and

(c) any other matters related to the implementation of the package of industrial relations changes, titled ‘WorkChoices—A New Workplace Relations System’.
COMMITTEES

Treaties Committee
Meeting
Senator EGGLLESTON (Western Australia) (3.39 pm)—by leave—I move:
That the Joint Standing Committee on Treaties be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today from 8 pm.
Question agreed to.

Legal and Constitutional References Committee
Meeting
Senator GEORGE CAMPBELL (New South Wales) (3.40 pm)—by leave—At the request of the Chair of the Legal and Constitutional References Committee, Senator Crossin, I move:
That the Legal and Constitutional References Committee be authorised to hold a public meeting during the sitting of the Senate today, from 7 pm, to take evidence for the committee’s inquiry into the administration of the Migration Act.
Question agreed to.

Legal and Constitutional Legislation Committee
Extension of Time
Senator GEORGE CAMPBELL (New South Wales) (3.41 pm)—At the request of Senator Crossin, I move:
That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the provisions of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 be extended to the first sitting day in 2006.
Question agreed to.

Finance and Public Administration References Committee
Extension of Time
Senator WATSON (Tasmania) (3.41 pm)—I move:
That the time for the presentation of the report of the Finance and Public Administration References Committee on government advertising be extended to 1 December 2005.
Question agreed to.

BOTTOM TRAWLING

Senator SIEWERT (Western Australia) (3.41 pm)—by leave—I move the motion as amended:
That the Senate—
(a) notes the damage that may be caused to deep sea coral and sponge communities by destructive fishing practices;
(b) recognises that fishing states are obliged to either join or cooperate with Regional Fisheries Management Organisations and states that do not do so should refrain from fishing for the species in the areas over which such organisations have competence;
(c) acknowledges that some species living on and around seamounts in the south east of Australia, require additional protection and therefore, some fishing methods are not permitted in identified areas;
(d) commends the Government for taking steps, on a case by case basis and based on science, toward protecting some deep sea coral and sponge ecosystems inside Australia’s exclusive economic zone; and
(e) supports the development and implementation of an effective, legally-binding governance framework to protect deep sea biodiversity in the high seas area and to conserve and manage bottom fisheries of the high seas consistent with the United Nations (UN) Convention on the Law of the Sea and the 2004 UN General Assembly resolution 59/25.
Question agreed to.

TAX DEDUCTIBILITY

Senator BOB BROWN (Tasmania) (3.42 pm)—I move:
That the Senate considers that any changes to the tax deductibility status for non-government organisations should be applied consistently across the board, specifically, so that organisa-
lations representing the business community are treated in the same manner as community-based organisations.

Question put:
That the motion (Senator Bob Brown’s) be agreed to.

The Senate divided. [3.47 pm]
(The Deputy President—Senator JJ Hogg)

Ayes…………… 8
Noes…………… 43
Majority………. 35

AYES
Allison, L.F. Bartlett, A.J.J.
Brown, B.J. Milne, C.
Murray, A.J.M. Nettle, K.
Siewert, R. * Stott Despoja, N.

NOES
Adams, J. Barnett, G.
Bishop, T.M. Brandis, G.H.
Brown, C.L. Campbell, G.
Carr, K.J. Chapman, H.G.P.
Crossin, P.M. Eggleston, A. *
 Faulkner, J.P. Fierravanti-Wells, C.
 Fifield, M.P. Hogg, J.J.
 Humphries, G. Hurley, A.
 Hutchins, S.P. Johnston, D.
 Joyce, B. Kemp, C.R.
 Kirk, L. Lightfoot, P.R.
 Ludwig, J.W. Lundy, K.A.
 Marshall, G. Mason, B.J.
 McEwen, A. McLucas, J.E.
 Moore, C. Nash, F.
 O’Brien, K.W.K. Parry, S.
 Polley, H. Ronaldson, M.
 Scullion, N.G. Stephens, U.
 Sterle, G. Troeth, J.M.
 Trood, R. Watson, J.O.W.
 Webber, R. Wong, P.
 Wortley, D.

* denotes teller

Question negatived.

COMMITTEES
Finance and Public Administration
References Committee

Extension of Time

Senator EGGLESTON (Western Australia) (3.51 pm)—Mr Deputy President, I ask that general business of notice of motion No. 279 be put again, by leave.

The DEPUTY PRESIDENT—Is leave granted?

Senator CARR (Victoria) (3.52 pm)—by leave—Before leave for motion No. 279 to be put again is granted, I wish to make a short statement. My understanding of proceedings here is that the government is seeking to recommit a vote on the extension of time for a committee to report—namely, the Senate Finance and Public Administration References Committee inquiry into government advertising. The reporting date that the Senate has agreed to is 10 November. The committee, by unanimous resolution at its last meeting, agreed to request that the Senate extend the reporting time to 1 December. That involves no extra sitting days—none at all. The reason for the extension of time is that two departments were not available to be heard at the last hearing date—the department of tourism and the department of industrial relations. The minister himself was present and agreed that those officers would be made available at another time.

These are quite standard procedures. The committee works well. It is not a particularly aggressive or divisive committee. It is considering very important matters which, I might say, have led to considerable controversy. A minister in the government has accused the Clerk of all sorts of nefarious activities by putting in a submission in which he criticised the government’s approach on this particular matter. That has offended the government. In terms of the actual taking of evidence and consideration of the issue, it
was unanimously agreed by the committee what should occur.

This is particularly important given that the government has now embarked upon what appears to be a $100 million advertising campaign on industrial relations and the government now refuses to tell the Senate about its costings, its budget, its reach or any of those other matters. These are important questions which departmental officials should be able to speak to a committee about and which the government has previously agreed should happen. Now we are told that the motion from the deputy chair of the committee, a government member, will be defeated on the numbers of the government by way of recommittal because the government cannot even get its line straight on the proceedings of the chamber we now should be entertaining.

This is clearly totally unacceptable and highlights that this is really all about the government trying to cover up its nefarious activities when it comes to the question of government advertising. It is seeking to launch a con campaign—a shocking campaign—which it basically has now found itself before the High Court on. It is seeking to run a highly controversial propaganda campaign to persuade Australians to give up their industrial rights, which are going to be snatched from them by this chamber. We are told that this is a matter that should just blithely go through by way of recommittal. It is totally unacceptable and it ought to be strongly noted by this chamber exactly what the game plan is that the government has in mind here.

Senator Bob Brown—Mr Deputy President—

The DEPUTY PRESIDENT—Senator Brown, you will need to seek leave. Senator Eggleston is seeking leave. If people want to comment on this, they will need leave. I have not granted leave for the motion to be recommitted yet.

Senator Bob Brown—I just wanted to make it clear that I was not granting leave.

Leave not granted.

VOLUNTARY STUDENT UNIONISM

Senator NETTLE (New South Wales) (3.56 pm)—I move:

That there be laid on the table by the Minister representing the Minister for Education, Science and Training, no later than Thursday, 13 October 2005, copies of the departmental documents on the three options for voluntary student unionism.

Senator WONG (South Australia) (3.56 pm)—by leave—I move the following amendment:

At the end of the motion, add “including:

(a) the departmental documents for all three options for voluntary student unionism (including, but not limited to, that document identified as ‘c37’);

(b) the letter from the Minister for Education, Science and Training (Mr Nelson) to the Prime Minister, dated 13 May 2005 (identified as ‘c8’); and

(c) ministerial talking points, dated 7 March 2005 (identified as ‘c36’).”

I indicate clearly that this motion relates to documents which were not provided through a freedom of information application by the Australian newspaper. They clearly show that Dr Brendan Nelson was considering a fallback position and amendments to the Howard government’s voluntary student unionism legislation. The amendment I have moved goes to three documents which were excluded, either in total or in part, by the department or other parties from the FOI request and which are highly relevant to the fact that the government was entertaining amendments to the VSU bill. These are important documents. We are keen, and I understand that Senator Nettle is also keen, to
ensure that these documents receive the scrutiny of the chamber.

The DEPUTY PRESIDENT—The question now is that the amendment be agreed to.

Question agreed to.

The PRESIDENT—The question now is that the motion as amended be agreed to.

The Senate divided. [4.02 pm]

(The President—Senator the Hon. Paul Calvert)

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The Senate divided. [4.02 pm]

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Question negatived.

PROPOSED DESALINATION PLANT ON KURNELL PENINSULA

Senator NETTLE (New South Wales) (4.05 pm)—I move:

That the Senate—

(a) congratulates the Federal Government for extending the time for submissions on whether the proposed New South Wales desalination plant on the Kurnell Peninsula requires full assessment under the Environment Protection and Biodiversity Conservation Act 1999;

(b) notes that the Federal Government will consider the public submissions in determining whether the proposed New South Wales desalination plant on the Kurnell Peninsula requires full assessment and approval under the Act; and

(c) calls on the New South Wales Government to ensure that proper and thorough environmental assessments are undertaken on the proposal before construction proceeds.

Senator GEORGE CAMPBELL (New South Wales) (4.06 pm)—by leave—I would like to make a statement. The issue of water supply for Sydney is complex, and glib, opportunistic motions like this are unhelpful. It is a simple fact that the New South Wales government is using a combination of methods to improve the sustainability of Sydney’s water supply, including large-scale recycling schemes which will mean at least 12 per cent of Sydney’s water supply will come from recycled water by 2011. Significant water efficiency projects are underway as are engi-
neering works to significantly reduce water leakage. Part (a) of the motion congratulating the government for extending time for submissions is simply crawling by the Greens. Part (b), calling on the New South Wales government to cease any further planning while an environmental assessment takes place, is somewhat contradictory. An environmental assessment is an important part of the planning process. On this basis, the opposition opposes the motion.

Senator NETTLE (New South Wales) (4.07 pm)—by leave—I recommend to the opposition that they read the amended motion in the Notice Paper. Part (c) of the motion calls on the New South Wales government to ensure that a proper and thorough environmental assessment is undertaken on the proposal before construction proceeds.

Question agreed to.

MR DAVID HICKS

Senator STOTT DESPOJA (South Australia) (4.08 pm)—I move:

That the Senate notes:

(a) the decision of the United States of America (US) to commence military commission proceedings against Mr David Hicks;
(b) that Mr Hicks will be the first Guantanamo Bay detainee to be tried by these military commissions;
(c) the comments by the United Kingdom’s Attorney General, the Right Honourable Lord Goldsmith, that ‘the United Kingdom has been unable to accept that the US military tribunals … offer sufficient guarantees of a fair trial in accordance with international standards’; and
(d) the decision of Mr Hicks to apply for British citizenship.

Question agreed to.

MURRAY RIVER

Senator SIEWERT (Western Australia) (4.08 pm)—by leave—I move the motion as amended:

That the Senate—

(a) notes:

(i) that the environmental health of the Coorong, Lower Lakes and Murray Mouth in South Australia has declined and this area has been identified through the Living Murray process as requiring additional environmental flows, according to the Lower Lakes, Coorong and Murray Mouth Asset Environmental Management Plan:

(A) there is evidence that there are changes in the distribution and abundance of invertebrates on the mudflats,

(b) salinity levels may be at an historically high level in areas such as the South Lagoon,

(c) there is evidence of decline in native fish populations and one species of fish is locally extinct, and

(d) migratory waterbird populations have dropped from a peak of over 234 000 in 1982 to an average of approximately 75 000 to date,

(ii) Professor Peter Cullen, a member of the Wentworth Group of Concerned Scientists and a commissioner on the National Water Commission, states that it is time for governments to start buying water on the open market to boost water flows,

(iii) Professor Cullen’s statement that there are plenty of funds available for cost-effective infrastructure that would return appropriate volumes of water, but that it seems we do not have the skills in some agencies to identify them, and

(iv) the diverse interests supporting the purchase of water on the open market, including the newly established National Floodplain Graziers Association, the South Australian Member of The Nationals and the Minister for the River Murray, Ms Karlene Maywald, and the New South Wales Minister for the Environment, Mr Bob Debus;
(d) recognises market options as a way of meeting environmental flow targets; and
(e) calls on:
   (i) all governments involved to address the challenges facing the Murray River and to consider the full range of mechanisms available including market options, and
   (ii) the state governments to bring forward infrastructure and water efficiency products for investment under the Living Murray initiative as a matter of priority.

Question agreed to.

Senator Bob Brown—I note that the Labor Party opposed the last two motions.

COMMITTEES

Australian Crime Commission Committee Meeting

Senator EGGLESTON (Western Australia) (4.09 pm)—At the request of Senator Santoro, I move:

That the Parliamentary Joint Committee on the Australian Crime Commission be authorised to hold public meetings during the sittings of the Senate, to take evidence for the committee’s review of the Australian Crime Commission Act 2002, on the following days:

Tuesday, 11 October 2005, from 4 pm to 7 pm
Thursday, 13 October 2005, from 9.30 am to 11.30 am.

Question agreed to.

NATIONAL MENTAL HEALTH WEEK

Senator GEORGE CAMPBELL (New South Wales) (4.10 pm)—by leave—at the request of Senator Stephens, I move the motion as amended:

That the Senate—

(a) notes that:

   (i) Sunday, 9 October 2005 marked the beginning of National Mental Health Week, the theme for 2005 being ‘Family, Friends and Intimate Relationships’,
   (ii) Monday, 10 October 2005 is World Mental Health Day, the theme for 2005 being ‘Mental and Physical Health Across the Life Span’,
   (iii) one in five Australians will, at some time in their lives, experience some form of mental illness,
   (iv) mental illness manifests itself in many forms including depression, anxiety, schizophrenia, bipolar disorder and eating disorders,
   (v) Sane Australia report that up to 12 per cent of people with severe mental disorders, such as schizophrenia, bipolar disorder and other forms of psychosis, eventually end their lives as compared with about one per cent for the whole population,
   (vi) most people with mental illness recover well and are able to lead fulfilling lives in the community when they receive appropriate ongoing treatment and support,
   (vii) only about half of those affected by mental illness actually receive treatment, and
   (viii) in Australia there are hundreds of mental health organisations, health professionals and carers providing assistance and treatment to sufferers; and

(b) urges the Federal Government to:

   (i) recognise that mental health is not something separate from the health care agenda, but an integral part of it,
   (ii) show national leadership and drive a real national mental health strategy, and
   (iii) improve those mental health services for which it has direct responsibility.

Question agreed to.
DOCUMENTS

Tabling

The PRESIDENT— I present the annual report of 2004-05 for the Parliamentary Service Commissioner.

Ordered that the report be printed.

BUDGET

Consideration by Legislation Committees

Additional Information

Senator EGGLESTON (Western Australia) (4.11 pm)— On behalf of the chair of the Economics Legislation Committee, Senator Brandis, I present additional information received by the committee relating to hearings on the 2004-2005 additional estimates.

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint

Report

Senator EGGLESTON (Western Australia) (4.11 pm)— On behalf of the Joint Standing Committee on Foreign Affairs, Defence and Trade, I present a report on the review of the Defence annual report 2003-04. I seek leave to move a motion in relation to the report.

Leave granted.

Senator EGGLESTON— I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

Deputy President,


During the period July 2003 to June 2004, Defence has been subject to a range of external and internal challenges. The Defence Update 2003 highlighted the changed strategic environment in which the Australian Defence Force (ADF) operates. In particular, the rise of global terrorism and the threat of non-state actors is causing Defence to reassess its capabilities. The new Defence Capability Plan provides detailed information on the capabilities that Defence will acquire during the next 10 years.

Defence has embarked on an ambitious program of reform to its procurement arising from the Kinnaird Report. These reforms culminated when the Defence Material Organisation (DMO) became a separate prescribed authority on 1 July 2005, headed by Dr Stephen Gumley. In addition, a Capability Development Group, headed by Lieutenant General David Hurley, has been formed within Defence for the purpose of better defining capability requirements and advising DMO of specific capability needs. This procurement reform is the first of four topics explored by the Committee as part of the review of the Defence Annual Report 2003-04. The Committee found mixed progress on major procurement projects but overall noted significant improvement to the process by which capability requirements are identified and briefed to Government.

The Committee next reviewed decisions relating to the selection of Australia’s future amphibious capability. This critical capability will serve Australia to the middle of this century and is regarded by Defence as a capability of first resort for contingencies from disaster relief to mid intensity warfighting. The current Defence Capability Plan states that two large amphibious ships will be purchased to replace Australia’s current amphibious capability. The Australian Strategic Policy Institute has argued that it may be more effective to purchase four smaller amphibious vessels, rather than two large ships. The Committee notes ASPI’s arguments that a larger number of smaller ships may be more effective in some circumstances but accepts the comprehensive nature of the Navy and Defence analysis which shows that the acquisition of two larger ships to be more efficient, in both operational capability and cost-effectiveness, over the life of the project. In addition Defence’s decision to procure two large ships was based on their capacity to embark an Army
combined arms battle group and deliver this force ashore more rapidly and effectively than would be possible from smaller platforms.

The management of Defence’s budget continues to be problematic. In part difficulties stem from the transition to accrual accounting standards, but other procedural and cultural difficulties remain. The Department of Defence is a complex organisation, designed in the first instance to support operational activities such as the deployment of the Al Muthanna Task Group to southern Iraq. However, like other government agencies, Defence must comply with Australian Accounting Standards and to demonstrate transparency and accountability to the Parliament. Defence’s budget remains qualified and, while a significant amount of work is being done to rectifying these concerns, much room for improvement remains. Defence’s qualified financial statement, and the steps the Department is taking to remedy this situation are the third topic examined by the Committee report. In its review the Committee notes that the Defence leadership have been particularly frank about the nature and extent of the problems they face and that significant progress has been made on reforms. The Committee makes some recommendations in this section intended to assist Defence in prioritising resources while seeking to meet the requirements of the Financial Management Act. These recommendations are based on the need to stratify the data held by Defence to ensure money is not wasted seeking old audit data that has not been retained.

The final topic examined by the Committee was a review of Defence’s capability for humanitarian relief operations. The most recent example of the ADF capacity for relief operations came during the exemplary response to the Tsunami on Boxing Day 2004. During the hearing, Defence detailed the extent of its humanitarian relief capabilities and their relationship to Defence’s key war-fighting objectives. The Defence balance of capabilities, designed for war-fighting but suited to relief operations, is considered appropriate. The Committee concluded this section of the inquiry by commending the ADF for its performance on humanitarian relief operations throughout Australia and our region.

To conclude this review of the Defence Annual Report 2003-04 the then CDF, General Peter Cosgrove, and the Secretary, Mr Ric Smith, made themselves available for a wide-ranging discussion on current issues in the Department. In this section the Defence leadership demonstrated a high level of cohesion and left the Committee confident the reforms described in other sections of the report were being allocated sufficient priority.

Finally, the Committee offers its sympathy to the families and friends of the crew of Sea King Helicopter ‘Shark 02’ for the tragic loss of their loved ones in Aceh. The loss of this fine group of service men and women during the period of Committee consideration highlighted the dangers faced by all ADF personnel and confirms the need to ensure the ADF receives the best equipment and support our nation can afford.

Question agreed to.

DELEGATION REPORTS
Delegation to the United States

Senator EGGLESTON (Western Australia) (4.12 pm)—On behalf of the Joint Standing Committee on Foreign Affairs, Defence and Trade, I present the report of a delegation to the United States from 28 June to 13 July 2005 as part of the committee’s inquiry into Australia’s defence relations with the United States. I seek leave to move a motion in relation to the report.

Leave granted.

Senator EGGLESTON—I move:

That the Senate take note of the report.

Senator HUTCHINS (New South Wales) (4.12 pm)—I understand that I have five minutes to make a contribution in relation to the delegation report presented today by Senator Eggleston on behalf of Senator Ferguson. I was a member of the delegation that went to the United States in that period, delegated from the defence subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. I was one of a number of members of parliament who were
privileged to be part of that delegation led by Senator Ferguson and his deputy, Mr Graham Edwards. Other members of the delegation included the chairman of the defence subcommittee, Mr Bruce Scott; Ms Joanna Gash; Mr Steve Gibbons; Senator Johnston; and me. We were assisted on that committee by Lieutenant Colonel Gus McLachlan, who is the defence adviser to the committee, and also in the United States by the Australian Military Attache—I think that is his title—Lieutenant Colonel Andy Hoffmann. I do not know if they are comfortable with being referred to as LTCs, because that is how the Americans refer to lieutenant colonels. I do not know if that means that they are not about to make it or they have made it—that is just the term they use. Both those gentlemen did a grand job in making sure that the committee had the access, the information and the wherewithal to deal with the report that has been presented this afternoon.

The terms of reference of the committee are clearly set out in the document that Senator Eggleston has presented. It represents the culmination of a number of hearings conducted by the committee into Australia’s defence relations with the United States. Contrary to what people may have read in the last few weeks, the Australian Labor Party see our defence relationship with the United States as one of the bedrocks of our security not only in this region but also in the world. We do not seek to change or vary that to my knowledge. I have been a member of the Labor Party since I was 15. I cannot recall that there has been any serious debate for some years about whether we should query the context, the depth or the nature of our defence relationship with the United States. That certainly was reaffirmed, as you will see in the report that has been tabled here this afternoon.

We were given unparalleled access to the levels of command, bases and industry that we sought to see. We were able to meet with the now commander of the US Pacific Fleet, Commander Gary Roughead, in Hawaii; we were able to meet with General Abizaid, the head of US Central Command, under which Iraq is the military responsibility; and we were able to meet with the head of the US First Marine Corps in California, who shares the name of a famous South Sydney footballer, John Sattler. Only a New South Welshman would be familiar with that name—a great footballer. No doubt General Sattler is a great leader of his men and women in combat and in peacetime.

If you look at the terms of reference and the committee report, you will see, as I said, that we were given unparalleled access to the levels of government and military, business and industry, that we were interested in. A number of my colleagues were particularly interested in the Abrams tanks and the joint strike fighter. Of course, I would have to put Senator Johnston in that particular category. He seems to have a penchant for big boys’ toys—as they might be referred to. Senator Johnston certainly not only enjoyed the experience of the access to those levels of industry but also is quite knowledgeable in relation to those pieces of military hardware. Equally, we were given generous time with not only those military commanders but also a number of the think tanks in the United States. We were given access to the Rand Corporation, the US Army Strategic Studies Institute, the American Enterprise Institute and in Washington the Center for Strategic and International Studies.

During our defence relationship tour in the United States, Senator Johnston and I were aware that both of us are on the Senate Foreign Affairs, Defence and Trade References Committee, which is conducting an inquiry into our relationship with China. We were aware that we had accepted an invitation to go to the People’s Republic of China not
long after we had been to the United States. I had the opportunity on each occasion in those strategic or defence areas to inquire of the US military or policymakers their position in relation to the potential threat of a coming conflict with the People’s Republic of China and whether they saw that Australia would automatically be involved in that threat if it did occur. From the Pentagon through to the military, there certainly was no feeling that Australia would automatically be involved in any conflict. Indeed, the US military, defence and policy people to whom we spoke were certainly very much concerned about whether there would be any conflict. They certainly did not want one to occur and were doing what I believe was anything they could to make sure that it did not occur. In fact, when we were in the Pentagon meeting with senior military and defence personnel, one of the defence personnel said—only an American would use the term—that if such a conflict did occur about the Chinese situation there would be no ‘automaticity’ that Australia would be involved in that conflict.

When Senator Johnston and I went to China after that we were able to speak to the Chinese and ask them their views about the situation of Taiwan and other issues and what would happen if it deteriorated. Certainly, for me and for Senator David Johnston, both trips were particularly enlightening. We got, from an Australian point of view, an aspect of those two superpowers and how they viewed each other. We had access that not many Australians, let alone many Australian backbenchers, would have an opportunity to obtain.

It was not all business. When we went to the US Army Strategic Studies Institute we had the opportunity to be taken by officers of that institute to the famous American battleground, Gettysburg, which is not far from the institute. We were in the United States, as you will see from the dates the delegation was there, on 4 July but we were not in Gettysburg on 4 July, which is the anniversary of that famous battle that was fought in 1863.

As I said, we had an opportunity to view these policy makers up front and personal, so to speak. We did get to talk to our embassy and consular staff. Contrary to what people may think about some of our people overseas, these men and women that we had access to and contact with were very professional. They were not toadies, fawning or forelock tugging to the United States. They were men and women who very much had the interests of their country at heart and had a very professional relationship with their American counterparts that was equally appreciated by them. To finish, as I said earlier, the opportunity about China and the United States is welcome. There is only one policy maker who injected caution about the future of the Chinese. Most of the others said they believed there would not be a difficulty; only one believed there would, and I did not agree with him.

Question agreed to.

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint Report

Senator MARK BISHOP (Western Australia) (4.24 pm)—by leave—I move:

That the Senate take note of the report tabled earlier today.

I want to make a few broad comments on the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on the review of the annual report of the Department of Defence for the 2003-04 financial year. I should say at the outset that this is a timely and useful report from the committee. It goes to some 40 pages and discusses a range of items in detail, many of which have
been discussed in other reports and have been addressed in passing in the bulkier annual report tabled on an annual basis by Defence, and some of which have been addressed in discussion at length in various estimates committees of this place in recent years. So it is a timely and useful report and to that extent fleshes out things that have been under discussion in recent years.

The report also serves as an important reminder of the important responsibilities we in this place have for the proper defence of Australia. Defence, I think it goes without saying, is a critical federal responsibility. It is the essence of our nationhood. We ignore it at our peril and we are obliged to be constantly attentive and committed. One notes from various reactions of members of the community and the public to commemorative events that the role of our defence forces both at home and overseas in recent years continues to enjoy critical elements of community support and public approval.

However, in that context I note that the fact that Defence is held in high regard and tries its best to match capability with needs when our troops are required to attend to a task overseas—that critical role—can in no way absolve the Department of Defence of scrutiny, and scrutiny by relevant personnel in this place. In fact, it is quite the opposite. Defence does happen to be one of the largest parts of our budget, of Commonwealth outlays. More importantly, it also involves the lives and safety of a large number of people who, in the national interest, choose to enlist. It therefore behoves us to get right what is being done and to maintain it. I do not think it is any great news event; it is just that getting things right on a constant basis is a difficult equation.

Ultimately we know that defence costs lives, and that is a pain we all have to endure. We also know that those risks can be reduced by ensuring that our people are properly equipped and supported as they carry out the duties they are tasked with. At the same time, we all accept that does not give carte blanche to the administration of the department. All of the usual principles of good policy, good government and sound administration must prevail. That is why we in opposition keep hammering on about the things we think threaten the importance of our contribution to defence. It is our job to make sure the government is at all times accountable and that maximum transparency is provided. That is why the report of the joint committee today is so important. It is a manifestation of this parliament—a committee of the parliament doing its job.

Underneath all the government’s spin and rhetoric about defence, it is fair to say—particularly in the light of various reports of the Australian National Audit Office in recent months—that all is not well. Wrapping oneself in the flag might have some political advantage, but at the end of the day the flag has got to be in good shape. From this report, even though it is couched in the most careful language, it is clear that all is not well.

It is true that we currently live in an uncertain world. That might be a bit of a cliche, but nevertheless circumstances are as volatile as they have been for decades. Importantly, though, it is not a matter of total conflagration as previous events in the 20th century were. The real question, however, is how well we understand the circumstances and how well we are prepared to meet them if we have to. It is clear from this report—putting aside all the hype about large and growing budgets and big capital commitments—that it is difficult to gain much real reassurance. There are in fact a number of quite disturbing matters which are worthy of comment.

To begin with, our defence strategy is all at sea—literally and figuratively, perhaps.
The white paper brought down some years ago, which is essentially the guidepost of our defence strategy, is now barely relevant. That lack of relevance underlines the basic volatile nature of the security environment in which we live. I emphasise the word ‘security’ because it is the new de facto parlance for ‘defence’. Yet a lot of our decision-making processes do not seem to have embraced that new reality. We seem strangely caught using 19th century terms, yet with a model of defence built on large, growing and expensive navies and air forces kitted out for wars fought elsewhere against organised enemies.

It is true that we are reacting to the insidious, but it is through intelligence, sound analysis and police forces rather than defence. That is absolutely appropriate and vitally important, but it questions the relevance of much of contemporary defence policy in this country. If, for example, the Prime Minister’s threat, some time ago now, to invade countries in the region to quell terrorist threats was an expression of our new defence policy, it is an example of how confused these two streams of modern thought are. If our neighbours are perplexed then so are we.

Putting that dilemma aside though, it is also clear from defence policy terms that we are a member of multilateral operations through the United Nations. Blended with that, we need to also consider our military and economic alliances, even to the extent that such alliances make some—a minority, it must be conceded—uneasy. That is another element of the confusing and seemingly ongoing contradictory nature of much of defence policy at the moment. It would certainly be nice to have some clear vision as to exactly what it is that we stand for, free of the customary political polemic.

Most important, though, is the process by which we budget for all of this and procure the best, the most modern, the most needed and the most relevant equipment for our forces. That is the black hole, and as readers go through this report, and a whole series of other reports produced over the last few years, I am sure they will agree that there is a lot of confidence on this issue that needs to be gained. Beneath the rhetoric and the political grandstanding, there are a number of large and ongoing problems that to date remain insoluble. Our forces are stretched and under strength. They are not as well-equipped as they ought to be and the procurement shambles continues to compromise every good intention. I seek leave to continue my remarks on this report at another time.

Leave granted; debate adjourned.

Foreign Affairs, Defence and Trade Committee: Joint
Additional Information

Senator LIGHTFOOT (Western Australia) (4.33 pm)—On behalf of Senator Ferguson, I present a document containing comments by former Senator Harradine, a former member of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, relating to the committee’s inquiry into Australia’s human rights dialogue process.

Prior to his retirement and while on sick leave, Senator Harradine sent these comments to the subcommittee. The subcommittee thought they were for consideration rather than inclusion. In fairness, because of his absence due to illness just prior to his retirement, the subcommittee has agreed to accede to his wishes and table his comments.

I seek leave, therefore, to incorporate the document in Hansard.

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

Senator Bob Brown—I am certainly happy for anything from former Senator Harradine to be incorporated, but it is normal
practice for that to be preceded by the document being distributed to interested parties in the Senate. For former Senator Harradine, we will waive that rule.

Leave granted.

_The document read as follows—_

Human Rights Sub-Committee, of the Joint Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into Australia’s human rights dialogue process

Qualifying comments

Senator Brian Harradine

Faced with the multiplication of flagrant violations of human rights and the impossibility to denounce them in countries, the only hopes of victims, their families, and of human rights defenders are the condemnations and the pressures which can be exerted by the international community.

Sidiki Kaba, president of the International Federation for Human Rights

My concern with bilateral human rights dialogues is that they are being used by governments on both sides of the dialogue to reduce public airing and scrutiny of human rights abuses. There may be improved trade relations between countries for not embarrassing a trading partner for its human rights transgressions. Government may also be more interested in the process of dialogue than in practical improvements in human rights outcomes.

