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the Senate and committee hearings are available at

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http://parlinfoweb.aph.gov.au

SITTING DAYS—2005

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

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FORTY-FIRST PARLIAMENT
FIRST SESSION—FOURTH PERIOD

Governor-General

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

Senate Officeholders

President—Senator the Hon. Paul Henry Calvert
Deputy President and Chairman of Committees—Senator John Joseph Hogg

Leader of the Government in the Senate—Senator the Hon. Robert Murray Hill
Deputy Leader of the Government in the Senate—Senator the Hon. Nicholas Hugh Minchin
Leader of the Opposition in the Senate—Senator Christopher Vaughan Evans
Deputy Leader of the Opposition in the Senate—Senator Stephen Michael Conroy
Manager of Government Business in the Senate—Senator the Hon. Christopher Martin Ellison
Manager of Opposition Business in the Senate—Senator Joseph William Ludwig

Senate Party Leaders and Whips

Leader of the Liberal Party of Australia—Senator the Hon. Robert Murray Hill
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Nicholas Hugh Minchin
Leader of The Nationals—Senator the Hon. Ronald Leslie Doyle Boswell
Deputy Leader of The Nationals—Senator the Hon. 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
Leader of the Australian Greens—Senator Robert James Brown
Leader of the Family First Party—Senator Steve Fielding
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
Australian Greens Whip—Senator Rachel Siewert

Printed by authority 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>Prime Minister</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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<td>Minister for Defence and Leader of the</td>
<td>Senator the Hon. Robert Murray Hill</td>
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<td>Government in the Senate</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</td>
<td>Senator the Hon. Nicholas Hugh Minchin</td>
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<tr>
<td>Leader of the Government in the Senate and</td>
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<td>Vice-President of the Executive Council</td>
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<tr>
<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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<tr>
<td>Minister for Education, Science and Training</td>
<td>The Hon. Dr Brendan John Nelson MP</td>
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<tr>
<td>Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues</td>
<td>Senator the Hon. Kay Christine Lesley Patterson</td>
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<td>The Hon. Ian Elgin Macfarlane MP</td>
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<tr>
<td>Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service</td>
<td>The Hon. Kevin James Andrews MP</td>
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<tr>
<td>Minister for Communications, Information Technology and the Arts</td>
<td>Senator the Hon. Helen Lloyd Coonan</td>
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<tr>
<td>Minister for the Environment and Heritage</td>
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(The above ministers constitute the cabinet)
HOWARD MINISTRY—continued

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<td>Senator the Hon. Ian Douglas Macdonald</td>
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<tr>
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<td>Senator the Hon. Charles Roderick Kemp</td>
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<tr>
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<td>The Hon. Joseph Benedict Hockey MP</td>
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<td>Minister for Human Services</td>
<td>The Hon. John Kenneth Cobb MP</td>
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<tr>
<td>Minister for Citizenship and Multicultural Affairs</td>
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<tr>
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<td>The Hon. Patrick Francis Farmer MP</td>
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SHADOW MINISTRY

Leader of the Opposition: The Hon. Kim Christian Beazley MP
Deputy Leader of the Opposition and Shadow Minister for Education, Training, Science and Research: Jennifer Louise Macklin MP
Leader of the Opposition in the Senate, Shadow Minister for Indigenous Affairs and Shadow Minister for Family and Community Services: Senator Christopher Vaughan Evans
Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications and Information Technology: Senator Stephen Michael Conroy
Shadow Minister for Health and Manager of Opposition Business in the House: Julia Eileen Gillard MP
Shadow Treasurer: Wayne Maxwell Swan MP
Shadow Attorney-General: Nicola Louise Roxon MP
Shadow Minister for Industry, Infrastructure and Industrial Relations: Stephen Francis Smith MP
Shadow Minister for Foreign Affairs and Trade and Shadow Minister for International Security: Kevin Michael Rudd MP
Shadow Minister for Defence: Robert Bruce McClelland MP
Shadow Minister for Regional Development: The Hon. Simon Findlay Crean MP
Shadow Minister for Primary Industries, Resources, Forestry and Tourism: Martin John Ferguson MP
Shadow Minister for Environment and Heritage, Shadow Minister for Water and Deputy Manager of Opposition Business in the House: Anthony Norman Albanese MP
Shadow Minister for Housing, Shadow Minister for Urban Development and Shadow Minister for Local Government and Territories: Senator Kim John Carr
Shadow Minister for Public Accountability and Shadow Minister for Human Services: Kelvin John Thomson MP
Shadow Minister for Finance: Lindsay James Tanner MP
Shadow Minister for Superannuation and Intergenerational Finance and Shadow Minister for Banking and Financial Services: Senator the Hon. Nicholas John Sherry
Shadow Minister for Child Care, Shadow Minister for Youth and Shadow Minister for Women: Tanya Joan Plibersek MP
Shadow Minister for Employment and Workforce Participation and Shadow Minister for Corporate Governance and Responsibility: Senator Penelope Ying Yen Wong

(The above are shadow cabinet ministers)
SHADOW MINISTRY—continued

Shadow Minister for Consumer Affairs and Shadow Minister for Population Health and Health Regulation
Laurie Donald Thomas Ferguson MP

Shadow Minister for Agriculture and Fisheries Shadow Assistant Treasurer, Shadow Minister for Revenue and Shadow Minister for Small Business and Competition
Gavan Michael O’Connor MP
Joel Andrew Fitzgibbon MP

Shadow Minister for Transport
Senator Kerry Williams Kelso O’Brien

Shadow Minister for Sport and Recreation
Senator Kate Alexandra Lundy

Shadow Minister for Homeland Security and Shadow Minister for Aviation and Transport Security
The Hon. Archibald Ronald Bevis MP

Shadow Minister for Veterans’ Affairs and Shadow Special Minister of State
Alan Peter Griffin MP

Shadow Minister for Defence Industry, Procurement and Personnel
Senator Thomas Mark Bishop

Shadow Minister for Immigration
Anthony Stephen Burke MP

Shadow Minister for Aged Care, Disabilities and Carers
Senator Jan Elizabeth McLucases

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

Shadow Minister for Overseas Aid and Pacific Island Affairs
Robert Charles Grant Sercombe MP

Shadow Parliamentary Secretary for Reconciliation and the Arts
Peter Robert Garrett MP

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

Shadow Parliamentary Secretary for Defence and Veterans’ Affairs
The Hon. Graham John Edwards MP

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP

Shadow Parliamentary Secretary for Environment and Heritage
Jennie George MP

Shadow Parliamentary Secretary for Industry, Infrastructure and Industrial Relations
Bernard Fernando Ripoll MP

Shadow Parliamentary Secretary for Immigration
Ann Kathleen Corcoran MP

Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Science and Water
Senator Ursula Mary Stephens

Shadow Parliamentary Secretary for Northern Australia and Indigenous Affairs
The Hon. Warren Edward Snowdon MP
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 9.30 am and read prayers.

AUSTRALIAN GREENS Leadership and Office Holders
Senator BOB BROWN (Tasmania) (9.31 am)—by leave—That leave is received with much joy, and I thank the members opposite. I notify the Senate that I have been elected as parliamentary leader of the Australian Greens, and Senator Siewert has been elected as whip of the Australian Greens.

NOTICES Presentation
Senator Siewert to move on Monday, 5 December 2005:
That the Senate—
(a) notes:
(i) the release of the submission by Women With Disabilities Australia (WWDA) to the Government on the ‘Chairman’s text for a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities’,
(ii) that, according to this report, there are 1.9 million women with disabilities in Australia and that it is widely acknowledged that they are one of the most marginalised groups in society, suffering triple discrimination—female, poor and disabled,
(iii) that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) does not explicitly refer to women with disabilities and is not considered to adequately address their needs, and
(iv) that the Government has not signed the Optional Protocol to the CEDAW which passed a general recommendation to ensure that it also covered the human rights of women with disabilities; and
(b) supports the recommendation from the WWDA that a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities must contain a substantive article on women with disabilities, in recognition of the need to acknowledge, emphasise and address the particular disadvantages faced by women the world over.

WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005
Declaration of Urgency
Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (9.31 am)—I declare that the Workplace Relations Amendment (Work Choices) Bill 2005 is an urgent bill and move:
That this bill be considered an urgent bill.
Senator Ludwig—Can I speak to that motion?
The PRESIDENT—The motion is not debatable, I am informed.
Senator Ludwig—I seek leave to speak to that motion.
Leave not granted.

Suspension of Standing Orders
Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (9.32 am)—Pursuant to contingent notice, I move:
That so much of standing order 142 be suspended as would prevent Senator Ludwig making a statement.
The position is that this government has finally pushed through what we thought was coming in any event. It has clearly decided to cut off the debate on the Workplace Relations Amendment (Work Choices) Bill 2005—the extreme position of ensuring that those people remaining to speak cannot be
heard. It has denied people who would otherwise speak on this legislation the ability to make a speech on the second reading debate on this legislation.

**Government senators interjecting—**

**Senator LUDWIG—** The government may laugh about this, but it is a very serious matter. Without notice, without advice from the Manager of Government Business in the Senate, they come in here to take this action. The government has not provided advice to the opposition about this tactic of bringing to a close the debate on the workplace relations legislation. In the past we have had cooperation between the government, the opposition and the minor parties as to how we manage this chamber. This government has now demonstrated utter contempt for the procedures and processes of this parliament by ensuring that we will not be heard, by ensuring that they can come in here, declare the bill urgent, cut off the second reading debate and deny those people remaining to speak on the second reading debate the ability to be heard.

The coalition also has utter contempt for the orderly processes of this Senate chamber. We find the manager has taken it upon himself to determine how this chamber will operate. All the good devices of being able to consult have been thrown out the window, trashed, thrown in the bin, and we have the government exercising its numbers in this place to determine what legislative program will be proceeded with. This chamber is not being treated with respect.

This is not the first abuse; this is one of many. On 1 July, the PM intimated that there would be business as usual. Business as usual would generally mean that the procedures in this chamber would be laid out. We would obviously get to this point at the end of the year where there is a requirement to utilise the time available to deal with the legislation. We would then have the ability to have the leaders and whips look at the legislation. Instead, we have this government coming into the chamber, moving a motion without consultation and without informing the opposition that this was the tactic of the day—a surprise tactic. Well, it is no surprise. There are no surprises in this place, because you have got to stand up and be counted.

The Liberals and the National Party are supporting this motion to ensure that we shut down the debate in respect of this legislation. We have got a government that has not only exercised the guillotine and the gag in the last six months but has also ensured that there would be no references on some matters of importance. We have had the McGauran incident—if I can call it the Senator McGauran incident—where utter contempt was shown to this side of the chamber, and we have the continuation of that now.

**Senator McGauran—** I apologised for that.

**Senator LUDWIG—** We have talked about the incident—that is all. You cannot wipe that from the record. We understand that you apologised for it. But the way the coalition treat this chamber is shameful and they should listen to what their PM and Senator Hill said: that a responsible government would not take these actions; a responsible government would ensure that there would be business as usual in this chamber. The government have not acted responsibly when it comes to the management of this chamber. They complain that there has not been sufficient business done in the hours we have had, but their own incompetence has led to that. It is their own inability to manage the chamber that has put us in this position—as well as their own inability to consult to ensure that the work of this chamber can be dealt with properly and appropriately to ensure
Senator BARTLETT (Queensland) (9.37 am)—The simple fact is that, as we have seen this morning, the government have chosen to introduce a guillotine, without notice, on the Workplace Relations Amendment (Work Choices) Bill 2005. It is probably no great shock to all of us here that the government would want to guillotine this legislation through. Indeed, I would suggest that the only reason they did not guillotine it earlier was that they had not figured out amongst themselves what they would be willing to support in terms of government amendments to the legislation. That lack of certainty amongst government members about their own position is the only thing that has given the Senate and the public the grace, I would suggest, of an extra day or so of debate on this legislation.

The simple fact is that this is a perfect example of the most flagrant untruth the Prime Minister has told since the last election, when he assured the Australian people that he would not abuse his unexpected and very slim majority in the Senate. What we have seen during the last six months—and what has been reaffirmed today in a very brutal, callous and contemptuous way—is utter contempt for the Senate. There has not even been the basic courtesy of providing to the Senate notice that they were going to do this and detail about how many hours were to be allowed to debate the bill. There is still nothing before the Senate, even after the government have moved this guillotine, that gives us any knowledge about how long the government are willing to provide for further debate on the legislation. I do not think you could get a more blatant sign of contempt than to come in and move a guillotine without even saying what amount of time is going to remain.

I am sure the government will go on with all sorts of nonsense about how this has been the longest debate since 1996 and so on, but the simple fact is that this legislation is not only the most comprehensive workplace change since 1996 but also the most comprehensive workplace relations change in 100 years. So I think it is worthy of debate, particularly given the earlier contempt that the government showed by not allowing even a vaguely decent Senate committee inquiry into the legislation. That is the sort of unprecedented level of contempt that we are seeing here from the government. It has to be emphasised that the responsibility for this does not lie just with the minister or the government; it lies with every single government senator in this place. Any single individual Liberal or National Party senator could prevent this outrageous show of contempt from succeeding by simply standing up and saying, ‘I will not support any motion that prevents proper examination of this legislation or of the amendments to the legislation that have been circulated.’

It should also be emphasised that the key part of this debate is not the second reading stage but the committee stage. We cannot go on to the committee stage of this debate until all the amendments are ready, and it is the government amendments that have not been ready. Despite all the resources that the government have had—they have had a whole department behind them—the government are moving a guillotine without, to this very moment, having circulated their own amendments to this legislation. They have had their little backroom secret deals with their backbench committees and they have had their party room meetings in secret to decide what changes they will support, but they have not bothered to share those amendments with the Senate, let alone the rest of the world, so nobody knows.
Nobody knows what the detail is going to be, so it has been impossible for the Senate to start on the committee stage. We have been waiting for the government—with all their resources. However, with the outrageously short time frames and the truncated committee inquiry that we have had to work with, there are about 40 pages of amendments just from the Democrats, and yet we will be prevented, because of this sort of contempt, from having those amendments properly examined by the chamber. There is no greater example of the Prime Minister’s dishonesty in making his flagrantly untrue statement that he would not misuse his control of the Senate. This is a perfect example. The government’s contempt for the Senate reflects contempt for the Australian people, particularly on legislation that is going to impact so comprehensively on them.

Senator BOB BROWN (Tasmania) (9.43 am)—This is a case of the government—and that means the Prime Minister’s office, because that is the government of the day—treating the Senate with utter contempt and also treating the people of Australia, the workers of Australia, with utter contempt. I heard Senator Joyce on the radio this morning saying that he had saved Christmas. He said that The Nationals had saved Christmas. Senator Joyce is Australia’s Christmas turkey, if not Australia’s Christmas chicken, for having backed off on the need to protect Australians, and their rights, and their income, and their ability to be with their families on days like Christmas Day. If you go to work on Christmas Day, do not expect to get penalty rates—

Senator Sherry—Or any others.

Senator BOB BROWN—Or any of the other time-honoured conditions—they are to be stripped from you. So you have got a negative present on Christmas Day, and it is the same with other holidays, courtesy of The Nationals. Christmas Day is a day for having things taken off you. It is a day for having income taken off you, for having rights taken off you.

Senator Joyce interjecting—

Senator BOB BROWN—Senator Joyce says it is wrong. He can get up and say what he likes. The fact is that it is true. He has been the turkey in this whole process trying to aggrandise himself about looking after Australian families and Australian workers when in fact he has been plucking every feather out of their rights—rights which have been put together in this great nation of ours over the last 100 years. This man, this party and this government are pulling apart this great nation’s humanitarian workplace arrangements, this great nation’s determination to be egalitarian, the fair go which is the centre of this nation’s philosophy towards people. He might be gobbling from the back bench over there, but it is not going to impress the voters. Senator Joyce has been a turncoat when it comes to protecting families and protecting the rights of Australians. And so has his party and so has this government. This is about dividing.

Honourable senators interjecting—

Senator BOB BROWN—He says he is the only one—isn’t that marvellous! But, if you are going to be the Christmas turkey, you have to put up with some heat. It keeps coming. People out there know what is going on here. This is a person of little substance when it gets down to making a real stand for the Australians who matter—that is, the workers who keep this country running. It is not the bosses, who take home their millions at the end of the year, or who, when they get sacked for failing to run a company, take home $4 million in some sort of package they have put together. That is who you are defending—that is who the National Party is defending: the wealthy, the silver spoon lot,
the billionaires. But it is not the workers who are being defended here by the National Party, in the bush or elsewhere. They are having the rug pulled out from under them.

It is a duplicitous act. When you have a piece of legislation like this that rips away the right of average Australians, there is nothing worse than having somebody come along and put up a fantail and say, ‘I’m covering this; it’ll all be pretty.’ That is the worst thing you can do. That is what Senator Joyce is doing in this process. What we are having guillotined through here with his vote—he is going to vote for it—is a complete abrogation of a century of workplace rights, defence of workers in their workplace and the right of Australians to get a fair day’s pay for a fair day’s work and penalty rates when they are working on days that are outside the working week as we have known it in Australia. I do not know where Senator Joyce has been, but, if you are mixing with the Australian people around this country, time and time again they come up and say: ‘I depend on penalty rates. I depend on the extras. My family depends on these things. But now I am going to left with—’ (Time expired)

Senator Joyce (Queensland) (9.48 am)—I think we should go through the whole iconic public holiday scenario so that we get it clearly on the record. It is illegal—

The President—Order! Senator Joyce, the motion is in relation to suspension of standing orders. I draw your attention to that.

Senator Chris Evans—On a point of order, Mr President: if he wants to speak on the bill, he has to put his name on the list.

Senator Joyce—We should continue on and get this legislation bedded down. We have had innumerable debates. We have also secured some major amendments protecting the iconic public holidays. The National Party has saved Christmas. The National Party has saved Good Friday.

Senator Murray—Mr President, I rise on a point of order. We do not have the amendments before us; we do not know what the senator is talking about.

The President—The senator is having his five-minutes worth on the suspension of standing orders, and I remind him that that is the question we are debating.

Senator Joyce—I acknowledge that, Mr President, and I return to the issue that we should suspend standing orders. We should guillotine this debate and get on with it, do our job and get this piece of legislation bedded down. There is only one way this argument is going to be won or lost, and that is over the next year and a half when the sky does not fall, when people are still collecting their pay packets and when their standard of living goes up. They will be able to turn around and reflect on those who declared that the wolf was going to come and gobble them up. The wolf has not actually turned up. Those people are going to look a bit foolish. I think it is about time we avoided this procrastination. Apart from theatrics, there is no purpose to it.

It is great to see the debate carrying on, but I think it is about time that we get to some of these amendments, which will be tabled. You will be able to see what the National Party has extracted in this debate and you will be able to see that the default mechanism will be a fortnight, that the loopholes and unfair dismissal laws will be closed up, that public holidays will be covered and that the seven amendments that the committee brought forward will go forward. It will be clear to everybody that the government has a direction—the government is prepared to lead. People vote for people who lead; they do not vote for people who follow. The government is leading, and it is going to
lead forward with this piece of legislation. In due course people will realise, as their standard of living goes up and as they become wealthier, that it was right for us to go forward with this debate, to close this debate down and to take it to a committee stage.

We have listened to the mindless ramblings of Senator Brown and others on the other side as they prostrated themselves and frothed at the mouth as they talked about how the sky will fall. We need the committee stage to start so that we can get stuck into the theatrics. We need some purpose, and the only purpose they can get is volume. There has never been a constructive amendment suggested by the Labor Party. They want to throw the whole thing out. They believed a couple of weeks ago that, when the Senate obstructed supply in 1975, it was the most evil thing on earth. But apparently now the Senate can throw out legislation holus-bolus.

Senator Sterle interjecting—

The PRESIDENT—Senator Sterle, come to order! I have let you have a good go. I think it is about time you let the senator continue with his debate.

Senator JOYCE—I look forward to the committee stage, when we can listen to some more mindless ramblings. I look forward to Senator Brown standing up, putting the whales back in the ocean and giving himself some sort of purpose in life. I look forward to the Labor Party not suggesting any amendments but just suggesting that the Senate should be some sort of obstructionist house that never actually gets forward with a policy, that never actually delivers on anything. But they will ultimately see that the government is a government that leads and comes up with a constructive path for the future. The government will get re-elected, those on the other side will still be in opposition and the world will go on. Let us get the guillotine in. Let us get this piece of legislation through. Let us bed it down. Let us go forward.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (9.52 am)—We certainly know that goose is on the menu this Christmas. Senator Barnaby Joyce: what a contribution! But I do not want to deal with Senator Barnaby Joyce, because he is clearly irrelevant. What we have today is the government seeking to move the gag and the guillotine to bring on the committee stage of the Workplace Relations Amendment (Work Choices) Bill 2005. I say: bring it on, because what this government is showing—

Senator Joyce interjecting—

Senator CHRIS EVANS—I will vote to bring it on, Senator Joyce, because, unlike you, we can win the argument. You did not save anything, mate. You did not save Christmas. You did not save penalty rates. All you did is prove that you are just out of your league. This government is so arrogant, so contemptuous of parliamentary process and so incompetent at ruling and governing in the interests of all Australians that we are now faced with the biggest logjam of legislation we have ever seen in the Senate prior to the end of a sitting. It is most important legislation. Do you know what we are dealing with today? We are not dealing with the terror laws—legislation that the government said was its priority, that Labor committed to pass as soon as possible, as soon as we got it right. No, we are dealing with the ideologically driven agenda of industrial relations.

We knew they would come in and move the gag and the guillotine. When I was invited to the leaders and whips meeting yesterday—the first since 1 July—where we used to resolve these things amicably, I thought: ‘This is strange. Suddenly the niceties are being observed.’ We got there and we had a nice little chat, and they said, ‘Don’t
worry about the fact that we rammed through Telstra. Don’t worry about the fact that we rammed through the hours. We want to have a nice chat about how we manage it.’ In other words, ‘We would like you to help us manage it because the Manager of Government Business in the Senate has totally buggered it up again.’ But we had a nice chat, and I made it very clear: bring on the terror laws.

Senator Joyce—Mr President, on a point of order: the Senator should withdraw that comment. I do not think it befits this house.

Senator CHRIS EVANS—I thought you were a country boy, that you liked a bit of rough and tumble, but you are clearly a wimp!

The PRESIDENT—Order! Senator Evans, I believe that word may have been unparliamentary. I ask you to withdraw it.

Senator CHRIS EVANS—Mr President, if Senator Joyce is so fragile and you rule accordingly, I withdraw.

The PRESIDENT—Thank you.

Senator CHRIS EVANS—What we have today is the government seeking to bring on the debate because they cannot win the argument. They have to ram it through by Friday. They are losing the argument with the Australian public. They are desperate to get the bill passed because they know they cannot win the argument. As far as I am concerned, bring it on. We want to debate IR because we will win the argument. You will win the vote, but we will win the argument.

I point to Senator Santoro—though he is not in the chamber—who tried it in Queensland. I think his vote went down from 64 per cent to 48 per cent over two elections because the Queensland public did not buy his IR reforms. Does anybody remember Graham Kierath, the former WA industrial relations minister? He brought in the exact same legislation in WA. He is now out looking for a job. Work Choices may well help him. Do you know what happened to him? The Western Australian public said, ‘This is un-Australian. This is not fair law. This is not what we want to see for our kids.’ They threw him out of his previously safe Liberal seat.

We are happy to debate industrial relations. We will be happy to bring the debate on because, while we know we will lose the vote, we will win the argument. We will argue every clause of this bill, because it is ill conceived, it is ideologically driven, it does not provide more choices for Australian workers, it removes rights, it removes people’s access to the umpire and it fundamentally takes us down the low-wage and low-skill path—and it takes us down the American path, where those with power do well and those without power do badly.

All the people around Australia who rely on penalty rates and overtime to pay their mortgages ought to be very concerned about this legislation because over the longer term this will really bite. They know that, despite spending $50 million of Australian taxpayers’ money, the government have not been able to win the argument and they will not win it. The government hope, if they pass it quickly before Christmas, ram it through now, that Australians will go on summer holidays and forget. Well, you are kidding yourselves. The people of Australia will not forget. They understand very well that you are ruling for your mates. You are not ruling for Australians. You are ruling for John Howard’s ideological obsession. You are not ruling for ordinary families. There is nothing family-friendly about this legislation. You are not ruling for ordinary workers. There is nothing in it for ordinary workers except the prospect of getting ripped off. You will pay the price and we will make sure you pay the price. We have the names of all the backbench committee members. Senator Santoro may think he is protected because of his spot
on the Senate ticket, but there will be a lot of members of the House of Representatives who will not be coming back next time because of this legislation. Bring it on. We know we will lose the vote, but we will win the debate because the Australian people know you are not ruling for them; you are ruling for your Business Council mates. (Time expired)

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (9.57 am)—We are proposing a responsible approach to how we manage the business of the Senate and the business of the government. This is a very important reform, one which we have taken to the people of Australia and have been elected to implement. The time management that we are putting in place is nothing new. To say that it is arrogant is a complete denial of what has gone on in the Senate previously. In fact, when Labor was in government, over 10 years 221 bills were put through with the use of the guillotine. People come in here and say that this is in some way arrogant, that it is ramming legislation through, but when you look at the practice of Labor when it was in government, 221 bills over 10 years were put through by virtue of the guillotine. It is interesting to look at what Senator Evans said in September this year. He said:

I also accept that it is legitimate on occasions for a majority of senators in this place to move the guillotine. There are acceptable cases where it is rational for the Senate to agree that there is a limit to a debate.

That is precisely what we are doing here. This is an occasion where we have to put in place a reform on which this government was elected. We have had an extensive second reading debate.

Senator Sherry—You didn’t mention one word of this just before the last election.

Senator ELLISON—What Senator Sherry does not recognise is that unfair dismissal went to committees in 1999, 2000, 2002, 2003 and 2005. Secret ballots went twice to a committee—and, of course, fair bargaining as well. So, much of this legislation has already been looked at previously by Senate committees, this chamber and the House of Representatives. What we have is a comprehensive reform—

Senator Murray—Mr President, I rise on a point of order. It is unusual for the minister to mislead the Senate—and perhaps he is doing so inadvertently—but of course secret ballots, unfair dismissals and bargaining have not been assessed by the Senate ever with respect to the state systems and how the Work Choices bill will affect the state systems. So, regrettably, he is misleading the Senate. But I am sure it is inadvertent.

The PRESIDENT—There is no point of order.