When considering proposing this inquiry, I had in mind the words from an earlier report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, which found that:

Nation states have no sovereign right to abuse their own people and they should be answerable to the international community for the treatment of their people. Conversely, the international community has a responsibility to assist those who cannot protect themselves. This is not a luxury to be determined by strategic considerations although it is often used in that way. It is a matter of our intrinsic humanity.

These concerns were highlighted for me by the visit to Australia in October 2003 of Chinese President Hu Jintao. President Hu’s address to the Australian Parliament was the first for a head of state of a non-democratic country. I was even more concerned that President Hu was the head of state of a country with an appalling human rights record. That’s why I suggested that the Human Rights Subcommittee initiate this inquiry to see what practical steps the Government could take to increase pressure on regimes such as China where there are significant human rights abuses. I was very pleased to have the support of my colleague Roger Price MP, who was also interested in proposing an inquiry. These concerns, the nature of the evidence received by the Committee and the fact that the Australia-China human rights dialogue is the longest running of the Australian dialogues, mean that the greater part of my qualifying comments concern human rights in China.

It is worth restating the extent of China’s human rights problems:

It tortures and ill-treats prisoners. It conducts more executions than all other countries combined. It carries out forced abortions and sterilisations on women. It persecutes the people of Tibet. It tramples on the rights of political activists. It represses the rights of workers and stops people freely expressing their religious and spiritual beliefs.

I acknowledge there are also serious human rights problems in Vietnam and Iran, which are the two other countries involved in human rights dialogues with Australia.

It is interesting to speculate that Vietnamese Prime Minister Phan Van Khai’s recent support for Australia to take part in the East Asia Summit, to be held later this year, may derive in part from the lack of public criticism from Australia of Vietnam’s poor human rights record.

**Dialogues as a way to hide human rights abuses**

There is a shared concern across many groups with an interest in human rights that human rights dialogues are a way of Governments avoiding embarrassing public disagreements, especially when those disagreements might threaten trade relationships or other interests.
One submission to the inquiry argued that:
China’s purpose in entering into the dialogue process was to preserve the monopoly of power exercised by the Chinese Communist Party, on the one hand, and avoid international criticism of human rights restrictions thought necessary for that purpose, on the other.4

A number of interested parties making submissions to the Committee had a very clear view of why the Australian Government agreed to a bilateral dialogue. One submission from a person with a special interest in Tibet argued that:
Since 1997, Beijing has succeeded in convincing Australia, and a large number of other nations, to forego the ritual of annual condemnation of Beijing’s Human Rights abuses in the multilateral forum of the United Nations Commission for Human Rights (UNCHR) in exchange for closed-door bilateral dialogues on Human Rights. Beijing’s manipulation of Third World votes in the UNCHR—primarily through aid packages—coupled with threats of trade losses against First World nations has been a successful strategy…
A compliant Australia is too scared to risk trade deals by mentioning the abuses in the UNCHR, but only too happy to engage in a closed-door dialogue where no pressure whatsoever is brought to bear against Beijing. By acting in this way, Australia is complicit in the gross abuse and cultural genocide of a people.5

In another submission, Dr Ann Kent from the Australian National University argued that:
When China’s leaders offered bilateral dialogue to states in exchange for an agreement to cease cosponsoring the China resolution in the UN Human Rights Commission in early 1997, Australian policy makers, who had been subordinating principle to pragmatism since 1993, did not hesitate to move from multilateral monitoring to quiet, bilateral dialogue.6

In evidence to the Committee, the Human Rights and Equal Opportunity Commission (HREOC) commented on its technical cooperation program work in China:
It seems that Australia continues to be one of the partners of choice for cooperation in the most sensitive of human rights areas. This is well demonstrated not only by the direct statements of cooperating organisations but also by the topics nominated for inclusion in the program by cooperating organisations and by the eagerness of some of the organisations to join the program. It is perhaps notable that one of the aspects of the reform agenda of the National Population and Family Planning Commission is specifically to seek out cooperation with Australia in the human rights aspects of family planning.9

This statement implies that there are improvements underway in the coercive population control policies of the Chinese Government or that
the Chinese Government is open to improving human rights in this area.

Activities such as the technical cooperation program with the HREOC are useful to the Chinese authorities because they can be represented as a sign of approval of, or tolerance for, the use of coercive measures in family planning which flow from the one-child policy.

The National Population and Family Planning Commission of China (NPFPC) is already using the recent talks with the Australian HREOC representatives for this purpose. A news item dated 3 June 2005 on the National Population and Family Planning Commission’s website reported that Zhao Bingli, Vice Minister of the NPFPC met with the Hon. John von Doussa, President of the Human Rights and Equal Opportunity Commission (HREOC) and other members of the delegation. The article stated:

Vice Minister Zhao highly appreciated the consistent understanding of Australia to China’s population and family planning policy and the scientific and effective work of Australian project managing experts and officials.

… He pointed out that the guiding principle of client-centered comprehensive development of all the people had been emphasized in the present population and family planning policy of China. The “consistent understanding” phrase is a way of saying that Australia accepts China’s view of its family planning policy. The NPFPC is, in effect, citing the conversation as synonymous with an endorsement of its program by Australia.

Foreign organisations involved with the Chinese program, such as the United Nations Population Fund (UNFPA) and the International Planned Parenthood Federation (IPPF), also often provide assurances on human rights given to them by their official Chinese contacts. But these agencies have a conflict of interest on the issue of human rights because of their heavy involvement in the China program and have often disseminated Chinese propaganda in defence of the population control program.

The National Population and Family Planning Commission of China acknowledges its close links with the UNFPA and the IPPF on its website:

China has had constructive cooperation with UNFPA, IPPF and other international organizations. In its 17 years (3 cycles) cooperation with the UNFPA, China has learned and absorbed good experiences, strengthened population science and family planning studies and improved the quality of services.

Given China continues its coercive population control program, the close links with the IPPF and UNFPA are damming.

The one-child policy and the coercive birth control measures used to enforce the policy have been well documented. There is also solid evidence that the policy continues to be enforced. A directive issued on 26 August 2003 by the Party Committee of Jieshi Town, a community of 200,000 in Guangdong Province announced the beginning of the “autumn 2003 planned birth campaign”. The campaign was to last 35 days, during which time 818 women were to be fitted with IUDs, 271 were to undergo abortions (108 late-term), and 1,369 were to be sterilised. Local family planning officials were to report their progress every five days and evaluate the performance of their subordinates every ten days. The family planning cadres were told to “mobilize the whole town”, “take all possible measures”, and “overcome difficulties with creativity”. These commands are an open-ended invitation for human rights violations.

The instructions in the directive that officials should publicise China’s new national family planning law, adopted 29 December 2001, indicates that the new law was not perceived as prohibiting coercive measures but rather as authorising their use.

Officials are under great pressure to enforce family planning rules with the advent of the ‘veto with one vote’ rule. John Aird explained to the US House of Representatives International Relations Committee that this is a rule:

… which provided that cadres and officials who failed to meet their family planning targets were to be judged a total failure in the annual evaluations, regardless of their accomplishments in carrying out other central tasks, and penalised accordingly. A failure in family planning ‘vetoed’ all other achievements.
What the Jieshi directive reveals is that, despite Chinese Government assertions that the new family planning law prohibits coercion in family planning work, it is actually intended to legalise the continuing use of coercive IUD insertions, abortions, and sterilisations.

The impact of the coercive population control policies have been brought closer to home in Australia with news that the wife of Chinese diplomat and asylum seeker Chen Yonglin witnessed the brutality of the family planning program. The *International Herald Tribune* recounts that Chen’s wife Jin Ping:

… had been a student activist, while studying law in Shanghai, and after Tiananmen, she had been sent to a rural area for ‘re-education’. She was assigned to work in a family planning program, she said.

One woman she had to work with was eight months pregnant with her second child, when forced into a hospital for an abortion.

She escaped, was caught and brought back, an operation was performed, and the baby boy, born alive, was then killed by the doctors, Jin said.

Her experiences had been so traumatic that after she and Chen married in 1992—they had been high school sweethearts—she was not sure that she wanted children, and it was six years before their daughter, Fang Rong, was born. 18

It is regrettable that by participating in technical cooperation programs with the National Population and Family Planning Commission, Australian agencies can be used for domestic propaganda purposes to imply foreign support for China’s one-child policy.

**UN Commission on Human Rights**

The Department of Foreign Affairs and Trade argued that the Australian Government was pursuing the human rights dialogue with China because:

… going back to the late eighties, there has been no successful resolution on China in the Commission on Human Rights. Almost every year, with one or two exceptions, it has been mooted and the Chinese have been able to muster sufficient numbers to have the resolution not acted on … Last year for the first time in some years the Americans put forward a resolution and it was defeated by a no-action motion. So one of the reasons why we have this dialogue is because the UN has not been able to deal with the issue.19

DFAT’s explanation appears to be a convenient excuse for moving to the bilateral dialogue process. Dr Ann Kent argues that … a resolution in the UN Human Rights Commission drawing attention to a state’s abuse of human rights but at the same time commending the state for any human rights improvements, is effective whether or not the resolution is subsequently adopted. This is because the adverse publicity associated with the draft resolution is as powerful a deterrent as the number of states that support it. By contrast, bilateral monitoring lacks the capacity to shame …

Unless a critical mass of consensual state opinion, expressed through United Nations (UN) or regional human rights bodies and forums, can be arrayed against an offending state, with the inbuilt socialising process that implies, normative adjustment is unlikely to occur.20

Amnesty International Australia also spoke of the value of exerting multilateral pressure on China. The relative lack of country resolutions at the Commission on Human Rights in recent years, particularly with respect to China, is a significant concern to the organisation. The lack of critical motions with respect to China is noted, particularly in the light of critical Special Rapporteur reports in recent years, including the Special Rapporteur’s assessment in 2003 on China’s education policies.21

It seems clear that China’s discomfort with any airing of its human rights abuses indicates that public exposure of its behaviour is an important method of pressuring the regime for change.

**Measuring the outcomes of human rights dialogues**

In order to determine the success of any project, it is essential to have specific and measurable objectives. So it is important to have publicly reported measures of the changes in countries’ human rights situations and whether positive changes can be linked to dialogues.
The Australian Council for International Development complained about the Australian Government’s approach:

We do not have any benchmarks or indicators. I am sure you will have the opportunity to ask the department itself but, in our request for greater accountability, the department has put up its hand and said quite openly, ‘We’re not going to set any benchmarks, because we’re not going to be able to tell if the human rights dialogue is making any demonstrable progress towards advancing human rights.’ On our interpretation, that is an invalid justification for having a human rights dialogue. If you cannot demonstrate that you are making some progress—and it does not have to be fantastic advancement; baby steps are sufficient—and that the dialogue is making a positive contribution, it raises the question of what point there is in having a dialogue. Is it merely window-dressing?22

The lack of measurement of the progress of the dialogues was not disputed by the Department of Foreign Affairs and Trade. While DFAT stated that it employs some informal monitoring, it does not have specific objectives to track.

In terms of monitoring the effect of the dialogue, clearly there are factors that we would look at. One of those would be progress in individual cases of concern. If, for example, a number of people have been released from prison, that would be something we would see as a very positive step. We also look at the overall human rights situation in the country concerned. It is simply that we do not have specific benchmarks. I think that is really the question.23

In response to a question on how the Government measures the effectiveness of dialogues, the Department said it would be too difficult.

I understand what you are saying but, as I mentioned at the outset, there are a whole range of influences on China with respect to human rights—our dialogue, the dialogue that others have with all sorts of other pressures, elements within their own society. It is quite difficult to be able to measure precisely—we are not sure that it would be very productive—what has been done directly only as a result of the Australian dialogue.24

But DFAT is being disingenuous. The process of measuring the effectiveness of dialogues need not try to isolate the exact effect of a particular dialogue between nations, but at the very least track how well China or other countries are going in meeting particular benchmarks or overall objectives for human rights.

Dr Ann Kent points out the obvious difficulties of the Australian Government’s approach:

The emphasis is on process, and no evidence is supplied of progress made, or of any intention to make the process more transparent. … If there is no way that citizens can find out what is happening during the dialogue, how can they evaluate it? … it gives rise to the suspicion that form rather than substance, and pragmatism rather than principle, are now Australia’s defining priorities.25

In particular, it is important that the Australian Government’s part in this process is accountable to the Australian people. There can be no accountability without the publication of measurements or an attempt at an objective assessment of the progress of particular work.

**Accountability to the public**

The Government’s refusal to formally monitor the progress of human rights dialogues in which it is involved and report on progress means that the relative value of the discussions is not made known to the Australian public. As far as the public knows, the dialogues could be a complete waste of time and money.

The dialogue is lacking in most of the vital requirements of accountability, particularly those included in the terms of reference of the current Inquiry: sufficient parliamentary participation and oversight; involvement of non-government organisations; reporting requirements and mechanisms; and public monitoring and evaluation of outcomes.26

In addition to accountability to the Australian public, the dialogue process removes accountability from countries committing human rights abuses:

… a combination where, on the one hand, you do not take any multilateral action against China in the commission of human rights or make any great public criticism of it and, on the other hand, you have a confidential dialogue—then you have
removed both the multinational accountability and you have not replaced it with any kind of accountability at all.\textsuperscript{27}

Amnesty International Australia commented that it has:

\ldots no in-principle objection to bilateral dialogue processes between states on human rights. However, in the absence of appropriate measures to ensure accountability and transparency, Amnesty International does not see the dialogues as having or being able to have a direct impact on addressing serious human rights violations. We maintain that bilateral dialogues must never be seen as a substitute for other recognised human rights mechanisms and forums.\textsuperscript{28}

Amnesty suggested ways of making the dialogues more accountable:

In our submission we outlined that there should be a report tabled to this committee in writing. Such a report should include core benchmarks. We refer particularly to the EU guidelines on human rights dialogues as an appropriate reference for such criteria. We see the tabling of such findings to this committee as a fundamental part of an accountable dialogue process. To expand on this issue of the lack of accountability in current processes, we would also like to make some recommendations regarding a more constructive engagement with domestic NGOs before and after dialogue processes. At present our organisation provides submissions to the dialogues, often on specific cases, but more often than not we do not receive feedback.\textsuperscript{29}

**Continued serious human rights abuses in China**

The Department of Foreign Affairs and Trade claimed that the human rights situation in China is improving, though their spokesman admitted a lack of accurate figures on one of the most significant abuses of human rights—the death penalty.

Regarding human rights in China in the broad, I think our assessment is that the situation has, over a longer period, improved rather than worsened. Obviously there are instances on occasions where you would see two steps forward and one step back, or what have you, but in the broad we do see an incremental improvement \ldots Unfortunately we do not have accurate figures for many issues, including, for example, the death penalty. It is possible that over some years there have been higher numbers of instances of death sentences, but we do not know that for a fact because China does not publish the figures.\textsuperscript{30}

Despite DFAT’s claims, it is difficult to reconcile these with other assessments of the situation from credible sources.

The US State Department’s 2004 country report on human rights in China states that:

The Government’s human rights record remained poor, and the Government continued to commit numerous and serious abuses. Citizens did not have the right to change their government, and many who openly expressed dissenting political views were harassed, detained, or imprisoned, particularly in a campaign late in the year against writers, religious activists, dissidents, and petitioners to the Central Government.\textsuperscript{31}

In contrast to DFAT, the State Department was able to quote official Chinese figures on the death penalty:

The Government regarded the number of death sentences it carried out as a state secret. However, in March, a National People’s Congress deputy asserted that nearly 10,000 cases per year ‘result in immediate execution.’ \ldots Amnesty International (AI) reported that China executed more persons than any other country. Some foreign academics estimated that as many as 10,000 to 20,000 persons are executed each year.\textsuperscript{32}

The United States Government viewed the lack of progress on human rights in China so seriously that “the U.S. did not agree to schedule a new round of dialogue with China because of the lack of sufficient concrete results from the last round, held in December 2002. The Government also terminated some legal reform cooperation with the United States and U.S.-supported organizations.”\textsuperscript{33}

It was also claimed in one submission that human rights in Tibet have declined since Australia commenced a human rights dialogue with China.

The deterioration in conditions in Tibet since 1997 shows that Beijing has been emboldened by the closed-door nature of Human Rights dialogue process and now acts with increasing impunity in
Tibet. Dialogue partners are now reluctant to raise violations in multilateral forums in fear of retaliatory impacts on pending trade deals. Beijing has succeeded in buying complicit silence.34

The latest Amnesty International report for China begins:

Despite a few positive steps, no attempt was made to introduce the fundamental legal and institutional reforms necessary to bring an end to serious human rights violations. Tens of thousands of people continued to be detained or imprisoned in violation of their rights to freedom of expression and association, and were at serious risk of torture or ill-treatment. Thousands of people were sentenced to death or executed.35

**Human rights in Iran**

Amnesty International Australia also gave evidence that the human rights situation in Iran is also poor.

The situation is similar with respect to Iran. I note that Australia has only undertaken one dialogue process with Iran at this stage. We are concerned about the ongoing imposition of the death penalty on children and note that Iran, like China, is a party to the Convention on the Rights of the Child. We highlight again the violations, as outlined in our submission.36

This was supported by evidence from DFAT:

The human rights situation in Iran is obviously a matter of concern to us. It is a bad human rights situation and I guess you could say, to be honest, the prospects for it improving do not look very good. The areas of particular concern to us, recent and ongoing, are crackdowns on freedoms of the press, especially a crackdown on internet journalists, which is worrying. You would be aware of recent reports of the execution of juveniles for so-called ‘morality crimes’.37

**What is needed to improve international protection of human rights?**

Instead of a human rights dialogue process which is not measured, which has no objectives and which is not accountable because it is not reported to the public, there were a number of suggestions on how to improve the process.

The Australian Council for International Development (ACFID) argued:

ACFID is concerned at the lack of measurable progress in Australia’s human rights dialogues with China, Iran and Viet Nam. Without clear objectives, timelines for desired outcomes and benchmarks for evaluation, countries may participate in a bilateral dialogue process as a means to avoid public condemnation of their human rights record. Australia risks compliance in a dialogue process that offers only an illusion of progress on human rights issues, rather than contributing to authentic improvements in human rights.38

ACFID also argued for regular reports to be made to Parliament on the progress of the dialogues.

I believe that such a report would be made by the Minister for Foreign Affairs. It would contain a synopsis of the overall aim of undertaking the dialogue and the specific objectives for that particular dialogue or future dialogues. It would discuss the outcomes. It would outline issues that the partner country specifically raised with regard to their own human rights concerns as well as human rights concerns in Australia. It would conclude with a vision—or a statement, more correctly—of how human rights dialogues might persist in the future. Referring back again to the EU—and I know I am making a lot of references to them—in their regular assessments of each of the human rights dialogues which they undertake each year, they do include an assessment as to whether a human rights dialogue should be pursued in the future. They have expectations that they feel need to be met within each of the meetings and then as a follow-up to each of the meetings. If those expectations are not met then they will abandon the dialogue altogether.39

The Vietnamese Community in Australia suggested using aid to promote human rights:

Australia can apply aid pressure without hurting the recipient people. It can carefully choose to suspend only those aid projects that benefit officials more directly than ordinary people (for example, inviting officials to visit Australia), and those that impact slowly rather than immediately (for example, developing long-term partnerships between our and their research bodies).40

While some argued that improving human rights would be achieved more effectively by abandoning the dialogues,41 a greater number instead called for significant reforms and argued that “…
bilateral dialogues should be integrated into multilateral processes, such as the United Nations Commission on Human Rights, to more effectively promote human rights. ”

Conclusion

Australia’s human rights dialogue process needs major reform. A system of discussions with countries which have significant human rights problems will not succeed unless it is consistent with the democratic norms of transparency and accountability. It should not adopt the secret and unaccountable practices of the countries it is supposedly trying to change. There will not be adequate pressure on countries to change unless there is international public scrutiny of countries which abuse their citizens.

Bilateral dialogues should not preclude participation in multilateral resolutions through the United Nations on countries which abuse human rights. It is only by public denunciations of human rights abuses that Australia can minimise the risk of dialogues and technical cooperation programs being used for domestic propaganda by the Chinese dictatorship.

The Australian Government should set measurable objectives and benchmarks for human rights and report publicly using these measures on whether countries in dialogue with Australia are improving the treatment of their people. This is the only way the Australian public can judge whether the dialogues are a worthwhile process.

Brian Harradine

Independent Senator for Tasmania

4 Mr John Greenwell, Submission 3, page 4.
5 A Charade in the Shadows, submission 11, pages 7, 10.
6 Dr Ann Kent, Submission 1, page 5
10 The Hon John von Doussa, HREOC, Committee Hansard, 14 March 2005, page 16.


John Aird on Human Rights Violations Under China’s One-Child Policy. op cit


Ms Caroline Millar, Department of Foreign Affairs and Trade, Committee Hansard, 14 March 2005, pages 42 and 43.

Dr Rebecca Smith, Amnesty International Australia, Committee Hansard, 14 March 2005, page 29.


Ms Caroline Millar, Department of Foreign Affairs and Trade, Committee Hansard, 14 March 2005, page 39.

Ms Caroline Millar, Department of Foreign Affairs and Trade, Committee Hansard, 14 March 2005, pages 42 and 43.

Dr Ann Kent, Submission 1, page 4

Dr Ann Kent, Submission 1, page 4

Mr John Greenwell, Amnesty International Australia, Committee Hansard, 14 March 2005, page 36.

Ms Rebecca Smith, Amnesty International Australia, Committee Hansard, 14 March 2005, page 30.

Ms Rebecca Smith, Amnesty International Australia, Committee Hansard, 14 March 2005, page 30.

Mr Peter Roggero, Department of Foreign Affairs and Trade, Committee Hansard, 14 March 2005, pages 48.


United States State Department, 2004

United States State Department, 2004

A Charade in the Shadows, submission 11, page 3.


Ms Rebecca Smith, Amnesty International Australia, Committee Hansard, 14 March 2005, page 30.

Ms Nicoli Maning-Campbell, Department of Foreign Affairs and Trade, Committee Hansard, 14 March 2005, pages 49.

Australian Council for International Development, submission 6, page 5.


Vietnamese Community in Australia, submission 15, page 6.

Dr Ann Kent, Submission 1, page 8

Australian Council for International Development, submission 6, page 5.

Membership

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

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the
Minister for Trade) (4.35 pm)—by leave—I move:

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

Community Affairs References Committee—

Appointed—Substitute member: Senator Crossin to replace Senator Carol Brown for the committee’s inquiry into petrol sniffing in remote Aboriginal communities

Economics Legislation Committee—

Appointed—Substitute member: Senator George Campbell to replace Senator Stephens from 15 October to 7 November 2005

Employment, Workplace Relations and Education Legislation Committee—

Appointed—Participating member: Senator Nash

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

Discharged—Senator Troeth

Appointed—Senator Adams.

Question agreed to.

HEALTH INSURANCE AMENDMENT (MEDICARE SAFETY-NETS) BILL 2005

First Reading

Bill received from the House of Representatives.

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Trade) (4.36 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This Government is committed to protecting and strengthening Medicare and delivering high quality, affordable health care to all Australians.

The measures in the Health Insurance Amendment (Medicare Safety-nets) Bill 2005 will maintain the sustainability of the extended Medicare safety net and ensure Australians will continue to receive additional protection for high out of pocket medical costs.

From 1 January 2006, the extended Medicare safety net thresholds will increase from $306.90 to $500 for concession card holders and families in receipt of Family Tax Benefit Part A, and from $716.10 to $1,000 for all other families and individuals. The current thresholds will continue to apply to all families and individuals for the current calendar year. The changes give effect to the thresholds initially proposed by the Government in 2003.

An overriding concern for the Government was the long-term sustainability of the safety net. When first announced, the estimated cost of the extended safety net was just $440 million over the four years to 2006-07. After the safety net came into operation it became clear that these estimates needed to be revised. More people than expected qualified for safety net benefits, out-of-pocket medical expenses turned out to be considerably higher, and some specialties shifted charges onto Medicare out-of-hospital items so that their patients could claim safety net entitlements. If the Government had not acted quickly, costs would have blown out to $1.4 billion over the four years to 2007-08.

Increasing the Medicare safety net thresholds has been a tough decision. It reflects our commitment to a strong economy, along with our support for Australia’s world class health system.

The extended Medicare safety net is the most important improvement to our health system since Medicare commenced in 1983. It demonstrates this Government’s continued commitment to
helping all Australians to afford quality health care. Increasing the thresholds will enable the Government to retain what is still a generous safety net.

Through its continued commitment to the extended safety net, this Government is investing nearly $1.1 billion over the next four years, to ensure individuals and families are protected against unforeseen and high out of pocket costs for health care. The safety net will continue to help the estimated 1.5 million people who will benefit in 2006 under the higher thresholds.

Australia has one of the best health systems in the world. For the past 20 years, Medicare has provided Australians with essential protection through affordable access to medical, pharmaceutical and hospital services. Through the measures in this Bill, this Government demonstrates its continued support for the extended Medicare safety net. Through this Bill, the Government is continuing its investment in affordable access to high quality health care.

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

COMMITEES

Rural and Regional Affairs and Transport References Committee

Reference

Senator BOB BROWN (Tasmania) (4.37 pm)—I move:

That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 1 December 2005:

(a) the public and private commitments of the Prime Minister (Mr Howard) in his 2004 pre-election announcement on logging of old-growth forests in Tasmania, with particular reference to his commitments to the forestry division of the Construction, Forestry, Mining and Energy Union, its officers and related organisations; and

(b) any relevant matters.

A summary of why we should be referring these matters to the Rural and Regional Affairs and Transport References Committee and why we should be having a report into it comes from an extract from an article by Brad Norington in the Weekend Australian dated 8 October. I quote:

John Howard yesterday denied corruption was involved in his vote-winning Tasmanian forests policy at last year’s election over an agreement to pay $4 million to a company with strong union influence.

The Prime Minister won the support of the timber and workers’ union with a package that included the $4 million, earmarked for skills and training.

The funding was mentioned with minimal detail in government policy documents and this year’s budget.

But it was the subject of pre-election negotiations, with an understanding that the money would go to a company heavily promoted by the financially strapped forestry division of the Construction Forestry Mining and Energy Union.

Mr Howard said the $4 million was no secret and was provided for in the budget.

“The idea that this is corruption is absurd,” he told Melbourne radio.

The fact is that the $4 million was a secret. There was, in the Prime Minister’s announcement at the Albert Hall in Launceston, part of a $50 million package, which included skillling, but there was no extant revelation of a number of things: that $4 million had been agreed to in prior negotiations with union officials and the Prime Minister and that that money would go to an organisation called the Forest and Forest Products Employment Skills Company, known as FAFPESC, which is dominated by the CFMEU’s forestry division. Moreover, that organisation tends to subcontract its work to another organisation, which is wholly controlled by the forestry division of the CFMEU, and that organisation is called Forest Industry Employment Training Ser-
vices—FIET. So there is a circuitous route by which this money goes back to the forestry division of the union.

It is important that the Senate discover, in the interests of the public, the negotiations that took place with the Prime Minister by the union prior to the Prime Minister going to Launceston—three days before the last election. It is very important that that is understood. You will recollect, Mr Acting Deputy President Watson, that when the Prime Minister did get to Launceston, he had what can only be described as a rousing reception from timber industry representatives, including those associated with, and members of, the CFMEU. The extraordinary thing was that that rousing reception—with the red flags of the CFMEU forestry division flying in the Albert Hall for the Prime Minister—was notwithstanding the fact that two days earlier the then leader of the Labor Party, Mark Latham, had offered Tasmania an $800 million package as against the Prime Minister’s $70 million. In other words, here we had the logging union getting a $4 million consideration after negotiations with the Prime Minister’s office, and Tasmania losing $730 million which was offered by Mr Latham and the Labor Party. I could never understand that.

There are great issues about Tasmania’s old growth forests, which are still not protected, but I could never understand why it was that the Labor Premier of Tasmania, and other members of the Labor Party, for that matter, in the north of Tasmania, were not much more demonstrative in accepting a package that would have given our state almost three-quarters of a billion dollars extra had it been implemented.

There are other factors at play which need the full light of public inquiry placed upon them. Another article in the *Weekend Australian* on 8 October, also by Brad Norington and headed ‘Labor called on lawyers to have union’s anti-Latham ad binned’, says that the forestry division of the CFMEU had actually got together an advertisement condemning Mark Latham and the Labor Party before Latham had even got to Tasmania. The advertisement showed a photo of the leader of the Labor Party with the words ‘Will he rat on you too?’ across the front of it. The photo was taken when Mr Latham earlier visited a Tasmanian sawmill. The question here has to be: how could it be that the CFMEU and Michael O’Connor, who leads the CFMEU, had a prepared television advertisement, in the thick of an election campaign, which presumed that the Labor Party was going to present a less advantageous offer to Tasmania than the coalition and Mr Howard? In effect, that did not happen, as I said. The Labor Party offered an extra $730 million to Tasmania.

I will not beat around the bush. What we had here was a massive fix in which the forestry division of the CFMEU and, I think, elements of the Labor government in Tasmania combined with the timber industry, the logging industry, the woodchip industry, got together to ensure that, regardless of what the Prime Minister and Mr Latham announced, it was the Prime Minister who was going to get the accolades. I cannot understand that. Some other member of the Senate may be able to explain why the decision of the Tasmanian government, the industry or the union to reject $730 million extra was such a thing to celebrate with flags waving. I do not know why. When you see something patently in disjuncture like that, you look for other reasons.

The fact is that, on the conservation side of things, there was not a great deal of difference in what was being offered, although, once again, the Latham package was offering to protect some 240,000 hectares of Tasmania’s old growth forests and the Howard...
package was offering to protect some 176,000 hectares—30 per cent less. But the devil is in the detail. As we know, since then the Howard package has protected an extra 55,000 hectares of forest in real terms. It is excellent that that includes the rainforests of the Tarkine, but it does not include the eucalypt forests, which were also in the Latham package. The Latham package went further. Both packages, and both leaders, gave commitments that there would be no jobs lost in the timber industry in Tasmania as a result. That commitment has not been upheld by Prime Minister Howard.

Let me give you one example, Mr Acting Deputy President Watson. I am sure that, as a Tasmanian, you are aware of this. Gunns has, in recent months, effectively sacked 20 per cent of its contract work force. Mind you, these days, when nobody ever loses a job because of industrial action or in order to foster the profit lines of people like those on the board of Gunns, they were clever enough to say that they were leaving it to the industry; they were simply reducing the contractual intake from log hauliers and others by 20 per cent and the industry could sort out amongst themselves who bit the dust. As a result, a large number of people have bitten the dust. They have lost their jobs. Some face bankruptcy. Some are trying to bring their equipment to the mainland to find work. I would have thought that, whatever the case, the extra $730 million would have ensured that these people could have been bought out very easily.

**Senator McGauran**—They did not want to be bought out. That is the point.

**Senator BOB BROWN**—The honourable senator from the National Party says that they did not want to be bought out. What he seems to be indicating is that they wanted to be sacked and bankrupted, because that was the option given to them by Gunns Ltd, this gargantuan woodchip company which is, amongst other things, the world’s biggest hardwood woodchipper and one of the great desecraters of forest environments on the face of the planet. That is not the subject of today’s debate—although it ought to be because the Prime Minister’s package left out the majority of such places as the Blue Tier, the Great Western Tiers, Wielangta and Weld Valley, where people are protesting to protect high conservation old growth forest as we debate this here today. And, of course, at Recherche Bay in southern Tasmania 100 hectares of privately owned land faces a woodchipping outcome in the near future.

It is very important that people are not deceived on their way to the ballot box. There is no time when transparency is more important than in a pre-election period. If there is nothing to hide then the government and opposition will be supporting this motion. If there are matters to hide then they will oppose the motion. But I submit that they should not. The fact that there were inducements of millions of dollars—which were good, on the face of it—for a union that was critical of the Tory Prime Minister of this country, which then lauded him with cheering and stamping of feet for a deal which was $730 million less than that being offered by Labor and which would have protected jobs now lost by the Howard package and which would have engendered potentially hundreds if not thousands more jobs in the Tasmanian economy, does not add up. In fact, it stinks to high heaven and it ought to be investigated.

It is the job of the Senate traditionally to investigate such matters. I repeat that, if there is nothing untoward here, if this should be all aboveboard, there will be no concern at all about us investigating it. That is why I have moved this motion. You know, Mr Acting Deputy President, that for a long time I have been calling, with my colleagues at
both state and federal level, for a royal commission into Forestry Tasmania. I believe that its practices fall far short of what a public corporation like that should be doing with a public resource. One has only to see the difference between the profit lines of Gunns, to whom Forestry Tasmania delivers the majority of public owned forest in Tasmania, and the paltry return to Forestry Tasmania, which sells the resource, to see how remiss that relationship is in Tasmania.

But there is a fetid relationship here between the Tasmanian hierarchy of the Labor Party, the forestry branch of the CFMEU, the industry, NAFI up on the hill here—which funds front groups for its logging propaganda purposes for Tasmania and which, by the way, sits on the board of the organisation which is to be receiving the $4 million—and the industry generally in Tasmania.

This matter should be subject to an inquiry whatever one thinks, however one falls, as far as the ongoing logging debate in Tasmania is concerned. This is not principally about that; this is about democracy, about the transparency of deals like this in the run to elections. Perhaps the cheering for the Prime Minister was genuine but, if he had given the union or the cheering loggers in some magical way an explanation that his $70 million was better than Latham’s $800 million, I have not seen it. I do not think you have seen it, Mr Acting Deputy President. I do not think anybody has seen it, and that is what we need to know. We need to know: how come this electoral advantage was gotten for so little—that is the question that this inquiry should set out to discover the answer to.

Senator O’BRIEN (Tasmania) (4.54 pm)—I was a bit taken aback by Senator Bob Brown’s comments about Gunns’ job losses, which were seeking to lay the blame for those losses at the feet of the company.

My recollection is that Green groups have been lobbying companies in Japan not to purchase Tasmanian woodchips and, as a result of the downturn in the market, the contractors have lost their jobs, their businesses and their livelihoods, and in some cases, apparently, all of their assets are at risk. To lay that at the feet of Gunns from a Green perspective I think a bit too much, frankly, because the Greens have been campaigning for the markets served by Gunns not to buy Tasmanian woodchips. You cannot have it both ways. You cannot seek to blame the government—Tasmanian or federal—for a problem which is substantially to do with a decline in the market when the groups supported by Senator Brown and the Greens have been actively campaigning against the marketing of Tasmanian woodchips. So I really was taken aback by that claim and I think we should put those comments in that perspective.

This is a resolution which has its genesis in some articles published in the Australian—I think on 7 and 8 October—and written by the journalist Brad Norington. I am advised that that journalist did not bother to contact people who might have had some important information on the story. I am advised that Mr Norington did not contact the Prime Minister’s office, he did not contact the shadow minister for forestry, he did not contact the CFMEU forestry division, he did not contact the forest industry peak body, the National Association of Forest Industries—but he wrote the story making allegations in relation to Mr O’Connor of the CFMEU and the government. If that is the case and he did not bother to contact them, I can only assume that Mr Norington had no interest in getting to the truth of the matter, that he had a story to run and did not want the facts to get in the way of the story. That is as the matter has been put to me. If that is the case, Mr Norington has done no service to the reputation
of the newspaper that he works for, the *Australian*.

Senator Brown chooses to use Mr Nörtington’s articles as the factual basis for the reference of matters to a Senate committee for the purposes of an inquiry. As far as Labor is concerned, I can tell senators here today that we are satisfied that the health and safety of forest workers was never up for sale. The forest and forest products division of the CFMEU, together with the National Association of Forest Industries, pursued an agreement on skills and training for timber workers with both the government and the opposition during the course of 2004.

My colleagues the member for Batman and the member for Hunter tell me that they first met Mr Michael O’Connor, representing the CFMEU, and Ms Kate Carnell, representing the National Association of Forest Industries, about skills and training funding for forest workers through the Forest and Forest Products Employment Skills Company, the company referred to by Senator Brown, at the ALP national conference in Sydney in January of 2004. That was no secret. Furthermore, they tell me that they did agree to a $4 million skills and training funding package similar to that announced by the government. Whilst it was not itemised in Labor’s $800 million package for forest industry, my colleagues tell me it was certainly part of that package and rightly so. The $4 million skills and training funding package for the Forest and Forest Products Employment Skills Company, a well-respected joint industry-union organisation, was entirely appropriate given the changes in forest industry practices that are essential to implement the Tasmanian Community Forest Agreement, which was announced in May by the Prime Minister and the Tasmanian Premier and which implemented the government’s election commitment.

Labor does support changes in forestry industry practices to end clear-felling and restructure the sawmilling industry. The move away from clear-felling to more selective logging practices is historically referred to within the timber industry as widow-making because of the inherent dangers involved for workers, and it comes with the need for retraining to address those significant dangers. Similarly, the move to upgrade sawmills to use better technologies and to focus on higher value adding products comes with the need to retrain and reskill workers.

Both the industry and the union, as far as the opposition is concerned, are to be commended for the effort they put in during the lead-up to the 2004 election to ensure that, regardless of who formed the 41st parliament, the jobs and the health and safety of timber workers would be protected. This is one of the great traditions of the labour movement: looking after the interests of hardworking Australians and their families. It is certainly the case that the industry and the union together were pursuing a package with the opposition, and obviously with the government, which would ensure that that training occurred whoever won. I have been in a number of portfolios on behalf of the opposition and it is common for people to ask the same thing of both the government and the opposition. If a business or community group can get the promise of the same thing from both the government and the opposition, they are assured of a positive outcome whoever wins the election. When those claims are put to the opposition, having already been put to the government, I understand that those groups are seeking the best outcome—that is, the same promise or even a better promise from both sides to deliver the best possible outcome in the election campaign.

The funding for the Forest and Forest Products Employment Skills Company pro-
vides for proper consultation and proper management on the job, formal training for timber workers and consistent standards for employers across the industry. That funding is welcome as far as the opposition are concerned. We are talking about a company that includes representatives from the CFMEU, the National Association of Forest Industries, the Victorian Association of Forest Industries, the Forest Industries Association of Tasmania, Kimberly-Clark Australia, Hyne and Son Pty Ltd, Amcor, Paperlinx, Australian Hardboards Pty Ltd, Hudson Timber Products Limited, Forestry Tasmania, the Timber Merchants Association and the Timber and Building Materials Association. It is not a company dominated by the CFMEU. It is a company where there are significant industry associations, major companies and a significant union involved. It is an industry training body similar to other industry skills councils, including the Resources and Infrastructure Industry Skills Council, which is chaired by an official of the CFMEU mining and energy division. That body will receive more than $4 million in federal government funding over the next four years.

The forest division of the CFMEU is receiving similar funding to the mining and energy division of the CFMEU. There is no suggestion that there is any secret deal involving the mining and energy division, and there should not be any suggestion that there is a secret deal involving the forestry division, in our view. There was certainly no secret in January 2004 when both the union and the National Association of Forest Industries lobbied Labor about exactly the same package. The bodies that will receive this funding are to provide strategic industry advice on employment and training matters. With all the debate raging currently on the skill shortages in Australia, we welcome that funding. The bottom line is that the industry and the union did the same sort of job that most groups in the community do when seeking funding during an election: they sought the same commitment from both sides of politics. In this case, they got one which was advantageous in the union’s case for the people whom they represented.

You would have to say that the CFMEU’s first responsibility, despite their affiliation with the ALP, is to do the right thing by their members. I respect that. The Labor Party respects that. I hope the government respects that. Perhaps it is news to Senator Brown that that is their responsibility, but it is their responsibility. If he is perplexed about them looking after the best interests of their members, then perhaps that is the best explanation I can offer him in this debate today. That role is a proper role for any part of the trade union movement. Their first responsibility is to their membership. If they did not act in that way, they would be remiss and certainly would not have my respect.

We come to the question about whether there is a secret deal involved here. Given what I have outlined about the pursuit of exactly the same package from Labor, and which indeed received a commitment from Labor, we think it is hardly a matter that is noteworthy or that requires an inquiry. We also note a statement from Mr Trevor Smith, the national secretary of the CFMEU forestry and furnishing products division, in response to the article in the Australian. What he said is pretty unequivocal:

Before the 2004 election, no Officer of the CFMEU Forestry and Furnishing Division met or spoke to the Prime Minister’s Office concerning the Government’s forest policy for the election.

Until it was made available to industry on the day of the announcement, our efforts in negotiating an election policy was solely concentrated on the Australian Labor Party.

It was our understanding, and it has since been confirmed, that the forest package announced by the Prime Minister was negotiated by the Na-
tional Association of Forest Industries ... The Forest Industries Association of Tasmania and Timber Communities Australia.

It was our understanding, and it has been confirmed today that the request to fund training and skills development for industry was put to the Prime Minister’s Office by Kate Carnell, at that time the NAFI CEO.

I am not sure in the circumstances what purpose the inquiry proposed would serve. It is certainly an inquiry which may suit Senator Brown for political purposes. Senator Brown is keen for as many inquiries as possible into anything connected with the timber industry. Whilst I respect his right to hold that view, Labor is not bound to support it. I did say in the campaign that Labor’s package of $800 million was an opportunity that, if missed, was never to be revisited, and I think that is true. Never again will a package of the magnitude Labor offered at the last election be proposed. That was the decision of the Australian people. A significant part of the Tasmanian population supported the government’s package. That is history, and we live with it. I suspect that trawling through the entrails of this matter is not going to enlighten Senator Brown as to why people made that decision. It is more to do with political opportunity than with arriving at the truth of this matter, which would motivate the pursuit of this inquiry, and we will not be supporting it.

Senator HEFFERNAN (New South Wales) (5.08 pm)—It is rather sad to think that the best attack on an excellent package that has been presented to Tasmania is a conspiracy theory put up by the Greens and Senator Bob Brown. The Australian government went to the last election with a commitment to increase the reserves of Tasmania’s old-growth forests and to preserve jobs. What the government did for Tasmania has provided certainty for their workers. As I said to Senator Brown on a different occasion, if I had gone to him two or three years ago and said that the Prime Minister, John Howard, was going to lock up the Tarkine, he probably would have made an application to get me locked up.

I think the government has done an excellent job. The only criticism is a conspiracy theory, and I thank Senator O’Brien for his remarks in that regard. There is no conspiracy. Part of giving certainty to people and safety in the workplace is putting your money where your mouth is in terms of training and retraining. As I said, we have done this in regard to changing from clear-felling to selective felling. There is some truth to the view that there has been a long-term decline in the number of jobs in forestry because of technology and aggregation, and there is no question that there has been lobbying for the woodchip industry to move to plantation trees, which are obviously a better product than old growth.

If today is about a conspiracy then everyone but Senator Brown is guilty of the conspiracy, because it was an open and transparent process. I note that Martin Ferguson, who would not unnecessarily go out of his way to protect the government, said that they would have offered the same retraining money. It is no great secret.

Senator O’Brien—I just said that.

Senator HEFFERNAN—Yes, thank you, Senator O’Brien; I am re-endorsing your remarks. Martin Ferguson said to Louise Yaxley:

Frankly, as a former president of the ACTU ... the CFMEU hadn’t been pursuing such an outcome, they should have been condemned for letting their workers and their families down. And I am not surprised that the Government agreed to a similar proposal, because it was intended the Labor Party do the same thing.

It is with great regret that one of the things that I recall from the first meeting that I went
to of the Rural and Regional Affairs and Transport References Committee was thinking. ‘I think there’s one or two people at this committee that really are happy for the argument never to have an outcome.’ There has been a certain amount of long-term political convenience in having an extreme argument in Tasmania and never having an outcome. I am pleased that in the lead-up to the last election both the Labor Party and the coalition put their minds to an outcome instead of allowing the politically convenient argument with no outcomes whatsoever to continue. I guess if you are in a minority there is some political convenience in focusing your constituency.

It is an excellent package. I do not think it is an issue that should take up a lot of time of the Senate and I do not intend to go back over some of the points that Senator O’Brien made. In the window of my office I proudly have a photo of the Tarkine, given to me as a gift of thanks from the Tarkine National Coalition for looking after it so that we can all look back in 100 years and say, ‘Locking up this precious, ancient forest was an excellent bit of work.’ At the same time, we have not destroyed the Tasmanian economy. We have put millions of dollars into ensuring that does not happen. We have proposed to invest $250 million to strengthen the Tasmanian forest industry. If part of that investment is $4 million to protect the lives and safety of Tasmania’s workers through training, I think that is money wisely proposed.

I absolutely think that this is a debate of frustration, Senator Brown. As you know, I am pretty keen on some of these issues, but I think you have picked the wrong issue. Martin Ferguson highlighted the fact that the Australian newspaper was talking through the back of its head—that would be the most polite way to put it. I strongly endorse the Prime Minister’s position that we should let the excellent proposal put at the lead-up to the last election play itself out in Tasmania. Tasmanians, all Australians and the planet ought to reap the rewards of that. I am pleased that there is a plan that by 2010 no more than 20 per cent of the small area of old growth harvested will be clear-felled. I think that is a major step forward.

I have always been a critic of poor farming practices, whether it was the cotton industry 20 years ago or the timber industry five years ago. Years ago Landcare educated Australia’s dryland farmers that what we really need to sustain the planet is good farming practices—but that does not mean to say that you do the industry in. So I am pleased that the timber industry in Tasmania has taken some of the first steps towards good farming practices. I am pleased that Forestry Tasmania has at last advertised and got themselves a hydrologist. The first time I went to Tasmania I went down there without any fanfare and had a good look about and discovered that they had never employed a hydrologist.

There are certainly some serious issues that have to be addressed in the water area, and I am pleased to see the Australian government is keeping its commitment to spending a million dollars for river catchment water quality auditing. Senator Brown shakes his head. I am determined, Senator Brown, to see that that money is wisely spent. In fact, I have been in some discussions in the last couple of weeks on that issue. I can assure you that I will be—as you know I am capable of being—a strong critic if I think it is running off the rails, but I am confident that the Prime Minister’s commitment at the last election will be met. If the best you can come up with is some conspiracy theory that has already been knocked on the head, then I think we ought to get on with the business of the Senate and put the motion to a vote.
Senator MILNE (Tasmania) (5.16 pm)—
I am glad that Senator Heffernan just spoke about Martin Ferguson, a member of the other place. Recently the former leader of the Labor Party, Mark Latham, had this to say:

Inside the ALP, the Forestry union is a leading player, integral to Martin Ferguson’s powerbase and his many factional deals with the Right-wing unions. This web of influence means that the timber companies exercise significant power over many leading ALP figures. When it comes to Gunns, they wouldn’t say Boo to a goose. No policy issue or set of relationships better demonstrates the ethical decline and political corruption of the Australian Labor movement than Tasmanian forestry.

I repeat that last sentence:

No policy issue or set of relationships better demonstrates the ethical decline and political corruption of the Australian Labor movement than Tasmanian forestry.

That is the point of this motion today. We have endlessly talked about what is going on in Tasmanian forestry and we will continue to do so.

During the last period of government, we called for a royal commission into the Tasmanian forestry industry and, in particular, into the set of relationships. That is what has been missing in the debate so far from both Senator Heffernan and Senator O’Brien. They act as if the forestry division of the CFMEU may as well be part of the Tory government, the Labor government of Tasmania or indeed on the board of Gunns—and said to him: ‘Can you protect the minority Labor government from the Greens long enough for us to get resource security through the parliament? And then you can go to an election.’ That is what they did, knowing full well that at that election Labor would lose and the Liberals would win a majority. There you have a former trade union boss going to the Leader of the Opposition, Robin Gray, saying: ‘Protect us from the Greens’ no confidence motions long enough to get this through, and then go to an election and let the Liberals win’—and they happily did it. That is the kind of relationships we are talking about here.

Of course, Robin Gray went from being Leader of the Opposition in the Tasmanian parliament to being on the board of Gunns. They move around in Tasmania quite happily. It is musical chairs. The music stops and they leave the government and go onto the board of Gunns or they go out of the Forest Industries Association straight into the chair of the Secretary of the Tasmanian Department of Infrastructure, Energy and Resources—and they bring their secretary with them straight into the Premier’s office or the minister’s office as an adviser and then move that person around. So you only have to pick up the phone once. There are no degrees of separation in Tasmania—pick up the phone once and you get them. That is why this lame excuse from Senator O’Brien saying: ‘Oh, it wasn’t the CFMEU forestry division talking
to Mr Howard; it was NAFI. NAFI, the CFMEU forestry division, Timber Communities Australia, Forestry Tasmania and Paul Lennon are all exactly the same. Don’t tell me they do not pick up the phone to talk to one another. Of course they do. That is the whole point. This is what is so wrong about this set of relationships in Tasmania, and that is why this deal needs to be investigated. We have just heard a story of about $4 million being used for a training package.

Yet, when they are asked to identify the details of the training package, we find there are no details—and I quote: ‘We have spoken to them and are waiting for them to submit an industry plan.’ There was no proposition put as an industry plan; it was just a straight-up $4 million that these people managed to achieve—and, in return, they delivered a standing ovation to the Prime Minister, John Howard, which significantly affected the outcome of the election. As the industrial relations laws come down—landing right on top of them—I hope every single worker, every single CFMEU member, remembers that they have to thank for those laws the fabulous forestry division of the CFMEU, where Michael O’Connor, Scott McLean and his associates preferred $4 million and John Howard and his package to the $800 million that was offered by the Labor Party to actually address the problem of Tasmanian forestry.

As the unions lobby on the industrial relations laws, they should deal with the scabs in their own movement. Once upon a time, the labour unions recognised and dealt with people who behaved as scabs. There is no other word to describe what happened with the forestry division of the CFMEU. Once again, just as back in 1992, they preferred to put in a Liberal majority government in Tasmania rather than maintain a Labor minority government in order to get their outcomes—to get resource security legislation to deliver to the companies control of public forests.

That is what this is about. The community deserves to know what went on, because the industrial relations laws that every worker in this country has to put up with are going to be delivered by a majority in both houses that was delivered to them by these union officials, by geeing up the crowd in Launceston, by telling the workers that this package would guarantee their jobs. What nonsense! They could not guarantee their jobs. They knew as well as I did that the market for old-growth woodchips had collapsed or was collapsing. It would have collapsed by the end of the nineties; the fact that it has lingered on until now is just a function of these relationships. Market forces would have seen them go down the tube years ago if not for the millions of dollars over time that have subsidised ongoing operations.

The fact is that old-growth woodchips have been displaced by plantation woodchips into the Japanese market because these plantations have come on stream from South America, from Vietnam, from Indonesia, from China et cetera. That is why we are having a pulp mill saga in Tasmania—because Gunns want to export plantation woodchips onto the export market and use old-growth woodchips in the pulp mills. This is a deception that it is not out there. They are trying to suggest that they are interested in downstreaming. They are actually looking for substitution, to use up the old-growth woodchips in the pulp mill so they can continue to export overseas and convert native forests to plantations.

But to refer particularly back to this: what happened with Steve Bracks when he offered the CFMEU forestry division his $3.9 million several years ago? It was promised for training services, just like we have heard today. And what did we find? They subcon-
tracted to another company that was CFMEU owned. That company provided advice, site visits, identification of job vacancies, counselling, financial planning and worker support. Most of these tasks were carried out by the union. That is what people pay union dues for the union to deliver. That is not a training package; that is subsidising the CFMEU so that the union apparatchiks can get more for what they are doing.

I am a supporter of people collectively bargaining. I am a supporter of the rights for which people have campaigned for years. I was saying earlier today what a disaster it is that, after 20 years of campaigning for decent wages and conditions in this country, we are seeing them torn up. But that is why I feel particularly strongly about this. The workers of Australia deserve to know exactly what went on. Kate Carnell might well have negotiated this deal, but who did she talk to? Who did she pick up the phone to—her fellow board members? On this board we have Michael O’Connor—what a surprise! And there is Scott McLean—what a surprise! Did she pick up the phone and talk to them? Did she talk to Forestry Tasmania? Did she talk to Gunns? Of course, nobody is mentioning the fact that Gunns is a major supporter of the Tasmanian Forestry Industry Association and, in turn, NAFI.

This is the point. That is why we need to get to the bottom of who actually spoke to whom and when the money was guaranteed. If it was for this fabulous training package, why are there no details of this training package? Frankly, $4 million is a dirt-cheap price to sell out the industrial relations regime in Australia. I will be very surprised if, at the CFMEU conference, the CFMEU members themselves do not divorce the forestry part of the CFMEU and name them for what they are. At the very least, this Senate should investigate the deals that went on that delivered to the Prime Minister the best advertising he could ever have coming into an election—that is, unionists cheering, mobbing him at a meeting in Launceston.

**Senator Vanstone**—It was great!

**Senator MILNE**—I can see, Senator Vanstone, why you would be delighted by it and I can see everyone on your side of the house would be thrilled to bits. In fact, we even had a situation where there was free beer flowing out of a pub in Launceston and taken across the road into the park—a public place where drinking is normally illegal. People are not allowed to drink in public places, but the police in Launceston did not seem to want to arrest anybody. They were well and truly tanked up before they got into the meeting in the hall where they were geed up by their union leaders to welcome the Prime Minister—

**Senator Vanstone**—So you think the cops were part of the conspiracy, do you?

**Senator MILNE**—I do not regard it as a conspiracy; what I regard it as is a political deal done to achieve outcomes which resulted in the coalition winning the election at the expense of Australian workers. I see it as a complete confidence trick and a slight on those workers who are now losing their jobs—they were always going to lose them—because of market forces and the collapse in the old-growth woodchip market in Japan, which anyone who knew about the industry would already have recognised. I see it as the cabal of this group of people who consistently undermine the best interests of Tasmanian workers. If they had had the best interests of Tasmanian workers and the industry at heart they would have supported the Latham package, which would have done far more than just protect the Tarkine.

I acknowledge the Tarkine. I am grateful for the protection of the Tarkine. I am very pleased that that occurred, and I am glad that Senator Heffernan acknowledged it. But
what he did not say is that, while he was proud of the Tarkine, he should feel ashamed about the Weld Valley where, at the moment, forests that are of high conservation value, that are suitable for World Heritage listing, that were recommended to go into the World Heritage area, are not in the World Heritage area because of this same cabal of men who were around 15 years ago and who kept those forests out of the World Heritage nomination. Right now, the woodchippers are in there with the support of these unions, with the support of Senator Heffernan and with the support of everyone in this chamber, it seems, except the Greens, who are prepared to stand up and fight for these forests and will continue to fight for these forests.

It is my view that the government is in breach of its World Heritage obligations by allowing the logging along the eastern boundary of the World Heritage area. The Latham package would have protected the forests right along the eastern boundary, which is what should be done, and it would have put money into transition out of old growth and conversion and into downstream processing and value adding of the plantation sector, which is also what should be done. We should be downstreaming the plantation sector and not continuing to log old growth. But this is not a debate about forest practices; this is a debate about a set of relationships. I am going to read the full quote from Mark Latham before I sit down because I think that the people of Australia deserve to know. It was published on the Crikey website.

*Senator Wong interjecting—*

*Senator MILNE—* It states:

Gunn is a significant donor to the ALP, plus they have a very close relationship with the hapless Forestry union. Just as Michael O’Connor and the union sold out to the Tory Government and embraced Howard during the last election campaign … they sold their souls to the timber bosses years ago. It’s a classic case of corporatism, with these personal relationships and side deals—an unholy alliance of labour and capital, Labor and Liberal—driving policy making in Tasmania. In my Diaries, I described Gunn as the new Hydro, a fair reflection on their role within the Lennon Government. The Premier is a close personal friend of the head of Gunn, John Gay. Inside the ALP, the Forestry union is a leading player, integral to Martin Ferguson’s powerbase and his many factional deals with the Right-wing unions. This web of influence means that the timber companies exercise significant power over many leading ALP figures. When it comes to Gunn, they wouldn’t say Boo to a goose. No policy issue or set of relationships better demonstrates the ethical decline and political corruption of the Australian Labor movement than Tasmanian forestry.

I think that that is an indictment of this set of relationships and why the Senate should be supporting a full, clean and clear investigation into the circumstances surrounding that $4 million deal. That is what we should be doing if we are to uphold some transparency and break open this cabal, this corporatism, which is causing so much ecological damage in Tasmania and which is damaging the body politic and the union movement as well.

*Senator BOB BROWN (Tasmania) (5.32 pm)—* Senator Wong might interject on Senator Milne but one of the problems is the situation that Senator Milne describes in Tasmania. Let us not beat around the bush here. How on earth could the forestry division and these union people in Tasmania arrange such a rousing reception for the Tory Prime Minister of this country, who was giving Tasmania $730 million less than the Labor Party? Senator O’Brien has left the chamber now, but the silence or the muted words of so many people in the Labor ranks, when they should have been out backing that $800 million offer to Tasmania from the rooftops, was just extraordinary at the time and it showed the power of the logging corporation and its operators over the Labor...
Party in Tasmania. That flowed through to the extraordinary situation that we have now where the government is about to pull the rug from under workers right across this country. That analysis has to be looked at. There is no logic to it. It is a rotten state of affairs, and Senator Milne has described it well. But that does not fix it. A spotlight on it will help, and that is what this motion is about.

Senator Heffernan is very pleased about the role of the government in protecting part of the Tarkine, while forgetting that it is sending to the chainsaws most of Tasmania’s high conservation value forests. He says, ‘What the government did for Tasmania has provided certainty for their workers.’ I say: come back down to Tasmania, Senator Heffernan, and speak to those people who have lost their jobs since Mr Howard got the rousing reception and left Launceston. Speak to those people who have been dumped. I have not seen the forestry branch of the CFMEU out on the streets protesting about that. In fact, I have not heard a word from them, just the same as when Senator O’Brien, as Labor’s spokesperson for forest workers, was in here when the regional forest agreement legislation was going through I do not remember him doing one thing at all to support my assertion that we should be giving job security to the workers, not just forest security to Gunns Pty Ltd. Labor did not back that. Senator O’Brien did not back that. When I did it 20 years ago in the Tasmanian parliament, Labor did not back it then either.

It is an extraordinary situation where a few people wrecking the forests, wildlife and cultural amenity of Tasmania can do so well. We had the Minister for the Environment and Heritage, Senator Ian Campbell, announce just last week the national heritage listing of the Recherche Bay forest—which is of World Heritage value as a site for the interaction between the Lyluequonny people and the French scientists in 1793—and on the same day give the go-ahead for the bulldozers to move in on that site to log those forests for export woodchips for Gunns.

It is an extraordinary situation. How could the Labor Party have allowed the government and the Prime Minister to get the drop on them like they did in the week running up to the election last year? I submit that it was because of this relationship between the forestry division of the CFMEU—Mr O’Connor and the whole lot of them—the corporations and, therefore, the Howard government, at the expense of workers generally.

In the industry, those people have since lost their jobs. And jobs will be lost across Australia, because we have now got a government which dominates this very place and is bringing in these industrial relations bills. Labor should be supporting this legislation. Labor should be outraged by what happened in the Albert Hall. Labor should be outraged by the behaviour of this Tory-backing forestry division of the CFMEU. Labor should want to have the whole thing opened up to discovery. So how is it that one Tasmanian Labor senator contributes to this debate and that is the end of it? That says so much of itself.

We will not have the numbers and there will not be an inquiry, because the government and the opposition are not going to support it. That is not going to stop the Greens pursuing a spotlight being put on the relationships in this unsavoury industry, and on the question of how both the environment and the workers of Tasmania can lose out time and time again, as they have done on this occasion. It deserves a Senate inquiry. The terms of reference are narrow and specific. The Greens stand by it, and it is not the last of the debate that the Senate is going to hear on this issue.

Question put:
That the motion (Senator Bob Brown’s) be agreed to.

The Senate divided. [5.43 pm]
(The Acting Deputy President—Senator LJ Kirk)

Ayes…………  8
Noes…………  39
Majority………  31

AYES
Allison, L.F.  Bartlett, A.J.J.
Brown, B.J.  Milne, C.
Murray, A.J.M.  Nettle, K.
Siewert, R. *  Stott Despoja, N.

NOES
Adams, J.  Bishop, T.M.
Brandis, G.H.  Brown, C.L.
Crossin, P.M.  Evans, C.V.
Fielding, S.  Fierravanti-Wells, C.
Fifield, M.P.  Heffernan, W.
Hogg, J.J.  Humphries, G.
Hurley, A.  Hutchins, S.P.
Joyce, B.  Kirk, L.
Lightfoot, P.R.  Ludwig, J.W.
Lundy, K.A.  Mason, B.J.
McEwen, A.  McGauran, J.J.J. *
McLucas, J.E.  Moore, C.
Nash, F.  O’Brien, K.W.K.
Parry, S.  Polley, H.
Ronaldson, M.  Scullion, N.G.
Stephens, U.  Sterle, G.
Troeth, J.M.  Trood, R.
Vanstone, A.E.  Watson, J.O.W.
Webber, R.  Wong, P.
Wortley, D.

* denotes teller

Question negatived.

PERSONAL EXPLANATIONS

Senator O’BRIEN (Tasmania) (5.46 pm)—I seek leave to make a brief personal explanation.

Leave granted.