Senator ELLISON—Those bills went to the committees, and I stand by that comment. Those bills went to the committees in those years that I have mentioned. As a result of obstruction from the opposition and others, we have seen a reduction in government time from an average of 14 to 16 hours a week down to 10 hours. That is why we are in this position. Make no bones about it: we have had debates on procedural matters, debates on references to committees and debates at every point taken up by the opposition and others, and this has caused a consumption of Senate time, which has in turn reduced the time for the government to get through legislation. That is why we have to use time management in this last sitting fortnight. You need look nowhere else on this but to the opposition and the other parties and the time that has been wasted by procedural argument. That is why we are now seeking to have time management put in place for the
committee stage. We are allowing two full days for a debate in the committee stage. That has been circulated. That allows for speeches in the second reading debate to continue until 12 pm today, then the Committee of the Whole debate will be until 2 pm today, then from not later than 3.45 pm until 6.30 pm today and then from 7.30 pm until 11 pm tonight. Tomorrow the Committee of the Whole debate will continue from 9.30 am until 4.30 pm and then the remaining stages until 6.00 pm. That spells out a responsible time management program for what is going to be a very important committee stage. We have seen the committee look at this legislation. It was sent to the committee on 2 November and it reported three weeks later on 22 November. (Time expired)

Question negatived.

The PRESIDENT—The question now is that the motion moved by Senator Ellison, that the bill be considered an urgent bill, be agreed to.

The Senate divided. [10.07 am]
(The President—Senator the Hon. Paul Calvert)

Ayes………… 34
Noes………… 31
Majority…….. 3

AYES

Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Chapman, H.G.P. Colbeck, R.
Cooan, H.L. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
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. Nash, F.
Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Santoro, S. Scullion, N.G.
Troeth, J.M. Trood, R.

NOES

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

PAIRS

Campbell, I.G. Campbell, G.
Ferris, J.M. Ray, R.F.
Minchin, N.H. Wong, P.
Vanstone, A.E. Hutchins, S.P.
Watson, J.O.W. Carr, K.J.

* denotes teller

Question agreed to.

Allotment of Time

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (10.10 am)—I move:

That the time allotted for the remaining stages of the Workplace Relations Amendment (Work Choices) Bill 2005 be as follows:

Second reading: commencing immediately till 12 noon today
Committee of the whole: from not later than 3.45 pm till 6.30 pm today, from 7.30 pm till 11 pm today, and from 9.30 am till 4.30 pm on 2 December 2005
Remaining stages: till 6 pm on 2 December 2005
I also move:
That the question be now put.
The PRESIDENT—The question is that the question now be put.

Question put.

The Senate divided. [10.15 am]

(The President—Senator the Hon. Paul Calvert)

Ayes…………… 34
Noes…………… 31
Majority………. 3

AYES

NOES

PAIRS
Campbell, I.G. 

CHAMBER
We are constrained in the second reading debate now because of the debate that has just ended, and that will mean that some people will not have the opportunity to speak, but that is a decision that the government has imposed, not my decision.

On the face of it, as I was saying yesterday, the Workplace Relations Amendment (Work Choices) Bill 2005 contains a similar prohibition on coercion as that contained in the existing act. The new proposed subsection 104(5) provides:

A person must not apply duress to an employer or employee in connection with an AWA.

But proposed subsection 104(6) says this:

To avoid doubt, an employer does not apply duress to an employee … merely because the employer requires the employee to make an AWA with the employer as a condition of employment.

Senator Barnett in particular has obfuscated on this provision in a vain attempt to hide the truth—because the government has discarded the no disadvantage test; and penalty rates, overtime and leave loadings can be excluded from the terms of an AWA without compensation.

The third matter I want to address is unfair dismissal. Upon the passage of the bill, about four million Australians will automatically lose unfair dismissal protection because they work in businesses which employ fewer than 100 employees. Inevitably, more will lose protection because the bill provides a general exemption for business—

**The ACTING DEPUTY PRESIDENT (Senator Barnett)—Order! There is too much noise in the background and I would ask the relevant senators to go to their seats or leave the chamber.**

Senator O’BRIEN—on so-called operational grounds. It is another example of the lack of balance that is the defining characteristic of the Work Choices bill. This is a bad bill. The expenditure of $55 million on a taxpayer funded campaign has not changed that fact. The government has spent a lot of our money, but it has failed to make the case for change.

Sensing the government is in trouble, the Business Council of Australia has come to its rescue with its own campaign, after resisting that for some time. But, in a demonstration of greed that staggers me, the Business Council of Australia does not advocate just the implementation of the government’s extreme industrial agenda; no, the Business Council of Australia also wants massive tax cuts for the rich, including the CEOs of its member companies. Its advertising campaign has coincided with the release of the Australian Financial Review’s annual study of executive salaries. It shows that, in the past financial year, the pay earned by the chief executives of Australia’s top 300 companies rose by 16 per cent. The average annual pay for these CEOs was $1.9 million, up from $1.6 million in the previous year. That is
more than $36,000 a week. Contrast that figure with $484.40 a week, the current minimum wage. Four hundred and eighty-four dollars is not even a decent lunch bill for the BCA members passionate about restraint on the part of ordinary wage and salary earners!

Australia’s industrial relations system, built on a bedrock of fairness, has served our nation well. It is not just Labor that makes that claim. Let me quote a statement published in the Economist magazine just last month:

Although Australians are renowned for their relaxed and friendly demeanor, they are also highly skilled and boast one of the most productive workforces in the world. Benchmarked against other OECD nations, Australia’s productivity has been consistently high, reflecting the widespread adoption of new technologies and modern work practices.

I underline this—

According to the statement, Australia enjoys the ‘highest overall productivity per person employed in the Asia-Pacific region’ and is ‘the best place in the Asia-Pacific to live and work’—well, up till now. It notes that in 2004-05 company profits in Australia grew by 11.9 per cent, and it says that over the past 20 years the number of working days lost through industrial disputes has decreased by 89 per cent across all industries. Who is the author of this tribute to our existing industrial relations system? The Howard government. At the conclusion of my speech, I will seek to table the advertisement that the government lodged in the Economist.

Australia’s industrial relational relations system has delivered the very things the government is hailing in its pitch to the Economist’s international readership. Our existing system is in no need of fundamental reform. It certainly does not need the changes proposed in this bill, changes that would throw out a century of sensible industrial relations practice.

Among the loudest and least credible members of the government’s IR cheer squad is Peter Hendy of the Australian Chamber of Commerce and Industry. Mr Hendy is a long-time Liberal staffer. He was Peter Reith’s Chief of Staff during the ‘children overboard’ scandal and a key adviser during the waterfront dispute. From the latter experience, we know Mr Hendy is an expert on undermining workers’ rights. So it is no great surprise to read in the Sydney Morning Herald that Mr Hendy is an architect of the Work Choices bill. That paper said that, soon after Christmas, Mr Hendy met privately with the Prime Minister to ‘work up a plan of action’ on industrial relations. That plan of action, Work Choices, is the most fundamental attack on the wages and conditions of Australian workers since the last Howard-Hendy plan. It was called Jobsback and it was comprehensively rejected by the Australian people at the 1993 federal election. Work Choices, of course, was not presented to the electorate before the 2004 poll, but that will not save it from the same fate as Jobsback. There is one thing Australians cannot stomach, and that is unfairness. For that reason alone, this law will hang like a millstone around the neck of this government.

A couple of weeks ago, half a million Australians came together to protest against the government’s radical industrial agenda. The Prime Minister and other members of the government have dismissed opponents of Work Choices as irrelevant. Let me assure those opposite that, at the next election, those who oppose these changes will prove anything but irrelevant. I joined thousands of others protesting in Launceston on 15 November and, like them, I look forward to ejecting Michael Ferguson from the federal seat of Bass at the next federal election. I say to those opposite: spend some quality time with your marginal seat colleagues because,
like Mr Ferguson, many of them will not be around much longer.

State Liberal and National parties should not think they will be immune from the backlash against this legislation. My constituents know that Tasmanian Liberal leader Rene Hidding is in lockstep with the Prime Minister in this savage attack on their living standards. Should the Liberal Party win the next state election, you can be sure that a Hidding government would partner the Howard government in its attack on workers. Last month Mr Ridding wrote to Unions Tasmania confirming his support for the Howard government’s industrial relations agenda.

The Tasmanian Liberals further confirmed their support during debate on the Lennon government’s Industrial Relations Amendment (Fair Conditions) Bill on 10 November. This bill seeks to establish fair minimum standards for Tasmanian workers irrespective of whether they are covered by state awards or agreements. It contains a no disadvantage provision that means the state industrial relations commission cannot make awards or approve agreements that diminish conditions of employment. It was introduced in response to what Tasmanian Attorney-General, Judy Jackson, describes as the Howard government’s ‘unreasonable, unjustified and totally unfair’ industrial relations agenda.

During his contribution to the debate on the bill, state Liberal MP Michael Hodgman said:

Let me place on the record our views on these matters. We are 100 per cent behind John Howard and Minister Kevin Andrews’ workplace reforms, including their legislation for a unitary system of industrial relations in Australia.

Many Tasmanians are asking themselves why the Liberal Party—at a state and federal level—is so hell-bent on destroying a Tasmanian industrial relations system that works, because Tasmania has a stable industrial relations environment with very low disputation. We have a state commission that acts as an independent umpire and gives employers and employees alike a fair go.

There is some irony in the fact the Howard government’s bill is entitled ‘Work Choices’ because it will remove choice for Tasmanian workers by ripping them out of the state system. The simple fact is that Tasmanians and Tasmania will suffer under the provisions of the Work Choices bill. Tasmania has fewer large employers than other states, so changes to unfair dismissal laws will expose a higher proportion of workers to arbitrary dismissal. A higher percentage of Tasmanian workers rely on awards than in any other state. The minimum wages and conditions of these workers will not be in the hands of an independent commission anymore. The fate of Tasmanians who rely on awards will be in the hands of the Fair Pay Commission headed by Professor Ian Harper.

It says a lot about the Prime Minister’s regard for this parliament that he announced Professor Harper’s appointment before the Work Choices legislation was introduced. However, it is pretty clear why Professor Harper was the government’s choice. Professor Harper has made two public statements that auger poorly for the quality and independence of his decision making. First, he said the minimum wage has been set at ‘historically high’ levels. Second, he cheerfully admitted that he does not meet many low-paid workers in his line of work. Not only does he share Mr Howard’s views on the minimum wage; he mixes in the same elite company. It is bizarre, though, that Professor Harper finds himself able to make pronouncements on the excesses of the minimum wage when, by his own admission, he would not know a low-paid worker if he fell over one. It follows that he would not know what it means for a low-paid Australian to
feed, clothe and shelter their family on the minimum wage. Before he takes up his appointment, Professor Harper ought to get out of his ivory tower and meet some of the low-paid workers I used to represent as a union official—the sort of people that clean his office every night. He ought to get out there and meet with working families in northern Tasmania in places like Invermay, Gladstone, Scottsdale and George Town before he fixes on the view that minimum wages are too high.

This bill deserves to be defeated on the floor of this chamber. It contains extreme and divisive measures that the government has no mandate to implement. Indeed, it did not take those matters to the Australian people at the last election. It will drive down wages and rip away conditions for millions of Australian workers. At the conclusion of this debate I will join my Labor colleagues in voting against this bill and I will work to elect a Beazley Labor government that will consign these laws to the dustbin of history.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.33 am)—I am not one of those people who thinks the world is perfect and that we cannot improve the way we do things. Equally, I do not think that change for the sake of it is necessarily always good. If we are going to elevate proposed change to the status of reform, we need criteria for doing so. For me, the criteria revolve around families and small business. As I said in my first speech, I believe the first question we must always ask is: what is best for families and what is best for our kids? As I also said, my vision includes the idea that families should have genuine choice about how they structure their paid work and family life. People should be parents first and workers second. Workers should feel secure in their jobs and should not have to bargain for basic wages and conditions. Any changes should be aimed at reducing the crippling number of marriage and relationship breakdowns which wreak such a devastating toll on families. Ultimately, that is what is best for this great nation of ours.

I know I ruffled some feathers when I said that the major parties struggle to reconcile their professed family values with their free-market mantra. To those politicians, I say that this legislation is a test, because it reflects the tension between the market and families. If people think I am wrong when I say that what are sold as family-friendly policies are really market-friendly policies, this legislation gives them an opportunity to prove it. The direction in which society is going is affecting family life in ways we do not even understand. For example, while we talk about the benefits of part-time work to families, we do not talk about the significant number of men in their thirties who only work part time. A report commissioned by the Australian Family Association suggests that, because of their limited income and education, these men do not form relationships and are unable to take on the responsibility of marriage and children. We talk about work and family. This bill is all about work or family. That is a choice Australians should never have to make.

I understand the Prime Minister’s argument that we have to look to tomorrow as well as focus on today. However, I do not think that means families should stand idly by and accept the Prime Minister’s idea that businesses ought to be able to operate 24 hours a day, seven a days a week, 365 days a year without paying penalty rates. Australian families do not think working at 2 am is the same at working at 2 pm. Nor do they think working on a Sunday is the same as working on a weekday, or that working seven days a week with no day off is fair or reasonable. That might suit the market, but it certainly does not suit families. In fact, families suffer. Mr Howard may be right: the world may
have changed from a five-day-week society. However, we work to live, not live to work, and our laws should reflect this important point.

There is more to industrial relations than economics, but let me address the economic issues first. I agree we all have a vested interest in a strong economy which continues to generate jobs and ensures we can maintain our standard of living. However, views about the economic benefits of the government’s legislation are not universal. Professor Mark Wooden, who is not one of the usual government critics, says that, if individual agreements promote:

... competitive behaviour within workplaces, and fosters non-cooperative relationships and greater uncertainty for workers, then business may actually suffer ... AWAs could be used by some managers to avoid management responsibilities.

Professor Wooden went on to question why firms employing up to 100 people should be exempt from unfair dismissal laws. He says most of the employment gains will be concentrated on very small businesses and adds:

... among larger businesses the employment gains are likely to be small and could even be negative. The cost, on the other hand, is greater uncertainty and insecurity for some Australian families ...

One of the difficulties with the economic case is that the government has not produced hard evidence to support its claims and has not commissioned Treasury to do any modelling, thereby reinforcing suspicion that it cannot support its arguments. It is not surprising that the latest Sensis business index reveals that 70 per cent of smaller businesses do not have a problem with the present system and 25 per cent believe the changes have gone too far. Despite government claims that changing unfair dismissal laws could create 50,000 to 80,000 jobs, Heather Ridout from the Australian Industry Group says:

You’re not going to go around putting on more people just because the unfair dismissal laws have changed.

Dr Paul Oslington from the Australian Defence Force Academy, who together with Ben Fryers has done a three-year study on the costs of hiring and firing, believes the changes will create about 6,000 jobs. I accept there are problems with the current unfair dismissal laws and I agree with Ms Ridout that these arise from too much emphasis on procedural fairness and not enough on the facts of the dismissal. Unfortunately, the government has not addressed the real problem.

It is important to state that this bill does deal with issues of legitimate concern and these changes I do not oppose—for example, changes to the minimum wage. I know there is suspicion around setting up the Fair Pay Commission and how that might impact on minimum wages. While there are some people in the community, and, I suspect, the bureaucracy and government, who think the market should determine the minimum wage and it should fall to its natural level, there is no evidence this new body will deliver that outcome. Further, we cannot deny a link between the minimum wage and jobs for low-income earners.

As far as a national industrial relations system is concerned, I understand the argument of those such as Professor Craven about the benefits of a federal system and the consequences of entrusting one government with what Lord Acton might have described as absolute power. However, this is not the first example of this government’s centralist tendencies and, looking at comments by the ministers for health and education, it is probably not the last. I also do not think the government’s obsession with destroying the Industrial Relations Commission is sufficient reason to oppose this bill, even though unin-
corporated businesses currently under the federal system may pay a price in five years.

The fundamental flaw in this bill is that it is another example of this government putting the interests of the free market ahead of the interests of families. This legislation is driven by ideology, by this government’s obsession with the free market, and no amount of tinkering at the edges, such as last-minute changes to public holidays, can disguise that fact. Markets are there to serve people, to serve families—it is not the other way around.

When families voted for the government last year they were not voting for abolishing the concept of a fixed working week. The government’s claim that overtime and penalty rates will be protected is hollow. A significant number of Australian workers, such as cleaners, security guards and funeral assistants, depend on overtime to earn a decent living. These workers tend to be those whose bargaining position is the weakest. How will they cope if they suddenly find their weekly pay packet reduced by the equivalent of eight hours pay? As important is the effect this new regime could have on those families who rely on overtime to pay for the little luxuries, such as seeing a movie or going to the local pizza parlour for dinner on Sunday night. The protection the bill offers for meal breaks is equally flimsy. We work to live, we do not live to work, and our laws should reflect that fact.

While the government puts the market before the interests of families, it conveniently ignores its own mantra when the market leads to outcomes the government does not like. For example, not only does the bill allow companies with fewer than 100 people to dismiss people unfairly, the government will not allow employers and employees to strike their own dismissal procedures. This means a small business which wants to attract good staff by offering job security will not be allowed to do so. That does not make sense. The government claims it wants to remove third parties from the employer-employee relationship, yet it interferes by preventing employers and employees from negotiating their own arrangements. If the government wants a market system, it should allow a market system, even when it produces outcomes the government does not like. To do otherwise creates the impression that the government’s agenda is loaded in favour of employers.

The government also claims it is interested in transparency but it will not list in the bill those matters about which employers and employees cannot negotiate. Surely these items should be listed in the legislation, particularly as negotiating such matters risks fines of up to $33,000. Small business should not be expected to keep up to date with government regulations to know whether or not they are breaking the law.

The government argues that individual agreements enable workers to strike a balance between work and family life. The government assumes that employees and employers negotiate on a level playing field. We all know that this is not what happens in the real world. We also know how family friendly many workplaces would be if left to employers. The managing partner of a national law firm thinks that employees do not have the right to free time. The Australian Chamber of Commerce and Industry says that many workplaces cannot accommodate the demands of parents. The workplace relations manager for the Victorian Employers Chamber of Commerce and Industry stated:

'It’s important individuals have their life in a reasonable balance so they are focused on the job.

I regret that the market is more important to this government than family life. As I said earlier, we talk a lot about work and family,
but this bill is about work or family. That saddens me because that is a choice Australians should never have to make. As long as these provisions remain in the bill, I cannot support it.

Senator RONALDSON (Victoria) (10.47 am)—In the short time I have to speak on the Workplace Relations Amendment (Work Choices) Bill 2005 as we try to accommodate others who wish to speak on the bill, I will just say some quick words. I say from the outset that I passionately support this bill. It is good for Australia, it is good for Australia’s future, it is good for Australia’s workers and it is good for Australia’s employers, particularly small business employers.

I have noticed with some interest the change in body language of those on the other side over the last 10 days. I remember during other debate when reference was made to their trade union roots and the fact that 18 of them came straight of the union movement that there was a bit of kicking of the ground, a bit of shuffling and a little bit of embarrassment because they know, as we do, that the union movement now covers about 17 per cent of the private sector work force and less than 30 per cent of the public sector.

It just made me wonder whether Shazza Burrow might have been on the phone to these guys. Perhaps the conversation was along the lines of: ‘The Lord giveth and the Lord taketh. Who are you going to talk about when you are speaking on these bills? Who are you going to protect?’ They might have answered: ‘Well, Sharan, we are going to protect the workers and talk about them.’ You can imagine Sharan Burrow saying: ‘You fools. Why would you talk about the workers? What have they done for us over the last 10 years? They have re-elected the Howard-Costello government. What have they done?’ You can imagine those on the other side saying: ‘Well, they might have a point, Sharan, because this is a government that has created 1.7 million jobs, about 900,000 of which have been full time, and I am a bit embarrassed to say it but they are also a government that have delivered about a 14.6 per cent increase in real wages over the 10 years they have been here. And, Shaz, as you might remember, under us it was only about 1.2 per cent. So we do have some sympathy.’ You can then imagine Sharan Burrow saying: ‘Listen, knuckleheads, you are here to protect the union movement, not the workers.’

Time after time, we have seen the proud-to-be-union badges put back on. All of a sudden it is proud to be union. This debate has not been about the protection of Australian workers; this debate has been about the protection of the trade union movement. That is why the language of those opposite, who are beholden to the trade union movement, has changed in the last 10 days. They have been rummaging around in their top drawers trying to find their proud-to-be-union badges. This is what this debate has been about. The most disappointing thing about this debate is the fact that it has been characterised by lies and deceit.

I have just been given even better news. The Lord giveth and the Lord taketh. I have a couple more minutes than I originally thought I had. I am very grateful, and I am sure that that is by agreement. If you look at what underpins this legislation, it shows the fallacy of the trade union argument in relation to this debate. I know that Senator Parry, who has just come into the chamber, has also referred to that. This debate has been characterised by an obscene attack on the goodwill and the good grace of Australian workers.

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Order! There is too
much discussion on both sides of the cham-
ber.

Senator RONALDSON—Thank you, Mr
Acting Deputy President. As a former chief
whip in another place, I am acutely aware of
the negotiations that go on prior to matters
being put to the chamber. However, I am
pleased to be able to continue my comments
in some silence. I can understand the trade
union movement wanting to protect itself.
We all want to protect ourselves. But when
that is done to the detriment of Australian
workers, many of whom will not read this
bill and will not know the intricacies of the
act, they are entitled to rely upon a fair and
objective assessment of what it means to
them. That has not been done in the last six
months. There has not been a fair and objec-
tive assessment of what the outcomes will
be. Why, for example, haven’t the workers of
Australia been told that it is absolutely piv-
otal for the future growth of this country, the
sustenance of the jobs growth that we have
had and the sustenance of low interest rates
and low inflation that we do not stand still?

Australian workers have shared in the out-
come of the industrial relations changes this
government made some four or five years
ago. They have shared the fruits of that in-
vestment in industrial relations through jobs,
real wage growth and low inflation. So they
are far more guaranteed than they were under
the Australian Labor Party that they will
have a job and they can afford to buy a
house. There was fear in the Australian
community for many years, with high infla-
tion and high interest rates, and Australian
workers were the ones who suffered. It was
not the well-off, because they can always
afford to buy a house. They are always the
ones who can afford to buy share portfolios
for their future superannuation. But Austra-
lian workers could not—until the election of
this government. It is no secret that one of
the reasons that we now have the highest
private share ownership anywhere in the
world is that Australian workers are finally
empowered to start investing in their own
futures. That is a matter this government is
extremely proud of.

Senator Parry interjecting—

Senator RONALDSON—It is, as Senator
Parry said, one of the many things that we
are very proud of.

I want to turn briefly now to the engine
room of the Australian economy, the small
business community, which we should all be
so incredibly proud of. They employ some
50 per cent of the private sector work force.
They produce about 30 per cent of our GDP.
They are subjected, at the moment, to 130
different pieces of legislation. They are sub-
jected to 4,000 awards and six different
workplace relations systems. They are stran-
gled by the red tape of complexity. I have to
say, on behalf of the small business com-
munity, that I have found some of the comments
that I have heard over the last 10 days quite
objectionable. The principle on which the
comments have been made by the other side
is that all employers are bad. That is the basis
that underpins the comments made by those
opposite: that all employers are bad and peo-
ple should be protected from that bulk of
people who are bad employers. The bottom
line is—and I have been in small business
myself—that your most important resource
in small business is your staff. This notion
peddled by the other side that we are trying
to do something to diminish the rights of
small business workers is patent nonsense.

Senator Abetz interjecting—

Senator RONALDSON—Senator Abetz
I think has really hit the nail on the head with
his comment. It is about re-endorsement.
And when Shaz Burrow picked up the phone
and said, ‘You are going to talk about the
union movement. Don’t you talk about the
workers, who have let us down over the last
10 years,’ she said, ‘You know and I know that I own you.’ The trade union movement, regrettably for the Senate, owns the majority of those on the other side. I wonder how the others got there without the trade union movement. I would like to see their photo albums.

Senator Abetz interjecting—

The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Senator Abetz, you are interjecting out of your seat.

Senator RONALDSON—In finishing, I am as confident as I can be about anything that these changes will enable this country to deliver the standard of living that we have seen over the last 10 years. The people that the Australian Labor Party says this legislation is designed to impact on are the very people, quite frankly, who will be the great winners under it. I say, with some excitement, that these changes will generate another surge in this quite extraordinary economy, an economy of 20 million people which, on any proper assessment, is punching well above its weight. It is punching well above its weight because we have one of the most important partnerships we have seen in this country’s history. That is a partnership between a government that wants to invest in its people and its workers themselves. The Australian working men and women of this country have voted on four occasions to reinforce and re-endorse that the coalition government is a party for Australian workers that wants to help them invest in their futures.

Senator CONROY (Victoria) (10.59 am)—I always enjoy following Senator Ronaldson because after one of his performances I am reminded of that famous saying that politics is just theatre for ugly people. He was a living embodiment of that today. I rise to speak against the Workplace Relations Amendment (Work Choices) Bill 2005 because this bill marks a significant escalation in this government’s contempt for working families in this country. John Howard’s new industrial landscape will change the way we operate as a society. It will change the way we currently enjoy time with our families and friends, and it will undermine job security for millions of working Australians.

The Liberal Party and the National Party may sneer and claim that Labor and the ACTU are crying wolf over this legislation; however, as last week’s news poll showed, Australians know what is coming and they do not like it. Australians recognise that this legislation is the product of the extreme right-wing ideology of the Liberal and National parties. That extremism has triumphed over the more moderate voices who acknowledge the importance and significance of maintaining a cohesive industrial relations system.

Despite wasting in excess of $55 million of taxpayers’ money on a disgraceful propaganda campaign, this government has failed to convince Australians of the need for these radical changes. Senator Abetz has won a new classification of award for the most unsuccessful advertising campaign in Australian history—$55 million spent on a product, and the polling has collapsed for them. We have seen a seven-point drop in their primary vote and a 12-point drop in their two PP vote off the back of the genius industrial relations advertising campaign at the expense of $55 million. The polls have plummeted. Congratulations, Senator Abetz! You can wear that lemon with pride.

Not surprisingly, the public has not bought the argument that you can improve productivity by forcing someone onto an AWA which removes overtime, removes penalty rates, removes shift penalties and removes annual leave loading. This legislation is like a B-grade remake of Frankenstein in which
the conservative beast has broken free and is turning upon its creator. This government knows that this legislation is unpopular and that it is bad for this country. It has now gone too far with the experiment and cannot turn back. There is no point trying to cover up the ugliness of this legislation by offering to protect employees working on Christmas Day and Anzac Day, because those changes are cosmetic and fail to disguise the beast underneath.