Senator O’BRIEN—In the previous debate, Senator Bob Brown made the assertion that during the last election campaign I did not campaign for Labor’s forestry package. That is incorrect. In fact, I think it was on the Thursday before election day that I sat in the Launceston studio of the ABC with now Senator Milne, vigorously arguing the case, and I am sure Senator Milne will back that argument to the hilt. So it is not true to say that I did not very publicly campaign for Labor’s forestry package in the last election.

Senator BOB BROWN (Tasmania) (5.47 pm)—I seek leave to make a personal explanation.

Leave granted.

Senator BOB BROWN—It has been drawn to my attention by Senator Fielding that I said in the chamber the other day that he had opposed a motion for a family impact statement on the Telstra legislation, whereas in fact he did not; he absented himself from the chamber and did not vote for or against it. I apologise for that and correct that mistake. I wanted that to be on the record.

TRADE PRACTICES LEGISLATION AMENDMENT BILL (No. 1) 2005

Second Reading

Debate resumed.

Senator FIELDING (Victoria—Leader of the Family First Party) (5.47 pm)—Late last year the Australian Competition and Consumer Commission made significant changes to streamline and improve its processes for approving mergers. In fact, the ACCC adopted International Competition Network guidelines on time frames, information requirements and releasing reasons for its decisions. It made these changes in response to criticism from business about the inefficiencies of its procedures. It was these inefficiencies which provided the justification for the amendments concerning mergers in this bill, the Trade Practices Legislation Amendment Bill (No. 1) 2005. Businesses have welcomed these changes and say they are working. Despite this, the government is
still proceeding with these merger amendments, which are unnecessary.

So what is really going on here? After all, the ACCC is already approving 98 per cent of merger applications. The government appears to be rushing through changes to deal with the two per cent of mergers that do not succeed, plus ones that nobody is game to own up to. The real question is: what is in the bottom drawer? Would the current prohibition on bank mergers stand up to the Australian Competition Tribunal’s test? On the face of it, the four pillars banking policy might be rendered meaningless under the tribunal’s rules. It was revealed only two months ago that the National Australia Bank had secretly planned to take over the ANZ and that the Commonwealth Bank had had informal merger discussions with Westpac. Do these proposed changes also mean it will be easier for a company like Toll to take over Patricks?

These changes effectively sideline the ACCC and significantly boost the powers of the tribunal, which is a quasi-judicial body staffed by judges and business executives. Small business and consumers will need legal representation to appear before the tribunal, and my concern is that the tribunal will not be exposed to the wide range of views and concerns on mergers that are currently put to the ACCC and that form a key part of the ACCC’s decision-making process. I am also concerned that ACCC Chairman Graeme Samuel has publicly threatened to shut down the popular informal approvals process, which is currently used for the vast majority of mergers, if business ‘games’ the regulator by manipulating the proposed new merger rules. Mr Samuel has also warned that the government’s proposed new system would be ‘all over the place’, as some businesses might exploit the rules.

On the other hand, this bill contains provisions which are beneficial to, and important for, small business. Collective bargaining for small business will be easier by streamlining procedures to apply for immunity under the act. The new notification proposal will make it easier for small businesses such as panel beaters to bargain collectively with big businesses, such as Promina with AIG. However, I am concerned that the price for supporting this amendment on collective bargaining is too high, despite the benefits for small business. The benefits for small businesses such as panel beaters must be weighed against the impact on small business and the community generally of even more mergers. I remind the Senate that 98 per cent already go through, so we are talking about two per cent.

The best way to proceed is to split this bill so that we are not forced into the position of having to choose between supporting collective bargaining and opposing more mergers. Those of us who think that having even more mergers is a good thing can vote for them. I will not be among them. On the other hand, those of us who believe that the playing field in which panel beaters and other small businesses operate should be more level can do something to make that happen. For my part, I do not believe that the case has been made for allowing more mergers and tilting the playing field further in favour of big business. I cannot support it.

As I have already mentioned, 98 per cent of mergers are already being approved. That is good enough for me, and I think it is good enough for most. Consequently, those who share my concerns are in an impossible position. We are being presented with an all or nothing situation. This is not good policy, and we do not need to be in this position. There is a better way. For these reasons, at the appropriate time, I shall move to have the bill split as an instruction to the Committee of the Whole after the bill has been read a
second time. This way, senators can look at each of the major components and then decide how they should vote in the best interests of small business.

Senator HOGG (Queensland) (5.53 pm)—The Trade Practices Legislation Amendment Bill (No. 1) 2005 was introduced as part of the government’s response to the Dawson inquiry into collective bargaining provisions under the current Trade Practices Act. At present, small businesses are prevented from collectively bargaining in the provision of goods or services due to the anticollusion provisions of that act unless ACCC approval is sought and granted. That process is understandably long and time consuming.

The bill in its current form replaces the authorisation process with one based on notification which aims to streamline the process. However, buried in this otherwise innocuous bill is a provision that denies the very freedom of choice that this government like to believe is at the core of their political values. It appears that freedom of choice is only consistent with what the government believe is politically expedient at any one time. I say this because the relevant section, section 93AB specifically denies the right of small business to select a union as their bargaining agent. Last year we heard how the government are the party of contractors, the party of the self-made worker. The government now think this worker is not smart enough to choose an agent who will bargain in their best interests. It smacks of arrogance of the highest order.

I want to look specifically at the owner-drivers. Some of these people who are dramatically affected by this are owner-drivers and people who, in many instances, are members of the Transport Workers Union. Whilst I am on that subject, I mention that my colleague Senator Hutchins, whilst addressing this bill today, pointed out that many of those people, whilst members of the union and using the TWU as the bargaining agent, were not necessarily anything else other than conservative voters. They were not all Labor voters by any means at all.

These workers have in many instances bought their own truck and have it branded according to the firm they contract to, be that Tolls, Startrack Express or similar, and only accept work from them. Many are commonly seen on our roads as the drivers of the major brewery trucks, especially the likes of Tooheys. These people’s trucks are all branded. Moreover, many have paid large amounts of money to the company they contract to, often in the tens of thousands to hundreds of thousands of dollars, known as goodwill payments. These payments are made over and above the terms of the contract and are designed to ensure a steady flow of work from the company to the contractor. Many contractors aim to use these payments as their retirement savings in the future because, in the words of one contractor, ‘After I pay off my rig and running costs, there will not be much left to save.’

Because these trucks are branded, these drivers cannot accept work from other firms, so the need to get a good contract is crucial. Because of the unique and expensive start-up costs in the industry, contract certainty and rates of return play a central part in negotiations. Drivers need a good contract not only to recoup the goodwill payment but also to keep the rigs running on the road. Ultimately, for many drivers it is going to be an unpalatable choice between safety and keeping afloat. In the transport industry, the trend in recent years has been to take on contractors in favour of employees. That way, the companies can avoid paying for superannuation, sick leave and other traditional employee entitlements. But this is meant to be a two-way street. The contract should also have a
rate of carriage that will also include hidden costs, such as the upkeep of the vehicle and the like. These contractors thus bargain for a lot more than just their hourly rate of labour. That is why having a strong bargaining agent is so essential, especially through collective bargaining. That is because the transport industry is already one in which profits are marginal at best. It is easy for companies to adopt a ‘take it or leave it’ approach.

Without strong collective bargaining provisions, contractors will be forced to take lower and lower rates of carriage in a race to the bottom. It is a race that will make the roads unsafe and will cost lives in the long term. Faced with massive overheads, drivers will see their runs become unprofitable. They will not be able get the rates on the contracts that they need, because their union will be prohibited from representing them. So much for freedom of choice. So much for all the flexibility that senators opposite have been going on about. It appears one can only negotiate things that fit within their narrow world view. The long history of owner-drivers being represented by the TWU clearly does not fit within this.

I want to look at the unique status of owner-drivers. Owner-drivers run a unique form of small business. They take on much of the investment risk of a larger party in return for a rate of carriage. They are dependent on that other party for work. They take all of the risk and attempt to turn it around to make a profit. They are entrepreneurs of the first order. The degree of practical independence that most owner-drivers exercise in the day-to-day operation of their business is minimal. For example, the overwhelming majority of owner-drivers—almost without exception—perform work for a single transport operator. They perform work at the behest of that operator in accordance with very specific priorities, including specific delivery and pick-up priorities, set by the directors and management of that operator. They are usually required to hold themselves available to perform work for a single contractor, thus rendering themselves unavailable for anyone else. They take direction from that operator on a day-to-day basis as if they were employees of the operator. They are required to paint or otherwise mark the vehicles they provide with the operator’s colours and/or insignia. They have little or no power to set price; rather, they take the price that they are given.

The effects of this bill will make it extraordinarily difficult for those drivers to get the rate of carriage they need. It is all because of some ideological fetish this government has about unions, despite a recent survey finding that 70 per cent of Australians have a favourable or very favourable view of them. The upshot of denying the right of owner-drivers to be represented by the unions will be a loss of, in some cases, hundreds of thousands of dollars worth of goodwill and no realistic avenue to recover it because of the prohibitive costs involved in the normal court system. There will be an incapacity to properly maintain the vehicles if rates are cut, leading to short cuts on safety and increased danger to road users. There will be an inability to meet mortgage and finance repayments, resulting in family stress and breakdown. There will be a need to work longer hours to earn a decent living for the family, consequently increasing the risk of fatigue-related accidents and placing further stress on the family unit. There will be exposure to arbitrary termination of contract and loss of significant investment in truck and goodwill. Last but not least, there will be a lack of a low-cost expert body to deal with disputes or through which to recover compensation for large investments unfairly extinguished.

So there are real problems posed by this bill confronting this group of people in Aus-
Australia who find themselves in a unique situation. It may well be an unintended consequence—I do not think that that is the case—but it is a consequence which will impact severely on their financial and personal lives and on their families. It is interesting to listen to what some of the drivers themselves have to say about the government’s proposal. I am going to quote them, and I will quote them by name, as they have stated that they do not mind being cited in this particular debate because it is so critical to their futures.

Robert Whitfield is a driver with Express Freight. He said:

It’ll take away my rights! No Union, No Determination, No decent rates, Nowhere to go if I get into trouble.

He further said:

I’m not a rich man—how am I supposed to pay for a lawyer to represent me?

He further said:

They are going to take away my rights!

Robert is certain that removal of the state system will be detrimental to him. He further said:

I have the right to be a union member and John Howard is going to take this away.

Further, he said:

Collective bargaining is the only strength we have.

How right Robert Whitfield is. Collective bargaining is the only strength that they have.

Paul Dewberry started working as an owner-driver at the age of 21. He said:

I have had choices all my life. I chose to come into the industry so I could give my children the private education I wanted for them ... I also invested in a job for me that would carry me through to retirement. At the end of that term, I would like to sell that job, as I bought one, for superannuation purposes.

Paul recognises that the New South Wales system is unique. He has first-hand experience with friends who work in other states without industrial protection. He said:

I’ve had counterparts in Victoria ... who have had their contracts terminated. They finish within 18 months to two years. They are out of a job. There is no collection of goodwill for them. Their goodwill has been terminated. They have mortgages they are halfway through paying off. If they cannot successfully get a job to pay these mortgages they will be out on the street.

Paul is also concerned that safety and living standards will be compromised. He said:

The only one to benefit from the changes will be the companies because they know that for me to take my problems or disputes to court will cost a lot more money than I can afford.

Senator McGauran interjecting—

Senator HOGG—You will have your chance later, Senator McGauran. There is a further contribution from Col Neal. Col has recently left the industry. He is worried about what the future will bring for those who stay on. He said:

I was born into the industry: my family was involved in it and now my son is involved in it. I started before the contract determination came into existence. As far as contractors were concerned, it was catch and kill—you could not get paid, and it was an ongoing rat race.

Further, he says:

I believe it will go back to the old dog eat dog days—my young bloke isn’t game to make further investments to upgrade trucks at the moment.

He goes on:
Contractors can’t be relied on—when you got your house mortgaged to pay for your truck and you don’t want to lose your house you’ll do anything to stay afloat.

Unfortunately there are blokes in so much debt they’ll go to work and take what’s offered ... These blokes are just hard workers who are forced into a situation where they gotta pay their bills.

The big risk is to the families, the house is at risk, the family is at risk, no money to even live on.

Col has been involved in some significant claims to recover costs from contractors, and he recognises what can happen without the ability to go to the commission. He says:

About 10 years ago we were involved in a huge dispute ... the principal brought in a demolition contractor, who was a good worker but he had no idea how to take care of the books ... in the end there was over $300 000 owed to the owner drivers ... We had to chase the principal to get the money back ... We got paid but only after putting the pressure on as a group.

You’ll see on the big construction jobs trucks will come in from other states—they know it’s better for them to burn a day’s pay getting here and have some guarantee over the work than to stay and work and get screwed in Queensland for instance.

He goes on to say:

No driver has a barrister in their back pocket. When you don’t get paid for a job, the cost is actually higher than the outstanding money; you’ve got all your costs on top of that.

Senator McGauran—Do you still use the union?

Senator HOGG—Senator McGauran, I am quite happy for you to put your name on the speaker’s list. These people are genuinely concerned about their difficulties and you are not helping, Senator McGauran.

Ian Beattie sees the introduction of this bill as a direct attack on his ability to collectively bargain. He says:

I should be able to bargain with the others. We need to be able to set a reasonable rate for all the blokes to get.

However, owner-drivers in New South Wales are working up to 70 hours per week. For many drivers, a deregulation of rates through the introduction of the independent contractors act will result in an increase in already high driving hours. He goes on to say:

I’ll be forced to work longer hours to make the truck viable. This means no spare time. I’m pretty involved in my local soccer club and I won’t have any time for that. It’s disappointing to think the kids will miss out.

Drivers like Ian have raised concerns that the increase in hours and the decrease in rates will also impact on their quality of life. He says there will be less time to relax and less time to have a life. These are the concerns of a number of drivers as a result of what will come out of the changes that are being sought under the Trade Practices Legislation Amendment Bill (No. 1) 2005. Their position will be severely weakened because they will no longer have a collective bargaining opportunity. That will flow on to their lifestyle and their ability to make ends meet.

I believe that this is something that should be addressed now. It is not something that should be allowed to go on. Clearly, it gets to the very issue of the dignity of individuals. It gets down to the very issue of the impact on the family and social lives of people, and it gets down to equity, fairness and justice for these people. I would submit that this is not the right way to take this nation—particularly in an industry that is so critical to the economy and the day-to-day running of business throughout Australia.

As most people know, I come from the retail industry, and I have looked at people who work in the retail distribution industry where food is moved right around Australia by major retailers and wholesalers. Many of these people are owner-operators who eke
out an existence on a day-to-day basis. As I said, many of these people rely on the goodwill that they purchase. They do not want to see the goodwill destroyed but neither do they want to see an end to their right to be able to bargain effectively and to obtain fair and reasonable rates in return for the work that they offer. No-one should be under any illusion: the work that these people do is difficult work indeed. It is not easy being a person who drives the hours that these people put into trucks on the roads and meeting the schedules that they are forced to meet. I believe that that aspect of the bill needs to be looked at immediately and addressed to overcome the issues raised with me by truck drivers from New South Wales and from my own state of Queensland.

Senator JOYCE (Queensland) (6.13 pm)—The introduction of the Trade Practices Legislation Amendment Bill (No. 1) 2005 is of crucial importance to the National Party, and I think it is good to reiterate what Senator Boswell said. He said that the bill introduces a crucial new reform which is of great importance to small business and farmers: a cheap and simple notification process for collective bargaining. The new notification procedure gives small business and farmers a simple instruction process to get together to negotiate for better commercial outcomes with large suppliers or customers in the buying of inputs and the marketing of their goods and services. I agree with those sentiments expressed by Senator Boswell, which reflect schedules 2 through 12 of the Trade Practices Legislation Amendment Bill (No. 1) 2005.

During the recent campaign for Senate seats in Queensland, where the National Party campaigned in its own right, we took to the people of Queensland four issues. One of those issues was zonal taxation, which, as everybody knows, is the capping of tax rates in depressed regional areas as a stimulus to further economic growth and a stimulus for small business—to rejuvenate an area, to make the economy grow and broaden and to take it away from that agricultural boom-bust drought-prosperity cycle. We talked about the mandating of ethanol. We are starting to move in that direction and we would like to see a bit more movement. We want to look over the horizon and see an alternative fuel policy into the future so that Australians can maintain the freedom to drive a car at an affordable price.

We talked about core family values because we believe that the family is the fundamental unit which drives society and that, if you have the family unit right, a lot of your other social problems move away. There is no social security policy that will replace a family. We also talked about the overcentralisation of the retail market and our belief that it has gone too far. It was a real head-nodder at speeches we gave around the countryside. People were on board with that. They believe the market is overcentralised and that Australia needs to do something about it. Currently, we have 77 per cent of the retail market controlled by two organisations. Just think of all the dollars you spend every day on retail trade. To have so much of that controlled by two organisations is not a healthy thing.

We made a contract with Queensland that, when we came here, we would represent them on those four issues, and I intend to do that. Because they believe in us they gave us this seat; that seat is now used to gain the majority in both houses. I acknowledge it is one of many seats, but it is one of the seats nonetheless. So we have a special contractual relationship because we had to campaign in our own right in Queensland and they were the promises we made. In my maiden speech, to follow that issue up, I talked about strengthening the power of the ACCC and section 46 of the Trade Practices Act. I men-
tioned that, if there were a clash between small business and big business, I would be on the side of small business. This frames the current problems I am having with schedule 1 of this legislation.

The purpose of the economy is not to produce the lowest priced product for the end consumer. That may be a consequence of a good economy but it is not the purpose of the economy. The purpose of the economy is to create the greater nexus between the wealth of the nation and its people, and it generally does that through small business. Our job in this parliament is to maintain the management of that, to make sure that small business prevails and gets a fair go, to make sure that small business can start from the ground up, that a person can start from the ground up and attain their goal and that freedom that they get from small business.

We have had so many instances where it has looked like that might be slipping away. Newsagents, some of the horticultural producers, pharmacies and a lot of small retail shops in regional towns or in suburbs feel that they are over a barrel. They feel threatened and do not feel that they have the ability to go on in the manner in which their parents or grandparents probably went on before them. Our job in this parliament is not only to say we support that but also to publicly show we support that and to do it in such a forum as this, the elected body in this Senate chamber they have sent us to. Why do we believe in this freedom to go into business? The freedom to go into business is a mechanism that gives us our own personal freedom. In politics, we have to allow the greatest freedom for the individual that does not impose upon the freedom of others. That is the aspiration within politics.

One of the key freedoms you can have is the freedom to start your own business, build it up, see it progress and hand it on as a legacy to your children. That is a key aspiration we hold. Some people talk about their future within a company. Some people like to have their own future managing their own affairs, their own future that they determine. I side with those people and I want to support them. I believe the birth of a new business gives birth to an aspiration that you can pursue. It also allows the development of new products, new ideas and new managerial techniques. It gives the whole economy a greater breadth, a breadth to go forward. On the conservative side of politics—and, I suppose, even on the Labor side of politics—it is a fundamental good that we try to encourage.

Currently, with 77 per cent of the retail market controlled by two organisations, we would have to say that freedom is slipping away somewhat. The ‘national champion’ argument pays little regard to the ‘freedom of Australians to be in business’ argument. Mergers and acquisitions are the stepping stones by participants in the market to a position of centralisation that inhibits this freedom. As such, Senator Boswell was instrumental in including the provision that you cannot have a merger that is likely to have the effect of lessening competition in the market. The ACCC works under this auspice.

The Australian Competition Tribunal, however, works from a different format—the format of the public benefit. I will now refer to the Law Council of Australia for an outline of what public benefits are. Public benefits include increased exports, increased substitution of domestic products with foreign goods, increased international competitiveness of Australian industry and efficiency gains. It does not mention anything about participation from the ground up of small
business, keeping a broad participation in the marketplace and maintaining the fundamental freedom of someone to start with nothing and build their business up. It does not speak to that issue; it speaks to another issue. The ACCC was a protector of that initial goal of not fundamentally reducing competition in the marketplace and, by doing so, maintaining people’s ability to start a business and grow. One would hope that that is a fundamental belief of anybody on the conservative side of politics.

The public benefit argument obviously runs in complete conflict to what I was walking around Queensland talking about with my Senate team. It also works at an angle to what I was speaking about in my maiden speech. The difference between what the ACCC represents and what the Australian Competition Tribunal will represent is 40 days—that is, if the ACCC in 40 days does not approve or come up with the decision on a merger then it is deemed to have not approved it and it heads off to the Australian Competition Tribunal. Someone could ask, ‘What’s the issue with that?’ The fact is that once it gets to the Australian Competition Tribunal they then have three months to approve it as opposed to 40 days. They can then apply for an exemption to take it out to six months, so we now have six months as opposed to 40 days. There is a disparity between the power of the ACCC and the premise on which it examines the legislation. I feel that is an unhealthy thing.

The Australian Competition Tribunal, as an example of the culture of the place, approved the trans-Tasman merger of Air New Zealand and Qantas. This would allow one operator to have 95 per cent of the trans-Tasman route. I agree at the outset with Peter Costello’s statement about the Dawson inquiry: it was to show a true balance between big business and small business. I think schedule 1, however, moves away from that and gives more power to big business at the expense of small business.

What we have got to do, I feel, is see a split in this legislation so that we can clearly understand the two issues that are being dealt with: schedules 2 to 12 and schedule 1. I want to reiterate what this legislation will mean: 40 business days for the ACCC to pass a merger, and it makes that decision on the basis of competition or likely competition. Schedule 1 says:

The commission cannot grant a clearance unless it is satisfied—
the ACCC—
that the acquisition would not have the effect, or be likely to have the effect, of substantially lessening competition in a market.

What schedule 1 will allow is that:

The Tribunal cannot grant the authorisation unless it is satisfied the acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

So it is the public benefit argument which does not take into account the aspirations of people to start a small business. This is further backed up by Hugh Morgan, who says:

... mergers will not be allowed to proceed if they substantially lessen competition, unless the impacts on competition are clearly outweighed by the public benefits.

In summary, it is not a minor change. If it were a minor change it would be able to stand alone in its own piece of legislation. But it is not a minor change and it has to sit with other pieces of legislation to get through. If the decision was inconsequential there would be no reason for it to be in this bill. I refer to the Business Review Weekly, which said there will be people champing at the bit with a whole raft of new mergers to take advantage of this. They are the mergers that we said in our campaign we would protect against.
Finally, splitting the bill also reflects that when legislation comes into this house it is not a carte blanche. You cannot expect legislation to go straight through. There is a review process, and it continues on. That is a healthy thing for the Australian people to see. I appreciate the ability to stand on this side of house and to make that statement. I can refer, unfortunately, to my colleagues on the other side of the house and see the freedom they have had. The last time someone in the Labor Party crossed the floor was in 1988: Graeme Campbell, 17 years ago. For his efforts, he was kicked out. That is the sort of freedom that you have on the other side of the house. Unfortunately, that lack of freedom might be a reason why there is currently a majority held by this government in both houses.

I would like to encourage the freedom on both sides of the house to be able to state what you truly believe so that not only can we talk about freedom in business but we can talk about freedom within this house—freedom to say what you truly believe and freedom for the Australian people to see this debate in its entirety in this chamber, on the public record rather than hidden in other vehicles which do not truly report to the Australian people.

It is disappointing and always humorous to hear the Labor members on the other side who rail against the National Party, calling them doormats, this, that and everything else. Yet, when you look at their actual record, they do not only not have the courage but are terrified to ever step out of their box and exercise the freedom that this nation gave them—the freedom to vote on certain issues and probably at a difference to their party. It is a shame that in the thing that protects the freedom of our nation you are not actually free.

My intention is to support schedules 2 to 12 but not to support schedule 1. I have given my reasons for that and I am thankful that we still have the ability in this parliament to express our differences of opinion and show people that just because you have a majority in both houses does not mean you are not going to have a review of legislation.

Sitting suspended from 6.29 pm to 7.30 pm

(Quorum formed)

Senator McGAURAN (Victoria) (7.33 pm)—We are in the middle of the second reading debate on the Trade Practices Legislation Amendment Bill (No. 1) 2005, and the difficulty we have after dinnertime is that the Labor Party cannot supply a speaker for the resumption of debate. This is an amazing fact given that today we extended the time for debate on this legislation because the Labor Party had so many speakers on the list. We extended the time of the Senate tonight so that all those speakers could have an opportunity to address what they consider to be a very important matter. What a joke! Here is Senator Sterle now. He has finally turned up to speak. We have extended the parliament until 11 o’clock tonight, yet the Labor Party cannot supply the speakers on their own list. There are more than 10 speakers on the list. I invite the whip to make sure that they are ready to speak, otherwise the government will think that all the debate, concern and grief displayed by the opposition is just a fraud. Senator Sterle, I will not take much more of your time, but I—

Senator George Campbell—I raise a point of order, Mr Acting Deputy President. I draw your attention to Senator McGauran’s comments. We are debating the trade practices legislation amendment bill. There is absolutely no relevance in anything he has said so far. If he is getting up to bag the Labor Party, that is one thing and he should do
it at an appropriate time. But if he is speaking on the trade practices legislation amendment bill, then Senator McGauran should keep his comments relevant to that bill.

Senator Ian Macdonald—I assume that was a point of order, though I did not hear Senator George Campbell indicate that it was a point of order.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—He did indicate it was a point of order, Senator.

Senator Ian Macdonald—I assume that it was. I want to make the point on why Senator McGauran is very relevant to this particular debate. It is a debate about the trade practices bill. The Labor Party are here to speak on it, or they have a list a mile long to speak on it, and they could not even get anyone into the chamber to actually speak. Senator McGauran’s speech is very relevant to the debate. It clearly demonstrates the hypocrisy you get from the Labor Party: they demand to speak on the subject and then there is no-one in the chamber to speak on the subject.

The ACTING DEPUTY PRESIDENT—Order! I am not having you debate the issue. Senator McGauran, have finished your contribution to this debate?

Senator McGARURAN—Yes.

Senator STERLE (Western Australia) (7.36 pm)—Before I start, I would like to commend Senator Joyce for having the courage of his convictions with regard to the TPA. However, I am sure that the people of Queensland who voted for him would have been more keen to see him display such conviction with regard to the Telstra legislation. We live and learn. I rise today to speak to the Trade Practices Legislation Amendment Bill (No. 1) 2005. I support the comments made by the Labor senators who have spoken before me in this debate and, like them, I will support the amendments that will be moved by Senator Conroy on behalf of the opposition in the Committee of the Whole.

In addition to speaking to the amendments that will be moved to this bill by the opposition, I will also have to talk about the gutless hypocrisy of government senators opposite. The bill is broadly supported by Labor senators. The bulk of it is consistent with the spirit of the Trade Practices Act in promoting competition and fair trading and in restricting inappropriate, anticompetitive conduct. Labor senators also support streamlining the approval process for collective bargaining by small businesses. What we do not support is the attempt by the government to exclude unions from this process by legislating to deny small business the right to freedom of association. Senator Conroy has already foreshadowed that Labor senators will seek to amend this bill to omit clause 93AB(9). Clause 93AB(9), if enacted unamended, would exclude a trade union, an officer of a trade union or a person acting on the direction of a trade union from lodging a collective bargaining notice on behalf of small businesses.

We always hear government senators banging on about how they support the principle of freedom of association. Senator Abetz, speaking to the Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2] on 22 March 2004, made the bold claim:

The government does not seek to regulate genuine contractual relationships beyond providing for remedies in relation to unfair contracts and protecting freedom of association.

What absolute hypocrisy! Senator Abetz is to be pitted more than despised. I suspect he suffered some childhood trauma. Why else would he hate people who stand together in union so much? Is it because no-one picked him for the playground footy team? I suspect it is. Nobody wanted him. You can see it in

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his face. You can hear in his words. And it has scarred him for life. Now that he has grown to be not much of a man, he is wreaking revenge. ‘I’ll get them back’—he may think to himself—’I’ll show them for leaving me out.’ So now he attacks people who stand together in union whenever he can. Is it just to avenge the trauma caused by being the playground runt that he despises people united together for the common good?

Senator Ian Macdonald—Mr Acting Deputy President, I rise on a point of order. I am sure Senator Abetz would not want my intervention on his behalf but I think, to uphold the dignity of the Senate, some of these terminologies are not the sort of thing that one would expect in this place. The senator has mentioned several words which I have let go. You do not usually worry about those, and I am quite sure that Senator Abetz would not want me to have to protect him, but I think this senator should moderate his tone and the types of words he is using to describe other senators.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Senator Sterle, I would simply ask you to be conscious of the terminology that you use in your contribution to this debate.

Senator STERLE—I would like to carry on and I would like to remind Senator Abetz that counselling is available. The senator might find that his irrational hatred of people who stand together in union goes away after he gets some counselling. Senator Abetz has ridiculed me in the past for being new to the Senate. I may be new to this place, but I have come straight from the real world—a place Senator Abetz has been sheltered from for a long time. Having worked for and on behalf of thousands of owner-driver small business men and women in the transport industry over the last 14 years, I believe I bring real and current industry experience to this debate. I remind the Senate that, in working for the Transport Workers Union—may I say, a very fine union—to achieve safe work practices and sustainable pay rates for owner-driver small businesses, I always acted within the laws of the land through sensible, fair and well-reasoned negotiation. The vast majority of union officials do, despite what Senator Abetz might say.

An example of the sensible and well-reasoned negotiation that owner-driver small businesses have achieved through the TWU is occurring in Western Australia. Around 12 months ago, over 500 owner-drivers met and demanded that the TWU negotiate for and on their behalf to establish a code of practice and safe, sustainable rates. The TWU have been joined at the negotiating table by the Transport Forum, which is the peak employer body, and also representatives of the West Australian state government. Negotiations are progressing well, with the full support of the employer body, who understand the owner-drivers’ concerns for the safety and sustainability of the industry. But apparently the Howard government does not think that the TWU or other unions should be trusted to participate in collective bargaining under the provisions proposed in this bill.

The senator’s colleagues in the other place have gone even further in the claim that the government cares about the principle of freedom of association. The member for Warringah, for example, in a second reading speech to the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002 [No. 2] on 4 December 2002 said:

Freedom of association is a cornerstone of the government’s vision for more productive and more prosperous workplaces.

Yet these same senators and members have the hide to introduce and vote for a bill—
Senator Lightfoot—Mr Acting Deputy President, I rise on a point of order. I might through you draw Senator Sterle’s attention to the fact that standing orders do not allow for speeches to be read in the Senate. Although he is a new boy on the block, I think you ought to draw his attention to that fact.

The ACTING DEPUTY PRESIDENT—You have made your point of order. It is customary for senators to be allowed to use copious notes in the presentation of their contributions to debates, and I am satisfied that that is the case.

Senator STERLE—I take that on board, but I am referring to my notes. I know that reading the newspaper in the Senate is against procedures too, and that will not go unnoticed. As I was saying, these same senators and members have the hide to introduce and vote for a bill that makes freedom of association illegal for small business operators who choose to associate in union. I would have thought that if a small business did not want a union to represent them then all they had to do was choose not to have a union represent them. I did not realise that small businesses needed the government to legislate to protect them from the possibility that they might choose to associate and negotiate in union. So much for freedom of choice. So much for freedom of association. So much for principles.

If enacted unamended, clause 93AB(9) of this bill would deny small business operators the freedom of choice that every other Australian has—that is, the freedom to choose their preferred representative. If enacted unamended, clause 93AB(9) of this bill would have the effect of removing the choice that thousands of owner-driver small businesses within the transport industry have exercised over the decades—that being the choice to have the Transport Workers Union negotiate on their behalf. What the government are saying with this bill is that small businesses such as motor dealers and publicans are allowed to collectively negotiate with their representation from the MTAA or the AHA but that owner-drivers are not allowed to be represented by the TWU.

Owner-drivers are not employees; they are small business operators—many of whom have chosen to have a trade union represent them in negotiations. Owner-drivers are at a significant disadvantage in terms of bargaining power when compared with the large transport companies they contract to. Without independent choice of representation, owner-drivers would be forced to be members of the same industry association that represents the large transport companies they would be negotiating against. To deny owner-drivers the right to effective representation through the TWU will result in further abuses of the significant bargaining advantages large transport consigners and freight forwarders currently enjoy. I would like to take this opportunity to bring the voice of Bob Hayden into the Senate. Bob is an owner-driver. He had this to say about the government’s attack on his right to choose whom he negotiates through:

If you take away the protection of being able to choose our representation and say this is what we’re entitled to, there’s just going to be a raffle at the front door ... ‘This is how much we’re going to pay to get this load done—who wants it?’

This bloke is one of thousands of decent, hardworking Australians who drive trucks for a living and want the TWU to represent them. Bob knows that, when he stands together with other drivers, he stands a better chance of getting a fair deal.

How dare the Howard government tell Bob Hayden or any other owner-driver who they can and cannot get to represent their interests! Without equality in bargaining, owner-drivers will be forced into unsafe, low levels of remuneration and other inadequate
contractual conditions which may force them out of business and may threaten public safety because they are forced to work too long or too fast in order to make a living for themselves and their families. In the government’s mad rush to use their new-found power in the Senate, it is clear that they have not considered the implications of this bill on hardworking Australian small business operators in the transport industry.

It is a mystery to those of us in the Labor Party how clause 93AB(9) made it into the bill. Senators will remember that, when the government introduced this bill prior to the last election, it did not attempt to include a clause 93AB(9) or anything like it. The government did not think it was necessary to legislate to exclude the right of freedom of association the first time they introduced this bill—but, now the election is over, the government has changed its tune. This is yet another example of an arrogant and extreme government that says one thing before an election and does another thing after an election.

We can only imagine what went on in the Liberal Party room when it was announced that this bill would be introduced with the new clause to exclude unions from the collective bargaining provisions of the bill. I wonder how many government senators put up their hand and asked: ‘How can this be? I thought we believed in choice. I thought we believed in freedom of association.’ I wonder how many government senators questioned their cabinet colleagues and said: ‘I thought we wanted to give small businesses the choice to negotiate collectively with their choice of representative. Is this a mistake? Is it a sick joke?’ It seems that the only sick joke here is the mob of government senators opposite. If they did not get up and ask those questions then they are gutless hypocrites.

Senator Lightfoot—Mr Acting Deputy President, I rise on a point of order. Directing those words at this side of the House is unparliamentary. I draw your attention again to the issue of Senator Sterle reading his speech word for word.

The ACTING DEPUTY PRESIDENT—Again, Senator Sterle, I ask you to be conscious of the language you are using in your contribution to this debate.

Senator Lightfoot—Mr Acting Deputy President, the second part of my point of order was that Senator Sterle is clearly reading his speech.

The ACTING DEPUTY PRESIDENT—You raised that point of order earlier, Senator Lightfoot. I have already ruled on that but, if you want me to rule on it again, I will. It is quite appropriate for a senator to read from copious notes and use those copious notes to assist them in their contribution to the debate. I am satisfied that that is what Senator Sterle is doing, and I call Senator Sterle.

Senator STERLE—Thank you, Mr Acting Deputy President. The government have sent a clear message to the small business people of Australia: ‘You can choose to bargain collectively but only on our terms. You can choose to bargain with our mates in the industry associations but you cannot choose to bargain with our enemies in the unions.’ That is the guts of clause 93AB(9) of this bill. It is not based on a constructive or productive premise—just revenge.

I am surprised that the government did not keep up for a little longer than this the pretence that they were fair-minded. I am also surprised that senators opposite are so willing to cast away their own values and their own sense of decency to indulge in a vindictive and ideological attack on workers and small business operators who choose to negotiate in union. Though we on this side of the Senate do not have the numbers, we will
not let the government legislate discrimination into Australian law without a fight.

Before I finish, I would like to put a challenge to the press gallery: when the government are filling the pockets of media barons across the country with taxpayers’ money to advertise how fair their industrial relations agenda is and how they are only interested in promoting choice and freedom of association, use the column space next to the ads to cite this bill as an example of their hypocrisy. The Prime Minister and his legion of sycophants bang on endlessly about choice but when they are put to the test—as they are with this bill—they fail miserably.

Senator STEPHENS (New South Wales) (7.52 pm)—I rise to speak on the Trade Practices Legislation Amendment Bill (No. 1) 2005, which seeks to amend the Trade Practices Act 1974 in the area of competition policy and in particular in relation to the scrutiny and regulation of corporate mergers and takeovers. As we all know, the objective of competition policy is to maximise public welfare by maintaining and enhancing competition in markets. That is a fundamental principle of the operation of any free-market economy.

Competition policy in Australia has, in large part, been the creation of successive Labor governments. Labor’s deregulation of the exchange rate and interest rates, taken with the great reduction in tariffs and other forms of protectionism and our sweeping reform of the labour market, amounted to a revolution in Australia’s economic life. It was Labor that introduced the 25 per cent across-the-board tariff reductions in 1973, and as a result of Labor’s innovations the Australian economy has become more competitive, both domestically and internationally, and as a consequence more efficient and more productive. As a result, living standards have risen and unemployment has fallen as both production and consumption have increased.

The bill we are debating this evening presents significant changes to the regulatory environment for business and industry in Australia. It is a bill that does not hold up the long-established economic principles of competition and choice. It is a bill that puts the interests of big enterprise well in front of small business, and it is a bill that continues to drive a dagger through the unions for no other reason than that the word exists somewhere in the current legislation.

The genesis of the bill is the government’s reply to the Dawson inquiry, which released its report in April 2003. The Dawson report was widely criticised—so much so that a Senate inquiry was set up to address its deficiencies. This Senate inquiry, entitled the inquiry into the effectiveness of the Trade Practices Act 1974 in protecting small business, which I chaired, reported in March 2004. I note that, of all the recommendations made as a result of that inquiry, only one was adopted. Incredibly, even those recommendations made in the minority report by government senators were completely ignored. I am pleased to see that a recommendation of the Senate committee for a streamlined approval process—through notification—of collective bargaining by small business has been taken up. I am also pleased that the government has backed down on schedule 7, which would have abolished the per se prohibition on third-line forcing.

But there are still areas of concern—great concern—not just for those of us on this side of the Senate but for Australian businesses as well. I look now at schedule 1, the new regime for approving mergers, which involves bypassing the ACCC. Schedule 1 could be titled ‘Back to the future’. It follows a theme of extreme and excessive changes to merger laws about which the Prime Minister has been
fixed over a period of almost 30 years. Back in 1977, Mr Howard, as the then Minister for Business and Consumer Affairs, made radical changes to Australian merger laws in this country—changes so extreme, in fact, that they were described as the most relaxed and liberal merger laws in the Western world. In 1977, Mr Howard changed the ‘substantial lessening of competition’ test—that is, the test for disallowing mergers—to the much more lenient ‘dominance’ test. This dominance test effectively opened the floodgates for mergers in Australia. Fortunately, when Labor was returned to government, we reversed this ‘dominance’ test and reinstated the much more sensible and protective ‘substantial lessening of competition’ test.

But now we are back to the future—a hallmark of this government. Thirty years later, when many things have changed, the Howard mind-set has stayed exactly the same. With the bill now before the Senate, the Prime Minister has gone back to the future. Although the legislation is different to that of 1977, the result is very much the same. Under this schedule in the bill, mergers will be made considerably easier. This time—in the form that the bill was passed in the lower house—the bill will establish a voluntary formal merger clearance system to operate in parallel with the existing informal Australian Consumer and Competition Council merger review system. This will provide the means for an authorisation process that actually bypasses the ACCC and goes straight to the Australian Competition Tribunal, the ACT.

Under the proposals, the tribunal will only consider whether a merger for which applications seek authorisation is in the public interest and not whether the merger is anticompetitive. In other words, where parties are certain to breach the competition test they will appeal directly to the ACT. The committee was warned during the inquiry that this could occur. The ACCC has expertise in this matter. The ACCC and its process of determining if a merger is anticompetitive is important. In fact, Mr Alan Goldberg, the newly appointed president of the Australian Competition Tribunal, recently told the Financial Review:

The tribunal doesn’t have any infrastructure like the ACCC does.

Further, Graeme Samuel, the chairman of the ACCC, is concerned that companies may play the ACCC and the ACT off against each other. What is wrong with having the added protection of the ACCC, we wonder. The ACCC process allows for public submissions, while the ACT does not, and has in many instances become a vehicle for compromise between parties.

The Treasurer made concessions on Friday, 2 September, following agitation by Labor, Family First and The Nationals—and I see that success has many fathers: The Nationals are claiming this as their own victory. The amendments flag that, instead of a complete bypass of the ACCC being permitted, companies will now have to consult with the ACCC. Although this is better than the original bill, there are still a number of problems with the proposed amendments that will need to be dealt with. These include the fact that the ACT will specify the terms of the ACCC report—therefore somewhat shackling the ACCC—and that there is also no guarantee that the ACT will act upon the recommendations of the commission.

Labor is proposing amendments to ensure that the ACCC must first decide if a merger should proceed and that the tribunal remains solely a review body. Labor’s approach would be to provide that authorisations must proceed to the ACCC in the first instance; however, the ACCC could waive this right and direct the authorisation application to the ACT and allow the ACCC to be a party to
the tribunal hearing and allow third-party appeal against a formal clearance approval, which is a logical proposal.

Schedule 3 has been dealt with by several other speakers. It relates to the union exclusion clause. I will move on from there to schedule 7. I welcome the government’s backdown on the proposed extreme changes to third line forcing—a backdown that has rightfully been praised and welcomed by small businesses Australia wide. Originally the government had proposed to radically change prohibitions on third line forcing—prohibitions which were prudently put in place by Labor in the early 1970s. Third line forcing, as I am sure you know, Mr Acting Deputy President Marshall, is where a business sells a product on the condition that buyers also accept another product from a different supplier. This conduct is anticompetitive in a number of instances. In fact, third line forcing, by its very definition, is anticompetitive. The government had originally set out to remove the per se prohibition and require only that such third line forcing be subject to a competition test. The per se prohibition has meant that businesses have had to notify the ACCC and wait for approval. Before this per se approval, big businesses could set up secret commissions to force products and services onto small businesses and, through them, onto consumers.

The deleterious effects of this on small businesses is very obvious. If the per se prohibition had been removed, what would have stopped history repeating itself? It would have been near impossible to accurately identify cases where third line forcing is hurting them. The ACCC would have to begin expensive Federal Court action—which would have been paid for by the Australian taxpayer, of course—to stop this conduct, and surely, due to the cost in time and money, that would only be initiated in the most extreme cases.

As Michael Delaney, executive director of the Motor Trades Association of Australia, said, these reforms were ‘completely retrograde’. Early in August, the effectiveness of the per se prohibition of third line forcing was shown again when Coles Supermarkets withdrew its application to the ACCC for approval of its plan to force suppliers to use a particular marketing company for their in-store promotions. This action was clearly in breach of our third line forcing laws and its impending failure was surely the reason that Coles withdrew its application.

So, what would have happened in this circumstance if there was no compulsory notification with the ACCC? The first line of defence would have been a legal one and it would have seen thousands of tax payers dollars effectively wasted on legal action that just should not have taken place—legal action, initiated by the ACCC, that would have had to meet a very high standard of proof in order to halt the arrangement. Thankfully in this instance with Coles, under the current law this did not occur. But, without third line forcing, according to the National Association of Retail Grocers of Australia spokesman, Alan McKenzie, ‘a lot more of this conduct will get the nod.’

Surely it is for this reason that a number of coalition members have pressured the government to change this schedule. Government senators questioned witnesses heavily about this problem during the inquiry process. They recognised that it was a problem. Senator Boswell, Senator Chapman, Senator Joyce, Mr Cadman and others have registered their concern too. In fact, Mr Cadman recently said that the current notification system worked well. These are people who are thinking about the adverse impacts of gung-ho legislation and who recognise the risks of being heavy-handed and bulldozing these changes through. We are starting to see such dissent emerging within this govern-
ment. We saw it with Telstra. We have seen it with the industrial relations already, asylum seeker detention, voluntary student unionism, the Welfare to Work reforms, environmental policies, transport, communication and media policy, higher education funding and foreign policy.

This government argues that it is the friend of small business. In fact, Mal Brough, the Minister for Revenue and the Assistant Treasurer, recently said in parliament:

The Liberal Party remain the best friend of small business and the best friend of Australian workers.

The amendments are important to protect small businesses. If they are rejected here in the Senate, the government is sending very clear signals to small business that it neither understands nor cares about their concerns that under the Trade Practices Act anomalies still exist that fail to protect them in terms of predatory pricing, cease and desist orders or criminal sanctions for breaches of the act.

So whether it is tariff reform, the floating of the dollar, communications competition, national competition policy or the creation of the ACCC, there is a long history of reform by Labor governments to improve competition in Australian markets. Labor recognises that markets work. They do not work perfectly, they do require some regulation and there is a need for intervention to ensure fairness, but ultimately markets are the bedrock of economic wellbeing in our society. That is why we need a Trade Practices Act. That is why we need regulation to ensure that competition is genuine and that all participants or potential participants have the prospect of being able to be involved in those markets on an equal footing. That is what the government should be doing here and that is essentially what it is failing to do with this legislation.

**Senator MILNE** (Tasmania) (8.06 pm)—
The Greens support small business and are very surprised by the government’s rhetoric that they support small business while the activity that they have taken in effect supports big business against the interests of small business. So the Greens oppose this bill because of the negative impacts it has on small business and also because of the restrictions it places on collective bargaining by trade unions.

I just want to note here the incredible hypocrisy of the Howard government in relation to collective bargaining. It has always been clear to me, whether you are referring to unions or any other organisation, that the whole purpose is to allow people to come together to argue for a common cause and for a common decent outcome. So I support the principle of collective bargaining. I support it for the unions and I support it for small business. I think it is a sensible way of assuring the community of decent outcomes.

In terms of the union movement, I am horrified by the proposed industrial relations laws, which will in fact mean that unions, such as those representing nurses, for example, are going to be left out in the cold. Nursing is predominantly a female profession. It has predominantly said it wants to get on with the task of nursing and not have to negotiate individual workplace agreements, and I support that. I think it is outrageous that the government is going to split teams and cause competition within teams when what we want are high-quality nursing standards, high-quality health care delivery, and decent wages and conditions for nurses.

So when we get to a bill like this on trade practices, and we look at this issue, I think it is entirely appropriate that small businesses, such as dairy farmers and others, should be able to come together to negotiate a decent deal against big business; otherwise, they are
simply not going to be able to do it. So I find this incredibly hypocritical—as, indeed, was stated previously, when the Australian Workers Union said:

... the ACCC decision demonstrates the hypocrisy of the Howard Government in its treatment of business compared with workers and trade unions. While the Government is supporting efforts to improve the conditions of small business through collective bargaining, it is trying to abolish collective bargaining rights for ordinary workers [...] fearing that [...] the Government’s legislation could stop the AWU and other unions from supporting small businesses facing unfair treatment like the chicken growers who will benefit from today’s decision. The Government should remove the ban on unions from its changes to the Trade Practices Act.

I could not agree more, and my colleague Senator Siewert will actually address that component of the legislation when she speaks later.

This bill, we all know, is the government’s response to the Dawson review into the competition provisions of the Trade Practices Act. This review sought to streamline the Trade Practices Act provisions to allow businesses to compete effectively on a global basis, particularly through mergers to create bigger corporations. However, it also raised issues about the appropriate balance between the interests of small and large business.

It is noted that the Business Council of Australia, in its submissions to the Dawson inquiry, wanted reduced controls over mergers, as it believes that this allows companies to grow to a size necessary to enable them to compete in international markets. However, the ACCC responded by referring to studies that conclude that vigorous domestic competition is a better generator of internationally competitive firms. For example, a study of Japan found that Japanese competitiveness was associated with home market competition rather than collusion, cartels or government intervention. Another international study found that few firms with virtually unrivalled domestic market positions were internationally competitive. Instead, they maintained their competitiveness through being heavily subsidised and protected. That has certainly been my experience. Having had almost a decade in the Tasmanian parliament, it is very clear to me that, where you have reduced domestic competition, you have very inappropriate and backward processes in industry, and it is only when you have vigorous domestic competition that those companies get up to speed enough to be able to compete internationally.

However, the government appears to have sided with the interests of big business in this bill. Currently, the Trade Practices Act provides that corporations proposing to take over or, in the language of the Trade Practices Act, to merge with or acquire another corporation and lessen market competition, must seek approval from the ACCC to avoid contravening the act. This bill establishes two new mechanisms by which corporations can get approval for a merger: merger clearances, by the ACCC, and merger authorisations, by the Australian Competition Tribunal. These new mechanisms significantly restrict the right of other businesses to oppose a merger that they feel reduces competition.

At present, the Trade Practices Act provides for third party review of the merits of an ACCC determination to the Australian Competition Tribunal. Under this bill, only the company proposing the merger will be able to seek review of an ACCC determination. Small businesses that are unhappy with a determination of the ACCC will now be excluded from appealing to the Australian Competition Tribunal. I think that is outrageous—that only those people who want to proceed with the merger can have a review when it is refused, whereas those impacted are not going to have the same rights. A
company which wants to take over another company but is not backed by the ACCC will be able to appeal, but a small business which might be a competitor and will be affected by the takeover will not be allowed to appeal. How can that be fair? It is not fair; it favours the big end of town against small business.

And let it be on the public record that the Howard government, which says it is the friend of small business, is in fact selling out small business in this particular legislation in favour of big business. But, by merging these two issues in one bill, by taking the issue of collective bargaining and lumping it in with the merger issues, it is actually putting a terrible conundrum to the Australian people and, in fact, to small business in relation to this, because clearly they are two separate issues. It is outrageous that it is putting small business in the position of saying, ‘Yes, we want the collective bargaining but, no, we do not want the merger provisions.’ It is a very clever tactic of the government to force small business to choose between the lesser of two evils, or the thing that appeals to them most, when in fact these are clearly two separate issues and they should have been dealt with appropriately. The government has tilted the playing field towards those companies that are big enough to take over other companies and it has tilted it away from small business.

Under the new provisions regarding merger authorisations, the power of the ACCC to assess merger authorisations that reduce market competition, but where the applicant believes there is an overriding public benefit, has been transferred to the Australian Competition Tribunal. As a result, there will be no right of review on the merits of a tribunal determination. The government wishes to streamline the process and reduce delays for the companies doing the takeovers but, again, small businesses whose interests are affected by the takeover are excluded from appealing.

In the Senate Economics Legislation Committee inquiry into this bill, the ACCC also questioned whether it was appropriate to split processes dealing with public benefit issues between the ACCC and the tribunal. We note that the former chairman of the ACCC, Professor Fels, has criticised this proposal. He points out that, unlike the ACCC, the tribunal is not an investigative body but a judicial body. The tribunal is, according to Professor Fels, ‘an unfriendly forum for the consumer and small business, usually knee deep in lawyers’. The tribunal will be reliant on the ACCC providing it with relevant information and assistance. I note that the government has proposed amendments to clarify the roles of the tribunal and the commission, but the fundamental issue remains—whether the government’s changes to the Trade Practices Act are warranted.

Another problem with the bill is that it fails to address a weakness in the current Trade Practices Act in that companies can substantially reduce competition not by a large acquisition but by a number of small incremental acquisitions over time—for example, a retail chain buying up other shops one by one. You only have to go into regional Australia to see this happening, nowhere more so than in my home state of Tasmania.

The bill also proposes to water down the rules regarding third line forcing—that is, the practice of offering for sale or at a discount one good or service on the condition that another good or service is purchased from a third party. Third line forcing is currently prohibited under the act, as corporations could exploit their dominance in one market to distort an unrelated market. However, I do note that the government is now proposing amendments to the bill which will maintain the ban on third line forcing. Whilst I appreciate that is a good move from the government and I acknowledge the work of
many senators on both sides of the house in relation to third line forcing, in my view the amendments do not go far enough in reversing the other negative aspects of this bill. It is for those reasons that the Greens will be opposing the bill. We believe it is a bad thing for small business. Whilst we do support the collective bargaining aspects of the bill, since the government has determined to put all of this in one piece of legislation we are not prepared to accept its predisposition to big business, to putting small business out of business, particularly in rural and regional Australia, in favour of large corporations. We would hope that in the event of our defeat of this bill we could deal with the collective bargaining issues elsewhere. But if collective bargaining is acceptable as a principle—and I believe it absolutely is—then it should apply not only to small business but also to the unions. To say that it is an acceptable principle for one and not the other is discriminatory, ideologically driven and quite unsound. So the Greens put clearly on the public record that we will be opposing this bill, and my colleague Senator Siewert will address the collective bargaining aspect of the bill in more detail in her contribution at a later time.

Senator MURRAY (Western Australia) (8.18 pm)—I rise on behalf of the Democrats to address the Trade Practices Legislation Amendment Bill (No. 1) 2005, which implements the government’s response to the review of the competition provisions of the Trade Practices Act commonly referred to as the Dawson review, otherwise known as the big business favourable review. This bill contains some changes that will assist small business and it was generally applauded. However, last year the Senate Economics Legislation Committee conducted another, more specific, review of the effectiveness of the Trade Practices Act in protecting small business. The Senate Economics Legislation Committee has also examined some aspects of this bill, and that inquiry is helpful in considering the bill’s 12 schedules.

Schedule 1 contains a voluntary form of merger clearance system that can operate in conjunction with the existing informal ACCC system. An unfavourable decision is reviewable by the Australian Competition Tribunal. The Democrats are concerned that this new formal system will reduce the power of the ACCC and result in forum shopping between the ACCC and the Australian Competition Tribunal. The question is of course whether it is at all relevant or needed. I am indebted to an AAP story, No. 5276, on 5 October 2005, which neatly encapsulated the current situation with respect to mergers. It says:

The competition watchdog identifies few proposed corporate mergers and changes it believes will reduce competition, new figures show.

Since 1996 the Australian Consumer and Competition Commission … has looked at 1,804 separate mergers or acquisitions.

In 1,704 of those cases, or 95 per cent, the ACCC decided against opposing a proposal.

In another 55 cases the ACCC was involved in a resolution.

In just 48 cases, or less than three per cent, did the ACCC oppose a merger or acquisition or asset sale.

The commission has the power under the Trade Practices Act to stop a merger or acquisition that it considers may substantially reduce competition in the marketplace.

In the latest full year, 2004-05, the ACCC considered 189 mergers, asset sales and joint ventures.

It opposed two outright while nine were allowed so long as the parties involved undertook court enforceable undertakings to the ACCC.

You would be forgiven for thinking that the ACCC have been too lax with respect to mergers. They have been awfully helpful to all the business proposals that have come to them, but that does not satisfy the big busi-
ness lobby, which wants them to almost give carte blanche to every single merger proposal.

Schedule 2 of the bill will impose time limits on the ACCC for considering applications. Schedule 3 will reduce the regulatory burden on small business by introducing a notification process for collective bargaining by small business dealing with large business. This process has been supported by small business but, unfortunately, the government has recently introduced an amendment to preclude small business from using a union to negotiate on their behalf. While I understand that the Trade Practices Act may not be the best place to conduct workplace and industrial relations negotiations—and they are specifically excluded from that—there are circumstances where it may be appropriate for a union to negotiate on behalf of small businesses. The TWU negotiating with transport companies on behalf of owner-drivers is a classic example of one that could. I do not know why the government believes that this is inappropriate. The Democrats will be supporting the ALP amendment that opposes the exclusion of unions from involvement in the collective bargaining process.

Schedules 4, 5 and 6 contain exclusionary provisions, price-fixing provisions and amendments dealing with dual-listed companies. These changes strengthen the Trade Practices Act and are supported by the Democrats. Schedule 7 made some changes to third line forcing provisions. The Democrats were opposed to this schedule, and we note that things have moved on since the original publication of the bill. The other schedules deal with enforcement penalties and local government bodies and ensure the constitutional validity of the ACCC and the Australian Competition Tribunal as a result of the Hughes High Court case. The Democrats will be supporting those schedules.

Now that the government has control of the Senate, many Australians were and still are concerned that this power would go to its head. It has gone to some heads, but not all so far. The gagging of the debates on Telstra is evidence of this, but there is a strong argument that a fair bit of power has shifted to the backbench members of the Liberal Party and to their National Party partners in the coalition. With all the publicity about Telstra, which ended up being a preset arrangement, who would have thought that the first time the government would succumb to backbench and National Party pressure—and, of course, pressure from the crossbenchers, including pressure from me and my party—would be in relation to these amendments to the Trade Practices Act? In August, the Treasurer, with pressure from the National Party Senate leader, Senator Ron Boswell, and some Liberal Party backbenchers turned tail on the proposed amendments designed to drastically weaken the third line forcing provisions in the bill. Like the Democrats, Senator Boswell and Liberal Party members had been lobbied by small-business owners about third line forcing, and they did listen. I must compliment the National Party on finally walking the walk and not just talking the talk for a change. I commend the Liberal backbenchers and the National Party members who stood up to represent the small-business constituency and forced the cabinet to change its tune.

The Australian Democrats have always taken our role of keeping the government accountable extremely seriously. Our greatest fear was that, once our numbers in the Senate were reduced, there would not be any parliamentarians on the government side who would take up the challenge of true representation. We still do have very serious concerns about this, and the actions of the government during the last sitting period did nothing to allay those fears, but we are heart-
ened by the apparent independence being shown by some members of the coalition backbench. But, once again, I say that talk is cheap: it is money that buys the whisky.

With those preliminary comments out of the way, there are other aspects of the bill which remain of concern to my colleagues and me. Some of the government’s amendments create a formal authorisation process which allows the Australian Competition Tribunal to authorise mergers. This will sit alongside the merger authorisation process currently in place whereby companies apply to the ACCC first and, if they do not like the decision, they can appeal the matter to the tribunal. Under the new arrangement, companies will be able to apply directly to the tribunal for a clearance authorisation of the merger as long as they can show that it is in the public interest, even if it is anticompetitive. I am not convinced that such a process is in the best interests of the Australian people. It smacks of forum shopping, which I dislike and which is a feature of other aspects of our economy. Currently, the process does require submissions to be made to the ACCC prior to their making a decision on the merger and then their decision can be reviewed by the tribunal. That is the proper hierarchy of authorisation, which should be continued. It is the best route to take with mergers, which would otherwise be anticompetitive, and I cannot see any merit in the government’s position. I and the Democrats will oppose schedule 1 in its entirety.

I want to return to a theme on this mergers issue that I have explored many times over the years—that is, the need for there to be a flip side to the mergers provisions. I am pleased that the Labor Party have now agreed with me in this area and that there is common cause on this issue across the non-government benches. The Democrats, Labor and the coalition have been of one mind in key areas of tax reform, such as the consolidation measures and Corporations Law reform, including the merger and takeover provisions that have been put into Corporations Law. Those parties have recognised that a dynamic modern market economy means that the efficiency and competitiveness of the market should be facilitated and that mergers, acquisitions and takeovers should be made easier, but the flip side of easing the market for mergers, takeovers and acquisitions is a need to ensure that the overmighty and abusive are properly constrained.

I have said before that big business roars approval at the dynamism of the American market but fiercely condemns a major contributor to that dynamism—that is, the effects of antitrust or divestiture laws. We do need those regulatory tools in Australia. Balanced divestiture laws are the corollary of balanced merger laws. They are the flip side. We do not have effective divestiture laws. It is a strange and illogical policy that can prevent mergers to maintain effective competition but cannot require divestiture to also maintain effective competition. It is the Treasurer most of all who stands in the way of that reasonable policy position. Why he continues to have that view beats me.

I believe that concentrated industry sectors need a trigger market share percentage at which the ACCC takes formal and public note of potential danger, similar to that used in Europe. Such thresholds recognise market power but do not constitute an automatic declaration of market dominance, nor are they an automatic signal as to the existence of anticompetitive prices or an abuse of power. They act instead as a trigger to the regulator to maintain a watching brief on the company concerned. I consider the figure of 25 per cent used under the United Kingdom’s Fair Trading Act as constituting a fair market power measure. If such a measure were adopted in Australia, the ACCC would there-
after notify a company so identified that it needed to keep the ACCC advised on all market acquisition activity, with a specific requirement to report to the ACCC annually on the concentration of market power in the market it operates in. The government is busy grabbing hold of some initiatives that it likes in England. Perhaps it should grab hold of this one. That would be an advance.

We return with this mergers proposal to a situation where we have to be concerned about the way in which these matters are to be considered. If all that is to be dealt with in this bill is the issue of collective bargaining from the perspective of small business, we have to ask the question: why are small business owners precluded from the choice of using unions? Frankly, if I was a small business owner running a supermarket, a widget manufacturer’s shop or a small farm and I wanted an expert to assist me in these matters, I would look to the unions. They are experts in negotiation. Why is that choice being refused to small business?

It seems strange that the National Party are prepared to accept that position, because some of the most affected are those who drive the roads of rural Australia and who are the friends of the farming and rural communities, as they are the people who visit them constantly by transporting their goods and services to remote parts of regional Australia. Why are the drivers and the TWU not worth standing up for? Many of them are classified under tax law, never mind employment law, as independent contractors, but they are still members of the union.

The amendments to section 93AB have the potential consequence of effectively banning trade unions from engaging in collective bargaining negotiations under the specific provisions of this bill. The amendments make a notice which is given by a trade union, trade union officer or person acting at the direction of a trade union invalid. So collective bargaining done by an industry representative body such as the excellent Motor Traders Association on behalf of petrol station owners is okay, or the Farmers Federation—who are also very capable—negotiating on behalf of rural producers is okay, but representation by trade unions, who are experts in negotiation, is not. If these amendments are passed, the only way around them will be for the owner-drivers to create their own industry association, an artificial contrivance, so they can bargain collectively for the purposes of the act.