What are the changes this government will create under this legislation? There will no longer be an unfair dismissal system for workers employed by companies with less than 100 employees; the Australian Industrial Relations Commission will be effectively destroyed; individual workers will be forced under duress to sign AWAs which no longer have to pass a no disadvantage test; and industrial action by unions and their members will effectively be removed as an option or a choice for workers seeking to improve their pay or conditions. That list may seem like a pretty comprehensive Christmas wish list prepared by an overeager employer group to send to Santa in time for Christmas, but it does not end there. In addition, trade unionists can face fines of up to $33,000 just for seeking to include in an agreement words dealing with unfair dismissal—$33,000 just for mentioning those words. What does this tell us about the fairness of this legislation? You cannot fool the Australian public, and this legislation will be recognised for what it is: antiworker hatred spilling from the Liberal and National parties.

You do not need to be a genius to see why this government is putting up this legislation. Its mantra about flexibility, creating jobs and growth is barely disguising its attempt to nobble the Labor Party and its traditional supporters: the Australian trade union movement. This government thinks: if you can destroy unions you can destroy Labor; however, this appalling attempt to attack working families will fail. I cannot recall a time when the Australian public were more united in their opposition to legislation than they are to these changes. We have seen rallies of hundreds of thousands of people across Australia demonstrating their widespread anger. The community is outraged that this government would dare to threaten traditional Australian values such as the notion of a fair go and the right to join a union.

People are not deceived by John Howard’s explanation that they will be protected because they can get another job. How ludicrous a proposition is that? Does the government seriously expect people to believe that their position has been improved when a potential employer offers them a position on the condition they sign an AWA—an AWA which provides lower wages and lower conditions than would otherwise apply? Perhaps this is why the government is allowing the waiving of rights to receive information about the AWA.

One of the most pernicious features of this system is the effective removal of the Australian Industrial Relations Commission from the industrial process. This bill removes AIRC responsibilities for the minimum wage setting, unfair dismissal matters, certification of agreements and the arbitration of disputes. The commission will be left with no more than about 15 per cent of its current work. All that remains of the commission is a shell with limited functions so that the Howard government can say that it has retained the umpire as part of the system. This is a body that has formed a central part of our industrial relations system for over a century and has performed its role as the independent umpire without fear or favour.

In relation to the minimum wage, the AIRC will be replaced by the so-called Fair Pay Commission. This is a body specifically
designed to reduce real wages over time. How do we know that? When you compare this bill with the existing provisions it becomes abundantly clear: the law currently requires the AIRC to take into account the need for ‘fair minimum standards in the context of living standards generally and inflation when setting the minimum wage’.

The so-called Fair Pay Commission puts ‘fair’ into the title but takes it out of the substance. It will not be required to take into account fair minimum standards. The government said, ‘We will call it the Fair Pay Commission but we will take the word ‘fair’ out of what it is allowed to consider.’ What a fraud. Now we know why they had to pulp millions of dollars worth of books. They had to put the word ‘fair’ in somewhere. They put it on the cover because they took it out of the substance. That is right: we have the government setting up a Fair Pay Commission that is not required to consider fairness in its decisions. What rank hypocrisy. What clearer indication of the government’s intentions could there be?

The Prime Minister likes to say that his guarantee to workers is his record. He says that minimum wages have risen during his time in office. Let us have a closer look at Mr Howard’s record. Since it came to office, the Howard government has opposed every increase in the minimum wage awarded by the Australian Industrial Relations Commission. In four out of the last nine years, the government argued for increases in the minimum wage that did not keep pace with inflation. If the AIRC had accepted John Howard’s recommendations, the minimum wage would be $2,600 a year lower than it is today. That is what John Howard wants. That is what he has stated publicly. The bottom line is that the minimum wage has risen despite John Howard’s best efforts—not because of them.

Now the Prime Minister has decided to gut the AIRC because it has not endorsed his low-wage agenda. Over 20 per cent of wage earners rely on the minimum wage safety net adjustments for wage increases. In addition, the minimum wage is often used as the reference point in wage negotiations. Cutting it in real terms will have flow-on effects for those further up the income scale. A significant number of people will now suffer under the new system proposed by this bill.

I have a strong association with the trade union movement. I am proud to say that I worked for the Transport Workers Union for a number of years before becoming a senator. I did not have the resources of Senator McGauran’s family to buy me a seat in parliament, to spend millions of dollars campaigning across the whole state of Victoria. I accept that I did not have that birthright.

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and file workers and union leaders in this country telling me about how these changes will affect them. The greatest effects these changes will have will be to undermine the living conditions of low-earning Australians and to push down wages. While this may be good for the bottom lines of businesses in the short term, we will see families suffer and those without skills left to rot by the Howard government. As a country, we cannot afford to let that happen, as it will damage the way we operate as a society.

Once you start encouraging wage disparity of record levels between the top and bottom income earners, you eat away at the fabric of our society. Those on the bottom and middle rungs will no longer have time to enjoy with family and friends, and security of employment will be a thing of the past. Overtime at ordinary rates will be a feature of our system, and employees will be forced to work on public holidays or look for another job.

If you think I am exaggerating, let’s look at ‘Billy’, the government’s own example in the WorkChoices booklet that they had to pulp in order to include ‘fairer’ in the title. Billy is not just an example of a new job seeker; he represents any worker who can effectively be presented with an AWA and told, ‘Sign it, or else’. Billy’s AWA gives him the minimum award classification wage and explicitly removes award conditions for public holidays, rest breaks, bonuses, annual leave loadings, allowances, penalty rates and shift and overtime loadings. Employees will be forced to accept new AWAs on lower terms and conditions or face termination without redress. There is no real choice for the employee in this situation; it is a ‘take it or leave it’ proposition. We know that people in Billy’s position will not be high-flying executives. They will be ordinary hardworking people just trying to get by.

We can also expect these changes to pose a serious threat to safety in our workplaces as low-income earners work longer hours for the same amount of pay they would have been earning otherwise. For example, we will see workers having to take on second jobs in order to make up the income they have lost from overtime and penalty rates, and we will see them endure fatigue and excessive hours of work. There is no doubt that these changes will impact on workplace safety.

I urge the Senate to listen to people like Tony Upton, a contractor in the car-carrying business. Tony has been an owner-driver for 21 years. He is married with three children and has $120,000 invested in his business. Tony is concerned about the effect of these changes on the safety net provided by collective bargaining. In the TWU submission to the Senate inquiry he commented:

If you don’t have a safety net, you don’t know how much you can spend on maintaining your vehicle. Without a safety net you can’t figure out how much you’re going to earn in a week, so you take every job going, you don’t sleep and you don’t stop. You just keep going and that is when things get dangerous.

I urge the government to listen to independent contractors like Tony and not to fictitious characters like ‘Billy’ in the WorkChoices booklet. Those employers who try to do the right thing by providing proper pay and conditions will be undercut by the employers who use this legislation to push wages and conditions down. It becomes a vicious cycle, particularly in competitive industries such as the transport industry, the retail industry, manufacturing, hospitality, building and many others.

I urge the Senate to listen to independent contractors like Tony and not to fictitious characters like ‘Billy’ in the WorkChoices booklet. Those employers who try to do the right thing by providing proper pay and conditions will be undercut by the employers who use this legislation to push wages and conditions down. It becomes a vicious cycle, particularly in competitive industries such as the transport industry, the retail industry, manufacturing, hospitality, building and many others.

In industries such as the transport industry, there are few costs that employers can control other than wages. The competitive nature of that industry dictates that pressure will be placed on larger employers that are
safety conscious and abide by driving hour regulations. For those employers at the other end of the spectrum, there is every incentive to push employees to break the road rules and cut time. They try to negotiate contracts which have speeds that actually are faster than the legal speed limits. That is right: there are companies out there who try to make drivers drive faster, on average, than the legal speed limit. That is unsafe and unscrupulous. The current system provides some protection for drivers from the imposition of contractual terms that would pressure them into unsafe practices. These protections will be stripped away by this bill.

In the retail industry, without an award safety net, large employers will be forced to compete with small chains on the basis of lower wages and worse conditions for employees such as ‘Billy’ from WorkChoices. In manufacturing and heavy industry, employees working with dangerous machinery and equipment will have to work longer hours just to make the pay they were getting with overtime and penalty rates.

This unjust bill also attacks the long-established right of employees to take organised industrial action. The requirement for compulsory secret ballots to occur in order to take legal and protected industrial action is intended purely to frustrate the legitimate pursuit of claims by employees. The bill effectively removes a right to strike, which is recognised internationally as a feature of free and democratic countries. The Howard government is attacking one of the characteristics of our system that differentiates us from despotic regimes. These are not rights that should be easily trampled in a democratic system such as ours. However, this legislation raises the spectre of state-sanctioned victimisation and jailing of trade unionists legitimately pursuing improvements to their members’ wages and conditions. For example, if a person contravenes an order of the commission, they may face a penalty of imprisonment for 12 months. This is extreme legislation and it goes far further than anything mentioned previously by the Howard government, and it takes Australia down a disturbing path.

The abolition of any effective right for employees of an employer with less than 100 employees to pursue an unfair dismissal claim is unarguably one of the most vindictive and ill-conceived proposals in this bill. All employees currently have access to unfair dismissal provisions. If this bill is passed, up to four million employees will be able to be unfairly sacked and left without a remedy. The concept of unfair dismissal will effectively be abolished in 98 per cent of Australian workplaces. The ACTU television campaign is spot-on in terms of what will happen. Employees with family responsibilities and those who have other fixed commitments will either have to toe the line or face the sack.

Of course, the government maintains that workers will still have the right to bring an action for unlawful termination in the Federal Court. This is nothing but a smokescreen for the removal of workers’ rights. This government cannot be seriously proposing that a low-income earner will waltz into the Federal Court with their legal advice and fund protracted litigation against a major company. Unlawful termination cases in the Federal Court can cost an employee up to $30,000 in legal fees and can run for 18 months. Not surprisingly, there have been only around 150 of those cases in the last nine years. In contrast, the AIRC has dealt with 50,000 unfair dismissal cases over the same time. AIRC cases are generally resolved within two months.

If there are problems with the unfair dismissal system then they should be addressed in a fair and balanced manner. This govern-
ment has decided to throw out the whole system because it does not believe people can be unfairly dismissed. It is not making the system simpler and fairer; it is just removing important rights from working people.

The Howard government has no mandate for these radical and fundamentally unjust changes. You can pore over coalition policies for the October 2004 election and you will not find any mention of the proposals contained in this bill. There is no mention of a proposal to centralise industrial relations and override the states. There is no mention of a plan to abolish the no disadvantage test and give employers the ability to force workers onto individual contracts. There is no mention of a plan to remove the unfair dismissal provisions for all employees who work in firms with more than 100 employees.

The Australian public knows this legislation completely fails the test of fairness. There is no way to satisfactorily amend this bill. No tinkering can remove its inherent unfairness. The Senate should reject this bill outright. If the Senate does not do so, I am sure that the Australian people will. Labor have pledged to rip up this legislation, and that is exactly what we will do after the next election. Labor will restore fairness to the industrial relations system.

Senator STOTT DESPOJA (South Australia) (11.20 am)—I rise to speak on the so-called work choices bill, the Workplace Relations Amendment (Work Choices) Bill 2005. The Australian Democrats have made clear in our report to the Senate committee and in various contributions in this place—specifically from my three colleagues, who preceded me on this legislation—that we will be opposing this legislation. Typically, because we still take seriously the role of the Senate as a house of review—that is, it entails an obligation to effectively analyse, scrutinise and assess legislation—we believe that not only do we have a responsibility to look for flawed legislation, where there may be mistakes or technical problems, but we also have a responsibility to improve legislation where it is bad and ameliorate the worst aspects of legislation. Therefore we have a series of amendments that will be moved on behalf of the Australian Democrats in an attempt to try to lessen the impact of this legislation.

We are not stupid. We have seen the numbers in this place, and we have certainly heard how, despite some of their individual preening and posturing, some individual senators—despite their comments and their purported concern for Christmas Day and/or workers—are going to give in to the agenda before us. Their having done so, this legislation will now pass with a majority of the Senate. Please do not get me wrong: I recognise a mandate in the sense that the government have a mandate to form government with a majority in the lower house. They also have a majority in this place. But I did not think that that majority would equate with numerical thuggery.

I never thought that we would see a curtailing of the role of the house of review in the way that we have seen it since the Senate resumed in August this year. I did not think we would see displays such as those that we witnessed this week in the lower house—that is, the perpetual gagging of people. Not only have the debates been gagged; even the debates on the debates have been gagged. I did not think we would witness members not being heard in the lower house, as has happened this week. So I did not think that the upper house would emulate that behaviour, because I have always thought that the green leather benches were where the action was and the red leather benches were where we saw more considered—
The ACTING DEPUTY PRESIDENT (Senator Forshaw)—Order! Senator Stott Despoja, sorry to interrupt you. Would the two ministers please keep their conversations down. If you are seeking advice, you might do it in a more quiet way and maybe in another place. Thank you.

Senator STOTT DESPOJA—As I was saying, I thought that this chamber would be the one where we took that process of comprehensively analysing and assessing legislation before us in a much more serious manner. But we are not doing that. In fact, this fortnight we were told that the government has, I think, an ambit claim of somewhere between 17 and 23 pieces of legislation. We are grappling with arguably the most serious legislative reforms this chamber has seen certainly in a decade—and, in the case of industrial relations legislation that is before us, arguably in 100 years. We are looking at the overturning of an industrial relations system that has served us well. It is an industrial relations system that recognises that workers are not as powerful as employers—that bosses do have more power and workers can be more vulnerable. And that premise is in the process of being overturned in this place. It is being overturned in a way that is gut wrenching and soul destroying. It is soul destroying because some of us do believe, as legislators in this place, that we have serious, far-reaching responsibilities to democracy.

Other legislation, combined with this bill, will have a far-reaching effect on the social fabric and the social cohesion of this country. Look at it. Mr Acting Deputy President: we are knee deep in it—whether it is a radioactive waste dump, whether it is radical welfare reform or whether it is antiterrorism provisions that overturn fundamental principles like the rule of law, professional legal privileges, human rights and civil rights. Those very aspects of our democracy are threatened not only by the substance and policy of the legislation with which we are dealing but by the process—the way in which it is being dealt with. I have been lucky enough to sneak in and grab my spot on the speakers list before it runs out—that is, before this debate is gagged, as it will be at midday today. I only hope that this is not setting a precedent for the remainder of the fortnight. I only hope that the antiterrorism law and the other bills that are still on the government’s long list of ambit claims will not be dealt with in the same way.

This bill before us is an attack on all workers, but particularly and most appallingly on our most vulnerable workers—women, families, workers with family responsibilities, younger people, workers with disabilities and, of course, it almost goes without saying, the low paid. But, in this place, on occasions I wonder if we have all forgotten what it is like to be low paid, because so many of these provisions suggest that we have a parliament, a government and an executive that are way out of touch with real Australia and the real concerns of ordinary workers. Reading through some of the submissions from the Senate inquiry and the personal stories, I found many of them heartbreaking. People keep saying the sky is not going to fall in—and I am not even going to refer to Senator Joyce’s outburst this morning—but the reality of the impact of this legislation is that a lot of the changes will be insidious. A lot of these people are so powerless and vulnerable that we do not always hear from them. These people do not always have a voice to speak for them, and that is why this Senate has to do its job properly today, and hopefully not pass legislation that is such an unprecedented and far-ranging attack on these people.

My colleagues, in their contributions and indeed in our Senate committee report, have discussed the impact that this legislation will have, particularly on the low paid, young
people and those with disabilities. So today I want to talk about the impact of this legislation on women in Australia and specifically on workers with family responsibilities—the majority of whom, of course, are women. It is particularly concerning that many women, particularly mothers—and in particular arguably one of the most vulnerable in our community, in a political sense and in every other sense; that is, single mothers—are among the most disadvantaged of all workers in terms of their pay and their conditions.

In fact, as the Democrats minority report on this legislation argues, we believe women and employees with family responsibilities will be hit hardest by these proposed changes. Workers with family responsibilities need job security, predictable common family time, protection from excessive hours and flexibility. Yet Australia already lags behind other countries on several of these measures, including working hours and policies to assist employees juggle their work and family lives. Of course, this legislation exacerbates all these issues, as argued overwhelmingly through the Senate inquiry process and in the submissions.

On average, full-time working women earn around $155 less per week than men. Their male counterparts get $155 dollars more on average per week. For women in a good bargaining position, these changes will have little impact. But, as a large number of submissions to the Work Choices inquiry showed, because women are in and out of the workforce for family reasons, they generally have lower bargaining power. This is a point that has been proven time and time again through research. This means they can be more easily forced onto AWAs. In fact, the Court government’s deregulation of the labour market in Western Australia resulted in women in that state fairing worse relative to males and to other women around Australia. In February 1992, the Western Australian gender pay gap was 22.5 per cent. By May 1995, it had widened to 27.8 per cent. We know already that many existing AWAs are in fact less family friendly. That point, as I recall, was borne out by the Victorian government submission to the Senate inquiry process. I thought that submission was quite informative and precise in the way that it pointed out its concerns about how the legislation would specifically affect workers with family responsibilities.

The submission listed a number of concerns. These include the removal of work and family conditions—for example, the right for parents to request extended parental leave—and the right to sell two weeks annual leave. This will reduce common family time. Key conditions, such as public holidays, rest breaks, annual leave holdings, allowances and penalty shift and overtime loadings, can be left out of AWAs. Workers with caring responsibilities will have less bargaining power in relation to family unfriendly conditions. The Victorian government argues that this will advantage the careless worker and may lead to ‘a race to the bottom, so that even good employers cut conditions’. It argues that the diminished role of the Industrial Relations Commission, which, as it says, ‘has been the source and forum for all recent general advances on work and family standards,’ will no longer play this role. So that umpire, that force of hope for fairness, particularly in relation to work and family, is effectively being emasculated. The loss of arbitral power of the AIRC, it argues, will reduce the capacity of employees to contest their employer’s application of work and family provisions, and the establishment of the Fair Pay Commission will see a likely fall in real wages.

The Victorian government is also concerned about the expansion of individual agreements. Its submission points out that ‘existing evidence shows that non-
managerial employees on AWAs, relative to those on collective agreements, face lower pay rates, lower pay rises, long, unsocial hours and less time autonomy. Women fare especially badly as do part-timers and casuals, who have disproportionate responsibility for families. It is concerned with the family unfriendly nature of AWAs generally. There is ‘less annual leave, long service leave and sick leave’. In fact, according to these statistics ‘only 12 per cent of AWAs registered between 1995 and 2000 had any work and family provisions.’ The fact is that most people who need those family friendly provisions have the least access to them. Only 51 per cent of women on AWAs had access to annual leave, so we are not talking about other specific work and family measures; we are talking about annual leave and just over half having access to annual leave. That is compared with 62 per cent of men. Fourteen per cent fewer women than men had access to any general work and family provisions. This is an outrage. It is a particular outrage in 21st-century Australia. How far backwards are we going to go as a consequence of this legislation?

This bill will encourage growth in unsocial and long hours. Hey, let us learn from parliament. I cannot wait for those sittings to roll on into the night! Conditions such as compensation for overtime and unsocial hours are not protected under the bill. Of course, as the Victorian government argues, control over working hours and the right not to work unsocial hours are important to protect family shared time. According to its submission, ‘almost two-thirds of Australians already work sometimes or often at unsocial times.’ Work Choices will exacerbate this.

In its submission to the inquiry, the Human Rights and Equal Opportunity Commission argued that the Workplace Relations Act had been, ‘singularly unsuccessful in achieving pay equity’ and it was ‘concerned that the Work Choices bill will not address this issue’. Further, HREOC argued that:

State industrial tribunals have been more successful in addressing the historical undervaluation of women’s skills and in assessing the work value of occupations traditionally carried out by women employees. HREOC is concerned that the restriction of State industrial jurisdictions will remove an important avenue of redress for women employees seeking equal remuneration.

HREOC regards it as essential for gender pay audits and work value tests to be conducted before the federal minimum wage is set by the AFPC, the Australian Fair Pay Commission. It recommended in its submission that the Work Choices bill be amended to require this. HREOC goes on to recommend that the bill should require the AFPC to conduct cross-classification comparisons to ensure outcomes that are equitable for men and women and that ‘the AFPC should be required to take into account structural problems in the classification rates that may affect pay equity.’

There are a number of additional recommendations contained in the Senate committee report, and I commend those to the Senate. They deal with a number of issues specifically dealing with pay equity. The Democrats agree with those. Since 2001, the Democrats, and certainly I, have been calling for a national review of pay equity in Australia. We have been arguing that such a review should be conducted by the Australian Industrial Relations Commission. It is shameful that, 30 years after the equal pay decisions of the 1970s, there is still a gender pay gap in this country, not to mention that this gap has only closed marginally, slightly, while the Howard government has been in power. It is time that the government looked at these issues, particularly pay equity, and examined the idea of some kind of review. At this stage I foreshadow that I will be moving on behalf of the Australian Democrats an amendment
during the committee stage to introduce those recommendations outlined by HREOC.

OECD evidence shows that, where the provision of family friendly conditions is left to the market, they tend to favour high- to middle-income earners and those in the public sector, which is unsurprising. In Australia, for example, employer-provided paid maternity leave is more available to high- and middle-income earners and public servants. By comparison, of course, paid maternity leave is almost unheard of in the hospitality or retail sectors. This means, once again, the most disadvantaged workers—those on lower wages, those with fewer conditions, those with decreasing conditions—miss out. Under this legislation there is absolutely no indication that that is going to get better. Of course, there are a suite of reforms required to ensure this work-family balance that we all talk about but very few governments—Labor or Liberal, at this stage—commit to. On a federal level, however, we have gone backwards. This legislation is a huge step backwards should it be passed. We are towards the bottom of the OECD listing when it comes to the work force participation of women. When it comes to women with children under the age of six, we need to improve their participation rates.

I do not suggest for a moment that we do that by using sticks and not carrots. I do not suggest that it is about ripping welfare payments and income away from mothers and fathers—but in this case in particular women with children aged six years and under. I do not suggest that it is about ripping away the bedrock that they may have, even if it is some mealy, below poverty-line-level income support. I am talking about the realistic creation of sustainable and meaningful jobs. I am not talking about casual and part-time work that is uncertain and insecure; I am talking about part-time work that is flexible, meaningful, properly compensated and secure. That is not what is provided for under this legislation. What about ‘flexibility’ under this legislation? I love that word but it is Orwellian in its meaning. It is double-speak when it comes to this legislation, as is the word ‘choices’ in the title of the legislation. It is immediately transparent to any worker, who knows full well that choice for workers is not part of this legislation but that choice for bosses is, as it always has been.

The suite of reforms that we require includes affordable and accessible child care. We need paid maternity leave. Indeed, we need paid parental leave, but as a starting point we need paid maternity leave from this government—a national, government funded, consistent maternity leave scheme; preferably a 14-week scheme, because that is the recommended standard at an international level. The government could do it. Its own Sex Discrimination Commissioner, Pru Goward, has shown how it is possible. She has endorsed the figures that the Democrats took to the 2001 election campaign. She was the first to make it clear that this is not only feasible and practical but also economical. So there needs to be paid maternity leave, child care, the right to return to work part time, flexible working hours and more family-friendly working hours if we are to assist more women and men—workers who are parents—to return to work and remain in the work force after taking leave to have a child.

I want to say a couple more things on the process. I am glad to see that Senator Abetz is in the chamber because he took advantage of a dorothy dixer during question time to have a go at Associate Professor Barbara Pocock. I will not reiterate his comments; suffice to say that she and others have the opportunity to respond if they feel they have been adversely reflected on—and, let us face it, I think she was. I am very proud of the fact that Barbara Pocock worked for the Democrats when I was leader. She was sec-
onded to Senator Andrew Murray’s staff. Indeed, ironically, she worked closely not only with the Democrats but with the Labor Party and the Liberal Party in reaching agreement and compromise in moving amendments that were acceptable to the government on some occasions when it came to industrial relations reform. I want to place on record that I was offended at the way that the government targeted a former staff member of mine. I hope Senator Abetz won’t be reflecting on any other staff members of mine, including a former staff member who is his nephew.

Senator Abetz—He’s sound.

Senator STOTT DESPOJA—Okay. I am not sure if that former staff member will want a right of reply because I am not quite sure if being called ‘sound’ by Senator Eric Abetz is necessarily something he would want. (Time expired)

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (11.40 am)—I rise to join in the debate on the Orwellian named Work Choices legislation—the Workplace Relations Amendment (Work Choices) Bill 2005. I do so because it is one of the most important and radical bills that have been introduced into the parliament in the 12 years that I have been a member of the Senate. It really reflects an ideological obsession of the Prime Minister. In my view it is clear that this is much more about ideology and about governing for your mates than about governing for ordinary Australians.

I know that the Business Council of Australia and others are ecstatic because there will be no restraints placed on them as a result of this legislation. I do not say that they should not be able to argue for their interests, but in this country we have always tried to have a balance, and to balance the rights of employers with the rights of workers. This legislation provides no balance. This is very much a one-sided piece of legislation that removes the most basic rights of employees. This is not something for which the government has a mandate. It is not something that it exposed in any detail before the election. In fact, on one of the key issues, unfair dismissals, a straight-out mistruth was told during the election campaign, when one sees what is proposed in this legislation.

The most important point to this debate is that I think this represents the first sign of the government over-reaching. Whatever people might say about John Howard—and I do not list him among my personal friends—he is a very smart and cunning politician. I have never underestimated him. I think sometimes some of my colleagues have, but he is a very cunning politician. Hubris has set in, ideology has taken over and absolute power has gone to the heads of the Prime Minister and this government.

We knew when the government gained control of the Senate after 1 July that the world had changed and that the government now had absolute power. But the old saying, that power corrupts and absolute power corrupts absolutely, is writ large in this bill. This is not the sort of bill that would have been passed at any other stage of the Senate’s history. Even when the government previously had control of the Senate, the old Liberal Party would not have advocated this. We heard from Malcolm Fraser the other day. I think Senator Faulkner made a speech in which he referred to Menzies and his attitudes. This is not the old Liberal Party; this is a hard right, ideologically driven agenda that seeks to strip workers of their entitlements.

I am not as confident as some of my colleagues that the effects of this legislation will be felt immediately. Our experience of this sort of thing in Western Australia was that, while it was enacted by some employers quickly, generally it took a while to take ef-
fect. I will come to the Western Australian experience in a moment. What we do know is that the rights of workers will be removed automatically and quickly, and we do know that, particularly when the economy starts to turn, we will really start to feel the effects. I concede that while the economy is going strongly, while there is a skill shortage and while there is low unemployment, the effects of this bill will not be as hard-felt as they will in the longer term. But no matter who is in government, the economy always turns. Good times turn bad, and when that happens we will have, under this bill, a race to the bottom. Competition between workers for a restricted number of jobs will mean that employers will be able to lower conditions and, in competing against other employers, many will be forced to offer the lower rates of pay.