That is something the government seems to prefer, because even though the industry body would be achieving the same outcomes on the same issues for its members through a contrived arrangement, it would not be called a union—that is, ‘unions bad, associations good’. Like employees, owner-drivers are at a significant disadvantage in terms of bargaining power when compared with the large transport companies for which they perform work. If this government was family friendly, if it truly believed in a work-life balance for Australian workers and Australian contractors, and if it truly believed in freedom of choice then it would not be proposing these amendments. Another issue is that there is no family impact statement, so I hope Senator Fielding will ask why and will inquire of the government why such an important bill does not have a family impact statement attached to it. We will be supporting the opposition amendment with respect to that bargaining provision.

Also included in this bill are amendments to the functions and powers under the competition code proposed by new sections 150F, 150FA and 150FB, which address the issues raised in the High Court case R v Hughes, where the court held:

... for the Commonwealth to impose on an officer or instrumentality of the Commonwealth powers
coupled with duties adversely to affect the rights of individuals, where no such power is directly conferred on that officer or instrumentality by the Constitution itself, requires a law of the Commonwealth supported by an appropriate head of power.

These amendments ensure that the power is conferred either by this legislation or by appropriate state or territory legislation, and the Democrats understand this is an essential amendment for the proper functioning of the ACCC. However, the proper functioning of the ACCC also requires appointments on merit. That is another initiative of the British government through the Nolan commission, where appointments on merit are carried out as a result of specific criteria. Once again, in this legislation we will be seeking to make the point that the people who make decisions in the ACCC, the tribunal and elsewhere should be subject to appointments on merit criteria—and that is with no disrespect to some of the excellent people who are presently on the commission and have previously been on the commission.

I also commend to the Senate the Australian Democrats amendments on the misuse of market power provisions. In particular, I draw attention to our proposed amendments to section 46, which refer to the misuse of market power and predatory pricing. You might ask why I am bringing these forward. I am doing so because the National Party keep telling everybody how important section 46 is, yet in response to the committee which reported on that matter raised two years ago—and which had unanimous support for the provisions which I will be putting—the government has been dragging its feet. Why has the government been dragging its feet on the issues? It is because it does not really suit the agenda of some big business groups and organisations which have been heavily lobbying against them.

At the time of the Telstra negotiations, I would have expected the National Party to say, ‘Just to ensure that we get something out of this, we’ll strengthen the Trade Practices Act by at least having those elements passed which the government has already agreed to in its reply and response to the Senate committee’s recommendations.’ They did no such thing. We are still waiting for those amendments to come through, and I propose to move those amendments and to see if the National Party will put its money where its mouth is with respect to those matters. The changes to strengthen section 46 on misuse of market power were unanimously recommended by the Senate Economics References Committee. Those amendments will strengthen the courts’ powers to rule where big business is unfairly using its market power and conducting predatory pricing to eliminate a competitor. These are important issues for small business.

As a member of the Senate Economics References Committee, I was proud to have contributed to the analysis and conclusions of the majority of the committee in its report into the effectiveness of the Trade Practices Act 1974 in protecting small business. Although that was a majority recommendation, in the minority report put down by Senator Brandis and the other government members they did support the amendments which I am putting forward here today, and the government responded favourably to them.

The Treasurer and the Minister for Small Business and Tourism jointly announced that the government would be introducing these changes in the June sitting. The amendments we are proposing had unanimous support. We have not seen those bills, and I have technical advice from the Parliamentary Library that our amendments do not need the approval of the states and of the conduct code agreement, so I will be disappointed if this excuse is used as a reason not to support
them. We will also be addressing the unconscionable conduct provisions which also attracted unanimous support around the chamber, and I hope that we will get the support of the National Party with respect to those as well.

Senator MARK BISHOP (Western Australia) (8.38 pm)—I rise tonight to speak on the Trade Practices Legislation Amendment Bill (No. 1) 2005. As we know, this bill addresses changes to third line forcing and a range of other issues identified in the dozen or so schedules attached to the bill. The important issue I wish to address tonight is the prevention of independent contractors having the ability to negotiate via unions and hence to achieve collective bargaining agreements. In that context, the schedule that addresses this point is simply another step in the government’s continuing attacks on working people. A fundamental plank of the ideology espoused by the Prime Minister for decades is now coming to pass. In short, this is little other than a blatant political stunt. What is worse, it will prevent hardworking Australian families from negotiating fair rates of pay and decent working conditions. As other speakers have done, I will refer specifically to truck owner-drivers in the state of New South Wales.

As we know, independent owner-drivers in New South Wales who work as contractors have the right to negotiate collective agreements via their trade union. They go through the relevant registration process and from that achieve the protection of law for whatever is included in the agreement. Those agreements are registered in the New South Wales Industrial Relations Commission and, as other speakers have said, some thousands of drivers in New South Wales have collectively negotiated agreements through the relevant trade union organisation, the Transport Workers Union.

The origins of this practice are not appreciated by many, but essentially it provides some control over totally laissez-faire market forces to apply particular outcomes that would occur otherwise in that negotiation process. Those market forces, as idealised by economic theorists, might be fine in principle, and generally they do have a sound place, but in some instances they operate to the detriment of individual small businesses. This is particularly the case where there is no or little real bargaining power.

As this bill recognises, in the marketplace there are many industries which are comprised of large, dominant players with significant influence and economic power. There are also customarily many small players who have little bargaining power but who nevertheless deserve some degree of protection from exploitation by those who have more power in a bargaining sense. This bill does extend some protection to small businesses which, together, seek to establish collective agreements in price setting. The example which is referred to in the bill, and which has been cited by other speakers, is sugarcane farmers, chicken growers and dairy farmers.

There is an interesting conjunction of events emerging here. Some of us do have a nodding acquaintance with the origins of trade unionism in this country, from Great Britain and from certain influences on the Continent. But it predates that, going back to the early stages of the Reformation in post-14th century Europe. It is noted in the rise of major cities, particularly in central and southern Italy, but occurred even up north into the Alps and west into Spain—parts of the former Roman Empire. There was a strong development of guilds based around individual trades, principally but not exclusively in the construction industry and some of the more modern industries of those times. There were also strong developments of
guilds in painting, decorating and artwork industries.

The guilds were similar to the sorts of bodies that the government seeks to authorise, legalise and regularise in the schedules attached to this bill; that is, they were a group of self-employed individuals, or masters, who worked in a particular occupation or trade. They came together to set a price that they were able to achieve for the labour they sold for a particular task. They set the conditions that were to apply to the employment of apprentices in the 13th, 14th and 15th centuries. Both on the supply side and the demand side, guilds were established by those groups to advance their own economic self-interest. On the demand side, the guilds sought to set the price that was to be achieved for the labour they sold, and on the supply side they sought to restrict competition by limiting the number of apprentices that masters might be able to hire and hence limit the supply of labour that would come into that particular trade or occupation in forthcoming years.

What was interesting, as we left the 14th century and moved through the period of the industrial revolution, was that the governments of the day in Europe, and latterly in Great Britain, had to come to terms with the power that guilds had developed over a long time. The guilds developed into organisations that essentially set the price of labour, restricted entry into their industries and restricted the hours of work—which, some would say, is not such a bad thing. The guilds became so strong and powerful that, during the latter part of the 18th century and into the mid-19th century, governments on the Continent, in Great Britain and, to a lesser extent, in the United States had to move to bust or break up those guilds because they were using the power that they had acquired to exploit consumers through higher prices. Some say those sorts of things occur today, in a different sense.

What I find remarkable in this bill is that the government identifies sugarcane farmers, chicken growers and dairy farmers—all examples of small enterprises, those where the barriers to entry are not so great and where the price of the asset is relatively limited and does not have a great capacity for capital growth so margins are small. When consolidation occurs, it is usually at a price not liked by the small producer, so they seek to protect themselves, as the guilds of old did, by combining together because the product that they grow or make is essentially a commodity product that has little specialisation within it; hence, the price that they receive for the product that they grow is set by the purchaser. They are price receivers, not price makers, in an economic sense. They seek to overcome those deficiencies, those shortages, that result in a smaller income than they would otherwise like or think they are deserving of, by coming together in a guild, a combination of groups, to have the same capacity to bargain with those seeking to purchase their goods. In these industries, I am told, it is principally the major retailers who, it is alleged—I suspect with a degree of truth—engage in a range of unsavoury, unsatisfactory and possibly illegal practices to force down the prices received by those smaller producers. Naturally, these small producers seek to combine together, firstly, to protect their own self-interests, secondly, to increase the asset value of their own enterprise and, thirdly, to achieve a higher margin for the product they grow and sell than they otherwise would achieve through normal bargaining processes.

None of that is particularly offensive or outrageous. I have probably spent the best part of my career to date, in other places, achieving those sorts of ends—in a more delicate and proper manner, of course; a
manner recognised and protected by the law for over a hundred years. But the outcome was the same. We sought, and we still seek, to achieve a rate of wage for the labour of working people that is higher than they can negotiate for themselves. If we do not achieve that particular end, we have not done our job and we are really not worth two bob. Why would people want to join an organisation that cannot achieve an end that is better than individuals can get for themselves acting on their own? I do not have a particular problem with what the government wants to do here in terms of addressing the legitimate and real concerns of these groups of people engaged in areas of agricultural produce industries—as I said, chicken growers, dairy farmers, sugarcane farmers and, I am sure, a range of other industries allied with these sorts of commodity based production types of agricultural industries where they seek to advance their self-interest.

There is nothing remarkable about that and nothing particularly offensive. As long as the degree of benefit derived by this group of small producers, whatever they might be, is not excessive or greatly exploitative and does not disturb the bulk of normal dynamics in a market economy, one is inclined to turn a blind eye and say: ‘Good luck to them. They’re entitled to make a quid, they’re entitled to have a decent living standard and we should encourage that.’ But, in that context, the obvious comparison is that that is apparently acceptable for sugarcane farmers, chicken growers and dairy farmers but not for another group of individuals, those who have one asset—in this case, a truck that they invest in. The initial capital price of a truck is somewhere between $100,000 and half a million dollars. The equipment declines in value as soon as it purchased—that is, the asset value goes down. It has to be repaired, improved over time and replaced in due course. The only margin they have is that which they receive for their labour.

The rhetorical question—and the real question, the heart and soul of this debate—is: if it is good enough for small agricultural producers such as sugarcane farmers, chicken growers, dairy farmers and a whole host of others in those industries, why is it so outrageous, so reprehensible, for truck drivers in rural and regional areas or the big cities of New South Wales? More importantly, one wonders, in a time when trade union membership is admittedly in decline, when penetration rates are not as high as they were 20, 30 or 40 years ago and when there is difficulty expanding into new industries to recruit, organise, retain and grow, why it is so necessary for government to identify this group of independent contractors and self-employed truck drivers in New South Wales and to say that this group cannot combine and appoint an agent of their choice to negotiate on their behalf. The agent might be a trade union, a law firm, an accountancy firm or a consultancy firm. I would have thought that was one of the things that, in this country, we attach as part and parcel of our birthright. One would hardly have thought that who you seek to appoint to negotiate on your behalf, to instruct to advance your interests, to come together with to determine a joint interest and prosecute through the negotiation process was testing the boundaries of freedom in Australia.

Apparently such activity, such action, notwithstanding the fact that it is countenanced, authorised and approved by law in the state of New South Wales—that is, the appointment of an agent called a trade union to bargain on behalf of a group of self-employed workers—is so reprehensible, so bad, so evil and has a set of consequences that one is forced to outlaw it. No reasons, I note, are advanced in the explanatory memorandum attached to the bill before us today.
as to how the activity of that particular trade union in the state of New South Wales has been so reprehensible, so evil, so bad, so disturbing of market forces, so disruptive to the economy or so exploitive of those who receive prices that the Commonwealth government is forced to intervene in the internal affairs of a trade union in a major state and outlaw that activity. No reasons are advanced, and so, in going through the analysis process, one can only come to the conclusion that has been advanced here by a range of speakers on this side of chamber. I seek leave to continue my remarks at a later stage.

Leave granted.

Senator POLLEY (Tasmania) (8.54 pm)—I seek leave to have my comments incorporated into Hansard.

Leave granted.

The document read as follows—

I rise to speak on the Trade Practices Amendment Bill 2005. When discussing this Bill the Government has touted the collective bargaining aspects of the bill as a win for small business in their dealings with big business. If that were the effect it would be a welcome move. In reality however, the bill is a smokescreen to obscure a government objective with precisely the opposite effect because it threatens to destroy the livelihoods of thousands of Australian small businesses.

There are thousands of transport owner drivers across the nation who like employees are at a significant disadvantage in terms of bargaining power when compared with the large transport companies for whom they perform work.

In denying owner drivers effective and established representation through their union this Bill exposes owner-drivers to large (often multinational) transport consignors and freight forwarders who will abuse their significant bargaining advantage. These unsafe low levels of remuneration and other inadequate contractual conditions will either force them out of business or kill/injure them (and/or other members of the general public) in the process of working too long or too fast in order to make a living for themselves and their families.

The TWU has bargained on a collective basis for owner drivers since the 1920s. In NSW owner drivers (around 12 000 of whom are union members) perform work within the legislative framework of Chapter 6 of the Industrial Relations Act NSW 1996. A significant portion of these owner drivers operate through incorporated entities. Driven by the desire to “cost-shift” expenses (such as workers compensation) to owner drivers, many companies will no longer engage owner drivers that are not incorporated entities—in other words the Bill applies to the vast majority of owner drivers.

For owner drivers in NSW this means that unless the system that has existed for over 30 years in legislation (and many years in reality before that) is maintained, they will go from a fair system with fair outcomes achieved via collective negotiations through their Union to an environment in which economic bullying by large multi-nationals making multi-million dollar profits forces them either to let their businesses go or to work in a manner which is unsafe in order to make ends-meet.

The NSW experience is that owner drivers simply do not bargain other than through their Union. The NSW owner driver legislation permits the making and registration of collective non-union agreements between groups of owner drivers and transport operators. On a very recent search of the Commissions files not one such non-union collective agreement is identifiable. This is to be contrasted with the 173 consent arrangements negotiated on a collective basis by the Union identified in the same search. The lesson from this is that preventing union representation of small business in the transport industry will ensure that big business gets its way in cutting its costs through exploiting its superior bargaining power.

Owner drivers in the transport industry are, almost without exception, marked by one common characteristic—they, like employees, perform work for a single transport operator. In that sense, they are not independent contractors but dependant contractors. They have ongoing, stable relationships with one operator upon whom they are dependant for their work. They take direction
from that operator as if they were employees of the operator. However, owner drivers also undertake substantial risk in their entry into businesses—they provide the vehicle used to perform the work and often they pay substantial amounts for goodwill.

Through the NSW system owner drivers and transport operators currently enjoy (and for much of the last 30 years have enjoyed) settled arrangements which recognise the commercial risk taken by owner drivers and lead to productive, efficient and harmonious execution of the transportation function. These arrangements are contained in a variety of Union bargained industrial instruments at both the industry sector (contract determinations) and enterprise level (contract agreements).

The Union, on behalf of owner drivers has negotiated long-term enterprise specific contract agreements with many operators in general transport/freight forwarding including the major transport operators such as:

- Toll;
- TNT;
- Linfox;
- Startrack; and
- Westgate.

The NSWRTA is the main transport employer body in the state. For decades it has represented the principal contractors who engage owner drivers. The RTA is on the record as supporting the NSW system regarding owner drivers. It is a system whom engage 100s of owner drivers, with logistical and economic certainty.

This broad industry support has flowed through to effect bipartisan political support. For example the system was reviewed and retained by the state Liberal government in the early 1990s and in 1994 was expanded by them to include the capacity to recover in appropriate circumstances the often significant goodwill payments made upon entry into businesses.

The primary result of these collective arrangements is the payment of rates which adequately compensate owner drivers for the function they perform. The rates are based on the concept of cost recovery. While owner drivers have some characteristics of small business, especially in that they assume often huge amounts of risk in the investment that they make in vehicle and goodwill, they do not perform work for “profit.” Rather they recover the cost of running the vehicle, including the cost of their own labour. Cost recovery is vital in ensuring the public interest in the form of road safety is protected. In NSW, there has been judicial and coronial recognition that low rates of pay and poor conditions lead to speeding, other unsafe practices and fatigue and thereby contribute to road fatalities.

This recognition has been supported by government commissioned inquiries at both state (Quinnan Inquiry Report) and federal (Beyond the Midnight Oil) levels. The Bill will have the effect of extinguishing a system which has promoted arrangements securing agreed cost recovery rates and conditions would add an additional incentive (in low owner driver rates and conditions) to have the work performed in an unsafe manner.

In addition to these attributes the system has provided for an accepted, cheap, quick and fair process for the resolution of disputes. Examples exist that illustrate the value of such dispute resolution mechanisms

Dispute Processes—Boral

The large multinational concrete haulage companies present formidable bargaining opponents when contrasted with a single owner driver of a concrete truck. In 2001/2002 Boral made a decision to terminate its ACT fleet of concrete owner drivers. The result, absent a collective approach, would have been the complete loss of thousands of dollars worth of goodwill paid by the owner drivers for entry into the business. The plight of these drivers was made even more drastic by the lack of statutory capacity in the ACT/Federal jurisdiction to readily make a legal claim for the goodwill.

In NSW the Industrial Relations Act protects the investments of these owner drivers with express provisions for the recovery of goodwill in such circumstances, a provision enacted by the state Liberal government. Even Tony Abbott, then Industrial Relations Minister, agreed that the approach of Boral was wrong (as reported in Owner Driver magazine). Although it took a good deal of time, through collective representation of the
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TWU, compensation packages were achieved for these drivers.

**Other Concrete Companies:**
This collective approach has led to recently achieved long-term settled arrangements for concrete owner drivers in each of the other major concrete companies in the State as well. In other words, the approach has added industrial and economic certainty in a cost effective manner to a vital area of the transport industry that feeds construction and thereby infrastructure needs.

**Network Distribution Company:**
A change of the overarching legal entity engaging 18 owner drivers performing Network Distribution Company work (magazine deliveries including Women’s Weekly) resulted in potential loss of goodwill paid because assignment of the business was prohibited by the proposed new contract. Settlement was reached through conciliation proceedings resulting in payments compensating for the investment and on-going engagement performing the same work.

**Recourse for Unfair Termination**
The NSW system acknowledges the unique status of owner drivers by bestowing upon them a basket of rights including one akin to unfair dismissal.

Australian Postal Corporation v Purcells Pty Ltd — Mr Purcell, the director and courier “owner driver” of Purcells Pty was engaged by Federation Couriers. In February 2002, Federation couriers was sold to Australian Postal Corporation (a commonwealth corporation).

Upon take-over Australia Post required all of the owner drivers to sign contracts. As at the date that Australia Post required the contracts to be signed, rates that would apply to the work had not been finalised through negotiations between the drivers committee (which included union member Mr Purcell) and Australia Post. Despite this, the contract required owner drivers to invest money in a new or near new vehicle. Mr Purcell refused to update the vehicle until he knew what he was going to be paid for the work. At that stage on his calculations he was being paid only $8 per hour above the fixed and running costs of his vehicle. Australia Post terminated his engagement.

The TWU applied to the Industrial Relations Commission of New South Wales on behalf of Purcells Pty Ltd for his reinstatement on the basis that the termination of the engagement was unjust. The Commission ordered that his engagement be reinstated and that Purcells Pty Ltd with backpay to the date of termination.

Australia Post has made two significant acquisitions in the courier industry in NSW (a pattern that parallels its incursions into logistics and other non-postal freight movements in recent years), Federation and recently Snap X. The proposed changes further advantage Australia Post so that it is not subject to the types of checks and balances in relation to engagement of owner drivers that resulted in the just result in the case of Eddie Purcell. There are numerous other examples of contracts being reinstated for unfairness and/or compensation being paid for the unfairness of the termination.

**Protection of Goodwill Investments**
As small businesses, owner drivers often enter a contract with a transport company by purchasing the “truck and work (goodwill)” of a previous owner driver performing work for the company. In 1994 the state liberal government acknowledged the economic desirability of protecting that type of transport specific transaction by enacting an extension of the owner driver legislation. Since then, the owner drivers have used the provision where there investment has been unfairly extinguished.

Some cases include:

- **Truckbug v Blue Circle Southern Cement (Boral);** Owner Driver’s engagement terminated for cause Tribunal said termination unfair and awarded $70 000 payment for investment in goodwill paid upon entry to the business.
- **Quintrell and Belprana v Monier Roofing Pty Ltd** Goodwill investments of $53 000 and $42 000 respectively recovered by order of the Tribunal.
- **7 TWU members v Visy (Decision pending)**—Visy imposed 1 year contract on long standing Lorry Owner Drivers who had paid goodwill for businesses —claims between $60 000 and $120 000.
• A number of other cases settled (ie a good portion of investment recovered) as a result of the existence of the right. For example—9 lorry owner drivers out of Bowral Brickworks—new contract attempted to wipe-out goodwill investments of up to $190 000. Settlement reached through conciliation of goodwill claim which included on-going contract for 7 years.

This Bill by removing access to union representation in collective bargaining and access to affordable and timely dispute resolution procedures will leave thousands of Australian small businesses more vulnerable. While employees will face greater job insecurity when the Government introduces their workplace relations reforms owner-drivers and their families will face the additional cost of losing their businesses and their livelihoods, many will also be left with debts they will be unable to service on wages alone because of the changes contained in this Bill. This is another example of a government out of touch and arrogant.

Senator ABETZ (Tasmania—Special Minister of State) (8.55 pm)—I thank all honourable senators for their contribution to this debate. It was great to see the championing of the National Party by those opposite and, Senator Murray, it was great to see that cross-party and cross-Senate support of my friends in the National Party.

Senator ABETZ—I am referring to you as well, Senator Bishop. You are all my friends—you know that. It goes without saying, but I will say it for the record in case you had any doubt. As I understand it, we will be moving into the committee stage very shortly, so I will curtail my remarks to thank all honourable senators for their contributions to the debate.

Question agreed to.

Bill read a second time.

Senator ABETZ—I am referring to you as well, Senator Bishop. You are all my friends—you know that. It goes without saying, but I will say it for the record in case you had any doubt. As I understand it, we will be moving into the committee stage very shortly, so I will curtail my remarks to thank all honourable senators for their contributions to the debate.

Question agreed to.

Bill read a second time.

Pursuant to the notice standing in my name on page 32 of today’s Notice Paper contingent on the Trade Practices Legislation Amendment Bill (No. 1) 2005 being read a second time, I move:

That it be an instruction to the committee of the whole that:

(1) 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.

(2) 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.

(3) the following amendments be made to the first bill:

(a) title, amend the title as shown in paragraph (1)(a) of this order;

(b) clause 2, page 2, omit table items 3 to 6 inclusive.

(4) the following amendments be made to the second bill:

(a) title, insert the title as shown in paragraph (1)(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.

I know we are not in the Committee of the Whole—someone has questioned that on the floor—but I am asking for this instruction to be given to the committee. It makes sense to split this bill. Mergers can then stand or fall on their own merits and senators can then vote without being compelled to vote for a bill that helps small business in one sense but hinders it in another. This is a house of review and not a house of the rubber stamp, and this allows us to look at the issues separately from there. I urge senators to support this notice.

Senator Murray (Western Australia) (8.58 pm)—Speaking to that motion, I will advise that the Democrats will support Senator Fielding’s splitting motion.

Question put:
That the motion (Senator Fielding’s) be agreed to.

The Senate divided. [9.02 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes………… 32
Noes………… 32
Majority……… 0

AYES

Abetz, E.        Andrews, J.
Barnett, G.      Boswell, R.L.D.
Brandis, G.H.    Calvert, P.H.
Campbell, I.G.   Chapman, H.G.P.
Colbeck, R.      Coonan, H.L.
Eggleston, A.    Ferguson, A.B.
Fierravanti-Wells, C.    Fifield, M.P.
Hill, R.M.       Humphries, G.
Johnston, D.     Kemp, C.R.
Lightfoot, P.R.  Macdonald, I.
Macdonald, J.A.H. McGauran, J.J.J. *
Nash, F.         Parry, S.
Patterson, K.C.  Ronaldson, M.
Santoro, S.      Scullion, N.G.
Troeth, J.M.     Trood, R.
Vanstone, A.E.   Watson, J.O.W.

NOES

Abetz, E.        Adams, J.
Barnett, G.      Boswell, R.L.D.
Brandis, G.H.    Calvert, P.H.
Campbell, I.G.   Chapman, H.G.P.
Colbeck, R.      Coonan, H.L.
Eggleston, A.    Ferguson, A.B.
Fierravanti-Wells, C.    Fifield, M.P.
Hill, R.M.       Humphries, G.
Johnston, D.     Kemp, C.R.
Lightfoot, P.R.  Macdonald, I.
Macdonald, J.A.H. McGauran, J.J.J. *
Nash, F.         Parry, S.
Patterson, K.C.  Ronaldson, M.
Santoro, S.      Scullion, N.G.
Troeth, J.M.     Trood, R.
Vanstone, A.E.   Watson, J.O.W.

PAIRS

Carr, K.J.       Mason, B.J.
Evans, C.V.      Heffernan, W.
Faulkner, J.P.   Minchin, N.H.
Forshaw, M.G.    Ellison, C.M.
Ray, R.F.        Payne, M.A.
Sherry, N.J.     Ferris, J.M.

* denotes teller

Question negatived.

In Committee

Bill—by leave—taken as a whole.

Senator Abetz (Tasmania—Special Minister of State) (9.06 pm)—On behalf of the government—

Senator Conroy—Mr Temporary Chairman, I raise a point for clarification. I would like to seek leave to move that we deal with the bill schedule by schedule.

Senator Abetz—We are moving some amendments.
Senator Conroy—But you are moving them to schedule 1, I think.

Senator ABETZ—No, as a block. You’d be used to a bloc vote! It is my intention to move, on behalf of the government, amendments (1) to (19), (21) to (50) and (52) together. I confess I am not 100 per cent sure as to which schedules they apply to.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—To explain it to Senator Conroy, and for the edification of other senators: when the bill is taken as a whole, any part of the bill is then open to amendment.

Senator ABETZ—To commence, I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. I understand the memorandum was circulated in the chamber on 5 September 2005. I seek leave to move amendments, as indicated previously, (1) to (19), (21) to (50) and (52) together.

Leave not granted.

Senator MURRAY (Western Australia) (9.09 pm)—If I may explain briefly: we would like the minister to put all the amendments to schedule 1 only together, without the amendments to other schedules. On sheet PF337, amendment (50), for instance, which he mentioned, is to schedule 7. Could he please put only those amendments related to schedule 1 first.

Senator ABETZ (Tasmania—Special Minister of State) (9.10 pm)—by leave— I move government amendments (1) to (19) and (21) to (47) on sheet PF337:

(1) Schedule 1, item 6, page 4 (lines 1 and 2), omit the definition of proceedings in section 29P, substitute:

proceedings includes:

(a) applications made to the Tribunal under Subdivision C of Division 3 of Part VII; and

(b) applications made to the Tribunal under section 111 (about review of the Commission’s decisions on merger clearances).

(2) Schedule 1, items 7 and 8, page 4 (lines 3 to 13), omit the items, substitute:

7 Section 39

Before “The”, insert “(1)”.

Note: The heading to section 39 is replaced by the heading “President may give directions”.

8 At the end of section 39

Add:

(2) The President may give directions to the Deputy Presidents in relation to the exercise by the Deputy Presidents of
powers with respect to matters of procedure in proceedings before the Tribunal.

Note: Subsection 103(2) provides that any presidential member may exercise powers with respect to matters of procedure in proceedings before the Tribunal.

(3) Schedule 1, item 27, page 12 (line 34), omit “make”, substitute “give”.

(4) Schedule 1, item 27, page 15 (line 17), after “Commission”, insert “, within a specified period,”.

(5) Schedule 1, item 27, page 15 (lines 20 to 23), omit section 95AK, substitute:

95AK Commission may seek further information and consult others

(1) The Commission may give a person a written notice requesting the person to give the Commission, within a specified period, particular information relevant to making its determination on the application.

(2) The Commission may consult with such persons as it considers reasonable and appropriate for the purposes of making its determination on the application.

(6) Schedule 1, item 27, page 16 (lines 4 to 7), omit subsection 95AM(2), substitute:

(2) In making its determination, the Commission must take into account:

(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received within the period specified under paragraph 95AG(b); and

(b) any information received under section 95AJ within the period specified in the relevant notice under that section; and

(c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection; and

(d) any information obtained from consultations under subsection 95AK(2).

(2A) In making its determination, the Commission may disregard:

(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received after the period specified under paragraph 95AG(b); and

(b) any information received under section 95AJ after the period specified in the relevant notice under that section; and

(c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection.

(7) Schedule 1, item 27, page 16 (line 22), omit “refused”, substitute “made a determination refusing”.

(8) Schedule 1, item 27, page 18 (after line 12), after subsection 95AR(2), insert:

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Commission.

(9) Schedule 1, item 27, page 18 (line 28) to page 19 (line 3), omit subsection 95AR(5), substitute:

Commission must make a determination on the application

(5) The Commission must make a determination in writing:

(a) varying the clearance; or

(b) refusing to vary the clearance. The Commission must notify the applicant in writing of its determination and give written reasons for it.

(5A) In making its determination, the Commission must take into account:
(a) any submissions received within the period specified under subsection (4); and
(b) any information received under section 95AJ within the period specified in the relevant notice under that section (as that section applies because of subsection (11) of this section);
(c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (11) of this section); and
(d) any information obtained from consultations under subsection 95AK(2) (as that subsection applies because of subsection (11) of this section).

(5B) In making its determination, the Commission may disregard:
(a) any submissions received after the period specified under subsection (4); and
(b) any information received under section 95AJ after the period specified in the relevant notice under that section (as that section applies because of subsection (11) of this section); and
(c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (11) of this section).

(10) Schedule 1, item 27, page 19 (after line 9), after subsection 95AR(6), insert:

Determination varying clearance may also vary clearance conditions

(6A) A determination varying a clearance may also vary the conditions (if any) of the clearance to take account of the variation of the clearance.

(11) Schedule 1, item 27, page 19 (line 14), omit “refused”, substitute “made a determination refusing”.

(12) Schedule 1, item 27, page 20 (after line 3), at the end of section 95AR, add:

Powers of Commission

(11) The following sections apply in relation to an application for a minor variation of a clearance in the same way as they apply in relation to an application for a clearance:
(a) section 95AJ (Commission may seek additional information from applicant);
(b) section 95AK (Commission may seek further information and consult others).

(13) Schedule 1, item 27, page 20 (after line 17), after subsection 95AS(2), insert:

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Commission.