So I, for one, think this is a bill that will, over time, do great harm to the industrial relations system in this country, and to working men and women and how they balance their family and work responsibilities. I think it will also do harm to the underpinning values of Australian society. I actually think this debate is more about values than industrial relations. It is about what values the Australian parliament ought to reflect and what values Australians hold dear. I think the reason that the government have been so spectacularly unsuccessful in their taxpayer funded advertising campaign is that the values that they are trying to promote are not accepted by Australians.

We do not want to adopt the American systems. We do not want to go down the low-skill, low-wage path. We do want to achieve high productivity and high skills. But we want to do that with some fairness in the workplace, and with some ability for people to manage their affairs so that they are not just seen as workers, but as human beings, as members of families and as members of the community. We have got to get that balance right. There is no balance in this bill. This is stripping away workers’ bargaining powers and replacing them with virtually nothing.

During the debates, we have seen the government point to the American and British systems, and say this is all part of a continuation of labour-market reforms started by Labor. It is nothing of the sort. Even under the American model, the rights to collective bargaining are protected—they are not protected terribly strongly, but they are protected. There is no protection for collective bargaining under this system. People are treated purely as workers—as part of the supply chain, the production chain. They are not allowed to come together in any meaningful way to argue for their rights and for measures which allow them to provide proper balance in their lives. So, as I say, I think this is much more about values than about industrial relations. It is about the values of a fair go; it is about those values that we have held dear for over 100 years in this country.

No-one on this side argues that there ought not to be changes. We have always argued that the industrial relations system, like our economy, must evolve. If you look at the big changes in economic policy in this country, they were made by the Labor Party. Some of the biggest changes in industrial relations were made by the Labor Party. But this goes too far. It does not go too far by an inch; it goes too far by a mile. This gets to the situation where there is no balance and there are no protections. It takes us down the road of the American system. It takes us down the road where the values that are underpinning this bill are not Australian values; they are not the values that we have cherished and promoted in this country over many years.

I think John Howard has seriously misjudged the Australian public in going down
this path. I think that this is the beginning of the end of this government, because it is clear to the Australian people that it is not governing in their interests. They smell the arrogance in the air. They smell the abuse of power. They smell the fact that this government is out of touch. They know this is not in their interests. $50-odd million of their money has been spent to convince them, and it has not worked because they know the government is trying too hard. If someone spends $50 million trying to convince you that you should not believe what you know to be true in your heart, you begin to get suspicious. When people cannot turn on their television for two weeks without seeing a government ad telling them that a better world awaits them, they begin to say, 'Why are they spending so much trying to convince me of this if their case is so strong?'

That is the reality. The government cannot convince the Australian people that it is right. It has lost the political debate. It will continue to lose the political debate, because the Australian public know this goes too far. They know the government is overreaching, that it is doing it for the wrong reasons, and that it is not doing it in their interests.

For those who are unionists, it is clear to them. For those who are non-unionists, it is clear to them. They know this does not assist them in any way, and they know that the protections that they have traditionally been afforded are being removed. They know that, when hard times come or there is pressure on them in the workplace, they will not get protection, they will not get the opportunity of accessing an independent umpire and they will not get the protection of being able to combine with others to ensure their rights are protected.

I think this is, as I say, fundamentally about values. It reflects a government that has overreached, has grown arrogant and is unable to quell its urge to exercise absolute power. People with experience in this parliament recognise that. People like former Senator Harradine would never have voted for this legislation. Senator Murray from the Democrats—who, I think, is regarded around the chamber as someone who has some expertise, and who has taken a keen interest in these matters—is appalled. Those who sit in the middle of politics in this country are appalled at the abuses reflected in this legislation. They are appalled at the lack of balance. They are appalled at the attack on ordinary people's rights and capacities to protect their lifestyle.

So this is not just from the Labor Party; you have the Greens, the Democrats, Family First and the Labor Party, coming from very different political positions, all arguing that the government have got this wrong. And, as I say, the government have been unable to convince the Australian public. The shameful abuse of their position in spending $55 million of taxpayers' money has been wasted. Not only were the process and the politics behind it bordering on corrupt, but it has also failed. It has failed because, fundamentally, Australians understand that there is no intellectual strength behind the argument.

In addressing these issues, I bring some experience to these matters, because I lived in Western Australia—as I still do—when the Court government introduced what are widely known as the Kierath industrial relations reforms after they were introduced by the state industrial relations minister at the time, Mr Graham Kierath. He introduced what he said were workplace reforms, and they bear a striking similarity to the federal system proposals we are debating today.

The proposals we are considering here today are very much in tune with the proposals introduced in Western Australia. They reflect the same ideology and the same approach.
The experience of Western Australian workers of those laws was that they drove down wages and conditions, and those who had high skills and were in high demand did quite well, but those who had lower skills—women and the young—did very poorly. ACCIRT, the research centre at the University of Sydney, did some very good analysis of the outcomes of the Court government changes for workers, for the Commissioner of Workplace Agreements in WA. It looked at what had happened to those in cleaning, retail, hospitality and security industries, occupations dominated by women and young people and those with lower skill levels. It went through what the experience had been under this sort of system—a very similar system.

It found that 56 per cent of individual workplace agreements provided for an hourly rate of pay below the award equivalent. Fifty-six per cent ended up on pay less than the award. Ninety-six per cent of contracts which included hours of work provisions specified Monday to Sunday as ordinary days of work. The traditional hours of work were abandoned, and workers in 96 per cent of contracts were required to work on all seven days if required by their employer. Only a third of the agreements contained overtime provisions and, of those, 80 per cent specified overtime at the single rate. So the penalties that had protected workers’ interests—first, by rewarding them for working unsociable hours, a decision that they could make, and, second, by providing a disincentive for employers to make employees work unsociable hours unless it really was required for their business—were removed. I accept penalty rates are a penalty on the employer for making their workers work unsociable hours, but that helped as a check; that is what has made sure that only employers who really need employees for those hours have accessed them.

Of those agreements in WA, only 36 per cent specified annual leave provisions and, of those, nearly half absorbed annual leave into the ordinary rate of pay. In its conclusions, ACCIRT said, ‘The findings in this report suggest that workers are in general worse off under individual workplace agreements.’ Professor David Plowman examined two of the government’s key claims. The first was that the system created jobs. The evidence was that under this system there were no more jobs created in WA than in the rest of the economy—that it had no significant impact on the creation of jobs. The other finding that is worth mentioning here is that, contrary to the government’s claim, it in fact saw women employed on lower rates of pay than the rest of Australia. Not only did their situation worsen in comparison to men, but the situation worsened for women compared to other parts of Australia. So individual workplace agreements lowered wages for the lower skilled, for women and for the young.

Now, some people did very well out of the WA changes; I am the first to concede that. A lot of miners in north-west Western Australia did very well because they had high-level skills and there was a skills shortage. And they are still doing very well, because they can basically name their own price. If you are a sparky or a plumber in the north-west of WA, it is much better than being a politician: they get about twice what we earn, and they work two weeks out of four. So times are good; I concede that. But they will not be so good when the economy turns. As they found out when the economy was a bit flatter before, they were not nearly in as good a bargaining position. The point about this legislation is that it removes protections. It removes the protections for those who do not have bargaining power. Negotiations in the workplace, like everywhere else, are about power. If you have power, you get a good
result. If you do not have power, you do not get a good result. This will fall most hard on those who do not have power—women, the young, the unskilled—just as it did in Western Australia.

Labor fundamentally oppose this bill because we regard it as un-Australian. We believe that the values that underpin it are not Australian values. I do not think they are even American values. They remove the necessary protections that people in Australia’s work force ought to enjoy. We do not want to stifle productivity; we want to encourage productivity. We want to see high-skill, high-wage workers in this country. We do not want to see us having to import people to take high-skill jobs. The government’s failure in the training area is, I think, a national disgrace. The fact that we have trained so few apprentices in the last 10 years has seen us fall into this skills crisis. But what we now know is that the government is committed to a low-wage, low-skill outcome that drives down the minimum wage. After this system had been put in place in Western Australia, we saw that, when the Labor Gallop government came to power, they had to increase the minimum wage by about $100 a week because it had fallen so badly. The protection for those at the bottom had all but disappeared.

These are not Australian values. These are ideological values driven by an ageing man whose vindication of his 20- or 30-year quest lies in having this legislation passed. And the Liberal Party have fallen hostage to that. I say to a lot of those marginal seat members in the House of Representatives: you have made a very stupid decision. Like so many of your Western Australian and Queensland members, you will regret this decision at your leisure, because you will be turned out. The Australian people smell the arrogance, they smell the ideology, they smell the fact that this is not for them and they know that you have overreached. They know you are driven by wrong motives and they know you are not governing for them. One of the things about the Australian public, and sometimes it has been very much to my chagrin, is that they are perceptive and they actually work it out. As a group they work it out. They can see through the posturing and the rhetoric and they actually make judgments that generally get it right. They know what is a fair thing. They know what is an Australian answer to an Australian problem and when they see us going down the American path—

Senator Abetz—Here we go: the ‘American path’. That was Mark Latham’s thing.

Senator CHRIS EVANS—they say, ‘Hang on, we don’t want to go that way.’ Senator Abetz may grin and make false claims, but the point is that Australians have figured it out. They know this legislation is not good for them. They know it might be good for certain vested interests, such as large donors to the Liberal Party and some of the wealthier in our society, but the great mass of ordinary Australian workers know this is not in their interests and they will deliver their verdict on the government at the next election. But we will resist these changes. Labor are fundamentally opposed to these changes. We think they ought to be defeated. But, if we do not win the vote, we will win the political argument, because Australians fundamentally believe in a different set of values than those that appear in this bill.

The ACTING DEPUTY PRESIDENT (Senator Barnett)—Order! The time for the second reading debate has expired.

Question put:
That this bill be now read a second time.
The Senate divided. [12.04 pm]
(The President—Senator the Hon. Paul Calvert)
In Committee

—by leave—taken as a whole.

Senator MURRAY (Western Australia) (12.08 pm)—Mr Chairman, I want to address this question to you in your capacity as Chairman of Committees, if I may. I am seeking your guidance. We have been presented in the last half hour with a circulated list of amendments from the government, comprising 337 amendments on 98 pages, on sheet PN271. The chamber has before it 34 pages of amendments from the Democrats, circulated well in advance; a page of amendments from Labor; three or four pages from the Greens; and three or four pages from the Family First Party. All of the non-government amendments have been designed with respect to the bill. The process in this place is normally that the government amendment to the particular subject matter is put first and, if that passes, obviously the amendments being proposed by the alternative parties need to be to the amended bill. Because we are under, as I understand it, an urgency motion, I am not able to put a procedural motion to defer the consideration of this bill until next Tuesday to allow the Senate committee to reconvene to examine the government amendments and their relationship to the non-government amendments.

The limited resources which the cross-benchers in particular have and even the Labor opposition have make it very difficult for us to conduct a proper examination of how to relate the amendments to the new propositions the government has put forward. Because we are under, as I understand it, an urgency motion, I am not able to put a procedural motion to defer the consideration of this bill until next Tuesday to allow the Senate committee to reconvene to examine the government amendments and their relationship to the non-government amendments.

Senator Faulkner interjecting—

Senator MURRAY—I am corrected by Senator Faulkner—it is because of the guillotine. Because I am not able to do that, we are placed in an impossible situation of having to deal with something which we have not sighted before and which we plainly want to address through amendments or
through adjusting our own amendments. One of the possibilities I can see to deal with this very difficult procedural and management issue is for me to move a motion in normal time, which, as I understand, expires at 3.45 today, recommending that the Senate committee be reconvened and debate on this bill be deferred until next Tuesday to allow for these matters to be discussed.

I am seeking your guidance on two bases, Mr Chairman. The first is an issue of fairness and proper process—whether it is appropriate for this debate to occur now, given that the government has at the last minute provided the Committee of the Whole with this extraordinary range of amendments, which, even given the obvious talents around the chamber, are very difficult to absorb in the time. So I seek your guidance on, firstly, whether it is a matter of fairness and proper process that the debate should be delayed and, secondly, whether it is possible for us to move an amendment in normal time—this is abnormal time because of the gag, the guillotine and the urgency motion—to defer the debate until next Tuesday and allow the Senate committee to convene.

The CHAIRMAN—Firstly, in terms of the issue of fairness and proper process that you raised, due process has been followed. It is up to the committee itself to determine how it will process the amendments that are before it. Amendments can be brought to this chamber at any time during the progress of a debate. In that sense, proper process has been followed. Secondly, in terms of the possibility of moving a motion when we are out of committee and in the normal sitting of the Senate, that is a matter that you will need to determine yourself. It is beyond the province of what will happen within this committee stage of the bill. That is the best advice that I can give you at this stage, Senator Murray.

Senator WONG (South Australia) (12.13 pm)—I want to make a number of comments on the issues raised by Senator Murray. I want to make it clear to my colleagues, who may not be aware of this, and to others exactly what is occurring here. Today we saw the government gagging and guillotining debate on what is the most complex piece of legislation dealing with workers rights in probably 100 years and the most drastic undercutting of wages that this country has ever seen. It was gagged in the Senate so people could not finish their contributions but also, more importantly, so this committee stage examining the detail of the amendments would be truncated.

What we have also seen today is that, at 11.21, the opposition, and I presume the minor parties, got from this government almost 100 pages of 337 amendments on what is already a complex bill. This was 39 minutes before the committee stage commenced. I think that is about seven seconds per amendment. I can read pretty fast—I do not know about others in this chamber—but even I would be pushing it. Jokes aside, I would have thought that the Australian people deserve that their senators in this chamber are offered an appropriate opportunity to scrutinise this legislation properly and are not presented with this level of amendment, this scale of amendment—nearly 100 pages, 337 amendments—from the government, giving us 39 minutes before the committee stage in which to get advice and to consider the impact on our own amendments or on the bill itself.

What is extraordinary about this is that not only is it a complete abuse of process but it also demonstrates the complete shambles of this so-called reform agenda of the other side of the chamber. To have a government so comprehensively make errors in legislation of this sort after talking about it for a number of months; to have the government so com-
prehensively fail to put forward a sensible and comprehensive package; and, worse, to have a government so embarrassed as to have to put forward 337 amendments to fix up the mistakes that are included in this legislation, really demonstrates what a shambles this process is.

There are 337 amendments—we know that Senator Joyce has been unfortunately sold a pup so we know that there are very few substantive policy issues—and the vast majority of these amendments relate to the government’s own errors. The government worked out, even through the truncated committee process, that there are serious flaws in this legislation separate from the policy argument. Just as a matter of legal drafting, there are serious flaws in this legislation. So how can the government seriously consider that it is appropriate to require this chamber to get across this scale of amendment to a bill that is already complex and already difficult to understand by giving us amendments 39 minutes before the committee process begins?

I will give one example of the errors the government has made. We found out through the Senate committee process, and also, to some extent, through the Senate estimates, about the problems in relation to the so-called prime ministerial promise that they were going to guarantee a 38-hour week. It was quite clear through the Senate committee process that, given the averaging over 12 months of the 38-hour week, an employee would not have the protection against unreasonable additional hours until the 53rd week. So Australian employees would not have protection against working unreasonable additional hours over their 38-hour week until the 53rd week. That was what the government’s bill said. That is the scale of the mistakes and errors in the government’s own legislation.

Who is going to pay for this appalling lack of management and appalling lack of professionalism in putting into the chamber a bill that is seriously flawed and then having to have 100 pages of amendments thrown at senators? It will be Australian workers. We on this side do not think that is acceptable, not only because of the outcome for Australian people but because the process in this chamber ought to be respected more. We ought to have a proper process. We ought to be able to consider the government amendments in detail. Senator Murray is right: we cannot do that in the time frame with which we have been presented. It is a sledgehammer approach by this government just to ram this bill through, regardless of the legal consequences.

I flag that we in the opposition are of the same mind as Senator Murray and we think the proposal that Senator Murray has flagged is a far more appropriate and sensible arrangement which would allow this Senate to do its work properly—something the government appears, on the basis of the way it has conducted this matter today, to not care about. By the way it is treating this Senate with such contempt, the government is clearly indicating that it does not care if senators in this place cannot do their job properly. I hope that some of the foot soldiers on the other side who are senators in the Liberal and National parties actually take their jobs as senators a little more seriously than simply fronting up with the government to trample over Senate processes in the way they are doing.

Senator ABETZ (Tasmania—Special Minister of State) (12.19 pm)—Let us get a few facts fair and square on the table. Those on the opposition benches will oppose this legislation no matter what. They are not interested in a single amendment. Mr Beazley has made the promise that he will rip up the legislation if he ever comes into government.
Senator Murray—Mr Chairman, I rise on a point of order, which refers to imputing improper motives to senators. There are, as I pointed out, well over 40, perhaps 45, pages of amendments from non-government parties attempting to amend the bill. My point of order is that the minister should not impute an improper motive that senators are simply concerned to oppose the bill and not concerned to improve the bill.

The CHAIRMAN—Senator Murray, there is no point of order. That is a debating point.

Senator ABETZ—Thank you, Mr Chairman. Those who read the minority reports co-signed by senators opposite in relation to the work choices bill will recall what they recommended—that the bill be opposed. No fancy points of order can now overcome the fact that they are on the public record as saying: ‘No matter what, we will oppose the legislation.’ Even if all of the Labor Party’s amendments were to be accepted by the chamber, would they then vote for the third reading of the bill? Of course they would not.

Senator Murray—Absolutely. Of course they would. You have not read them.

Senator ABETZ—Senator Murray is interjecting on behalf of the Australian Labor Party, which once again makes a point—

Senator Murray—Mr Chairman, I raise a point of order, which goes to my previous point, made not in my previous point of order, with regard to the fact that the chamber has not had time to read the amendments. If the minister had read the Labor Party amendments he would know that they oppose all the schedules and then, if they were successful, of course they would support the third reading.

The CHAIRMAN—There is no point of order, Senator Murray.

Senator ABETZ—Just for once, Mr Deputy President—although it is very dangerous—I will take on face value all the interjections taken by the other side. How embarrassing would it be for Mr Beazley, if he were ever to become Prime Minister, to then rip up the bill that he has promised to rebuff if it is a bill that the Labor Party now say they might support? That is the problem when you operate in a policy vacuum, jumping on each bandwagon as it goes along, thinking there might be a bit of popularity here or a bit of popularity there.

After a while, some of those bandwagons are inconsistent, and that is when the people of Australia start to say, ‘We cannot take these people for real.’ They looked at the bill, they provided a minority report to this place and they indicated that they would oppose the legislation. Mr Beazley said on the public record that he would rip up the bill, that there was nothing good in it. Now, all of a sudden, they say, ‘If we can amend it, it might be okay.’ That has shades of roll-back about it. Do you remember the GST and roll-back? They said, ‘We will roll back the GST. It is a disgrace.’ When asked why it was a disgrace, they said, ‘Because everybody is going to suffer. If you suffer from your cat getting lost up a tree, it is going to happen a lot more often.’ No matter what the circumstance, everything was going to be worse as a result of the GST.

Mr Beazley, looking after the workers of this country, was going to roll back the GST. Has he? Would he? No. It is now roll-over. He has fully accepted the GST, having been mugged by the reality that the Australian people are so much better off today than they were before the GST. He no longer uses the phrase ‘roll-back’. He now uses the term ‘rip-up’. Just as much as roll-back became roll-over for Mr Beazley, rip-up will become rip-off. They will rip off our policy, accept it and adopt it. What makes me so confident
about that? Unbeknownst to me, there seems to be movement on the other side. I do not actually believe that at this stage, because for those opposite it usually takes a bit longer for the reality to set in.

Tony Blair, in the United Kingdom, is a successful Labour Prime Minister. He railed and ranted a bit about the Thatcher reforms, terribly demonised still amongst the media and other commentators. But, surprise, surprise, when he became Prime Minister he thought, ‘These reforms are pretty good. Let’s not change them, because we will actually harm workers.’ To his great credit, he had the guts to front the Trade Union Congress of the United Kingdom and say, ‘We will not roll back the reforms.’ On the strength of that, he has been re-elected and re-elected.

Senator Wong—Chairman, I rise on a point of order. My point of order is one of relevance. The minister seems to be talking about another country. He is talking about a lot of things that are not relevant to the bill before us. I suggest that, as we were discussing the legislation that is in the chamber, perhaps we could get on to doing that. For the minister’s information—because he obviously did not hear Senator Murray the first time—if he took the time to read Labor’s amendments, the minister would see that we are opposing each schedule of the bill. Clearly, if every schedule of the bill is opposed, the Labor Party would not worry about supporting the bill because none of the schedules would be there. That indicates not so much Senator Abetz’s lack of preparation—because I concede that we are being rushed through this bill by the government—but the lack of time this chamber has to scrutinise the legislation.

The CHAIRMAN—There is no point of order. I remind senators that this is the committee stage of the bill. There is free-ranging debate allowed at the start of the consideration of the bill in the committee stage, and the person who looks after the committee stage of the bill is known as the Chairman of Committees and is therefore addressed as Mr Chairman or Mr Acting Chairman, not the Deputy President, the President or any other title in this place.

Senator ABETZ—The Labor Party always get terribly embarrassed when they are reminded of what Labour leaders around the world have done on coming into power after railing against industrial relations reforms. Mr Chairman, I have already dealt with the United Kingdom and Mr Blair. Let us take ourselves across the Tasman to New Zealand. Helen Clark and the Labour Party did exactly the same. Have they rolled back the reforms? No. What about the Premier of Victoria, just a bit south from here? Jeff Kennett referred the powers to the Commonwealth. Has Steve Bracks knocked on the door and said, ‘This terrible Howard government can’t be trusted. We want them back so that we can look after the workers’? No, surprisingly, he has not. He is very happy, because he knows the benefits to the economy and to the workers.

In relation to the matters raised by Senator Murray, he and others seem to have very short memories. I think it was Senator Robert Ray who guillotined over 60 bills through this Senate in one hour.

Senator Eggleston—Sixty bills.

Senator ABETZ—That is quite right, Senator Eggleston—60 bills in one hour. Hands on hearts, the other side say, ‘How dare you! This is just so terribly immoral.’ But the morality is that if you have the numbers, it is moral, it is proper and it is decent. You have a mandate. You should do it because you have a mandate. You have to answer to those who elected you. But when those nasty people on the coalition side hap-
pen to time manage the Senate in a sensible way, all of a sudden it becomes immoral. Let us not forget when the Labor Party was blessed with a bit of talent in this place, such as Gareth Evans. During the native title debate, as I understand it, he dropped in over 400 amendments without running sheets or explanatory memoranda et cetera available immediately. But, of course, that was important social legislation for the wellbeing of the community. So, if Labor does it, it is okay. But, if the coalition does it, it must be tainted—as of necessity, because the coalition does it, it must be somehow tainted.

In the motion that we put before the Senate about managing the time, we said that there should be appropriate cut-off times. I recall sitting here till four and six in the morning, whilst Labor was in government, trying to get certain issues through this place. If you think that is sensible time management, if you think sensible decisions are being made at five o’clock in the morning, so be it, but I think it will help all of us exercise some degree of judgment in how we conduct ourselves in this debate if we know what the time limits are in each of the stages. If we know the time allocated, we can concentrate on the things that are actually important to us.

I deem it a great honour to be able to handle this legislation on behalf of the government, because this legislation is about flexibility and simplicity. It is about employer and employee working together as partners with a common interest rather than the divisive ‘them and us’ paradigm. The now largely discredited and false division of capital and labour may still have a refuge in some dust-ridden offices of left-wing academics and those still wanting to fight a class war, but those of us who have moved on from those paradigms and artificial divisions look at the real world of the 21st century and we look to the aspirations of our fellow Australians, employee and employer alike. Australians all, we have a common interest in reforming and adjusting our methods of doing business, be it cleaning up our tax system, the waterfront, the building industry, the welfare system or indeed, today, the workplace relations system. Through reform, we establish a fairer system for all, a system which will allow Australia to grow its wealth and prosperity and to share the growth and wealth equitably for the benefit of every individual Australian. For many years, indeed decades, the need to reform our workplace relations system has been acknowledged, but not many have had the will to publicly advance it.

December 2005, coincidentally, marks the 20th anniversary of the famous Dollar Sweets case, a groundbreaking industrial relations case which exposed the intimidation and thuggery of elements of the trade union movement and, might I add, the complicity and moral bankruptcy of elements of big business. On an occasion such as today we should acknowledge the courage, commitment and dedication of people like Fred Stauder, the small business man who owned Dollar Sweets, and of course the excellent legal representation that he had in Messrs Kroger and Costello. I had the privilege of working on that case for a short period of time. I witnessed first hand the thuggery and intimidation of the union in that case, where migrant workers, very happy with their lot in life at Dollar Sweets, had their jobs prejudiced by union action and had their windows broken and their lives threatened by union operatives if they were to give evidence. I was also disgusted by a competitor of Dollar Sweets who told me he was only interested in the next six months’ figures and, if Dollar Sweets went belly up because of union action, it would give him a greater share of the market. This unfortunately was not an uncommon scenario.
At about the same time, the HR Nicholls Society came into being, an organisation named after a former editor of the Hobart Mercury who was threatened with imprisonment for daring to criticise the Conciliation and Arbitration Commission. At the time, the views expressed by the HR Nicholls Society were condemned as those of economic troglodytes. Today they are seen as mainstream and right for the times. Those opposite talk the talk, but they cannot bring themselves to walk the walk. The reason is simple: Labor know what needs to be done, but they cannot bring themselves to do it because of their union masters.

That is why today we have the pitiful sight of Mr Beazley, in his second incarnation, traversing exactly the same path as he did on tax reform. Remember Mr Beazley huffing and puffing about our new tax system? People were going to be worse off. People would lose their jobs. Indeed, everything other than Armageddon itself was going to fall upon the people of Australia. That was, of course, despite Mr Beazley having supported the GST previously with Mr Keating. He then said he would roll it back, and his policy now is to accept it 100 per cent—yet opportunistically he opposed the government, trying to ride into government.

All these years later, Mr Beazley and the Labor Party have learnt nothing from their previous debacle. Mr Beazley, with the same affected outrage, tells us he will rip up the workplace relations reform. Instead of rolling back, he will rip up. At least there is some hint of originality in that. But, when asked what his alternative policy would be, he lazily says: The industrial relations lemon has been squeezed dry.

He thinks there is no need for a policy: everything is okay; everything has been done. Indeed, Labor senators often mimic their leader’s laziness and interject arguing that the economy is going well. I agree, it is. But we on this side always believe that more can and should be done.

The Australian economy is finely tuned at the moment, but I say to the policy-lazy opposition that our economy is akin to an athlete. An athlete, having honed his body to peak physical fitness, would be as churlish as the Leader of the Opposition if he were to say: ‘I’m fit. I don’t have to train anymore.’ On the first day, in the first week and even in the first month there may be no discernible difference, but he will become less competitive. Talk to any athlete that has lost condition. It is a lot harder to regain peak condition than to maintain it. So it is with the economy. The day we are lazy enough to say we do not have to train or reform anymore is the day that we should be giving the game away.

During other stages of the Committee of the Whole I will make other comments in relation to what numerous other organisations have, unfortunately, said about this legislation, in exactly the same terms as they did about the GST—never offering the people of Australia an apology for their false prophecies but simply repeating and regurgitating them and just deleting ‘GST’ from their press releases and inserting the words ‘workplace relations reform’. I will be dealing with some of those matters later in the committee stage.

Senator Faulkner—Mr Chairman, I rise on a point of order on the issue of process. We have just witnessed a disgraceful abuse, in my view, of Senate procedures. This is a minister whose government has determined that we will deal with this bill under the guillotine. Because of the government’s guillotine, the time for second reading speeches ceased at 12 noon today. This minister was not capable of giving a speech on the second reading—
Senator Murray—Or incorporating it.
Senator Faulkner—Or incorporating it.
Senator Murray—We would have given leave.
Senator Faulkner—Indeed! So this minister did not give a speech on the second reading debate when the government insisted that second reading speeches should be given. Now he has come in here and abused the procedures of this place and made his second reading speech—in total contempt of his own government’s order, of the Senate chamber and of this committee—at the beginning of the committee stage of the debate. It is quite unprecedented to have a situation, under guillotine in this place, where a minister, failing to give his speech on the second reading because of the government’s own guillotine, then comes in and wastes the time of this committee in these circumstances. I just want to record what an outrage this is. It is an unprecedented abuse from the government, an unprecedented abuse from an incompetent minister, and I ask you to so rule, Mr Chairman.

The CHAIRMAN—Senator Faulkner, there is no point of order.

Senator Murray (Western Australia) (12.39 pm)—I want to return to the issue of process I raised with you, Mr Chairman.

The CHAIRMAN—You are entitled to do that.

Senator Faulkner—Do you agree with my comments, Senator Murray?

Senator Murray—I do, Senator Faulkner. And may I say on the record that if the minister had chosen to incorporate a second reading speech, we would of course have given him leave to do so.

Senator Abetz—I don’t read copious notes like that.

Senator Murray—You certainly read that one, and I do not blame you for it. This is the issue I put to you, Mr Chairman: I understand your earlier ruling and advice, and I concede that, under the standing orders and the precedents of this place, you do not have much option. However, as a fair person you would recognise that it is very difficult for us to change our amendments to accommodate the government amendments, given the time we have had to glance at those 98 pages and 337 amendments.

What I am requesting is this: because our amendments are to the bill—I am referring to the Democrats amendments; others can speak for their own—we would want our amendments to always take precedence before the government amendments in every case. That is because we are unable, if government amendments are moved, to amend the government-amended bill—if you can follow the point I am making. I think it is within your powers to so order where there is that kind of conflict, because it is in the power of the chair to make instructions with respect to the running sheet.

The CHAIRMAN—On that score, I would be guided by the wish of the committee. If it is the wish of the committee that your amendments be considered before government amendments, then that is a decision that the committee itself will need to make. I cannot make that decision for the committee. However, all I—and those who will occupy the chair during the committee stage—can be guided by is the running sheet that has been compiled by the clerks. I have got only the first page of it at this stage. Other than following the running sheet, which is the standard practice in this place, any deviation from that would need to be a matter determined by the committee itself.

Senator Abetz (Tasmania—Special Minister of State) (12.37 pm)—Without saying carte blanche in relation to Democrats amendments, I would be minded to agree to
that, let us say up until question time today, and then I will seek advice from those who are dealing with the government amendments to ascertain how they would actually dovetail together and whether that would cause any procedural difficulty. In my own mind I do not think it would, but do not take any comfort from that. I reserve my position on that. But, at this stage, if that is how the Democrats would seek to proceed, I think that, at least up until question time, we could accommodate them, and then let us see how it progresses thereafter.

Senator GEORGE CAMPBELL (New South Wales) (12.42 pm)—I feel compelled to get up and speak in this debate, particularly in light of the comments made by Senator Abetz and what was a very feeble attempt to defend the arrogance and contempt with which this government has treated this chamber in regard to this bill. It does not go just to the amendments but to the whole process of industrial legislation that is currently before this parliament. It started on 26 May, when the announcement was made about the Work Choices legislation. This was not an issue that was taken to the last election. It was not an issue that the Prime Minister was out there selling holus-bolus. It was an afterthought when it became clear that the numbers were going to be available in this chamber to get it through.

The announcement was made, we had the WorkChoices booklet distributed in August—some 63 pages of it—and what did the government do? Did the government seek to consult with the state governments? Did they seek to consult with the other players in the industrial relations arena about the implications of Work Choices? No. They summoned employer unions and employer groups to a briefing on a Sunday morning and briefed them about the content. They left out the community groups that were going to be affected by it. They left out the trade unions that were going to be affected by it. They appealed to a very narrow, biased electorate in terms of the contents of Work Choices, because this is a bill that has been specifically framed to satisfy the needs of one group within our community. It is not designed to satisfy the needs of the community in the broad but of one group within our community. So you would have to say that, as a very basic minimum, this bill is biased and prejudiced in its intent.

What was the second step that took place? They did not even have the decency to distribute copies of the bill to members of parliament, the very people who were going to have to sit in judgment on it and determine whether or not it should be passed. We had to go to the computer system and get them off an electronic form. But I did see a number of Liberal politicians around the building running around with the yellow documents. They obviously knew how to get them or had had them sent to them. Certainly we had seen the minister at question time consistently referring to the document when he was answering questions.

The second issue I will come to is the tabling of the bill. The bill was tabled on the Wednesday after Melbourne Cup day—all 700 pages of it and some 500 pages of explanatory memorandum. There were 1,200 pages.

Senator Abetz interjecting—

Senator GEORGE CAMPBELL—There were 1,200 pages, Senator Abetz, and you gave until the Thursday—the next day—for people out in the community who wanted to make submissions to the inquiry to get their submissions in. The inquiry started on the following Monday. That is the time frame we were given: three working days in order to absorb it and prepare ourselves to question the department. That is the second issue associated with it.
The third issue associated with it is that, in the committee, we sat down and worked out some detail as to how we would handle the inquiry, and we were told that the department would be there on the Monday morning for one hour—it might have been 1½ hours—in order to give us an overview of the bill and how it would operate. That was the proposition that was put to us. What happened? The department turned up with a submission, made an opening statement of a couple of minutes and answered questions. We had no overview of the bill from the department—not a comment. They answered a few questions that people had in respect of it. Again, they treated the whole process with contempt. They told us one thing in the Senate committee and have in fact done another.

What was very clear halfway through the process was that this inquiry was not being run out of the committee office. It was not being run by the Liberal members on the committee. It was being run out of the minister’s office. They were determining the agenda as to how we would deal with the issues that we had before us. The reality was that, even in the Senate hearing, significant players in the industrial relations field were deliberately excluded from giving evidence. They were deliberately excluded from being able to come along and give evidence, despite the fact that employer organisations in the same industry were invited along to put their point of view. So it was biased even to the extent that there was a selective choosing of the people who would come along and give that evidence.

Now we have, as my colleague Senator Wong said, some 100-odd pages of amendments dropped on our doorstep 20 minutes before it was proposed to start the process of debating this bill. There is not even an explanatory memorandum with them. Where is the EM to explain the basis of these amendments? Are you saying you did not know about them—that they were suddenly drafted last night at your party meeting? I have grave doubts that that was the case, Senator Abetz. There was not even an attempt to get an explanatory memorandum out. This process has nothing to do with giving people a reasonable shake at being able to debate the issues that are contained in this bill. This process is about getting it into your time frame where you can ram this through the parliament, get it adopted by this chamber in the shortest possible time and get yourselves out of here. That is what the process is all about.

There is not going to be an opportunity to genuinely debate some of the critical issues that are in this bill. One of the issues that was raised, as my colleagues mentioned, was the flexible working hours. I raised some questions about that at Senate estimates. You came back and promised that the minister was going to have a look at this. I have quickly looked at what is in the amendments. It does not go anywhere near addressing the issue I raised. In fact, it totally ignores it. It totally ignores the issue that was central to what I raised at Senate estimates. That is how little effort you have actually put in to try to genuinely address the real concerns that were being raised.

I have not had a chance to look at the outworker amendments. I doubt that my colleague Senator Marshall has had a chance to look at the outworker amendments. They are very complex. They go to providing coverage for some of the most exploited workers in this country, workers who are being paid and treated like people in the Third World. It is an absolute shame for this country to allow it to happen, never mind having to deal with it in legislation, but it does and those people are entitled to the best and the most basic protections that we can provide for them. I do not know whether what is proposed here will go anywhere near that. I doubt any of us today sitting through this process will in fact
have the capacity to thoroughly scrutinise those proposed amendments in respect of outworkers to ensure that they are adequately covered.

Everyone in this chamber knows the minister who is dealing with this bill. The chances of us getting genuine information out of this minister today are extremely remote. We will hear about his uncles, his cousins, how famous he is in Tasmania, how well liked he is, how terrible we are, what Kim Beazley said about the bill and what an awful person Andrew Murray is—

Senator Abetz—I have never said that.

Senator GEORGE CAMPBELL—but we will hear very little from the minister about the actual detail of this bill and its content. I did verbal you there, Minister! So we do not expect to be enlightened too much by what the minister is able to tell us, because I doubt very much if the minister even understands what is in the amendments. But he may surprise us: he might show a little bit of knowledge this afternoon that we do not give him credit for.

The reality is that this is a continuation of the farce that this process has been from the day it was announced on 26 May. There has never been an attempt at any stage through this process to genuinely involve the parliament and its processes in developing this industrial relations legislation. This has been developed from an ideological base. It is about implementing an ideology within our community and, come hell or high water, that is what this government set out to do and that is what we will finish up with at six o’clock tomorrow evening.

Senator SIEWERT (Western Australia) (12.52 pm)—I am not going to reiterate what other members have just articulated about the concerns with this process. However, I do want to put on the record that the Greens believe this is bad legislation. We said so in our dissenting report and I said so in my second reading contribution. If you have read the dissenting report and listened to my second reading contribution, you would know that I think this legislation is bad and should be thrown out. But if it is not thrown out then major amendments are needed. We want to see amendments that go some way towards protecting the people who are going to be hurt by this legislation—for example, outworkers. If we can pass amendments that make this legislation better and that actually protect these people then I am prepared to stand here and try to move those amendments.

I think this is an important process and we should be given time to fairly scrutinise the 100 pages of amendments to see if they go anywhere near protecting the people who are going to be hurt by these amendments and this legislation, and outworkers are a classic example of those people. I know that the government has seen the pages and pages of amendments that the FairWear campaign has circulated to try and make sure that its workers are protected.

We need time to make sure that those amendments are properly covered in this legislation. During the committee inquiry, I asked the department whether there were provisions in the legislation to protect people like outworkers and I was told, ‘Yes.’ That was on Monday morning. I was told: ‘Yes, we’ve covered it. We’ve moved the amendments from the present act into this one. We’ve made sure it is there.’ Well, they are not there. They were not there. It was the FairWear campaign which said: ‘You may have moved this provision, but the rest of the provisions in this legislation actually undermine that protection.’ And the coalition members also said, ‘Oh, yes, there are problems here.’ To give them their due, they did say that changes were needed, despite the
fact that the department said they were protected.

I want to know whether the provisions that are required to protect those outworkers are in these 100 pages of amendments. In the half hour before I came into this chamber at 12 o’clock, I have not had a chance to check these amendments—and I do not think anybody has had a chance to check them. We need that time to make sure that the protections are there. It is not true to say that we do not care about amendments to this legislation. Yes, I think it is bad. I think it is really bad. But I want to try and make it a little bit better if I can, so that some people in this country are protected from these laws.

Senator MURRAY (Western Australia) (12.56 pm)—I have a request of the minister to add to his response. An explanatory memorandum, as you know, is important in matters of law. If the law subsequently is not clear, courts will have regard to the explanatory memorandum. Even though the government has not had time to table the explanatory memorandum with these amendments, I respectfully ask the minister if, at a later stage in this debate before its conclusion tomorrow, we could have a supplementary explanatory memorandum tabled. It is my contention that that would be of assistance in subsequent matters of jurisprudence.

Senator ABETZ (Tasmania—Special Minister of State) (12.57 pm)—In response to Senator Murray, the explanatory memorandum that he seeks ought to be available by about dinnertime tonight. I would of course bring it into this chamber as soon as possible. In listening to the contribution of Senator George Campbell, everybody would have been absolutely convinced that he was not motivated by any ideology whatsoever! Of course, he is motivated by ideology: the things that you believe in. That is why he is so passionate. And, believe it or not, those on this side have an ideology as well, and we are passionate about the things that we believe in. But I have been listening to this quite bizarre discussion that has been taking place that somehow—

Senator Wong—This is a second reading contribution, Minister.

Senator ABETZ—I am responding to a committee-stage contribution from your own side, Senator Wong. If you wanted to take a point of order, you should have done it with Senator Campbell, not with me. Once again, this highlights how devoid the opposition are in relation to this debate. But it seems that, if the Labor Party are motivated by ideology, that is good and they get a big tick. If we happen to believe in a certain set of values, that is bad and you should not be seeking to implement it.

The reality is that in today’s society there are 1.9 million Australians who are either self-employed or small business people; there are only 1.8 million trade union members. There is a very basic balance there. The trade unionism of 100 or even 20 years ago is no longer there, because people have voted with their feet. We now have a lot more entrepreneurs and self-employed individuals, and we know that that is the area where growth in employment is taking place in the small business sector. That is why we are unashamedly pursuing this agenda. Call it ideology. Call it wanting to look after small business, help employed people, look after the unemployed to be able to get a job or enable current workers to get higher wages and more flexible hours. If that is ideology, so be it. That is our ideology and that is what we want.

The other matter that Senator George Campbell raised was whether we consulted with the state governments. We did raise it at COAG. And do you know how long the premiers discussed it for? One hour? No. One
They discussed it for 35 seconds. The brick wall went up. All being Labor, all being beholden to the trade union movement, they discussed it for all of 35 seconds and then it was scratched off the agenda. And yet the Labor Party come into this place bellyaching and seeking to assert that we did not consult with the states. How can you consult with the states when, because of their absolutely manic determination to do the bidding of the trade union movement rather than the workers of the various states, they refuse to discuss the issue? During the debate and discussion about these issues, numerous organisations have made very dire predictions as to what would happen if this legislation were passed. I remind them that they made the same sort of predictions about waterfront reform, tax reform and welfare reform. And of course their prophecies of doom have now been exposed as false prophecies. But what astounds me about some of these commentators is that they—

Senator Wong—Mr Temporary Chairman, I raise a point of order. We on this side would like to proceed with debating the bill, given that the government is not going to allow the committee reasonable time. We on this side of the chamber are wondering when the minister is going to stop making what is effectively his second reading contribution that he obviously forgot to make and thereby truncating the capacity of this chamber to ask him questions and to debate and discuss some of the detail of the amendments.

Senator ABETZ—What astounds me about some of these commentators is that they see a need to speak against workplace relations changes because they divide the community. But they are willing to prosecute the case for a republic—and I happen to be a reluctant republican—which also divides the community. If they initiate the change proposal that causes division in the community, that is somehow okay. But if somebody else happens to cause the division because they are putting forward a proposal, that is somehow wrong and evil.

Those same people who condemn our legislation, each and every time motivated to speak out for all the right reasons, I am sure, seem to suffer righteous indignation fatigue when the issue of waterfront rorts or the blue flu in the Western Australian construction industry; or the rampage of Craig Johnston, a trade union official, through a small business in which he destroyed property; or the findings of the Cole royal commission, which exposed the culture of lawlessness in the construction industry are raised. The need to write letters, hold press conferences and issue media releases about that must have escaped their attention as a result of suffering righteous indignation fatigue from having attacked our government. Or it might be that their moral outrage quota for the year had been exhausted and, therefore, they no longer found it necessary to comment on these other issues.

Senator Wong—Which of your colleagues leaked to Mr Koutsoukis? Tell us that.

Senator ABETZ—It was Senator Chris Evans, and it was, by the way, false. I have suggested to Mr Koutsoukis that he check with the Parliamentary Library, which has established a table which confirms that that which I said in question time is correct. Once again, Senator Evans is peddling stuff to
journalists and has not only embarrassed himself but also identified himself as a bad source of information. I think journalists all around the place will now be a lot more careful in accepting that which Senator Evans seeks to peddle to them.

This legislation, as I have said, had its genesis in a movement that started many years ago in this country. Substantial changes have taken place in this country. Sharan Burrow, for example, says that this is like the ripping up of about 100 years of history. In 1907 the Harvester case was interesting but, believe it or not, we are about 100 years removed from then. We now have a government that provide social security. We have a government that provide a family tax benefit. We have a government that provide sickness benefit. We have all these other factors involved which were not even contemplated by government in 1907. We live in a completely different society and situation than in 1907. That is the unfortunate thing with the trade union movement: they always hark back to 1907—nearly 100 years ago. They are trying to drive the country of Australia by looking into the rear-view mirror back to 1907. Sure, it is helpful to look into the rear-view mirror from time to time, but you are going to crash unless the vast majority of the time you are focused through the windscreen, past that rear-view mirror view, and looking forward. That is what this government are doing. We are looking forward to the future. We do not want some magic era of 1907; we want a future. We want to guarantee a future for young Australians in particular to be able to get employment opportunities.

In a very good speech, Senator McGauran highlighted for this chamber that countries with highly overregulated industrial relations systems are now suffering huge unemployment rates. We as a government have been exposing that time and again, and I have had the opportunity on behalf of the government to do that during question time as well. We have exposed countries such as France and Germany with their high unemployment rates because of overregulated workplace conditions. Guess what: in France reality has mugged them. They recently announced that they are going to deregulate their workplace circumstances. Why are they doing that? It is because they witness the social misery of an unemployment rate that is completely and utterly unacceptable.

That is what has motivated this government in proposing the changes that are before the chamber today. We do not accept that an unemployment rate of 5.2 per cent, or about 500,000 Australians, is good enough. Sure, Labor told us that we needed to have one million unemployed during the Hawke-Keating era when, remember, the trade union movement sat around the cabinet table as part of the Labor accord. They said that one million unemployed was necessary for the economy. The social misery of one million fellow Australians unemployed was acceptable to Labor and the trade union movement. We said that it was not acceptable and that reforms were needed. We were promised that if we introduced our first lot of reforms and all the other reforms that we have tried it would decimate the employment market and people would be worse off.

Today the unemployment rate has been about halved; we now have only 500,000. To those that are unemployed, I apologise for having used the word ‘only’. It is still far too high and that is why we as a government want to reduce the unemployment level even further. Even those on the opposite side finally said the other day in a committee report that to be actively engaged in your society and within your community through employment is really the ticket to ride. We want people to be employed because we see all the social benefits that flow from that.
There are a number of trade union officials on the other side who represent the trade union movement in this place. They are proud of that, and good luck to them. But I do not think that you can any longer claim that they are the cream of the Labor Party, as was the case when the likes of former Senator Gareth Evans and others were on the front bench here. Indeed, Mr Latham made a very good observation. At a meeting with ACTU officials Greg Combet and Sharan Burrow after he became leader in 2003, he said, ‘If they want people like me to take unionism seriously, they need to give us better senators and stop sending their rejects to Canberra.’ Those are not the words of some partisan coalition senator but the words of a Labor leader whom those opposite were promoting to be Prime Minister. They said that he had all the right ideas and all the right views to lead the Australian nation. I never thought that he did and, thankfully, the Australian people shared that view.

I suggest to those opposite that the number of trade union members—they need to be looked after and that is fine; we on this side accept that—should not be your total and sole focus. Indeed, if you are looking for numbers—unfortunately, just looking at numbers seems to be the methodology of the Labor Party at the moment—to give you a ticket to ride into government, start concentrating on small business and the self-employed, for there are more of those than there are trade union members.

What is more, under our legislation there will be greater flexibility for individual workers to make the sorts of deals that Greg Combet now talks about, such as getting rid of penalty rates. He says that he has negotiated awards to do exactly that. So if a union gets rid of penalty rates, that is okay. If an individual worker wants to do it, that is somehow bad. We put the focus on the needs of individual workers in this legislation as opposed to organisations that pretend to speak on behalf of individual workers. We believe that individual workers are savvy enough to look after themselves. Under this legislation, if they want a union, they will be fully entitled to have that union representation, but it will not be forced upon them against their will. That is the heart and reason for the Labor Party’s opposition to this legislation.

Senator WONG (South Australia) (1.13 pm)—I first place on record the bad faith that is being shown here. Not only is the committee stage of this very complex legislation being utterly and unreasonably shortened and not only is the Senate dealing with 337 amendments tabled by the government or provided by the government just over half an hour before the committee stage commenced, but we now have the minister giving, essentially, two second reading speeches in the committee. If you are going to truncate debate, Minister, I think that the least you could do would be to allow opposition and minor party senators the majority of the time in the committee instead of sitting over there and giving a second reading speech ad nauseam. I want to place on record our real concern at the bad faith that is being shown by Senator Abetz as the minister representing today.

I would like to start by asking a number of questions about the bill and the amendments as best I can, given that I have only just got some of these amendments. The first relates to the dates on which various aspects take effect. Firstly, when is the primary bill intended to take effect? Has the government determined that? Secondly, has the government determined when the new schedule in relation to the Australian Fair Pay Commission, which has been provided as schedule 1A to the new amendments today, is intended to commence? It is referred to in proposed section 7I(2) of the schedule.
Senator ABETZ (Tasmania—Special Minister of State) (1.15 pm)—In relation to the bill itself, it will be on a date to be determined. Regarding the question in relation to the Fair Pay Commission’s schedule 1A, no exact date has been determined for that but the government is hopeful that it will be within about a fortnight of passage.

Senator WONG (South Australia) (1.15 pm)—Could I clarify? I seem to recall the minister indicating that the bill might commence early next year. Proposed section 7I of the new schedule 1A sets out an interim period for the Australian Fair Pay Commission. It seems to suggest, Minister, that for a period of time the Fair Pay Commission will not actually have the power to do anything except ask people for information. It will not have any wage setting power etcetera. Is that the case? Is it not the case that all that the government is imposing with this provision is an effective wage freeze on Australia’s employees after the passage of this legislation?

Senator ABETZ (Tasmania—Special Minister of State) (1.16 pm)—The answers are yes and no respectively.

Senator WONG (South Australia) (1.16 pm)—When is the Australian Fair Pay Commission envisaged to be able to make its first determination in relation to wage rates?

Senator ABETZ (Tasmania—Special Minister of State) (1.16 pm)—It will be after the bill comes into effect, and no date has been determined for that. But this government has a very proud record of looking after people’s wages. People have experienced a 14.6 per cent increase in real wages under this government and there is nothing that this government will do to seek to prejudice the benefits that have flowed to the Australian people from 9½ years of coalition government.

Senator WONG (South Australia) (1.17 pm)—I do not want to engage in a rhetorical argument, Minister. I want to know whether the effect of the amendments moved will mean the deferral of the Fair Pay Commission determining the Australian pay and classification scales.

Senator Abetz—I am sorry, Senator, I did not catch your last question. Could you repeat it, please?

Senator WONG—The question is about the effect of schedule 1A and the different date between that and the commencement of the part. Does that effectively mean that you are deferring the establishment of the Australian pay and classification scales? If not, when are they likely to be determined?

Senator ABETZ (Tasmania—Special Minister of State) (1.18 pm)—In reverse order: when the bill commences; no; and, in relation to the bill itself, I think the minister has provided a rough indication. The first AFPC decision is expected in the spring of 2006.

Senator WONG (South Australia) (1.18 pm)—Thank you, Minister. The issue that I am trying to press is about classifications. The chamber will be aware that for a substantial number of Australian employees—certainly the majority of those on awards and agreements—their pay rate is linked to their classification. What is proposed under this legislation is that the government will give the Fair Pay Commission—although we obviously do not think it is the ‘fair pay’ commission; I will come to that later—the power to set new classification rates. A great many Australian families depend on the pay associated with a particular classification level. Is the government guaranteeing existing classifications? If it is not, when will the Fair Pay Commission be determining the
new classification structure? Perhaps I should stay on my feet, because I think the minister is getting advice and I do not want the question to be put. Is there any protection in this legislation for existing classifications? When will the new Fair Pay Commission determine new classifications? Those are the two questions, Minister. What criteria will be applied?

Senator ABETZ (Tasmania—Special Minister of State) (1.20 pm)—I will ensure that I get this right from the officials. It will be when schedule 1 is proclaimed, and that is still to be determined. But, as I have indicated, the Fair Pay Commission’s actual determination of the minimum will be in the spring of 2006. At that time it will also be dealing with—as I was imagining, but I wanted to make sure I was absolutely right on this—the full suite of other activities that the Fair Pay Commission is going to be required to deal with, which includes the matters that the senator raised.

Senator WONG (South Australia) (1.21 pm)—I turn now to the Australian Fair Pay Commission and the wage setting parameters. First, why is it that there is no reference to fairness in the wage setting parameters of the Australian Fair Pay Commission? Can the government really expect the Australian people to believe that this is about fair pay, despite calling the commission the Australian Fair Pay Commission? Can the government really expect the Australian people to believe that this is about fair pay, despite calling the commission the Australian Fair Pay Commission, when it is not including fairness in the parameters to which this body has regard when it sets the working conditions and wages of Australians?

Senator ABETZ (Tasmania—Special Minister of State) (1.21 pm)—You can have fairness without actually saying it. We have called the commission the Australian Fair Pay Commission because that is in fact what we want it to do. What we would assert is that fairness is implicit in each of the legislative parameters for the AFPC. It is fair to make further inroads into unemployment. It is fair to promote employment and competitiveness across the economy. It is fair that a safety net for the low paid is maintained. It is fair to ensure that juniors, apprentices, trainees and workers with disabilities are competitive in the labour market. Inherent within everything that we are doing is making the workplace a fairer and a more flexible place where people can come to agreements between themselves without having the dead hand of a third party that may well be disengaged from those workers determining their future.

Senator MURRAY (Western Australia) (1.23 pm)—On the same point, am I to understand that the minister is therefore saying that the issue of fairness in the Fair Pay Commission’s decisions is justiciable?