(14) Schedule 1, item 27, page 21 (lines 18 to 27), omit subsection 95AS(7), substitute:

Commission must make a determination

(7) The Commission must make a determination in writing:
(a) revoking the clearance, or revoking the clearance and substituting a new clearance for the one revoked; or
(b) refusing to revoke the clearance.

The Commission must notify, in writing, the person to whom the clearance was granted of its determination and give written reasons for it.

(7A) In making its determination, the Commission must take into account:
(a) any submissions invited under subsection (4) or (6) that are received within the period specified under that subsection; and
(b) any information received under section 95AJ within the period specified in the relevant notice under that section (as that section applies be-
cause of subsection (13) of this section; and

c) any information received under subsection 95AK(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section); and

d) any information obtained from consultations under subsection 95AK(2) (as that subsection applies because of subsection (13) of this section).

(7B) In making its determination, the Commission may disregard:

(a) any submissions invited under subsection (4) or (6) that are received after the period specified under that subsection; and

(b) any information received under section 95AJ after the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(c) any information received under subsection 95AK(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section).

(15) Schedule 1, item 27, page 22 (line 15), omit “refused”, substitute “made a determination refusing”.

(16) Schedule 1, item 27, page 22 (after line 25), at the end of section 95AS, add:

Powers of Commission

(13) The following sections apply in relation to an application for a revocation, or a revocation and substitution, of a clearance in the same way as they apply in relation to an application for a clearance:

(a) section 95AJ (Commission may seek additional information from applicant);

(b) section 95AK (Commission may seek further information and consult others).

Substituted clearances

(14) The following sections apply in relation to a clearance substituted under this section in the same way as they apply in relation to a clearance granted under section 95AM:

(a) section 95AP (Clearance subject to conditions);

(b) section 95AQ (When clearance is in force).

(17) Schedule 1, item 27, page 22 (line 31), omit “Note”, substitute “Note 1”.

(18) Schedule 1, item 27, page 22 (after line 34), at the end of subsection 95AT(1), add:

Note 2: Division 2 of Part IX contains provisions about procedure and evidence that relate to proceedings before the Tribunal.

(19) Schedule 1, item 27, page 23 (line 26), omit “make”, substitute “give”.

(21) Schedule 1, item 27, page 26 (line 26), after “Tribunal”, insert “, within a specified period,.”.

(22) Schedule 1, item 27, page 26 (lines 28 to 31), omit section 95AZD, substitute:

95AZD Tribunal may seek further information and consult others etc.

(1) The Tribunal may give a person a written notice requesting the person to give the Tribunal, within a specified period, particular information relevant to making its determination on the application.

(2) The Tribunal may consult with such persons as it considers reasonable and appropriate for the purposes of making its determination on the application.

(3) The Tribunal may disclose information excluded from the merger authorisation register under subsection 95AZA(3), (4) or (7) to such persons and on such terms as it considers reasonable and appropriate for the purposes of making its determination on the application.
(23) Schedule 1, item 27, page 27 (after line 3), after section 95AZE, insert:

95AZEA Tribunal must require Commission to give report
For the purposes of determining the application, the member of the Tribunal presiding on the application must require the Commission to give a report to the Tribunal. The report must be:
(a) in relation to the matters specified by that member; and
(b) given within the period specified by that member.

(24) Schedule 1, item 27, page 27 (after line 8), after section 95AZF, insert:

95AZFA Commission may make enquiries
The Commission may, for the purposes of complying with a requirement under section 95AZEA or 95AZF, make such enquiries as it considers reasonable and appropriate.

(25) Schedule 1, item 27, page 27 (lines 16 to 19), omit subsection 95AZG(2), substitute:

(2) In making its determination, the Tribunal must take into account:
(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received within the period specified under paragraph 95AY(b); and
(b) any information received under section 95AZC within the period specified in the relevant notice under that section; and
(c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection; and
(d) any information obtained from consultations under subsection 95AZD(2); and
(e) the report given to it under section 95AZEA; and
(f) any information or report given to it under section 95AZF.

(2A) In making its determination, the Tribunal may disregard:
(a) any submissions in relation to the application made to it by the applicant, the Commonwealth, a State, a Territory or any other person that are received after the period specified under paragraph 95AY(b); and
(b) any information received under section 95AZC after the period specified in the relevant notice under that section; and
(c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection.

(26) Schedule 1, item 27, page 29 (after line 24), after subsection 95AZL(2), insert:

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

(27) Schedule 1, item 27, page 30 (lines 12 to 19), omit subsection 95AZL(6), substitute:

Tribunal must make a determination on the application
(6) The Tribunal must make a determination in writing:
(a) varying the authorisation; or
(b) refusing to vary the authorisation.
The Tribunal must notify the applicant in writing of its determination and give written reasons for it.

(6A) In making its determination, the Tribunal must take into account:
(a) any submissions received within the period specified under subsection (5); and
(b) any information received under section 95AZC within the period specified in the relevant notice under that section (as that section applies be-
cause of subsection (13) of this section; and

c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section); and

d) any information obtained from consultations under subsection 95AZD(2) (as that subsection applies because of subsection (13) of this section); and

e) the report given to it under section 95AZEA (as that section applies because of subsection (13) of this section); and

(f) any information or report given to it under section 95AZF (as that section applies because of subsection (13) of this section).

(6B) In making its determination, the Tribunal may disregard:

(a) any submissions received after the period specified under subsection (5); and

(b) any information received under section 95AZC after the period specified in the relevant notice under that section (as that section applies because of subsection (13) of this section); and

(c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (13) of this section).

(28) Schedule 1, item 27, page 30 (after line 25), after subsection 95AZL(7), insert:

_Determination varying authorisation may also vary authorisation conditions_

(7A) A determination varying an authorisation may also vary the conditions (if any) of the authorisation to take account of the variation of the authorisation.

(29) Schedule 1, item 27, page 31 (line 29), omit paragraph 95AZL(13)(a).

(30) Schedule 1, item 27, page 31 (line 32), omit “consult others”, substitute “seek further information and consult others etc.”.

(31) Schedule 1, item 27, page 31 (after line 32), after paragraph 95AZL(13)(c), insert:

(a) section 95AZEA (Tribunal must require Commission to give report);

(b) section 95AZFA (Commission may make enquiries).

(32) Schedule 1, item 27, page 31 (after line 33), at the end of subsection 95AZL(13), add:

(e) section 95AZFA (Commission may make enquiries).

(33) Schedule 1, item 27, page 32 (after line 15), after subsection 95AZM(2), insert:

(2A) The regulations may prescribe that the application form contain a requirement that the applicant give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

(34) Schedule 1, item 27, page 33 (lines 24 to 33), omit subsection 95AZM(8), substitute:

_Tribunal must make a determination_

(8) The Tribunal must make a determination in writing:

(a) revoking the authorisation, or revoking the authorisation and substituting a new authorisation; or

(b) refusing to revoke the authorisation.

The Tribunal must notify, in writing, the person to whom the authorisation was granted of its determination and give written reasons for it.

(8A) In making its determination, the Tribunal must take into account:

(a) any submissions invited under subsection (5) or (7) that are received within the period specified under that subsection; and

(b) any information received under section 95AZC within the period specified in the relevant notice under that section (as that section applies be-
cause of subsection (15) of this section); and

c) any information received under subsection 95AZD(1) within the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (15) of this section); and

d) any information obtained from consultations under subsection 95AZD(2) (as that subsection applies because of subsection (15) of this section); and

e) the report given to it under section 95AZEA (as that section applies because of subsection (15) of this section); and

(f) any information or report given to it under section 95AZF (as that section applies because of subsection (15) of this section).

(8B) In making its determination, the Tribunal may disregard:

(a) any submissions invited under subsection (5) or (7) that are received after the period specified under that subsection; and

(b) any information received under section 95AZC after the period specified in the relevant notice under that section (as that section applies because of subsection (15) of this section); and

(c) any information received under subsection 95AZD(1) after the period specified in the relevant notice under that subsection (as that subsection applies because of subsection (15) of this section).

(35) Schedule 1, item 27, page 35 (line 10), omit paragraph 95AZM(15)(a).

(36) Schedule 1, item 27, page 35 (line 13), omit “consult others”, substitute “seek further information and consult others etc.”.

(37) Schedule 1, item 27, page 35 (after line 13), after paragraph 95AZM(15)(c), insert:

(ca) section 95AZEA (Tribunal must require Commission to give report);

(38) Schedule 1, item 27, page 35 (after line 14), at the end of subsection 95AZM(15), add:

(e) section 95AZFA (Commission may make enquiries).

(39) Schedule 1, item 27, page 35 (after line 14), at the end of section 95AZM, add:

Substituted authorisations

(16) The following sections apply in relation to an authorisation substituted under this section in the same way as they apply in relation to an authorisation granted under section 95AZG:

(a) section 95AZI (Authorisation subject to conditions);

(b) section 95AZK (When authorisation is in force).

(40) Schedule 1, items 33 and 34, page 36 (lines 12 to 20), omit the items, substitute:

33 Before section 103

Insert:

102A Definition

In this Part:

proceedings includes:

(a) applications made to the Tribunal under Subdivision C of Division 3 of Part VII; and

(b) applications made to the Tribunal under section 111 (about review of Commission’s decisions on merger clearances).

34 Subsection 103(2)

Omit “the Tribunal constituted by a presidential member”, substitute “a presidential member”.

34A At the end of section 103

Add:

(3) The powers mentioned in subsection (2) may be exercised by a presidential member:

(a) whether or not the Tribunal has been constituted under section 37 in relation to the proceedings; and
(b) once the Tribunal is so constituted—whether or not that member is part of the Division of the Tribunal so constituted.

(41) Schedule 1, item 36, page 37 (after line 22), after subsection 111(2), insert:

(2A) The regulations may make it a requirement that an applicant under subsection (1) or (2) give an undertaking under section 87B that the applicant will not make the acquisition while the application is being considered by the Tribunal.

(42) Schedule 1, item 36, page 37 (after line 24), at the end of subsection 111(3), add:

Note: Division 2 contains provisions about procedure and evidence that relate to proceedings before the Tribunal.

(43) Schedule 1, item 36, page 38 (lines 5 to 9), omit subsection 113(1), substitute:

(1) After being notified of the application for review, the Commission must, within 2 business days, give to the Tribunal all the information that the Commission took into account in connection with the making of the determination to which the review relates.

(1A) The Commission must identify which of that information (if any) the Commission excluded from the merger clearance register under subsection 95AI(3), (4) or (7).

(44) Schedule 1, item 36, page 38 (after line 12), after the definition of business day in subsection 113(2), insert:

merger clearance register means the register kept under section 95AH.

(45) Schedule 1, item 36, page 38 (lines 18 to 21), omit subsection 114(2), substitute:

(2) The Tribunal may disclose information identified under subsection 113(1A) to such persons and on such terms as it considers reasonable and appropriate for the purposes of clarifying the information.

(46) Schedule 1, item 36, page 39 (after line 7), at the end of section 116, add:

; and (d) any information or report given to the Tribunal under section 115.

(47) Schedule 1, item 36, page 39 (after line 22), after subsection 118(3), insert:

(3A) If the Tribunal has not made its decision on the review within the period applicable under subsection (1) or (2), the Tribunal is taken to have made a determination affirming the Commission’s determination.

The proposed government amendments clarify the procedures applicable in the merger and collective bargaining provisions and omit provisions from the bill which were to remove the per se prohibition of third line forcing and make third line forcing subject to a substantial lessening of the competition test. The government will be opposing clause 95AZB in schedule 1 of the bill and items 1 to 16 in schedule 7 of the bill. Clause 95AZB is redundant in light of the government’s proposed amendments. Items 1 to 16 in schedule 7 of the bill would have applied a substantial lessening of the competition test to third line forcing conduct.

I now turn to the merger related amendments. The government amendments to the merger provisions in schedule 1 of the bill clarify the procedures to be applied by requiring the Australian Competition Tribunal to obtain a report from the Australian Competition and Consumer Commission in relation to all merger authorisation applications considered by the tribunal. These amendments also enable the ACCC to gather the information necessary to compile the report; ensure that the tribunal has all the appropriate powers and procedures and sufficient flexibility of operation to take on its new merger functions; clarify aspects of the tribunal’s review of merger clearance decisions made by the ACCC in the first instance; and assist the ACCC and the tribunal to meet the
statutory deadlines that apply to the new merger processes by enabling the ACCC and the tribunal, in requesting information, to specify when the information is to be given. If the information is given on time, it must be taken into account. If information is given late, the ACCC and the tribunal will have a discretion to disregard it. The amendments also ensure that the ACCC and the tribunal have consistent powers for all merger clearance applications and all merger authorisation applications.

The government will oppose clause 95AZB in schedule 1 of the bill and items 1 to 16 in schedule 7 of the bill. As indicated, clause 95AZB is redundant in light of the government’s amendments.

Senator MURRAY (Western Australia) (9.17 pm)—Just to clarify: I assume the minister was just conflating all his remarks to all his amendments. I did hear him address third line forcing in those remarks. Those obviously relate to schedule 7—and, to make it clear, we are considering only schedule 1.

Senator ABETZ (Tasmania—Special Minister of State) (9.18 pm)—I did indicate—and I will repeat it for the honourable senator—that the government will also be opposing clause 95AZB in schedule 1 of the bill and items 1 to 16 in schedule 7 of the bill.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that amendments (1) to (19) and (21) to (47) be agreed to.

Question agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (9.18 pm)—I now come to government amendment (20). The government opposes item 27 in schedule 1 in the following terms:

(20) Schedule 1, item 27, page 26 (lines 12 to 23), section 95AZB TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question now is that item 27 in schedule 1 stand as printed.

Question negatived.

Senator MURRAY (Western Australia) (9.19 pm)—I move Democrat amendment (1) on sheet 4555:

(1) Schedule 1, page 3 (after line 22), after item 4, insert:

4A After section 8A

Insert:

8AA Procedures for merit selection of appointments under this Act

(1) The Minister must by writing determine a code of practice for selecting a person to be appointed by the Commonwealth or a Minister to a position under this Act that sets out general principles on which the selections are to be made, including but not limited to:

(a) merit; and
(b) independent scrutiny of appointments; and
(c) probity; and
(d) openness and transparency.

(2) After determining a code of practice under subsection (1), the Minister must publish the code in the Gazette.

(3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.

(4) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(5) A code of practice determined under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

I will not speak at any length on this amendment, as this amendment is well known to the chamber. The amendment refers to appointments on merit.
Question negatived.

Senator CONROY (Victoria) (9.20 pm)—The opposition opposes item 27 in schedule 1 in the following terms:

(1) Schedule 1, item 27, page 22 (line 27) to page 23 (line 16), sections 95A T and 95AU, TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that item 27 in schedule 1 stand as printed.

Question agreed to.

Senator MURRAY (Western Australia) (9.21 pm)—The Democrats oppose schedule 1 in the following terms:

(1) Schedule 1, page 3 (line 1) to page 43 (line 3), TO BE OPPOSED.

This refers to merger clearances and authorisations.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, be agreed to.

Question put.

The committee divided. [9.26 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 32
Noes............... 32
Majority......... 0

AYES

Troeth, J.M. Vanstone, A.E. Trood, R. Watson, J.O.W.

NOES

This refers to merger clearances and authorisations.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, be agreed to.

Question put.

The committee divided. [9.26 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 32
Noes............... 32
Majority......... 0

AYES

Troeth, J.M. Vanstone, A.E. Trood, R. Watson, J.O.W.

NOES

This refers to merger clearances and authorisations.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, be agreed to.

Question put.

The committee divided. [9.26 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 32
Noes............... 32
Majority......... 0

AYES

Troeth, J.M. Vanstone, A.E. Trood, R. Watson, J.O.W.

NOES

This refers to merger clearances and authorisations.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, be agreed to.

Question put.

The committee divided. [9.26 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 32
Noes............... 32
Majority......... 0

AYES

Troeth, J.M. Vanstone, A.E. Trood, R. Watson, J.O.W.

NOES

This refers to merger clearances and authorisations.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, be agreed to.

Question put.

The committee divided. [9.26 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 32
Noes............... 32
Majority......... 0

AYES

Troeth, J.M. Vanstone, A.E. Trood, R. Watson, J.O.W.

NOES

This refers to merger clearances and authorisations.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, be agreed to.

Question put.

The committee divided. [9.26 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 32
Noes............... 32
Majority......... 0

AYES

Troeth, J.M. Vanstone, A.E. Trood, R. Watson, J.O.W.

NOES

This refers to merger clearances and authorisations.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, be agreed to.

Question put.

The committee divided. [9.26 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 32
Noes............... 32
Majority......... 0

AYES

Troeth, J.M. Vanstone, A.E. Trood, R. Watson, J.O.W.

NOES

This refers to merger clearances and authorisations.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, be agreed to.

Question put.

The committee divided. [9.26 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 32
Noes............... 32
Majority......... 0

AYES

Troeth, J.M. Vanstone, A.E. Trood, R. Watson, J.O.W.

NOES

This refers to merger clearances and authorisations.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, be agreed to.

Question put.

The committee divided. [9.26 pm]
(The Chairman—Senator JJ Hogg)

Ayes............. 32
Noes............... 32
Majority......... 0

AYES
Senator ABETZ (Tasmania—Special Minister of State) (9.31 pm)—I move government amendment (48) on sheet PF337:

(48) Schedule 3, item 9, page 51 (after line 25),
after subsection 93AB(10), insert:

(10A) The Commission must, as soon as practicable after receiving a valid collective bargaining notice, give a copy of the notice to the target.

This amendment relates to the small business collective bargaining notification process set out in schedule 3 of the bill. The proposed amendment requires that, as soon as practicable after the ACCC receives a valid collective bargaining notice, the ACCC give a copy of the notice to the target of the collective bargaining arrangement. This will ensure that the ACCC will be able to quickly take the target’s views into account in deciding whether it should object to the notification.

Question agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (9.34 pm)—by leave—I move government amendments (49), (50) and (52) on sheet PF337:

(49) Schedule 7, heading, page 71 (lines 2 and 3),
omit the heading, substitute:

Schedule 7—Exclusive dealing

(50) Schedule 7, heading to Part 1, page 71 (lines 4 and 5), omit the heading, substitute:

Part 1—Tribunal review

(52) Schedule 7, items 18 to 29, page 73 (line 11) to page 74 (line 9), omit the items, substitute:

18 Application

The amendment made by item 17 applies in relation to notifications made after the commencement of that item.

These amendments deal with third line forcing and exclusive dealing. They relate to the removal of items 1 to 6 in part 1 of schedule 7 of the bill that would have changed the tests for the prohibition of third line forcing conduct from a per se or outright prohibition to a test requiring proof of a substantial lessening of competition. The government amendments will maintain the status quo in the test for the prohibition of third line forcing.

Senator CONROY (Victoria) (9.35 pm)—Did Senator Abetz move government amendment (51)?

Senator ABETZ (Tasmania—Special Minister of State) (9.35 pm)—If the committee agrees, I will also move government amendment (51) on sheet PF337. Given the intention was, I thought earlier, that we deal with these matters schedule by schedule, we then disaggregated. If we can re-aggregate then of course I would seek to do so and will include amendment (51) in this tranche of government amendments.

The TEMPORARY CHAIRMAN (Senator Marshall)—Amendment (51) needs to be put in a different form. The question is that government amendments (49), (50) and (52) be agreed to.

Question agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (9.36 pm)—I now come to government amendment (51). The government opposes schedule 7, items 1 to 16, in the following terms:

(51) Schedule 7, items 1 to 16, page 71 (line 7) to page 72 (line 15), TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that items 1 to 16 in schedule 7 stand as printed.

Question negatived.

Senator CONROY (Victoria) (9.37 pm)—I move opposition amendment (2) on sheet 4539 Revised 6:

(2) Schedule 2, page 45 (after line 14), after item 4, insert:

4A At the end of paragraph 90(11)(b)
Add “except that where 30 days have expired, the applicant may apply to the Tribunal for authorisation and upon such application, the Commission shall be deemed to have not granted the authorisation applied for”.

Question negatived.

Senator CONROY (Victoria) (9.38 pm)—I move opposition amendment (3) on sheet 4539 Revised 6:

(3) Schedule 3, item 9, page 50 (line 8), omit “$3,000,000”, substitute “$10,000,000”.

Question negatived.

Senator CONROY (Victoria) (9.38 pm)—I move opposition amendment (4) on sheet 4539 Revised 6:

(4) Schedule 3, item 9, page 51 (lines 10 to 16), omit subsection 93AB(9).

I have spoken on this issue at length, as have many others. It is particularly relevant to my union and a number of other senators’ unions. So I would urge the Senate to support this amendment.

Senator MURRAY (Western Australia) (9.38 pm)—I wish to say, through the chair, that that was slightly rude of Senator Conroy, because many senators who are not members of unions support this amendment, and the Democrats do support the amendment.

Question put:

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

The committee divided. [9.43 pm]

(The Chairman—Senator JJ Hogg)

Ayes…………… 31
Noes…………… 35

Majority……… 4

AYES

Allison, L.F. Bartlett, A.J.J. Faulkner, J.P.
Bishop, T.M. Brown, B.J. Hurley, A.
Brown, C.L. Campbell, G. * Kirk, L.
Conroy, S.M. Crossin, P.M.

NOES

Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Campbell, I.G. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ferguson, A.B.
Fielding, S. Fierravanti-Wells, C.
Fifield, M.P. Heffernan, W.
Hill, R.M. Humphries, G.
Johnston, D. Joyce, B.
Kemp, C.R. Lightfoot, P.R.
Mason, B.J. McGauran, J.J.J. *
Nash, F. Parry, S.
Ronaldson, M. Santoro, S.
Scullion, N.G. Stewart, J.M.
Trood, R. Watson, J.O.W.

PAIRS

Carr, K.J. Minchin, N.H.
Evans, C.V. Patterson, K.C.
Forsishaw, M.G. Ellison, C.M.
Ray, R.F. Payne, M.A.
Sherry, N.J. Ferris, J.M.

* denotes teller

Question negatived.

The CHAIRMAN—As I understand it, schedule 7 has already been removed from the proceedings and we therefore move to Democrat amendments (3) to (7) on sheet 4555.

Senator MURRAY (Western Australia) (9.49 pm)—by leave—I move Democrat amendments (3) to (7) on sheet 4555:
(3) Page 111, (after line 9) at the end of the bill, add:

**Schedule 13—Misuse of Market Power**

*Trade Practices Act 1974*

1 Subsection 46(1)

After “take advantage”, insert “, in that or any other market,”.

(4) Page 111, (after line 9) at the end of the bill, add:

2 After subsection 46(2)

Insert:

(2A) In determining for the purposes of this section whether a corporation has a substantial degree of power in a market, the Court may consider the corporation’s degree of power in a market to include any market power arising from any contracts, arrangements, understandings or covenants, whether formal or informal, which the corporation has entered into with other entities.

(5) Page 111, (after line 9) at the end of the bill, add:

3 After subsection 46(3)

Insert:

(3A) In determining for the purposes of this section whether a corporation:

(a) has a substantial degree of power in a market; or

(b) has taken advantage of that power for a purpose described in paragraph (1)(a), (b) or (c);

the Court may have regard to the capacity of the corporation, relative to other corporations in that or any other market, to sell in that or any other market a good or service at a price below the cost to the corporation of producing or acquiring the good or supplying the service.

(6) Page 111, (after line 9) at the end of the bill, add:

4 Before paragraph 51AC(3)(a)

Insert:

(aa) whether the supplier imposed or utilised contract terms allowing the unilateral variation of any contract between the supplier and business consumer; and

(7) Page 111, (after line 9) at the end of the bill, add:

5 Before paragraph 51AC(4)(a)

Insert:

(aa) whether the acquirer imposed or utilised contract terms allowing the unilateral variation of any contract between the acquirer and small business supplier; and

**Question put:**

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

The committee divided. [9.55 pm]

(The Chairman—Senator JJ Hogg)

Ayes........... 9  
Noes........... 57  
Majority........ 48

**AYES**

Allison, L.F.  
Brown, B.J.  
Milne, C.  
Nettle, K.  
Stott Despoja, N.

**NOES**

Abetz, E.  
Barnett, G.  
Boswell, R.L.D.  
Brown, C.L.  
Campbell, G.  
Colbeck, R.  
Coogan, H.L.  
Eggleston, A.  
Faulkner, J.P.  
Fierravanti-Wells, C.  
Heffernan, W.  
Hogg, J.I.  
Hurley, A.  
Johnston, D.  
Kemp, C.R.  
Lightfoot, P.R.  
Lundy, K.A.

Adams, J.  
Bishop, T.M.  
Brandis, G.H.  
Calvert, P.H.  
Chapman, H.G.P.  
Conroy, S.M.  
Crossin, P.M.  
Evans, C.V.  
Ferguson, A.B.  
Fifield, M.P.  
Hill, R.M.  
Humphries, G.  
Hutchins, S.P.  
Joyce, B.  
Kirk, L.  
Ludwig, J.W.  
Macdonald, I.
On previous advice that I had from the Clerk, I said that schedule 7 had been dealt with. That is not entirely correct, so I will be correcting the record. Those senators who want to remain for the explanation can, and those who want to leave the chamber can do so. In the earlier vote on schedule 7, items 1 to 16 were removed. There are other items in schedule 7. Therefore, the committee should proceed to the amendments listed as Democrat amendment (2) and opposition amendment (5).

The question is that schedule 7, as amended, be agreed to.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (10.04 pm)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [10.08 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes............ 35
Noes............ 30
Majority........ 5

AYES
Abetz, E.
Barnett, G.
Brandis, G.H.
Campbell, I.G.
Colbeck, R.
Eggleston, A.
Fielding, S.
Fifield, M.P.
Hill, R.M.
Joyce, B.
Lightfoot, P.R.
Macdonald, J.A.L.
McGauran, J.J.J. *
Parry, S.
Ronaldson, M.
Scullion, N.G.
Troeth, J.M.
Trood, R.
Watson, J.O.W.

NOES
Allison, L.F.
Brown, B.J.
Campbell, G. *
Crossin, P.M.
Faulkner, J.P.
Hurley, A.
Kirk, L.
Lundy, K.A.
McEwen, A.
Milne, C.
Murray, A.J.M.
O’Brien, K.W.K.
Siewert, R.
Sterle, G.
Wong, P.

PAIRS
Ellison, C.M.
Ferris, J.M.
Humphries, G.
Minchin, N.H.
Payne, M.A.

* denotes teller

Question agreed to.

Bill read a third time.

ADJOURNMENT

The PRESIDENT—I move:

That the Senate do now adjourn.
Regional Partnerships and Sustainable Regions

Senator BARNETT (Tasmania) (10.11 pm)—I am pleased to stand here tonight to speak to a very important matter. It is a matter that has actually gone through to the keeper. It relates to the report of the Senate Finance and Public Administration References Committee entitled the Regional Partnerships and Sustainable Regions programs, which was tabled last Thursday. It made a number of recommendations and observations, and some of those have gone through to the keeper.

I want to speak to those recommendations and observations but, before doing so, I want to thank the committee secretariat for their hard work on that 10-month inquiry, during which we travelled the length and breadth of Australia. Alistair Sands, Terry Brown, Lisa Fenn, Melinda Noble and Alex Hodgson put in a fine and comprehensive effort. The matter that went through to the keeper is not the benefits and the merits of the Regional Partnerships program offered by this government in terms of investment—where we put in $1 and it returns $3 in addition to that—and it is not in terms of jobs, where for every $50,000 invested three jobs are returned in the short term and four jobs in the longer term.

What I am speaking about tonight is the allegations of bribery and corruption made by a member in the other place, Mr Tony Windsor, against the former Deputy Prime Minister of Australia, the Hon. John Anderson, and a senator and now parliamentary secretary in this place, Senator Sandy Macdonald. The allegations relate to an offer of an inducement to Mr Windsor, by then Deputy Prime Minister John Anderson and Senator Sandy Macdonald, not to stand at the 2004 federal election. That allegation was made in the other house by Mr Windsor. In the report that was handed down last Thursday, that allegation was found to be baseless, without foundation—not only by the government senators but also by the majority of the committee, including Labor and other opposition senators.

The fact is an Australian Federal Police inquiry looked at this matter in some depth. On 22 November 2004 the Australian Federal Police publicly announced that there was no evidence of an inducement and no evidence that Mr Maguire had conspired with anyone else to make an offer to Mr Windsor. The Australian Federal Police found that they had finalised their investigation of an allegation of electoral bribery regarding the member for New England, Tony Windsor MP. The statement read:

As a result of advice from the Commonwealth Director of Public Prosecutions (CDPP) no charges will be laid in relation to this matter. It continues:

This referral was based on an allegation initially raised during a radio interview by Mr Windsor. A radio interview—obviously outside of the parliament, in the public arena. It goes on to say:

Following investigations, the AFP sent evidentiary material to the CDPP on 7 October for advice in relation to whether a prima facie case could be substantiated in relation to allegations of an inducement being offered. Having assessed this material the CDPP has advised that the evidence will not sustain a charge. This means that there was not even a possibility of a prima facie case against the Hon. John Anderson or Senator Sandy Macdonald. You would think that after that investigation that would be it, but the Labor senators in this place—and the Labor Party were compliant—agreed to Tony Windsor’s request to include in the terms of reference for their Senate inquiry the investigation into these claims. So there was a further inquiry, a Senate inquiry of some 10 months. As I said, the
outcome was that there was no basis to the claims whatsoever.

What I want to raise tonight is the fact that in the government senators’ report we have asked Tony Windsor not only to withdraw his accusations and his allegations, not only to regret his actions, but to publicly apologise to the Hon. John Anderson and Senator Sandy Macdonald and to put it on the record. I have the Northern Daily Leader dated 6 October with me tonight. I am sad to say that it says:

Tony Windsor has lost his Senate bid to prove he was offered an inducement to stand down from his seat but believes he has been vindicated by the inquiry report released late yesterday.

Government senators—Shame!

Senator Barnett—Shame is correct. Thank you for that interjection. I believe this is reprehensible behaviour by the member for New England. He goes on to say in the article, ‘I feel completely vindicated.’ Goodness gracious me! After all we have gone into. What a disgrace. What reprehensible behaviour. As the Prime Minister said about Mr Windsor in the other house earlier today: why can’t he be man enough to apologise for the baseless allegations that he has made? They are allegations of the most serious order against a man who has credibility, honour, honesty and integrity that has been accepted not only in this parliament but across all quarters of this country through his long and distinguished career in federal parliament. It is accepted that he has the honour and respect of the community, and yet Tony Windsor makes these most outrageous and reprehensible accusations and then does not have the guts or the manhood to stand up, withdraw his comments and publicly apologise for those accusations.

Senator Nash—Shame!