Senator ABETZ (Tasmania—Special Minister of State) (1.23 pm)—As I understand it, the answer is no, but in any event people can always go to the High Court with a prerogative writ.

Senator WONG (South Australia) (1.23 pm)—Let us be clear: the government is asking the Senate to pass legislation which establishes a body called the Fair Pay Commission, removing the section in the current legislation that talks about fair minimum wages. It is extraordinary. It demonstrates this government’s reliance on spin over substance. It is happy to call a body that sets wages the Fair Pay Commission but it is removing the reference to a safety net of fair minimum wages. This shows that what underpins this aspect of the legislation is a desire to reduce wages and particularly to remove protection for the low paid. The minister says, ‘It is implicit in the argument.’ I ask him this specific question: why does paragraph (c), which talks about the Fair Pay Commission—which we might call the ‘unfair pay commission’—providing a safety net for the
low paid, remove the reference to fair minimum wages and conditions of employment which is in the current legislation? What possible policy and legislative intent is behind the removal of references to fair minimum wages and conditions which currently govern the way in which the wages and conditions of Australian employees are currently set?

**Senator ABETZ** (Tasmania—Special Minister of State) (1.25 pm)—I will respond to Senator Murray’s question in some more detail, because I thought it was in fact the case now. Currently, the Australian Industrial Relations Commission is required to make certain determinations. If a person feels aggrieved with a decision of the Australian Industrial Relations Commission because it is not fair—whatever that might mean—can they go to the courts of the land to have it looked at? The answer is no. As a result, exactly the same regime will apply in relation to the Australian Fair Pay Commission. With the industrial commission now, if you feel terribly aggrieved you can potentially go to the High Court via a prerogative writ, and that situation will remain the same in relation to the Australian Fair Pay Commission.

It was a fair question, if I can use that term. It was a proper question by Senator Murray, but I would not want anybody to be under the illusion that in that question was the suggestion that currently if you are upset with an unfair decision of the Industrial Relations Commission you can somehow take that to the court system, because you cannot, and therefore the system will remain the same.

**Senator WONG** (South Australia) (1.26 pm)—I do not think the minister answered my question. What was the legislative and policy intent behind removing the phrase in the current legislation about the need to provide fair minimum standards and fair minimum wages and conditions for employees? What is the legislative and policy intent of removing the current reference to fair minimum standards which governs the wages and conditions of the majority of Australian employees?

**Senator ABETZ** (Tasmania—Special Minister of State) (1.27 pm)—Very briefly, it is implicit in what the parameters are. To use fancy words to say that as a result of putting in the word ‘fair’ it somehow will or will not make it fair will not necessarily assist anyone in this debate. The reality is that implicit in everything is that the Australian Fair Pay Commission will determine things in a fair and proper manner. I have every expectation that, especially with the excellent appointment of Professor Ian Harper, the workers of Australia will feel that the name of the Australian Fair Pay Commission is in fact appropriate.

**Senator WONG** (South Australia) (1.28 pm)—Can the minister explain how a statutory body can have regard to factors that are implicit in legislation, particularly given that the previous parameters including fairness have been taken out? Does the minister think that an implicit requirement for fairness exists? If so, why won’t the minister put ‘fairness’ into the legislation? What regard will the commission be required to have to a fair minimum standard under your provisions?

**Senator MURRAY** (Western Australia) (1.29 pm)—In answering that question, I wonder if the minister could add to his consideration the following: as we know, we have had some fascinating jurisprudence from the High Court on the issues of implied meanings with respect to the Constitution, which has created some considerable difficulties for the interpretation of law in this country. It seems to me that if the minister responsible is on the record as advising that that is an implied consideration, then at law
the High Court would take note of the minister’s views in considering any matter before the High Court. Therefore, fairness will automatically become justiciable—at least at the High Court level. If that is so, and fairness is not defined or not explicitly expressed in the legislation, then the minister opens up the opportunity for considerable judicial interpretation.

Senator ABETZ (Tasmania—Special Minister of State) (1.30 pm)—Questions are coming thick and fast. In relation to Senator Wong’s questions on the need for the word ‘fairness’ and how we can rely on the implicit nature of it, I suggest to her that the current legislation for the AIRC does not say that the decision needs to be a good decision. So why do you not want the AIRC to make good decisions? The legislation does not say ‘good’. What about ‘genuine’, ‘sincere’ or ‘wholesome’ decisions? We can think of a whole host of adjectives. We can say, ‘Why was that never included in the first place—that the AIRC should make good decisions?’ I think most of us would agree that the reason is that it is implicit that they should. Every now and then people put words into legislation, but I think it is implicit that anybody who sits on the Australian Fair Pay Commission will make ‘fair’ decisions, as they call it.

We might disagree with their decisions from time to time. Chances are that High Court judges are required, under their oath of office, to rule truly, honestly and according to law. Are they told in their oath of office that they have to rule fairly? No. It is implicit, isn’t it? It is the same with this. It is a moot debate, and I do not think it is getting us anywhere. Regarding the term ‘fair’, look at the terms of reference, for want of a better expression, of the Australian Industrial Relations Commission. Their terms of reference currently do not include the needs of the unemployed. So with all the fairness in the world that the industrial commission—

Senator Wong—They refer to the need for and the desirability of attaining a high level of employment.

Senator ABETZ—Yes. You see? It does not say ‘unemployment’, does it?

Opposition senators interjecting—

Senator ABETZ—I happen to agree with you. And, with the point I have made, you have fallen for my trap. Thank you very much. Because it is these simple semantics—

Opposition senators interjecting—

The TEMPORARY CHAIRMAN (Senator Forshaw)—Order! Let the minister answer the question.

Senator ABETZ—It is simply nonsense for us to waste time in playing these word games and asking, ‘Why isn’t the word “fair” there?’ when the previous one did not have ‘good’. We can play these word games. At the end of the day even the oath of office we take in this place does not mention that we have to be fair, good, wholesome or a whole lot of other adjectives—genuine and sincere—that spring to mind. At the end of the day, what is this legislation designed to do, and what is it designed to drive? I think we all know it is designed to drive greater flexibility in the workplace, and anything that allows that is anathema to those who are beholden to the trade union movement.

Senator MURRAY (Western Australia) (1.33 pm)—I am a bit disturbed by the minister’s response, because he has slipped from a formal and proper assessment of the questions into a rhetorical debate. The issue is a very serious one. I am as certain as a senator can be that the provisions of this bill covering the new Fair Pay Commission will end up in court on some matter or other. They will end up being a matter of legal action, because that seems to be the way of the
world. If that is so, to use the rhetoric that you do not call the Australian Industrial Relations Commission—or even the Commonwealth government—‘good’ because you expect good outcomes is an irrelevancy, because ‘good’ is not in their name.

What has happened here is that ‘fair’ has been deliberately put into the name not only of the commission itself but of the commissioner and with respect to the whole trappings of this organisation. I above all people, probably in concert with everybody in the Senate on all sides, would praise any organisation which produced fair outcomes with respect to low-wage decisions. But the point is that it is, by choice of the government, in the name of the commission, and the point that the minister is being questioned on, in his formal capacity as a minister of the Crown with representative responsibility in this area—and his words would be noted if there were to be a difficulty of interpretation, because these remarks are important where judicial matters are unclear—is to guide the committee as to whether, as a result of putting ‘fair’ into the name, fairness will end up as a justiciable matter.

The early response of the minister was no. But if you put it into the name and the name governs fairness, and if it is the intention that the commissioner and his commission operate on a fair basis, then whether something is fair will be argued in the courts. What the shadow minister for the opposition and the crossbenchers are asking is whether it would not be better for the clarification, the definition and the explicit expression of fairness to be within the overall design of the Fair Pay Commission’s objects and clarifying clauses. Unless you do that, you allow for the ‘fair’ title—the descriptor—to be as widely determined as the court and the judge of the day may determine. I acknowledge that that could produce very beneficial outcomes, but it could also produce some strange outcomes.

Senator ABETZ (Tasmania—Special Minister of State) (1.37 pm)—I have indicated earlier and I will repeat that it is my advice, and also my rusty understanding, that this would not be justiciable in any event other than by way of prerogative writ to the High Court. I would be astounded if in all those circumstances the High Court would make certain jurisprudence about it but, at the end of the day, the High Court can determine these things for itself. We live in a land of the rule of law. My advice is that this issue is not justiciable and therefore whether the word is actually included in the title or not I do not think will have any moment.

Senator MURRAY (Western Australia) (1.38 pm)—To clarify the reverse of that statement: therefore, if something is unfair it will be allowed?

Senator ABETZ (Tasmania—Special Minister of State) (1.38 pm)—Exactly as it is today with the Australian Industrial Relations Commission, which does have in its charter or whatever we call it the word ‘fair’. If you or I were to think that the Australian Industrial Relations Commission had made an unfair decision you could not seek relief in the courts of the land. That is the point that I have been making: you cannot of right go through and appeal to the Federal Court to have a decision overturned because you think it is unfair. The regime that applies today in that regard is going to be translated across to the Australian Fair Pay Commission.

Senator MURRAY (Western Australia) (1.39 pm)—Let me clarify a point: the existing act does in fact specify ‘fair’. I will quote from paragraph 3(e), which says that the act should provide:

... a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them ...
As a consequence of that in the present act, fair is directly justiciable.

Senator ABETZ (Tasmania—Special Minister of State) (1.39 pm)—Where were you quoting from?

Senator MURRAY (Western Australia) (1.39 pm)—Unfortunately, when I rushed down here I did not bring a copy of the act with me. I think it is in the objects, under agreement making.

Senator WONG (South Australia) (1.40 pm)—I know that Senator Siewert has a question, but I think it is also in the objects in section 88(b). I want to clarify that there are two points. One is whether something might be justiciable. The other is: what is parliament saying to the body that will now establish wages and conditions for Australian workers about the criteria it must apply to its decisions? That is what is being debated here.

The minister’s rhetorical and, frankly, hot air contribution that we do not put ‘good’ and ‘genuine’ in there is not the point. The point is that this is parliament determining what criteria this commission must have regard to in setting wages. The key issue here—and nothing the minister has said justifies this—is that the government is telling the parliament, ‘We want to take reference to fairness out when it comes to setting the wages and conditions of Australian workers.’ Nothing the minister has said today adequately explains their justification for taking the reference to fairness out from the things that the commission must have regard to in setting wages and conditions. Effectively, the minister is saying to Australian workers: ‘You do not have to have fairness in your wage setting principles, you do not have to have fairness in the wages and conditions which are set for you. We think it might be implicit but we are going to take it out anyway.’

Senator ABETZ (Tasmania—Special Minister of State) (1.41 pm)—The AFPC’s wage setting parameters are set out in clause 7J. I will read them for the benefit of the Senate.

Senator WONG—We have them in front of us, Minister.

Senator ABETZ—It says—

Senator WONG—You cannot answer the question so you have to read the bill that is in front of us.

The TEMPORARY CHAIRMAN (Senator Barnett)—Senator Wong, the minister has the call.

Senator ABETZ—Thank you, Mr Temporary Chairman. I can see that it is going to be a very long day—some tempers are beginning to fray. Clause 7J says:

7J AFPC’s wage-setting parameters

The objective of the AFPC—

Senator WONG—He can read the bill; that is very impressive.

The TEMPORARY CHAIRMAN—Senator Wong, the minister has the call.

Senator ABETZ—Mr Temporary Chairman, the honourable senator asked what parameters the AFPC would use to determine wages. I am just about to tell her verbatim what those parameters are.

Senator WONG—Mr Temporary Chairman, I raise a point of order. The question is not what the parameters are. I have clause 7J in front of me and like most senators I am capable of reading what is a reasonably small section in a very large bill. The question is: what justification—

The TEMPORARY CHAIRMAN—What is your point of order, Senator Wong?

Senator WONG—The point of order is that the minister is not indicating the question correctly. The question is: why is fairness
being taken out of the wage setting parameters? It is a very simple question.

The TEMPORARY CHAIRMAN—There is no point of order.

Senator ABETZ—We will get there eventually, I am sure. Clause 7J says that the new parameters for the AFPC:

... in performing its wage-setting function is to promote the economic prosperity of the people of Australia...

In other words, it includes everybody. I reckon most people might say that implicit in that is a degree of fairness.

Senator Wong—Then put it in.

Senator ABETZ—Oh, yes. It is also good, so let us put it in—anything that is going to be fair, anything that is going to be good, anything that is going to be genuine, anything that is going to be sincere. We can just go on with a whole lot of extra words but you are already complaining about how long the bill is and I would hate to make it any longer for you. What are these parameters to promote the economic prosperity of the people of Australia? This is something the Australian Labor Party does not like—and Senator Wong knows what I am about to get at and that is why she does not like me reading this. The first point is:

(a) the capacity for the unemployed and low paid to obtain and remain in employment is a fair thing. It is a good thing.

Do we have to specifically say in the legislation that we are doing this because it is fair and because it is good? No, I do not think we have to say that. I think that is implicit. We do not use the words ‘fair’ and ‘good’ in legislation—and that could apply across the raft of legislation we bring into this place. The suggestion is that, unless we say somewhere in the text of the legislation that it is fair and good, it automatically means that it is unfair and not good. You cannot make those sorts of jumps—they are not even jumps in logic; they are jumps in irrationality and understanding of the English language.

The second parameter that they need to follow is employment and competitiveness across the economy. The third is providing a safety net for the low paid. If fairness were struck from your mind—and goodness and wholesomeness and all those other words that Senator Wong would like to put in there—

Senator McGauran—Motherhood!

Senator ABETZ—and motherhood and whatever. Senator McGauran—why would you be bothered providing a safety net to the low paid? If fairness were struck from your mind, why would you want a safety net for the low paid? Their portrayal of our new parameters is that it is going to be dog eat dog, it is a race to the bottom and all the rest. But hang on a moment. This commission is specifically being asked to provide a safety net for the low paid: fair, reasonable, good and proper—exactly the sort of thing that we in Australian society would expect the Australian Fair Pay Commission to deal with.

Then the commission is to provide minimum wages. Why would you want to set a minimum wage unless you had a sense of fairness and—I have just thought of another
word—decency? Why would you want to set a minimum wage if this were a race to the bottom and dog eat dog, and if we could not care less about letting those who are unable to look after themselves fall to the bottom and get trampled? That is not going to happen, because under these parameters we are having a safety net and a provision for minimum wages for a number of specifically mentioned people such as junior employees, employees for whom training arrangements apply and employees with disabilities.

I have just thought of another term we could use: compassion. Why is the term 'compassion' not in the previous legislation? I think that anybody sane who has regard to arrangements for people with disabilities and has looking after them within their parameters would think compassion is a good thing. It is a fair thing, it is a decent thing and it is a proper thing. But we do not quickly write in the act, 'because it is good, fair and decent to do so'.

These are the parameters that have been set. I think any rational-minded Australian would say that setting those sorts of parameters indicates overwhelmingly a sense of fairness, a sense of social conscience and a sense of decency. We do not resile from that which we have put into this legislation, because it really does set out what this government is about. We are concerned to ensure that we have fairness, goodness, decency, social conscience or whatever word you want to use. But let us not get hung up on the word 'fair'.

Senator MURRAY (Western Australia) (1.49 pm)—I somewhat enjoy the Rawlsian sort of debate we are having, but that is about a general approach which should be taken in the public interest on matters of public policy. However, the government has put 'fair' into the name of the Fair Pay Commission. Unless the government is arguing that a decision can be unfair—and it has not argued that—the very process of putting the word 'fair' in the Fair Pay Commission and repeating it in the title of commissioners and in the general legislative surrounds of this new institution means, in my view, that it will end up being justiciable.

The government has not put a clause in the bill that says that an unfair decision may stand. It has not done that. Therefore, a fair decision must stand. If a decision is found to be unfair, then a judge will rule against it. So the question still before us is: since you, the government—and we are not talking about goodness, decency, compassion and mothers, as terrific as all those are, especially mothers—

Senator Abetz—Hear, hear!

Senator MURRAY—We are not talking about those things. We are talking about a word that you, the government, have put into the legislation. If you have only put it in a generalised section, if you have admitted that the implication of that is that all matters should be judged under that criteria and if we know that the High Court has previously dealt with matters where there was an implication for constitutional matters, then our view is that, unless you are to see this adjudicated on a broad and general basis, you will need to consider whether the word 'fair' should be properly defined and described within the body of the legislation or whether you are simply going to allow this to be an open-ended area for jurisprudence to exercise its own interpretation.

Senator ABETZ (Tasmania—Special Minister of State) (1.51 pm)—We can go down this line ad nauseam, but then we can ask about the Australian Industrial Relations Commission under section 3 of the Workplace Relations Act, 'Principle object', which provides for 'wages and conditions to be
determined as far as possible’ et cetera. It says, ‘fair and enforceable minimum wages’.

What does ‘minimum’ mean in these circumstances? Nobody knows. We have got everybody baulked on this one. It is just as sterile an argument to ask what the word ‘fair’ means in isolation as the word ‘minimum’. We can go through each and every word of this clause or subclause—

**Senator Murray**—Mr Temporary Chairman, I raise a point of order. I think that the minister has misunderstood the question. The question is: if the word ‘minimum’ in the present legislation is justiciable—which it is, because it is in the legislation—then if ‘fair’ was in the legislation would it also be justiciable?

**The TEMPORARY CHAIRMAN**—There is no point of order.

**Senator ABETZ**—The only way that this could potentially be justiciable is by way of prerogative writ in the High Court. We have had fairly inventive High Courts from time to time, and I accept the possibility that one day they might like to make a judgment but, quite frankly, I doubt that they will be deciding on what the words ‘fair’ or ‘minimum’ might mean. They would look at the process and the general consideration. But, of course, we live in a country where the rule of law applies and my assertion in this chamber in no way binds the High Court. That is the beauty of our system of division of powers between the various arms of government. But, with great respect, we can go through a whole lot of terms and ask what ‘minimum’ is or what ‘standards’ are, and what words should or should not be included. ‘Reasonable man’ is one such phrase that is used in relation to the law of torts. I know that is very sexist. I have known some reasonable women in my life, such as Senator Moore. They exist on the other side as well. I think this is turning into a bit of a sterile debate as to what ‘fair’, ‘standard’ or whatever means. The totality of the legislation would be looked at and what the specific purpose of the legislation is. That is why I read out the parameters for wage setting that the AFPC will be given.

**Senator SIEWERT** (Western Australia) (1.55 pm)—My question also relates to ‘fairness’. If ‘fairness’ is in the title, and if it is implicit, why is it not in the provisions? Why is the Fair Pay Commission not required to take it into account? If it is in there implicitly, why is it not explicit?

**Senator ABETZ** (Tasmania—Special Minister of State) (1.55 pm)—I have already gone through that. Should the AFPC make good decisions? I think we are all agreed that they should make good decisions. Would you want us to include that in the legislation as well, so it is no longer implicit but explicit? Do you want them to make genuine decisions? I think we would all want them to make genuine, sincere and compassionate decisions. You balance all these things up. The Australian Fair Pay Commission has been given substantial directions through the parameters in proposed section 7J without needing to be told, ‘By the way, make sure you are fair and good whilst doing it.’ I think most reasonable people, in taking on a job such as this, would accept that that is absolutely implicit. I have referred to High Court judges and senators taking their oaths of office. In being senators, should we be fair and good? I think we would all agree that we should. But is it in our oath in taking up our position as a senator? No. Why not? The chances are, I would suggest to the Greens senator, because it is implicit and does not need to be explicitly stated.

**Senator SIEWERT** (Western Australia) (1.56 pm)—I will have a go at trying to give an example of why I think we need the word
'fair' in connection to minimum wage. You could set a minimum wage of, say, $100.

Senator Abetz—You could.

Senator SIEWERT—It would be the minimum wage, but would it be fair? Would it be fair to help Australian workers meet a reasonable expectation of a standard of living? If you do not want to put it in explicitly, take it out of the title.

Senator ABETZ (Tasmania—Special Minister of State) (1.57 pm)—This is why I have pointed out to the honourable senator that if the purpose of this legislation were to have a minimum wage of $100, or even $1, do you think the government would be minded to instruct the Australian Fair Pay Commission to provide a safety net? Why on earth would you ask for a safety net unless you were concerned about fairness in the workplace? What sense would the term ‘safety net’ have, if implicit in that was not a sense of fairness? I suggest to the honourable senator that it is absolutely implicit in the legislation. But I know that these sorts of issues are the ones to which the other side have taken to with an eggbeater to try to whip things up a bit. But, of course, you know what happens when you take an eggbeater to things—they fluff up and look big but, given the passage of time, they all collapse into nothing again and that is exactly what is going to happen with the arguments of those on the other side.

Senator WONG (South Australia) (1.58 pm)—Is it not the case that the reason the government wants to remove the word ‘fairness’ from the things to which the commission has to have regard when setting wages is because the government does not want wages and conditions in this country to be fair? Isn’t that why you are taking it out?

Senator ABETZ (Tasmania—Special Minister of State) (1.58 pm)—The answer is no. As I have had occasion to say time and time again, after 9½ years of presiding over wage increases of 14.6 per cent, we as a government are not going to turn our backs on that achievement. When the real wages declined in this country under the Labor-union accord, when trade union officials had their feet under the cabinet table, the word ‘fair’ in the legislation did not guarantee workers that they would not suffer a loss in real wages as a result of the policies of those opposite when they were in government. So you can use the word ‘fair’, but you treated them unfairly when you were in government. We do not need the word ‘fair’ because it is implicit in everything that we do for the workers of this country.

Progress reported.

QUESTIONS WITHOUT NOTICE

Workplace Relations

Senator FORSHAW (2.00 pm)—My question is directed to Senator Abetz, the Minister reportedly representing the Minister for Employment and Workplace Relations. I ask: can the minister provide an assurance that, under the government’s industrial relations policies and the legislation—polices—workers will receive penalty rates if they are required by their employer to work on Christmas Day?

Senator ABETZ—I thought I heard in that question a reference to whether or not the government’s legislation had penalty rates. I distinctly heard the word ‘legislation’. I would have thought that would be against the standing orders, given that we are currently in the committee stage of dealing with this bill.

Senator Chris Evans—Mr President, I rise on a point of order. The senator corrected himself and said he wanted to know whether it was the case under the government’s policies. It seems to me that the question is in order. If Senator Abetz is too scared to answer the question, that is fine. We know
what the answer is, I guess. But, if he has any courage, I am sure he will have a crack at it.

The PRESIDENT—Senator Forshaw, did you say policy?

Senator Forshaw—I corrected myself to policies, and the minister heard that.

The PRESIDENT—Then the question is in order.

Senator ABETZ—I think those on the other side have to come clean on this issue, especially those senators from New South Wales. Yesterday we had one New South Wales senator feigning concern about Sunday employment. Today we have another New South Wales Labor senator feigning concern in relation to Christmas Day. Of course we read on the front page of the Sydney Morning Herald only this week that the Australian Labor Party in that state will allow the pubs and clubs to open for longer on Sundays and at Christmas time.

Senator Sherry—Oh!

Senator ABETZ—Senator Sherry objects. I suggest he has a look at Labor policy. The New South Wales Labor senators are not objecting to what I am asserting because they know what I am saying is right. But, of course, Senator Sherry has to interject to expose his ignorance. Under Work Choices, we want to see the greatest degree of flexibility within appropriate parameters to ensure that workers and the community can live by standards that I think most people would accept as being decent and proper. If people come to arrangements within the parameters of the law, which we are hopefully going to institute later on this week, then of course that will be according to law and it will be appropriate for those people to come to arrangements as long as they are within the parameters of the law.

Senator FORSHAW—Mr President, I ask a supplementary question. If the pubs and clubs are open longer, Minister, you will be able to pick up another sixpack. I ask: does the minister agree that the National Party has ‘saved Christmas’ as Senator Joyce has claimed this morning, or does he think that Senator Joyce is simply just a Christmas turkey who has been well and truly roasted 24 days early?

The PRESIDENT—Senator, I do not really think that is a supplementary question.

Senator Forshaw—On a point of order, Mr President—

The PRESIDENT—No, you do not have to take a point of order. I just said I do not really think that is a supplementary question the way it was worded.

Senator Forshaw—I asked him whether he agreed or not that Senator Joyce has saved Christmas. Senator Joyce is on the record constantly saying that he has saved Christmas. I am asking if he agrees with him.

The PRESIDENT—I am sorry. I do not believe that was a supplementary question. I rule accordingly.

Child Care

Senator LIGHTFOOT (2.04 pm)—My question is directed to the Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues, Senator the Hon. Kay Patterson. Will the minister inform the Senate how the Howard government is delivering on its program to provide child-care services for parents who are returning to the workplace? Is the minister aware of any alternative policies?

Senator PATTERSON—I thank Senator Lightfoot for the question. The Howard government is providing unprecedented support to Australian families with quality child care. In the 2005 budget, the Howard government announced a $266 million child-care package
to assist families and parents returning to the work force. This includes nearly 88,000 new child-care places, 84,300 outside school hours places, 2,500 family day care places and 1,000 in-home care places, and we are delivering on that commitment.

Last week I announced the first 15,000 outside school hours places plus an additional 2,000 re-allocated places to services. The Howard government met all confirmed demand from services on allocation of outside school hours places. These places will be delivered across 900 services across all states and territories. Families in 30 communities will have access to outside school hours care for the first time. This is on top of the 40,000 places we delivered last year. This allocation of outside school hours places will increase the total number of places now available to services across Australia to more than 285,000, a significant increase from the 72,000 available in 1996—and this on top of the government’s commitment to unlimited long day care places.

Yesterday I released the latest report from the Australian Institute of Health and Welfare. Amongst much of the good news on lower unemployment, and in addition to the fact that the number of children living in jobless families had halved, the report contained some comments on child care from 2002 data. But this old information was certainly enough for the shadow minister to make a number of inaccurate and misleading claims. The shadow minister has again shown her lack of understanding of child care by using this out-of-date data to cover for the fact that Labor has no child-care policy.

Since the data was compiled in 2002, the Howard government has provided an extra 55,000 new child-care places and introduced a child-care tax rebate worth up to $4,000 per child per year. The latest data shows that since 1996 there has been a 42 per cent increase in the number of children using formal child care, with over 752,000 children using such care last year. What Ms Plibersek failed to mention is that under Labor child-care fees grew at twice the rate they have since 1996. I repeat: under Labor, child-care fees grew at twice the rate at which they grew under us since 1996.

The Howard government has doubled the number of child-care places, to more than 600,000, and we have doubled spending on child care compared to the amount spent by Labor—$9.5 billion over the next four years. Ms Plibersek’s information is out of date and she is fast running out of time to offer an alternative plan for Australian families. In fact, the Howard government announced more outside school hours places—over 84,000—in the last budget than Labor had in their last total year in government—72,000. Labor announced in its election commitment 8,000 outside school hours places. It was said: ‘It’s not many places. It certainly is a drop in the ocean.’ Senator Abetz always gets us to guess who said something. There are no prizes for guessing that it was the shadow minister for children and youth who said, regarding their own child-care policy, ‘It’s not many places. It certainly is a drop in the ocean.’ It certainly was not enough places, but if Labor had gained government it would have been enough because we would have seen unemployment rates go up again, so people would have been out of the work force and not needing outside school hours places. So it was most probably prescient.

While I am talking about the Australian Institute of Health and Welfare reports, I want to highlight some points from the 1997 report, such as this comment:

At March 1996 ... the need was greatest for before/after school hour care services for children aged 6-11 ...
The report also showed that in 1994 child-care assistance was only paid to one in five families. Under the Howard government, families are now receiving on average over $2,000 per year. (Time expired)

DISTINGUISHED VISITORS

The President—Order! I draw to the attention of honourable senators the presence in the President’s gallery of an Australian Political Exchange Council delegation from the People’s Republic of China, led by Madam Zhang Xiaolan, Vice President of the All-China Youth Federation. On behalf of all senators, I extend to you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Welfare to Work

Senator Crossin (2.09 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that there is nothing in the government’s welfare package specifically targeted at helping the 708,000 Australians currently on the disability support pension to find work? Wasn’t one of the key objectives of the government’s Welfare to Work agenda to reduce the number of people on welfare? Why is it that, after years of citing the number of people stuck on the disability support pension as the No. 1 reason for changing the welfare system, the government still has not done anything to help them and instead has abandoned them to continued languishing on welfare?

Senator Abetz—Our welfare changes include a whole raft of changes designed to assist people making the transition from welfare to work. The proposals being put forward by the government include provision for a variety of different people with different needs within the community. If the Labor Party had their way, we would be helping no-one. We would not be giving them a future.

We are providing a $555 million package for people with disabilities. Those people who are currently on the disability support pension as at 10 May 2005 are grandfathered and no work force participation is required. For people who cannot work for 15 hours a week at award wages within two years, with rehabilitation assistance, the DSP will be available. A new, comprehensive work capacity assessment will determine work capacity—less than 15 hours, 15 to 29 hours or 30 hours plus. For those with 15 to 29 hours—

Senator Wong—Mr President, I raise a point of order as to relevance. The minister was asked a very specific question by Senator Crossin about what assistance was to be provided to the 708,000 persons on the DSP. None of the issues to which he has referred relate to that group. I would ask you to remind him of the question. Perhaps the minister is embarrassed to concede that there is nothing in the welfare package for the people currently on the DSP.

The President—There is no point of order. The minister has nearly 2½ minutes left. He has been talking about the question, and I believe he will return to the answer shortly.

Senator Abetz—I was asked about our Welfare to Work changes for people with disabilities.

Senator Chris Evans—No, currently on the DSP.

Senator Wong—Get the right brief.

Senator Abetz—Those who heard Senator Crossin’s question know what it was about. Those who are determined as being able to work for 15 to 29 hours will be provided with a Newstart allowance, the pensioner concession card, pharmaceutical al-
allowance and telephone allowance, and they will be asked to look for 15 hours work per week. People who can work for 30-plus hours will get Newstart and a health care card, as is the case now. We will also have a new taper rate for Newstart recipients.

The government is seeking to encourage more and more people to get themselves into work. Those who are currently on a disability support pension can avail themselves of Job Network and other facilities and support services, including specialised support services, to assist them. They are all there. But, to seek to ensure that those who are currently on a disability support pension are not the victims of the sorts of scare campaigns that those opposite run, we have decided to grandfather those who are currently on the disability support pension. They will still have available to them all the facilities, all the services, that currently apply. For those in the future, there will be enhanced services, as indicated by the $555 million package that I referred to.

Senator CROSSIN—I ask a supplementary question, Mr President. My question was about current recipients on the disability support pension, so perhaps, while I ask my supplementary question, Senator Abetz can get the right brief out. Can the minister confirm that at least 53,000 Australians will go on to the disability support pension every year in the future? Doesn’t this show that the government has completely failed the test of welfare reform, which was supposed to help reduce the number of people on welfare?

Senator ABETZ—No.

Environment: Greenhouse Gas Emissions

Senator RONALDSON (2.15 pm)—My question is addressed to the Minister for the Environment and Heritage, Senator the Hon. Ian Campbell. Will the minister advise the Senate of actions the Howard government is taking to ensure that the built environment is sustainable and contributes to Australia’s efforts to reduce greenhouse gas emissions? Is the minister aware of any alternative policies?

Senator IAN CAMPBELL—I thank Senator Ronaldson for a question on, I think, one of the most—probably the most—important environmental issues facing Australia and the world. I will, of course, be leaving to go to Montreal to lead the Australian delegation to the UN Framework Convention on Climate Change. The higher level segment commences next Wednesday. I note that some of my parliamentary colleagues are going a few days early, no doubt to pick up some Christmas shopping on the way through Los Angeles.

Next week, I will be meeting, amongst other people, members of the International Council for Local Environmental Initiatives. We are working at all levels—domestically, internationally, and right down to the local level. Equally, we have led a worldwide program to make sure that local councils change their policies to become greenhouse friendly. They have told me that Australia leads the world in that regard—80 per cent of the population is covered, as are 207 councils.

Of course, about 20 per cent of greenhouse gas emissions come from the built environment. We need to ensure, as we have done in Australia, that consumers—builders of homes—know that, when they build a home or buy a home, they can build one that is environmentally and greenhouse efficient. We want them, through the Water Efficiency Labelling Scheme, to be able to make choices on taps, shower heads and washing machines that reduce their use of hot water. We believe that, through this, they can save some 570,000 tonnes of greenhouse emissions when they choose appliances. Because of the Commonwealth government’s world-leading national appliance energy efficiency...
rating program, in making choices when they buy a dishwasher, a dryer or any other appliance, they will be able to save something like 134 million tonnes of greenhouse gases.

Against the background of these programs that help Australian consumers, when they build a home or choose an appliance, to do the right thing by the environment, Senator Ronaldson asks about alternative policies. Of course, many consumers and Australians would have woken up this morning and, while they were eating their Weet-Bix, porridge or muesli or, in fact, even their McDonald’s Happy Meals, they would have seen an alarming story on page 3 of the Australian, about Beazley Labor’s new policy, which describes the typical Australian home—the trend for them to have four bedrooms and two bathrooms and, dare I say it, even a backyard where you can have a barbecue—as ‘energy-guzzling McMansions’.

The new Beazley policy—the nanny state knows best; let’s design urban Australia, let’s tell people what sorts of homes they are going to live in; let’s tell them how many bedrooms they can have, how many bathrooms they can have, and whether they are even allowed to buy a barbecue or have a backyard—is now to educate families that ‘big houses in the suburbs are bad for the environment.’ ‘Big homes in the suburbs are bad for the environment’, and Beazley Labor wants to go and re-educate them about the sorts of houses they can build, the sort of size of blocks of land they want and, in fact, indeed, where we will, in fact, have future subdivisions. You begin to wonder just how in touch Beazley Labor is.

Mr Beazley should be reminded by Victorian senators, like Senator Ronaldson, that, in the electorate of Lalor in Victoria, in Kim Carr’s home state—I think he is the author of this Beazley policy—2,000 new homes were built in the last quarter. Part of the policy is to take the First Home Owners Scheme grants away from people who build these ‘McMansions’, so-called—these typical Australian family homes. In Mr Beazley’s electorate of Brand, 1,000 homes were built in the last three months, and you wonder how many of those who dare to aspire to four bedrooms, two bathrooms and, dare I say it, a backyard and a barbecue, will lose their First Home Owners Scheme grant. (Time expired)

Workplace Relations

Senator POLLEY (2.20 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that there are currently over 1.3 million Australians on the disability support pension and parenting payment? Is it not also the case that another 140,000 parents and people with disabilities will be added to the dole queue because of the Howard government’s welfare changes? How can the minister claim that the government is implementing welfare reform when, as a result of its changes, the welfare queue will grow to 1.5 million people, while at the same time only 109,000 people will get work?

Senator ABETZ—I do recall a dole queue that was one million long whilst Labor were in control of the Treasury bench. I am also aware of the Australian Labor Party opining from time to time that, with our policies, the unemployment or dole queues would grow. First of all—remember—it was the GST. I still remember those very effective advertisements that were shown in our home state, suggesting that if the GST were introduced jobs would disappear from the tourism sector and, as a result, the dole queue would grow. They made the same assertion about waterfront reform: the dole queues would grow. They made the same
assertion in relation to our first tranche of workplace relations reforms.

On each and every occasion, their prophecy of doom has been shown to be a false prophecy. Instead of having the decency to come into this place and apologise for their serial offences in this area—making these outrageous claims—they simply repeat them. And the Australian people have now heard this mantra for some 9½ years.

Opposition senators interjecting—

Senator ABETZ—It is long for those who are in opposition, but it is bright for the 500,000-plus Australians—indeed, it is 1.7 million Australians; I correct myself—that have found employment during the period of the Howard government.

Senator Chris Evans—Mr President, on a point of order going to relevance: I know the minister is very fond of his own voice, but he was asked a particular question about the people on the disability support pension, about the fact that under the government’s proposals—even they know and concede this—more people will be added to the list of those on the DSP and parenting payments. I ask you to bring him back to the question. A long rave about employment policies from 10 years ago is no attempt to answer the question.

The PRESIDENT—Yes, I hear your point of order. Senator Abetz, you have two minutes and I remind you of the question. I also remind you that points of order will reduce the number of questions.

Senator ABETZ—It is a bit rich, isn’t it, that the person who asserts that I like the sound of my own voice gets up on frivolous points of order to waste time during question time just so he can hear his own voice. If you do not like the sound of my voice, I suggest you should not ask me questions. You guys are the ones asking me the questions that give me the opportunity to speak, so if you do not like it then I suggest you change your tactic.

The PRESIDENT—Senator, could we return to the question.

Senator ABETZ—I will return to the question. The question was about the lengthening of the dole queues as a result of our policies. What I am pointing out to this place, and for the benefit of Senator Chris Evans, is that ‘lengthening dole queues’ has been the stock-in-trade Labor Party mantra now for some 9½ years—that our policies will have that impact—when of course exactly the reverse is true: 1.7 million people have gained employment whilst we have been in government, while those on the other side presided over an unemployment queue of one million people. And yet they have the audacity to come in here now and say, ‘By your policies you are going to put more people onto the dole queue,’ when they themselves presided over a dole queue twice as long as the one that we have now. But of course that was with the benefit of the trade union movement sitting with them around the cabinet table in that much vaunted accord. We do not like anyone—

Opposition senators—We know that!

Senator ABETZ—being on the unemployment benefit, because—

Senator Sterle—We already know that.
We don’t need you to tell us.

The PRESIDENT—Order!

Senator ABETZ—we know from the words out of the mouth of Senator Wong herself in that minority report on our Welfare to Work proposals that it is so important that people be engaged to get into the work force. So how silly was Senator Sterle—(Time expired)

Senator POLLEY—Mr President, I ask a supplementary question. Doesn’t the fact that the welfare queue will grow rather than de-
crease as a result of the government’s plans confirm what the Member for Pearce said yesterday—that we have lost a golden opportunity to implement meaningful welfare reform?

Senator ABETZ—I think the answer to that is no.

Feral Pigs

Senator BOSWELL (2.26 pm)—My question is to the Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald.

Senator Conroy—About the patagonian toothfish?

Senator BOSWELL—No, it is not about the patagonian toothfish. It is more detailed than that. Is the minister aware of the wide range of problems caused by feral pigs—

Opposition senators interjecting—

The PRESIDENT—Order!

Senator BOSWELL—to the national parks, particularly around the Cairns-Innisfail area and farms—

Opposition senators interjecting—

Senator Kemp interjecting—

The PRESIDENT—Order! Senator Kemp and other senators on my left, someone is going to take a point of order on this question in a minute and I cannot even hear it from here, and I do not think the minister can either. So will the Senate come to order so that the senator can ask his question.

Senator BOSWELL—Feral pigs are a major problem in rural and regional areas. Feral pigs might seem funny to the opposition, but they are a problem for national parks, farms, endangered species and the Great Barrier Reef. Will the minister advise the Senate what action is being taken to address this growing problem, particularly in World Heritage or national park areas?

Senator IAN MACDONALD—Senator Boswell raises a very important point about a pest that is very destructive and very dangerous, and costs Australia a lot of money. Senator Boswell and those of us on this side are concerned about these pests that impact upon our economy. The Labor Party have no interest whatsoever in pests or in pigs—sorry; that is, apart from Mr Keating, who was very prominent when it came to pigs and cheap loans.

Pigs are a pest to farmers because they attack lambs, they trample and eat crops, they damage fences and watercourses, they reduce yields in sugar cane and tropical fruits and they do cause land degradation. Pigs are a disaster for our national parks and World Heritage areas in conservation terms. They consume native plants and animals, including frogs, lizards, snakes, turtles and nesting ground birds. Feral pigs wallow in rivers, banks and creeks, creating sediment problems and poor water quality. And Senator Boswell, coming from Queensland, will know the impact of poor water quality on the Great Barrier Reef.

In addition to pigs, there are a lot of other problems in national parks. The problem there is with water quality, as I have mentioned. But also, if there is an outbreak of foot-and-mouth disease in this country, there would be an unnecessary complication in the containment and eradication efforts, as pigs are carriers of these diseases. Obviously, nobody in the Labor Party is interested in the impact of foot-and-mouth disease or of pests and feral animals. Indeed, if we were to round up all the donkeys in Australia and export them, there would not be an opposition left in this chamber.

Feral pigs are widely distributed in Senator Boswell’s home state of Queensland, and it is estimated that there are some 3½ million to 24 million pigs in Australia, although that
population varies according to environmental conditions. Senator Boswell has reminded me of a recent feral pig hunting competition in Mena Creek near Innisfail up my way where more than five tonnes of feral pigs were captured or shot in one weekend. These feral pigs are not the only problem we face in national parks. Wild dogs are a threat to graziers and to biodiversity. Cane toads, rabbits, foxes, mice and deer are in the national parks. Goats are in the national parks and opposite us here as well. They are a real problem in national parks and heritage areas.

Senator Boswell asked me what action is being taken. From the Commonwealth’s point of view, we have set up the invasive animals CRC, which I launched just a couple of months ago. We have a biosecurity strategy, the Australian pest animals strategy. We set up a joint committee inquiry into pest animals, which has just reported. The real solution to the problem of feral pigs and other feral animals comes by looking after national parks and World Heritage areas properly. These are in the main the concern of state governments and, regrettably, state governments set up national parks every time a state election comes around but they never put enough money into the management of these parks. As a result, these parks become havens for feral animals, including feral pigs. The Commonwealth are doing what they can, but we need to get the state governments to agree to not create national parks unless they are prepared to properly finance them as well as to do something about proper management of those national parks now. (Time expired)

Disability Services

Senator FIELDING (2.31 pm)—My question is to the Minister for Family and Community Services, Senator Patterson. I draw the minister’s attention to the fact that there are about 250 people aged under 40 living in aged care homes across this country. Does the government think it is appropriate that these young Australians are living in aged care homes? Does the government agree with Family First that young Australians should not be living in nursing homes? If so, what is the government doing about this and, more importantly, when will the government act?

Senator PATTERSON—I thank Senator Fielding for his question. I have to say that I agree with him. Senator Fielding may not be aware that we have the Commonwealth-state disability agreement whereby we give the states assistance and funding to provide accommodation for people with disabilities. We have a responsibility through the Commonwealth-state disability agreement to give assistance to people with disabilities through the DSP, the disability support pension, through the supported employment programs that are delivered through DEWR and through the assistance we give 17½ thousand people in business services, formerly known as sheltered workshops. That is the division of responsibility. If a young person with a disability goes into a nursing home, there is no penalty on the state, and they are going to nursing homes because the states have failed in their job of providing accommodation for young people with disabilities. They have absolutely and totally failed. That is why they end up in nursing homes. There is no cost to the state for doing that; the cost is all borne by the Commonwealth. But the responsibility is for the states to look after the accommodation of young people with a disability and their respite so that parents and carers can have a break.

The Prime Minister has been so concerned about this issue and the lack of response from the states that he has arranged for the issue to be brought back to COAG. There is a committee of state and Commonwealth officers reporting back to the Council of Austra-
lian Governments on this very issue, but I must say that, first and foremost, it is the states’ responsibility. People get sick of being told that it is the states’ responsibility or the Commonwealth’s responsibility. The Prime Minister has brought it onto the agenda to address the issue. I have also raised the issue in the relevant ministerial council meeting and said that we need to do more about the accommodation of young people with a disability. We have the $200 million program which the Prime Minister announced during Carers’ Week to assist families who have the means to provide accommodation for their children. That should relieve the states of some of their responsibility. It is an opportunity for them to use that. I will be using that to lever the states to actually do what they should be doing and provide care, accommodation and respite for people with disabilities.

**Senator FIELDING**—Mr President, I ask a supplementary question. Would the minister be willing to bring up with the Prime Minister the issue of Chris Nolan, a 37-year-old who was a school captain at St Patrick’s in Ballarat, a top sportsman, a founder of the Meredith Music Festival and a top lawyer who now has a severe brain injury, and ask him why he would have to live in a nursing home when the average age of residents there is 85 years old?

**Senator PATTERSON**—I thank the honourable senator for his question. I have met Chris Nolan, I have met his family and I speak to them on a regular basis. It is a state responsibility. Minister Julie Bishop and I have met with Minister Garbutt about this issue. Minister Bishop has offered an innovative pool program to assist the state in delivering a program to younger people in nursing homes. One program has been rolled out for people with multiple sclerosis down near Brighton. Minister Bishop advised me yesterday that they have come back with a proposition that is not workable. I have been adviser that that person has accommodation in the interim because his nursing home is closing down, but let me say that, had he not had a nursing home place, he would have had nowhere to go because the state have failed. They have failed him and every other young person in Victoria with a disability, as has every other state failed young people with disabilities.

**Sports: Volunteers**

**Senator PARRY** (2.36 pm)—My question is to the Minister for the Arts and Sport, Senator Kemp. Will the minister please outline to the Senate the valuable role that volunteers play in Australia’s sporting culture? Furthermore, is the minister aware of any alternative policies?

**Senator KEMP**—Thank you to Senator Parry for that important question. I acknowledge the interest that Senator Parry has in this area as, I think, a former surf-lifesaver, and the good work that he did as a volunteer. Australia, as is well known, has a rich tradition of volunteering. In my portfolio, as many senators will know, sporting clubs and cultural bodies are reliant on the many hours that volunteers spend each day in contributing to their activities. In fact, it is true to say that many sporting clubs would cease to exist without the vital contribution of volunteers.

There are some, I regret to say, who would prefer to drag Australia’s volunteers into the union driven campaign against Australia’s IR reforms. I regret to report to the Senate—and I say this with great sincerity—that the shadow minister for sport, Senator Lundy, took the union scaremongering campaign to a new level, this time aimed at Australia’s sporting clubs and volunteers. The shadow minister for sport, Senator Lundy, said that employer demands for parents to work longer hours will mean that they can no longer commit to coach, manage or support...
their children’s sporting endeavours. What absolute nonsense. As Kevin Andrews has pointed out and indeed as Senator Abetz has pointed out many times in this chamber, the IR reforms will promote flexible, family friendly working arrangements, which are vital to assisting both men and women in finding an appropriate balance between their work and family responsibilities.

Volunteers play an important role in a number of coalition government programs, including the highly successful Active After-School Communities program, which tackles the important issue of childhood obesity. Many members and senators, including, I am pleased to say, many Labor Party senators and members, have visited schools taking part in the program. The number of schools now totals over 1,400. The program, as senators and members will know, offers motor skill development, physical activity and sport.

I am pleased to say that the program has received universal support. Sorry, Mr President, I correct myself—with one sole exception. Approximately three weeks ago the state Labor sports ministers—I repeat, the state Labor sports ministers—said this about the program in a joint communiqué:

State and territory ministers applauded the successful implementation of the Active After-School Communities program.

In addition, one of Senator Lundy’s own Labor colleagues—and, Senator Abetz, I am not going to play ‘guess who’—said:

The Active After-School Communities Program is an excellent idea and I hope it will continue in following years.

However, there is one person who is not on the team. It is the shadow minister for sport, Senator Lundy, who claimed the program appears to be having little impact, contrary to what her colleague said. It is no wonder, after Senator Lundy’s performance in her last period in the sports portfolio, that she was sin-binned for poor performance. She has now been brought back after a period in the sin-bin. I have to say that, unless her performance improves, Senator Lundy will be out—(Time expired)

Department of Defence: Financial Management

Senator MARK BISHOP (2.40 pm)—My question is to the Minister for Defence, Senator Hill. Does the minister recall saying in 2003, after the Auditor-General’s refusal to approve Defence’s financial statements for the second year in a row, that financial management in Defence ‘shows significant improvements’? Can the minister now explain why two years later the Auditor-General has concluded that financial management in Defence is as bad as ever? Why has the minister’s financial management of Defence now been rated an F for fail in each of the four years that he has been in charge of the portfolio?

Senator HILL—If the honourable senator believed in fair play, he would have quoted that part of the Auditor-General’s report which praised the secretary of my department for the considerable progress that has been made in addressing the deeply entrenched financial accounting issues within Defence. He probably would have also acknowledged that, compared with most defence departments in the world, the Australian defence department is further advanced in meeting the modern requirements of accrual accounting and so on. It has not been easy for the defence department to comply with accounting requirements that have been basically designed for the private sector, because it is simply not a business for profit. Nevertheless, notwithstanding the difficulties, particularly difficulties that relate to the valuation of assets, considerable progress is being made, and I am pleased that that has
been acknowledged by the Attorney-General on this occasion.

Senator MARK BISHOP—Mr President, I ask a supplementary question arising out of that response. Why has the minister been unable to account for billions of dollars worth of public assets in each of the four years that he has held the portfolio, why has the Auditor-General concluded that 10 of the 11 most serious financial risks faced by taxpayers are in the Department of Defence and why should the public or any of the minister’s colleagues have any confidence in him, given his abject failure to get financial management in his portfolio under control?

Senator HILL—I actually answered that in the primary answer when I said considerable progress is being made. The honourable senator might want to reflect, for example, on the issue of valuation of defence assets. If military equipment is, say, 30 years old, was not recorded at the time of purchase—as is required today—and has been remodelled and reconstructed many times over, it is very difficult to agree the basis upon which it should be valued today. Put in technical terms, this means that the degree of risk in relation to the valuation has not been agreed to a standard acceptable to the Auditor-General. But considerable progress is being made. Major investment is being made in systems, education and agreeing the new standards, and I will be continue to be satisfied provided that progress continues to be made.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a delegation from the United States of America led by the Hon. Cruz Bustamante, Lieutenant Governor of the state of California. On behalf of all senators, I wish you a very warm welcome to our Senate and to Australia.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Marine Protection

Senator SIEWERT (2.45 pm)—My question is to the Minister for Environment and Heritage, Senator Ian Campbell. Given the government’s generous $220 million fishery buy-out package, in the restructuring process will the government use this opportunity to ensure that the Australian government meets its international World Summit on Sustainable Development, WSSD, commitment to protect up to 30 per cent of each habitat type in marine protected areas across south-eastern Australia?

Senator IAN CAMPBELL—I thank Senator Siewert for what we regard as a very important question. I think Senator Siewert knows this subject better than many others, as does Senator Ian Macdonald. Under his leadership, a $220 million package has been brought forward to ensure that 17, I think, distressed fisheries under enormous stress are brought back to sustainability, and let us hope that that is for perpetuity. We have also announced—and I think it is fair to say that Senator Siewert would probably agree with this—the Commonwealth’s new marine protected areas policy. This came from the national oceans policy, one of the first national oceans policies on the planet, and is designed to ensure long-term protection of biodiversity under the sea.

With our distinguished United States colleagues visiting us, can I say that we do have enormous cooperation with the US government and with a number of states in the US with regard to the national oceans policy, on the protection of coral reefs and on the protection of undersea biodiversity. The goal of our oceans policy, as Senator Siewert knows, is to ensure that we have representative protection right around the enormous and, of course, magnificent coast of Australia. I un-
understand that the Lieutenant Governor of California will be visiting a place that is very close to the hearts of both myself and Senator Siewert, and that is the north-west of Australia, and the Burrup Peninsula in particular, in the next day or two. I think our honourable friend from California will be very impressed by the marine environment—

Senator Ian Macdonald—Send him to the Great Barrier Reef, too!

Senator IAN CAMPBELL—Senator Macdonald suggests that the Lieutenant Governor of California might also benefit from visiting the Great Barrier Reef, another one of the world’s wonders. It is worth visiting the Barrier Reef. I am going to get very close to the question that Senator Siewert asked. The World Wide Fund for Nature has given us a Gift to the Earth award for the protection of the Great Barrier Reef, with the new Representative Areas Program, which protects 34 per cent of that unique ecosystem and seeks to use the best science available at the time to ensure that we have a good balance of biodiversity in the Great Barrier Reef Marine Park to protect the reef system and to protect a whole series of other biodiversity qualities within that quite massive marine park.

We would like to ensure that the very high level of biodiversity protection achieved in the Great Barrier Reef is also achieved in a range of other marine protected areas right around the coast so that we have that comprehensive protection. We want to ensure that, as we roll out these marine protected areas, they are supported by a historic level of structural adjustment for the fishermen in particular and, in the case of the Great Barrier Reef, for other affected businesses. Where environmental goals are achieved for the good of the public and for the good of future generations of Australians and other citizens of the world who visit these internationa-
environmental and biodiversity outcomes—the sorts of outcomes that the Worldwide Fund for Nature have recognised with the Gift to the Earth award that they have awarded the Howard government for the protection of the Great Barrier Reef Marine Park. We want to achieve those sorts of outcomes right around the coast but in a way that balances the need to have sustainable economic activity on the coast and within coastal towns, particularly in the fishing industry.

Department of Defence: Financial Management

Senator HOGG (2.51 pm)—My question is to Senator Minchin, the Minister for Finance and Administration. I refer the minister to the Auditor-General’s conclusion in the 2004-05 Defence Annual Report that Defence was unable to locate $7 billion worth of Commonwealth assets. Didn’t the Auditor-General conclude that this failure had a ‘pervasive impact on the financial statements’ of the Department of Defence? Doesn’t this mean that Defence has breached section 48 of the Financial Management and Accountability Act, which requires that proper financial records must be kept by Commonwealth agencies? Given that Defence has now breached the FMA Act for four years running, will the minister now personally intervene to ensure that this fiasco is not repeated for a fifth year in a row?