All of those headlines are very disturbing indeed. So you would think that when the findings came out from our report, which said that there was no case to answer, there would be an equivalent fair analysis which stated: ‘No case to answer’, or ‘No bribery claims sustained’ or ‘Anderson and Macdonald are cleared’. Why wouldn’t that happen? I simply ask that question in terms of the integrity of the media that are reporting on this matter. I have looked into it. What do you do when you have a complaint about bias in the media—media which has not offered a fair analysis of this case?

With television, you have the Commercial Television Industry Code of Practice, which says:

In broadcasting news and current affairs programs, licensees:

... must present factual material accurately and represent viewpoints fairly, having regard to the circumstances at the time of preparing and broadcasting the program ...

With the print media you have the Australian Press Council and the APC Statement of Principles. Complaints of bias within the print media can be made. Then you have the
Media, Entertainment and Arts Alliance code of ethics, where the members engaged in journalism commit themselves to honesty, fairness, independence and respect for the rights of others. It says:

Do your utmost to give a fair opportunity for reply.

So I simply ask this question to those in the media: do you believe there has been a fair construction, a fair analysis and a fair outcome in terms of the integrity and honesty of the Hon. John Anderson and Senator the Hon. Sandy Macdonald? I leave that question for those involved. The House of Representatives will make their own decision in terms of the reprehensible behaviour of this particular member. I raise these concerns and say they are most—

Obesity

Senator LUNDY (Australian Capital Territory) (10.22 pm)—Tonight I rise to once again bring the Senate’s attention to one of the most glaring policy failures after nine long years of the Howard government: Australia’s general population is getting physically bigger. Current estimates suggest that 2.4 million Australian adults are obese and a further 4.9 million are overweight. Levels of obesity amongst women have doubled in the last 15 years. Well over 30 per cent of Australian children are overweight or obese, with the most recent estimates of obese children being 12 per cent.

This is not a new story. TV current affairs programs have been doing stories on this issue for the last few years. The print press has also been quite diligent, with barely a week going by without a major paper running a story about this crisis and regular reporting of the rising incidence of the diseases associated with the so-called obesity epidemic. Glossy lifestyle magazines have been focused on health, weight and fitness for as long as I can remember. In short, this issue is well recognised and gets a great deal of media attention.

What is alarming is that, in spite of the widespread public discussion of the national population’s weight problems, the situation continues to get worse. There are a range of potential health problems raised by a larger proportion of the adult population being overweight, and this has a dramatic impact on overall public health. There will be a related rise in debilitating and life-threatening conditions such as type 2 diabetes, cardiovascular disease, stroke, osteoarthritis, cancer rates and a range of other health problems.

CSIRO research suggests that 11 per cent of cancers are attributable to low consumption of vegetables and fruit. In terms of health care costs, it is estimated that low vegetable intake—that is, less than four average sized serves per day—accounts for 17 per cent of the cost of bowel cancer, two per cent of the cost of breast cancer and nine per cent of the cost of both lung and prostate cancer. Twenty-one per cent of the cost of lung cancer and four per cent of the cost of breast cancer is attributable to low fruit intake—that is, less than three serves per day. The protective effects of vegetables and fruit against cancers as well as other diseases such as coronary heart disease and type 2 diabetes should lead to the promotion of vegetables and fruit consumption as a national public health priority.

Australians are aware of the problem. They read about the problem, they discuss the problem, but nevertheless they continue to add to the problem. What is fundamentally missing is leadership. The Howard government has not provided the leadership necessary to make a difference, to turn this trend around. Only last month the health minister, Mr Abbott, released a longitudinal study on women’s health which has been collecting
data since 1996. This study proved what had long been suspected: adult women’s weight levels are increasing across the board. The study proved that younger and mid-age women’s levels of obesity have increased since the study’s first survey in 1996. In 1996, 5.9 per cent of younger women were classified as obese, and this had increased by the most recent survey to 13.9 per cent. The corresponding figures for mid-age women are 17.7 per cent obese in 1996 and 22.8 per cent today. These figures only include the obese category and, if one factors in the figures in the overweight category and above from the study, we find that 34.3 per cent of young women today are overweight or above and 54.3 per cent of mid-age women today are overweight or above.

The causes of this trend are changes in our diet and levels of exercise. Figures show that the Australian population has increased its overall energy intake over the last couple of decades. The National Nutrition Survey has shown that this increase has mainly derived from a 20 per cent increase in total consumption of carbohydrates—this includes but is not limited to things like pizza, chips, cakes, biscuits, bread—and a 20 per cent increase in sugar intake. There is evidence that rates of participation in physical activity are declining. Three surveys undertaken by the National Public Health Partnership for the Getting Australia Active report showed that the proportion of the adult population that met the criterion for sufficient physical activity for health benefit had declined from 62 per cent in 1997 to 57 per cent by the year 2000.

So we are eating more high-energy foods and doing less physical exercise. There are many reasons for this trend. The hectic pace of modern life and longer work hours have left adults less time to exercise and with a greater reliance on convenience foods with pre-prepared food ingredients. At the same time, the nature of people’s pastimes are becoming more sedentary. I know from experience that, for people exhausted from long hours at work and hectic domestic responsibilities, pastimes such as watching TV start to grow in appeal.

Many other factors come into play—for example, the general perception of it being less safe in urban environments has contributed to fewer people, particularly children, exercising in public places and parks. Also, there is the propensity for people to drive shorter distances where previously they may have walked or ridden their bikes—again, usually because of time pressures or perceptions about decreased safety in the community.

Regardless of the barriers that are preventing Australians from being more physically active and eating well—whether it is geographic isolation, affordability, busy lives, poor attitude or the need for nutrition education—the results are now plainly obvious: we are less active and weigh more than at any time in our history. This crisis has not suddenly ambushed the government. This data has been demonstrable for some period of time. All of this has been well documented as happening since 1996—over the last nine years; over these long nine years of the Howard government. For once the Howard government cannot point the finger at somebody else—this crisis has developed on their watch. There has been a massive policy failure on behalf of the Howard government to encourage and support a fit and healthy Australian society. It is just not right when you think that our whole ethos in Australia is about getting into the outdoors, getting physical and playing lots of sport. It does not fit, and the Howard government is to blame for this trend.

Under the Howard government, Active Australia, the former Sports Commission division responsible for the delivery of
physical activity participation programs to all Australians, was effectively axed. The policies put forward by the Howard government have been farcical and inept, such as the short-lived ‘fat grants plan’, under which it was proposed that government members of parliament would lobby for funds to support healthy living projects in their electorate regardless of need.

The Howard government also completely ignored the findings and recommendations of their own National Obesity Taskforce which were handed down in November 2003. It was after Labor introduced innovative plans on obesity in 2003 that the Howard government were finally forced to move and in the following budget and again in June we had the Building a Healthy, Active Australia initiative. It is important to note that the targeted sports program was a dismal failure and there are emerging problems with the after-school sports program. There is certainly no sign that these programs are changing the obesity and overweight profiles of Australia’s kids.

The major limitations with their policies to date are that they have been entirely focused on obesity in children. That is a critical area, but it is not sensible to ignore the issue confronting many adult Australians as well. The Howard government seems intent on ignoring this aspect of the problem—adult obesity—and perhaps just hoping it will go away. Well, it won’t, and the figures on women’s health I quoted earlier from the longitudinal study which were released last month demonstrate that. What was Mr Abbott’s response to the release of these catastrophic results? One would have assumed Mr Abbott would have outlined a major government initiative to try and turn around this trend, but no. Mr Abbott merely rehashed adult health and fitness initiatives that had already been announced some years before—dietary guidelines, the food selection guide, the Australian Guide to Healthy Eating and national physical guidelines.

There are many good initiatives around the country, such as in school canteens. Many adults are getting together and finding their own solutions, but I cannot give the Howard government any credit for this. This is happening because of champions in those communities: the teachers, the principals, the sports and recreation leaders who are doing it themselves. But the Howard government cannot hide behind the efforts of the community. If the current trends continue unchecked, the authors of the most recent women’s health study have estimated that women who are in the 20- to 30-year age bracket today will be on average 13 kilos heavier when they reach 50.

It is notable today that the CSIRO, as under-resourced as they are, are helping to fill the policy void with the release of their new book the Total Wellbeing Diet. I congratulate Dr Manny Noakes, Dr Peter Clifton and their team. This book is a bestseller and fulfils a dire need to inform Australians in layman’s terms and through practical advice about the basics of good nutrition. Most importantly, it promotes the dual strategy for healthy living with nutritious eating on one side and more physical exercise on the other. (Time expired)

Australian Defence Force Parliamentary Program

Senator ADAMS (Western Australia) (10.32 pm)—I wish to continue my remarks on the Australian Defence Force Parliamentary Program this evening. This program gives parliamentarians a choice of being attached to the Navy, Army, Air Force or joint operations or to participate in defence and strategic studies dialogue by attending selected study modules at the Australian Defence College at Weston Creek in the Australian Capital Territory. Another important part of this program is the parliamentary ex-
change where Australian Defence Force personnel are attached to the office of a parliamentarian at Parliament House for a period of one week. Exchange personnel gain an insight into the parliamentary and committee processes, develop an appreciation of the departments that operate within Parliament House and learn how a senator or an MP operates within the Australian Parliament House environment. Senators and members are asked to consider acting as a sponsor for an Australian Defence Force member in this reciprocal exchange. The joint operations attachment allows participants to observe operational planning and process for surveillance at the strategic, operational and tactical level and participate in tactical operations, including Coastwatch surveillance.

As a recent participant in the 2005 program, I now have another opportunity to speak of my experience and that of my two colleagues who accompanied me on a five-day attachment to the Royal Australian Navy’s training establishments. In my earlier speech on the parliamentary program, I gave a brief description of HMAS Waterhen and the role it plays as a Royal Australian Navy commissioned establishment. I thank Commander Steve Reid for his briefing and hospitality during our visit. HMAS Waterhen has recently undergone a two-year $70 million refurbishment and is now well equipped to serve the Royal Australian Navy into the 21st century and beyond. This establishment is also the home to the Reserve mine warfare groups, the fleet intermediate maintenance activity, the mine warfare faculty and the Australian clearance diving team I. We were given an excellent briefing and demonstration by the clearance diving team members, and I thank them for the effort they made for us. Six Huon class minehunter coastal vessels are based at Waterhen as well as a number of support craft. We were very fortunate in having the opportunity to sail on the minehunter HMAS Yarra and to see its sonar equipment in action.

HMAS Penguin was the next establishment we visited, and I thank Commander Piers Chatterton for an excellent briefing and tour of the facilities. HMAS Penguin is part of Navy’s Systems Command. Its primary role is to provide trained personnel to the fleet and it is the home of the Royal Australian Navy Diving School, the Royal Australian Hydrographic School and the medical training school. The Balmoral Navy Hospital, which is the Navy’s principal medical facility, is located here and provides trained personnel for the primary casualty receiving facilities who serve in the Navy’s amphibious training ships, HMAS Kanimbla and HMAS Manoora. The submarine and underwater medicine unit and the Royal Navy recompression chamber facility are also based here. Together, they are considered as a centre of excellence for underwater medicine. I was most impressed with this establishment and the work being carried out here. HMAS Penguin has a strategic alliance with the Royal North Shore Hospital but continues to provide primary medical care to defence personnel, a pathology service and psychology staff to provide counselling services and critical stress incident monitoring.

Our final destination was to HMAS Watson on the cliffs of South Head in Sydney. I described the beautiful Memorial Chapel of St George the Martyr in my last speech, and I would like to thank Commander Ian Middleton and Commander John Hielscher for their wonderful hospitality. HMAS Watson is the home of the Training Authority Maritime Warfare, which helps prepare officers and sailors of the Royal Australian Navy to go to sea and be part of the team who contribute to fleet requirements and outcomes. This authority provides the training for principal warfare officers and junior seaman officers and all levels of navigation personnel. The
bridge simulator at HMAS Watson was a fascinating concept and it was interesting to see the training done in this area, after having seen it in action on HMAS Stuart. We also had the opportunity to sit in on a naval examination board interview, which was very interesting compared to the civilian interview process. In closing, I would like to commend the Australian Defence Force Parliamentary Program to all parliamentarians.

**Welfare to Work**

**Senator CAROL BROWN** (Tasmania) (10.37 pm)—I rise tonight to draw the Senate’s attention to the case of a Tasmanian woman who informed my office of her 12-month fight against a Centrelink debt. It comes at a time when families are feeling the pinch under this government in so many ways. Many families are cutting corners, stretching the household budget just to afford petrol for their cars. That is before they even begin to consider other expenses like mortgages, credit cards, medical bills and rates. To these families, unwelcome, unwarranted and unexpected bills are the last thing they want coming in just before a trip to the dentist.

Imagine, then, Melissa’s frustration when out of the blue she received in one day six debt notices from Centrelink. Melissa’s story is both revealing in its own right and a warning of what is to come as the government’s Welfare to Work reforms descend upon this parliament. Around 12 months ago Melissa was advised that her husband had underdeclared his income over a period of four years and owed the government $7,000. She had not heard anything of this debt before. There had not been a call, there had not been a letter, there had not been so much as a sniff of a problem until the day she received her hefty mail quota of six letters from Centrelink.

She says she was given two weeks to settle the debt. Seven thousand dollars is a huge sum to be hit with out of the blue, and giving a family on welfare payments two weeks to settle a debt of this magnitude is a joke. That aside, not surprisingly, Melissa set about proving that there was no debt and that there was no wrongdoing on her husband’s part. She requested her file from Centrelink under freedom of information, hoping to track down the paperwork and find that an error had been made. She also began scouring her personal records, checking details and referencing documents. She had learned in the past to keep records of all dealings with this agency.

She says that, when her personal file finally arrived from Centrelink, some of her personal information was missing. But what shocked her most was that attached to the back of the file was the personal information of another Centrelink client with the same name, which had been unwittingly sent to her. To receive six letters in one day alleging a $7,000 debt incurred over four years is highly unusual, to say the least, but to seek your own files and get someone else’s too is farce.

With the support of a community legal service, Melissa appealed the decision. Despite the appeal being on foot, Centrelink began taking repayments for the debt from her husband’s payments and her own. I understand $60 was taken from Melissa’s payments and $45 was taken from her husband’s—a not insubstantial amount for a struggling family to forgo. These repayments began in around February this year and were ceased when the case against them ran out of puff. I understand Centrelink has since returned the quantum repaid by Melissa and her husband.

This case poses some difficult and important questions for the government. It appears that this government has huge questions to answer on the handling of Melissa’s case.
Where does Centrelink's unauthorised release of personal information sit with the federal government's own Privacy Act, for starters? What steps were taken to reassure the other woman that the information mistakenly sent out to Melissa was recovered? Was this other woman even informed by the government that her files had been released? What internal reviews, if any, occurred following this debacle? Most importantly, what has been done to prevent something like this from occurring again?

The government is constantly telling Centrelink clients to support the system that supports them. But how well does the system support the people who need it most? With failures like this already occurring and the government about to move more Australians away from pensions and onto Newstart allowance, errors and wrongful debts may increase. The result of errors increasing at the same time as family entitlements are being slashed in the name of Welfare to Work could be crippling. The move to put single parents and disabled Australians onto Newstart would move them from one welfare payment to a lower level of welfare payment. The welfare reforms do not end there.

Many financial disadvantages will flow from this new payment for people with a disability. The Newstart allowance has harsher income tests and steeper withdrawal rates for earnings. It lacks additional income-free thresholds if you have kids. Its income-free threshold is not indexed. The payment cuts out sooner, meaning a concession card is lost sooner. Harsher assets tests and less support for education and training are also wrapped up in these moves.

Over the last couple of months, these proposals have been thoroughly analysed by the National Centre for Social and Economic Modelling, NATSEM. I had the privilege of hearing this first hand at a briefing today. NATSEM's research has shown that under the Welfare to Work proposals losses in take-home income could be as high as $122 a week for single people with disabilities who are placed on the Newstart allowance rather than the disability support pension. Beyond that, those who end up on the dole and earn $191 a week for 15 hours work will have a total income that is only $34 a week higher than what they receive under the current DSP system when they undertake no paid work at all. That is an effective rate of $2.27 an hour. It is a disgrace.

Imagine being sandwiched between these reforms and the failures of the Centrelink system. Imagine receiving six letters in one day telling you you have two weeks to pay a seven grand debt when your payments have been slashed to this level. Imagine having your personal financial information and client files distributed to third parties without your permission. Imagine a situation like Melissa's. Centrelink soaked up 12 months of Melissa's life over an error. They even forced her family to begin repaying a debt that in the end did not exist. How many more families will suffer the same fate when the Welfare to Work reforms enter this chamber in a few weeks' time?

Centrelink's own figures show that in the last financial year alone 3.8 million entitlement reviews were conducted, resulting in 525,247 payments being cancelled or reduced. While many of these cancellations and reductions were legitimate, how many others were not? How many other Australians suffered in silence instead of appealing like Melissa did? How many other Tasmanians and Australians are facing unnecessary hardship? I hope this out-of-touch government will consider these issues very seriously. My awful suspicion is that they will not.
The ACTING DEPUTY PRESIDENT (Senator Watson)—The Senate stands adjourned until 10 am tomorrow to allow honourable senators to attend a commemorative service honouring the victims of the October 2002 terrorist attacks in Bali.

Senate adjourned at 10.45 pm

DOCUMENTS

Tabling

The following government documents were tabled:

- Australian Film Commission—Report for 2004-05.
- Australian Film, Television and Radio School—Report for 2004-05.
- Department of the Prime Minister and Cabinet—Report for 2004-05.
- Department of Veterans’ Affairs—Data-matching program—Report on progress 2004-05.
- Northern Territory Fisheries Joint Authority—Report for 2002-03.
- Public Service Commissioner—Report for 2004-05, together with the report of the Merit Protection Commissioner.
- Repatriation Commission, Military Rehabilitation and Compensation Commission, Department of Veterans’ Affairs and the National Treatment Monitoring Committee—Reports for 2004-05.
- Treaties—Multilateral—Text, together with national interest analysis and annexures—

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]
Civil Aviation Act—Select Legislative Instrument 2005 No. 224—Civil Aviation (Fees) Amendment Regulations 2005 (No. 1) [F2005L03043]*.


Customs Act—
CEO Instruments of Approval Nos—
85 of 2005 [F2005L03006]*.
104 of 2005 [F2005L03039]*.

Customs By-Laws Nos—
0540003 [F2005L03056]*.
0540004 [F2005L03057]*.

Tariff Concession Orders—
0508788 [F2005L03047]*.
0509097 [F2005L03048]*.
0509609 [F2005L03049]*.
0509610 [F2005L03050]*.
0509673 [F2005L03051]*.
0509758 [F2005L03052]*.
0509811 [F2005L03053]*.
0509813 [F2005L03054]*.

Health Insurance Act—Select Legislative Instrument 2005 No. 219—Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2005 (No. 3) [F2005L03034]*.


Judiciary Act—High Court of Australia—Rule of Court, as of 30 August 2005 [F2005L02536] [tabled on 13 September 2005]—Explanatory statement.


Migration Act—Select Legislative Instrument 2005 No. 221—Migration Amendment Regulations 2005 (No. 8) [F2005L03037]*.


* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Aged Care Facilities**

(Question No. 1027)

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

(1) Since 1 January 2000, can a list be provided of all ‘spot checks’ by the Aged Care Standards and Accreditation Agency on facilities owned by Hall and Prior Aged Care or related companies and Vaucluse Nursing Home, including: (a) the date of the spot checks; (b) the name and location of the facility that was checked; (c) whether any issues or problems were identified; and (d) the nature of any issues or problems that were identified.

(2) Is the department informed of aged care facilities inspections by Worksafe Australia or equivalent agencies; if so, since 1 January 2000, can a list be provided of all worksafe inspections on either Vaucluse Nursing Home or facilities owned by Hall and Prior Aged Care or related companies be provided, including: (a) the date of the inspections; (b) the purpose of the inspection; (c) the name and location of the facility that was checked; (d) whether any issues or problems were identified; and (e) the nature of any issues or problems that were identified.

(3) (a) Does the department express concerns to providers when it becomes aware of occupational health and safety and/or resident care concerns arising from poor maintenance of facilities, such as ceilings collapsing; (b) what are the responsibilities of the department or agencies under these circumstances; and (c) how are these concerns progressed with providers.

(4) (a) How can the department assure the safety of residents and staff when incidents like this may be occurring on a regular basis; and (b) what is the department’s responsibility to ensure that providers have safe working environments for staff and living environments for residents.

(5) (a) Is the department aware of the number or details of workers’ compensation claims at aged care facilities; (b) how is the department provided with this information; and (c) what is the requirement on providers to provide this information as part of, for instance, their ongoing licensing responsibilities.

(6) Is the department aware of the number or details of workers’ compensation claims at either Vaucluse Nursing Home or facilities owned by Hall and Prior Aged Care or related companies; if so, can information be provided on: (a) the date of the claims; (b) the purpose of the claims; (c) the injuries that resulted in the claims; (d) the outcome of the claims; and (e) what was done in response to the claims.

(7) Does the department consider and monitor workers’ compensation claims and injury rates and check to see if mechanisms are in place to address the concerns when they conduct accreditation checks; if not, why not.

(8) Is the proportion of permanent employees, casual employees, trainees, contractors or agency employees considered and monitored by the department when it conducts accreditation checks on aged care facilities; if not, why not.

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

(1) (a) (b) (c) and (d) The Aged Care Standards and Accreditation Agency (ACSAA) has conducted 34 spot check visits to Hall and Prior homes and Vaucluse Nursing Home from 1 January 2000 to

Information about the history of these homes’ compliance with the accreditation standards can be found in the accreditation reports which are published on the ACSAA web-site. (www.accreditation.aust.com)

(2) (a) (b) (c) (d) and (e) Issues relating to safe working environments are the responsibility of the approved provider who has the obligation to meet appropriate state or territory laws and the accreditation standards.

(3) (a) Yes. Information received by the Department of Health and Ageing (the department), which raises concerns about poor care or the safety of residents, including issues surrounding occupational health and safety matters, are followed up either by the department or by the ACSAA to determine if there is a breach of approved provider responsibilities and whether compliance or other action is necessary. (b) and (c) The department can become aware of issues relating to resident care and building maintenance in a number of ways. These include the Complaints Resolution Scheme (CRS), a referral from the ACSAA made during the accreditation process and through the department’s building certification and fire safety declaration programs.

Through the accreditation process the ACSAA ensures that aged care homes operated by approved providers have the systems in place to ensure the safety of staff and residents, including fire, security, and other emergencies.

Failure to address areas of concern identified by the ACSAA are referred to the department, which is responsible for determining appropriate compliance action under the Aged Care Act 1997.

The department can also receive information through the CRS.

In addition, if the department considers that the information or complaint raises issues which have implications for occupational health and safety, it would refer these matters to the relevant state or territory government authority.

In all cases the action taken by the department is dependent on the nature and the severity of the issues. In all situations the approved provider is notified of any concerns and is given an opportunity to address the issues. If, however, the issues identified are not addressed by an approved provider or they pose a significant threat to the health, safety or wellbeing of care recipients the department may impose sanctions.

(4) (a) and (b) The Aged Care Act 1997 (the Act) provides for monitoring and compliance activities to be undertaken by the department and ACSAA. The Act also places responsibility on the approved provider to ensure the care and safety of residents.

The Australian Government has put in place a system for identifying an approved provider’s non-compliance and the monitoring of the care and safety of residents.

(5) (a) (b) and (c) Workers’ compensation and work safety issues are the responsibility of the approved provider and are implemented under state and territory law.

(6) (a) (b) (c) (d) and (e) See 5 (a) – (c).

(7) See 5 (a) – (c).

(8) The department does not conduct accreditation checks. Accreditation is the responsibility of the ACSAA.

Road Funding

(Question No. 1124)

Senator O’Brien asked the Minister representing the Minister for Local Government, Territories and Roads, upon notice, on 30 August 2005:
QUESTIONS ON NOTICE

(1) (a) Can the Minister advise which local councils have approached his department for additional road funding since November 2001; (b) when and under what program did each council first seek funding; and (c) how much funding did each council seek.

(2) (a) Which local councils were successful in obtaining additional funding; (b) when and under what program was additional funding approved; and (c) how much additional funding was approved.

Senator Ian Campbell—The Minister for Local Government, Territories and Roads has provided the following answer to the honourable senator’s question:

(1) (a) (b) (c) There are 2 programmes within the Transport and Regional Services portfolio under which road funding assistance has been provided directly to councils over the period since November 2001. These are the Roads to Recovery and AusLink Strategic Regional Programmes.

As there are some 700 councils, to advise the Senator as to which local councils have approached Ministers or the department for additional road funding since November 2001 would involve a significant diversion of Departmental resources.

The Roads to Recovery Programme, which since June 2005 has operated as a component of the AusLink Programme, has provided road funding assistance directly to all local government bodies eligible for Financial Assistance Grants (FAGS). The allocations under both the former and current programmes are based on the recommendations of the Local Government Grants Commissions in each jurisdiction and are fixed for the life of the programme.

The allocations under the original Roads to Recovery Programme (January 2001 to June 2005) were tabled in Parliament and gazetted. Variations to these allocations were only allowed in cases of council amalgamation or abolition or where a council’s responsibilities for roads expanded.

The provisions of Part 8 of the AusLink (National Land Transport) Act 2005 under which the AusLink Roads to Recovery programme operates are very similar to those of the Roads to Recovery Act 2000 in relation to allocations ie no changes are allowed except in specified circumstances.

The allocations under the original Roads to Recovery programme and under the new AusLink Roads to Recovery Programme can be viewed on the website of the Department of Transport and Regional Services at: http://www.auslink.gov.au/policy/programmes/r2r/roads_to_recovery.aspx.

Special provisions apply to AusLink Roads to Recovery funding for roads in unincorporated areas - places where there are no councils and the State and Northern Territory governments provide local government services.

Councils also have access to funding under the AusLink Strategic Regional Programme.

The 2005-06 Federal Budget provides $150 million for the AusLink Strategic Regional Programme to 2008-09. Of this funding, $120 million is allocated to strategic projects and $30 million for roads in unincorporated areas from 1 July 2005 under this programme.

In May 2005 the Australian Government advised councils of its intention to call for competitive bids in 2006-07 under this programme. The Australian Government has already received 27 submissions. These submissions will remain current until the call for bids. Councils will have an opportunity to update proposals at the appropriate time.

(2) (a) (b) (c) There has been no formal call for applications under the AusLink Strategic Regional programme.

Commonwealth Scientific and Industrial Research Organisation: Sale of Land

(1) (2) Senator Ian Campbell—The Minister for Local Government, Territories and Roads has provided the following answer to the honourable senator’s question:

Commonwealth Scientific and Industrial Research Organisation: Sale of Land

(1) (2) Senator Webber asked the Minister representing the Minister for Education, Science and Training, upon notice, on 6 September 2005:

QUESTIONS ON NOTICE
(1) Was the block of land at Lot 61, Leach Street, Marmion, Western Australia, purchased by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) in 1975 on the understanding that it would be returned to the Wanneroo Shire Council should it no longer be required for marine research.

(2) Did the CSIRO sell the land in 2003 to a property developer; if so, why did the CSIRO sell the land in contravention of its agreement to return the land to the local council.

(3) What mechanisms, if any, are in place to ensure that the CSIRO does not renge on other agreements.

Senator Vanstone—The Minister for Education, Science and Training has provided the following answer to the honourable senator’s question:

(1) The land at Lot 61 Leach Street Marmion was purchased by the Commonwealth for CSIRO for an agreed fair consideration with no obligation in respect to any return of the land. Prior to selling the land on the open market CSIRO communicated with both the City of Joondalup Council, which encompasses the old Wanneroo Shire, and the Western Australian State Government. The council showed no interest in acquiring the property either at this time or during the marketing period.

(2) CSIRO sold this property in December 2003. This sale did not contravene any agreement. As explained in the answer to (1) above, CSIRO had no obligation or agreement that the Marmion land be returned to the local council.

(3) As previously stated, CSIRO has not reneged on any agreement.

In regard to procedures for the disposal of property, a record of all interests in CSIRO property is held by the organisation. CSIRO also has a communication process that involves advising local councils and local Federal Members of Parliament of proposed property disposals.

The Marmion property was advertised and marketed through an expression of interest process. CSIRO kept the local council informed of the key aspects of the sale process.

Higher Education: Podiatry Courses

(Question Nos 1154 and 1155)

Senator Allison asked the Minister representing the Minister for Education, Science and Training, upon notice, on 7 September 2005:

(1) Is the Minister aware that the University of Western Sydney (UWS) has dropped its podiatry course due to lack of funding.

(2) Given the shortage of podiatrists, has the Minister made representations to the UWS on the matter.

(3) Has the Government considered providing funding to reinstate the course.

Senator Vanstone—The Minister for Education, Science and Training has provided the following answer to the honourable senator’s question:

(1) The University of Western Sydney (UWS) suspended its commencing intake of podiatry students in 2005 while it undertook a review of the programme. The University received the same level of funding for its podiatry units as other higher education providers.

(2) I wrote to the Vice-Chancellor on 8 December 2004 expressing my concerns.

(3) No. All universities receive the same funding rates for each discipline cluster. All universities received increased funding in 2005 for each Commonwealth supported place and will receive further increases in 2006 and 2007 subject to complying with workplace relations requirements and governance protocols.

As UWS was unable to commit to the future of its podiatry programme, I have transferred 37 commencing podiatry places from it to the University of Newcastle for a new podiatry course to
commence in 2006 or 2007. In addition I have allocated 23 new podiatry places to commence in
2007 at the University of Newcastle. By 2010 the University of Newcastle will have around 164
Commonwealth supported podiatry places.

Maralinga
(Question No. 1158)

Senator Carr asked the Minister for Immigration and Multicultural and Indigenous Af-
fairs, upon notice, on 7 September 2005:

(1) Has the Minister been a party to discussions with the Minister for Education, Science and Training,
aimed at offering Maralinga Tjarutja millions of dollars to take back the Maralinga site.

(2) Has the Minister used the department’s resources to undertake due diligence on the success of such
a venture, including reference to necessary skills and training.

(3) Has the Minister used the department’s resources to assess if the resource centre, if effectively
managed, is viable.

(4) Has the Minister used the department’s resources to assess if a payment of many millions of dollars
to the Maralinga Tjarutja for a resource centre compares favourably with other competing Indige-
nous funding requests.

(5) Will a decision be made to endorse the Department of Education, Science and Training proposal
before the above 3 assessments are made.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) Yes.

(2) to (5) The Government is considering a settlement proposal in the context of a request that
Maralinga site land be returned to its traditional owners, the Maralinga Tjarutja people. I am ad-
vised that this request is consistent with the agreement negotiated by the former Labor Government
in 1995. The current negotiations have not yet concluded.