Senator MINCHIN—Senator Hill, the Minister for Defence, has explained the particular issues in relation to Defence. They are quite particular to that department and not to be experienced by any other department. They are peculiar to the way in which Defence operates and the enormous load that has been put on Defence by the exigencies caused since September 11, 2001. I think every Australian should understand the extraordinary pressure that has been placed on one of the finest group of men and women in the world, in serving this country in the way that they have. That has meant particular difficulties for the Department of Defence itself in meeting that burden.

I am pleased to say that the Finance department and the Defence department have worked very constructively together to resolve some of these accounting issues and to ensure that we can reach a point where there is no question mark hanging over any of the technical issues associated with Defence’s accounts. Progress is being made. There is significant investment being made to ensure that we reach that point. These are not easy issues to deal with, but I congratulate both departments on the constructive work that is going on to resolve some of these issues.

Senator HOGG—Mr President, I ask a supplementary question. Can the minister point to any other Commonwealth agency in which financial management is in such a mess? Can the minister now provide an absolute assurance to the Senate that the minister has full confidence in the Minister for Defence to rectify the diabolical state of Defence finances, or does the minister agree with the Prime Minister that it is time for Senator Hill to go?

The PRESIDENT—Order! Minister, I invite you to answer those parts of the question that are relevant.

Senator MINCHIN—It is my experience that Senator Hill is one of the finest Defence ministers this country has ever had, and I hope that he serves in that role for many years to come.

Internet Safety

Senator BARNETT (2.54 pm)—My question is to Senator the Hon. Helen Coonan, the Minister for Communications, Information Technology and the Arts. Will the minister advise the Senate how the Howard government is helping families protect
their children from offensive material on the internet? Is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Barnett for his interest in this issue and for his question. Protecting children and families is a vital matter for coalition senators, and it is also something that Senator Fielding, the Leader of Family First, has raised with me on a number of occasions. The government has a three-pronged approach: we legislate, we regulate and we educate to protect all Australians, and particularly young Australians, from inadvertent dangers of the internet.

The Australian government already fund the internet safety agency NetAlert. We ban both X and RC material from being hosted by Australian internet service providers. We require all ISPs to provide filters at cost or below cost to consumers. I am pleased to say that some providers, including Optus, AOL and iPrimus, offer parental filtering controls to their customers at no extra cost. The evidence shows that the government’s strategy is working.

The kidsonline@home study, released earlier this year, found that 35 per cent of respondents use internet filters. This has more than doubled since 2001, when 17 per cent of the survey of internet-connected households with a child aged under 18 reported using such software. This increase has been driven by a government-funded education campaign. It is why at the last election the government committed $2 million for the National Cybersafe Program.

A major education initiative under the National Cybersafe Program, the NetAlert Expo, has been underway for several months, and it is proving very popular as it moves around the country. It is a targeted training roadshow, and the expo is there to provide information to parents, teachers and community groups to allow them to keep children safe on the net, including in the sometimes very dangerous chat rooms.

The online content scheme has also been enhanced by new strengthened industry codes to crack down on prohibited content on the internet. ISPs must now display a link to internet safety information more prominently on their home pages and provide regular updates on filtering options every four months. At my direction, ACMA will now undertake an initial audit of the top 20 ISP providers’ compliance with the codes. That will cover about 90 per cent of subscribers. The government treats noncompliance as a very serious issue, and breaches by ISPs can attract fines of up to $27,500 per day.

There is interest in applying filters at the ISP level. This is an issue that the government have already examined, and we will continue to closely monitor this. Reviews conducted by my department have uncovered a number of practical difficulties in mandating the URL/IP-based filtering at the ISP level, including accuracy rates and the impact on broadband speeds. I am, however, awaiting some further advice on server level filtering based on technical trials. Of course, technology changes so quickly that we need to keep an eye on this. I encourage all parents who may be listening to get in touch with their ISPs to ask about filtering in the home and about ISP filtering.

I was asked about other policies. As with most things, it is difficult to tell where Labor currently stand on this issue. They committed less than half the amount of funding for education initiatives at the last election. While some in the ALP have advocated filtering as a silver bullet, at least Senator Lundy, Labor’s former spokesperson, does not agree with this. (Time expired)
Welfare to Work

Senator LUNDY (2.59 pm)—My question is to Senator Kemp, the Minister for the Arts and Sport. I welcome the interest of Minister Kemp in volunteering, because I would like the minister to tell the Senate whether he is aware that, under the government’s welfare changes, volunteering will no longer be included on the list of approved activities that job seekers can engage in to meet activity tests to qualify for their welfare payments. Despite your earlier protestations, Minister, what are the implications of this change for programs such as the active after school sports program, which relies on volunteers to deliver the program to school children after school? Doesn’t the change make it even harder for this program to remain viable, given that the rate of volunteer participation is already in decline?

Senator KEMP—The program is not in decline. The active after school hours program—

Senator Lundy—Volunteering is in decline.

Senator KEMP—You were referring to the active after school hours program, Senator Lundy. That is what my colleagues and I understood. And it is not in decline; it is actually expanding. I will check this number, but the program has been rolled out in some 1,400 schools and this is expected to rise to just under 3,000 schools. So this is not a program in decline; this is a program which is profoundly expanding.

Senator Chris Evans—I rise on a point of order, Mr President. The minister is deliberately trying to misrepresent the question. He was asked about the rate of volunteer participation being in decline. He cannot then make up another question and seek to answer that. I would ask you to ask him to answer the question he was asked, not construct a new one and seek to answer that.

The PRESIDENT—I ask the minister to answer the question as it refers to his portfolio.

Senator KEMP—As always, Mr President. I am one of those ministers who do not need to be reminded of that, Mr President. Senator Lundy, I think if you check the Hansard you will find that you referred to the active after school hours program. You referred to volunteering, and what you failed to note was the answer that I gave to the excellent question from Senator Parry. One of the key purposes of the IR reforms is to be more family friendly. With the flexibility that these new IR reforms will introduce into the labour market, I would expect that there will be a boost to volunteering, not the reverse.

Senator Chris Evans—Why would you think that?

Senator KEMP—The reason I would think that is that people will have more flexibility in choosing their hours of work, which is actually a very important aspect. Senator Lundy, it is all very well for you to go around and attempt to attack sport, as you so often do—we recall your relentless attacks on the AIS; we recall the attempt to politicise the drugs debate before the last Olympics, over which you and your colleague Senator Faulkner disgraced yourselves—but the truth is that this government is strongly committed to sport. This government has given more support to sport than any other government in Australian history and I would expect that, as a result of the industrial relations reforms which this government is bringing in, all aspects will benefit, including sport.

Senator Lundy—I rise on a point of order, Mr President.

The PRESIDENT—I think the minister has completed his answer.

Senator Lundy—I stood up before he sat down, and I have a point of order.
The PRESIDENT—What is the point of order?

Senator Lundy—The point of order is one of relevance. The question was about the Welfare to Work changes, not the industrial relations changes, and the minister has not yet addressed my question.

The PRESIDENT—I do not think there is any point of order. Do you have a supplementary question?

Senator LUNDY—Yes, Mr President. My supplementary question is: can the minister indicate what action he has taken to ensure that the government’s decision to take volunteer work off the list of approved activities in which job seekers can engage to meet work tests will not force sports programs that rely on volunteers to survive to shut down?

Senator KEMP—The action I will take is this: I will not follow the Labor Party policy and cut the money available to the active after school hours program. This government committed $90 million to this program, and the Labor Party committed $80 million to it. So I give this assurance to the senator: I will not be seeking to implement the Labor Party policy and cut this very important program.

Senator Ferguson—I rise on a point of order, Mr President. I think I should alert the Senate to the fact that the President became a grandfather again at 1.50 this afternoon, while the Senate was sitting, so if he was distracted you will understand.

Honourable senators—Hear, hear!

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

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Answers to Questions

Senator MARK BISHOP (Western Australia) (3.05 pm)—I move:

That the Senate take note of answers given by ministers to questions without notice asked by opposition senators today.

I specifically refer to answers given by Senator Hill and Senator Minchin concerning aspects of Defence accounts. Something remarkable is occurring. Some would say it is unparalleled in the history of government in this country since Federation. It has been occurring for the last four years within the Department of Defence. For the last four years the Auditor-General has refused—and according to the departmental secretary it is most likely he will continue to refuse for the next two years—to endorse the financial statements for the Department of Defence. The secretary of the department has refused, under advice, to sign off on those same financial statements. Neither he nor the minister can provide an assurance that the accounts represent a true, accurate and fair record of the financial position of arguably Australia’s largest financial entity.

This year alone the Auditor-General identified a number of issues which, if they had remained unnoted or unremarked, would have given rise to material misstatement. These included inadequate prior-year financial statements; inadequacy of departmental response to prior-year audit recommendations; and ongoing system and data integrity issues relating to inventory, asset identification, stores, stock levels, liabilities for leave, record maintenance and identification, and asset valuation on an ongoing basis. All of these problems cover the entirety of the Department of Defence.

The genesis of those problems lies in an internal control environment which is almost entirely lacking in practice—or, some would argue, is totally dysfunctional at best. Again, believe it or not, this lack of control includes deficiencies in stocktaking, recording and reporting of quantities and inadequate controls to safeguard pricing data for general
stores inventory. It is the same for explosive ordnance: difficulty in revaluations and recording of land and buildings, infrastructure, plant and equipment, and poor processes for the capture and recording of the most basic data. One could go on and on, as the Auditor-General has for years and years. Put simply, the entire financial management and accounts report in the Department of Defence for at least five and possibly more years, discloses little information that is accurate, up to date or of any value at all. This failure and lack of responsibility lies, in the first and last instance, at the door of the Minister for Defence and, through him, the entire government.

Minister Hill repeatedly advised the parliament that financial management of Defence showed ‘significant improvement’ in 2003 and again in 2004. He said that the government ‘is confident that the program agreed by Defence would achieve significant improvements in the short term’. Again today Minister Hill repeated the same kinds of assurances. But, despite these guarantees, despite these assurances and despite repeated undertakings, the entire system of financial reporting, accounting and management in Defence remains a mess and in limbo. Every specific remediation program identifies new, additional, separate, distinct and growing numbers of problem areas within the Department of Defence.

Just a month ago, at estimates hearings in November, we were told of the progress of 95 old audit findings. In level of seriousness, 27 were rated A, 48 were rated B, and some 20 were rated C. Of the 27 audit findings categorised as the most serious for the last four years, exactly none had been remedied in total. None of those remediation plans have as yet been signed off by the ANAO. Neither the secretary nor the minister can advise when the plans will be implemented and when they will be signed off.

In summary, for the financial years 2002, 2003, 2004 and 2005, there has been no sign-off by the Auditor-General on the relevant financial accounts. For the financial years 2006 and 2007, the forward indicator is that the result is going to be the same. (Time expired)

Senator FERGUSON (South Australia) (3.10 pm)—I guess we have to give Senator Bishop some marks for trying—and some would say he is very trying. He certainly has, on a number of occasions, raised the issue of the auditing of the Department of Defence. But, unfortunately for Senator Bishop, he always tries to go too far. He goes too far in trying to blame the Minister for Defence for every single deficiency that he thinks exists in the Department of Defence.

For Senator Bishop’s information: both last night and again at lunchtime today, I spent a considerable amount of time with Defence Force personnel. In spite of Senator Bishop’s attempts to denigrate the minister for the work that he is doing in charge of the defence department and our defence forces, the minister is held in the highest regard by every member of the defence forces that I come into contact with. That is something that we should never forget.

The defence portfolio overall is an enormous portfolio, with an incredibly large amount of spending. At the time when there was a change in the accounting processes, there were some difficulties within Defence in identifying some of the equipment that needed to be audited and valued. It is much more difficult in Defence than it is in any other department to identify the actual cost and the capital cost of many of the items that are contained in Defence. So, Senator Bishop, instead of concentrating on those few issues—about which you questioned them at length at estimates—you should know that the Defence Force chiefs, the min-
ister and the department are making considerable progress in trying to make sure that, over a period of time, every piece of equipment within the Department of Defence is properly accounted for. You know that, Senator Bishop, because you have received the answers to those questions at estimates. During that period of time, they have made considerable progress in getting towards the result that they are looking for.

It is the role of the opposition—I defer to that—to try to find out all of these things through the estimates process and through every other process. But where you fall apart, Senator Bishop, is in your criticism of the minister. As I said, having spoken to people within the defence forces, no minister in recent times has been held in higher regard. He has enabled members of parliament to become more well informed about the activities of the defence forces, about procurement through the DMO and about a whole range of other operational activities of the defence forces. He has made it much easier for all of us, as members of parliament—including many members on your side of the chamber—to better understand the workings of the defence forces.

At lunchtime today—with one of your colleagues from Western Australia, Senator Bishop—I attended a luncheon with many members of the defence forces, and your colleague spoke highly of these people and of the opportunities that have been given to us by this minister to better understand the defence forces and to better understand the work that they are doing. And, through that contact, they naturally understand better the role of members of parliament as well.

Senator Bishop comes in here with bold statements and a prepared response. We are supposed to be taking note of answers but instead Senator Bishop has a prepared speech. Having gone through all the information that he can find at his disposal, Senator Bishop comes in with a prepared speech and is critical of the minister, when in fact this minister has done more for the defence forces and has given the parliament, senators and members of parliament more information than they have ever been able to get before, both about matters that are attached to the DMO and about matters of procurement, in trying to inform both the Senate and members of the House of Representatives of the exact state of affairs of the equipment that we have in the Defence Force in what is a very difficult time. Of course, one of the most expensive items that has to be paid for by government is capital items and the procurement of new equipment for our armed forces so that they can do their job in the way that they do. They are held up proudly by the Australian people. (Time expired)

Senator CAROL BROWN (Tasmania) (3.15 pm)—I rise to take note of answers given by Senator Abetz during question time today. Earlier this week, Senator Abetz claimed that he does not like to blow his own trumpet. Today we find out the reason: there is no trumpet to play. Senator Abetz says he does not understand why he is given so many questions during question time. I can tell him that he is asked these questions in the hope that Labor can actually get some answers for the Australian community on these radical workplace proposals—and a vain hope it is. Again today we have had a refusal by this government to provide meaningful answers to questions in this area. But, after listening to Senator Abetz, there is no doubt in my mind that the rationale behind the Work Choices proposal is to pay people less. This government’s objective is to cut the wages of Australian workers in the future.

But let us not forget in this chamber that, when you cut people’s wages, you cripple their ability to pay their mortgages, their credit card bills and their electricity and
phone bills. You put their families under pressure and you lock them into a grinding hand-to-mouth existence. Those on the other side constantly argue that we need to catch up with New Zealand and other countries around the world who have tried this sort of workplace experiment. They imply that somehow we are missing out on something that these countries have. The irony is that they are actually right. But, where they pretend we are missing out on a positive, wonderful, utopian world of workplace happiness, the reality is that we are missing out on a world of unnecessary hardship and unfairness—one of lower pay and poorer conditions. The US is the obvious example for us to look to. What has happened there? The minimum wage has not budged in more than eight years. How could Australia’s poorest workers cope with that?

Senator Joyce has staked his claim this week as the senator who saved Christmas, but he is a few hams short of a Christmas picnic on that one. Despite moves to clean up some small technical matters in the bill that the government muffed in their rush, the horrible core of it remains. Senator Joyce had the opportunity to be a workplace hero, but instead he has become yesterday’s wannabe hero. The tinkering that he and the Liberal backbench have done amounts to nothing in real terms. Despite it, Senator Joyce, Mr Howard and Mr Andrews are no more able today to offer a guarantee that no worker will be worse off under these proposals.

Peppered through Senator Abetz’s answers in this chamber, we hear the government’s rhetoric and slogans, all designed to hide a lack of real information about the impact of these reforms on Australian workers. He describes these reforms as flexible. He says they are about choice and about employers and employees sitting down together and negotiating sensible working arrangements. But the rhetoric is hollow. He really means something quite different but just does not have the ticker to name it. So I will provide to the chamber a quick translation of his language. What Senator Abetz means by ‘flexibility’ is actually inflexible arrangements for workers and complete flexibility for employers. What he means by ‘choice’ is in fact no choice at all. What he means by employers and employees sitting down together and negotiating sensible working arrangements is really employers presenting contracts to employees and saying, ‘Sign on the dotted line or join the dole line instead.’

No-one can possibly believe the spin—the $55 million taxpayer funded exercise in hollow rhetoric—this government has engaged in. The Australian public does not. No-one can believe that the motivation behind these reforms is anything other than to serve the interests of business and to pay ordinary Australians less. That is why this government is so keen to avoid scrutiny. That is why Senator Abetz’s answers in question time resemble a stream of consciousness rather than a considered response. That is why this government has spent so much to tell Australia so little.

Rapidly, this government is setting new records in avoidance of scrutiny. In addition to Senator Abetz’s appalling answers today, we have seen this out-of-touch government continue its arrogant abuse of the Senate by gagging and guillotining debate on the Work Choices bill. Not content with Senator Abetz’s fudging, the government has moved to limit serious debate on these radical changes. It is not good news for Senator Abetz, though. Earlier this week, he claimed to the Launceston Examiner that the Prime Minister would be closely watching his performance with this bill. Well, Senator Abetz, his direction to gag and guillotine debate is not exactly a ringing endorsement or a trumpet call for your performance. Your PM and your senior ministerial colleagues have given
up on you and moved to end a debate you have been losing terribly. (Time expired)

Senator PARRY (Tasmania) (3.20 pm)—I also rise to take note of the answers given by Minister Abetz during question time. I must take to task Senator Carol Brown for some of her comments. Senator Abetz is a leading light on this side of the chamber in relation to workplace relations and Work Choices. I think it is quite evident that the volume of questions that Senator Abetz has been receiving highlights and indicates his ability to answer the questions on behalf of the government in this chamber. I for one believe, as many of my colleagues would attest, he is handling this superbly and he has not been put off by some erroneous and deceitful questions from the other side.

I wish to take to task some of Senator Brown’s comments. Senator Brown was saying one minute that we should look overseas and the next minute that we should not look overseas, and she selectively wished to make examples of overseas countries. The reforms that we are putting forward are designed solely for the Australian environment and have come from Australian legislators—people who have spent a lot of time over many, many years looking at the best options that are going to take this country forward. I endorse and support the way this government is approaching workplace relations and the reforms.

I want to talk about some personal experiences that I have had in small business. Unlike many on the other side of this chamber, I have spent time in small business and I have taken a small business to a medium business. I have had many employees and I have needed flexibility in my workplace. My workplace operated 24 hours a day, seven days a week, which makes it very difficult to work within a regimented framework that is not conducive to that sort of business environment. Sometimes we had to call staff out at short notice; sometimes they needed to stay at short notice. We needed flexibility. Sometimes we even had to break the shifts—working in the morning and again in the afternoon. Also, we tried to have a very family friendly workplace where we could allow employees the flexibility to do what they wished to do. We have been able to do this through workplace agreements. I cannot wait for the rest of the country to have that ability, so the people who want flexibility can have it. Their lives will be better for it; the employers will appreciate it, though not nearly as much as the employees.

I wish to take Senator Carol Brown to task over another issue. She said, ‘Employees will be forced to sign on the dotted line or join the queue.’ I put it to Senator Brown and members on the other side that the queues will be to the employers. People will be queueing to sign up for a more flexible and more family friendly workplace under these proposed changes. There will not be an extra queue in the dole line. There will be additional jobs. The queues in the dole line will be reduced. Employees and employers will have a very harmonious way of deciding how they want to work in the workplace. I am looking forward to the day when these new workplace relations reforms are available. I know businesses in the home state that Senator Brown and I come from are looking forward to this—they want this.

The biggest aspect of this debate has been the confusion, misinformation and disinformation from those opposite. I keep getting asked: ‘Is this true, Senator? Is that true, Senator?’ When I tell them what the real answers are, they go away very comfortable. The scaremongering from the people on the other side has caused confusion within this entire debate. Australia has six different workplace relations systems with thousands of federal and state awards. We are going to
simplify this. It is going to make it easier for employers in particular to understand and comprehend the system. We are not reducing wages. We are locking in minimum wages. We keep hearing from the other side about wage reduction, but it is not true. It will not happen. We will be making sure that workers in this country enjoy great workplace conditions and work in an environment where there is flexibility to work how and when they see fit, based on the employer’s consent and an agreement with the employees. That is how a workplace is viable. That is how a workplace survives into the future.

I know from my workplace that if you have a happy and contented team, that team will be the most productive team you could possibly have. No employer in this country wants to have an unproductive workplace. No employer wants to have a workplace with unhappy employees. The best outcome will be if the employer and the employee sit down together and say, ‘This is what we want to move forward together and achieve.’ That is what will happen under our new workplace relations reforms, and I cannot wait for that to happen. (Time expired)

Senator WEBBER (Western Australia) (3.25 pm)—It is interesting that Senator Parry says that the policies being proposed by the government will not drive wages down. In Western Australia, we have seen policies like those that are being proposed by this government. I would like Senator Parry to explain to me why, if you are not going to drive wages down, when we had policies in Western Australia just like what is being proposed here, those working in the retail industry got offered a contract for $6.50 per hour? Is that fair and reasonable? Is it not driving wages down? The award rate of pay that people should have been paid at that time, according to the SDA, was $10.76 an hour. I do not know how it is not driving wages down. It will drive wages down. It will lead to the rush to the bottom. It will lead to the exploitation of vulnerable workers in sectors like the retail industry and other service sectors. That $6.50 per hour was a flat rate. That is what you got paid. It was inclusive of any casual loadings—that is, casual loadings were a thing of the past. It did not matter what hour of the day or night you were required to work, you were paid $6.50 an hour. That was a real, live contract that people were forced to sign in Perth. That is the kind of policy that those opposite want to impose on every worker in Australia. If that is not driving wages down, Senator Parry, I do not know what is.

That worker was being short-changed at least $4 an hour for every hour they worked—driving their wages further down. In addition to the flat rate of $6.50 an hour, there was no casual loading, nothing. It was a flat hourly rate no matter what hour of the day or night and no matter what day of the week they were forced to work. Your contract could be terminated with two days notice with no reasons given—just two days notice and ‘Don’t come in Monday; that’s it, it’s over.’ There would not even be $6.50 an hour for that person then. The award rate of pay of $10.76 an hour was the initial rate. Working in the retail sector at the time, you were meant to be paid an extra $2.55 per hour if you worked between 6 pm to 9 pm on a Thursday. You were meant to be paid $16.14 an hour—time and a half—for other family unfriendly working hours or $21.53 an hour—that is, double time—for extremely family unfriendly hours.

Let us now turn to the issue of public holidays—those iconic public holidays that Senator Joyce is particularly proud of. In the policies that were introduced in Western Australia—the policies that this government is modelling their current approach on—the contract says, ‘The following days will be
observed as fully paid holidays unless the employee is required to work on any of these days, in which case he/she will be entitled to an alternative day off. ‘Well, isn’t that nice! For a flat rate of $6.50 an hour, you could be required to work on New Year’s Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Foundation Day—that is an iconic public holiday in Western Australia, let me tell you—the Queen’s Birthday, Christmas Day or Boxing Day. If you were rostered to work on any of those days, there was no option that if you did not turn up you would not be sacked. You just got an alternative day off and you got a flat $6.50 an hour for being denied that important time with your family.

That is the kind of policy that you are saying you want to impose on the Australian people, and you are saying that it is not actually going to drive wages down. There were many people in Western Australia working in the retail sector who were forced to sign contracts like this. There were many cleaners and other service industry workers who were forced to sign contracts that were even more reprehensible than this. I do not know, Senator Parry and others: you obviously have a very different view about the way these things are going to work. But this is the real-life individual contract experience that you want to impose on every Australian worker. And it is even worse for young people. They do not even get offered $6.50 an hour; that $6.50-an-hour figure is the adult rate of pay. I think it is outrageous to expect people to work for $6.50 an hour on Christmas Day, New Year’s Day, the Queen’s Birthday—(Time expired)

Question agreed to.

Marine Protection

Senator SIEWERT (Western Australia)

(3.31 pm)—I move:

That the Senate take note of the answer given by the Minister for the Environment and Heritage (Senator Ian Campbell) to a question without notice asked by Senator Siewert today, relating to marine protection in Australia.

I rise to take note of Senator Ian Campbell’s answer on the marine protected areas of the south-east of Australia. I was really pleased to hear his commitment to world-leading outcomes on marine protection in Australia. He also talked about the Gift to the Earth award from the World Wide Fund for Nature. I am very greedily hoping that he intends to do the same thing around the rest of Australia. I was particularly pleased to hear him say—if I am interpreting his words correctly—that he is hoping to deliver the same level of protection that the Great Barrier Reef has to the rest of Australia. That would mean that, like the Great Barrier Reef, 33 per cent of other marine park reserve areas will be protected. As the south-east of Australia is of similar size to the Great Barrier Reef, I hope that means that he is committed to delivering marine protected areas for that region of around 33 per cent. That will deliver what I understand he committed to deliver, which are truly excellent biodiversity outcomes. That would very definitely help to deliver that. I was also pleased to hear him say that he is still committed to delivering on the government’s commitments through the oceans policy because, although we have seen some marine protected areas delivered under that policy, we have seen nowhere near enough. We have seen nowhere near enough of what is needed to protect marine areas of Australia.

The proposal that the Australian Marine Conservation Society released this morning for the south-east region is a very comprehensive package. They have recommended a series of 11 multi-zoned marine protected areas for the south-east. The marine protected areas network amounts to one-third of the south-east area. They are proposing that two-thirds of the area within each marine...
protected area should be no-take areas—the exclusion areas that Senator Ian Campbell referred to. I hope that he is prepared to deliver on his commitment regarding the excluded areas. This proposal meets that.

This proposal is based on the best available science from international and national marine scientists and would deliver on the government’s commitment under a number of conventions. The government has provided this opportunity with the $220 million fisheries restructuring package. If we do not take the opportunity now, I do not believe we are ever going to have the opportunity again. We need to take this opportunity to deliver on fisheries restructuring, which is very desperately needed. But to do that we also need to protect our marine environment. In fact, if we do not protect our marine environment we will not adequately deliver the fisheries restructuring package that the government has very generously provided. About a half of the 70 Commonwealth managed fisheries are in some way classified as overfished, and I think there is general agreement that we need to do something about this. Part of doing that is through the restructuring and the buyout but, as I said, it is absolutely essential that we commit to a series of marine protected areas.

In the south-east we have done a lot of study and there has been a lot of consultation about this process. I understand that the government will be making an announcement on this in the very near future, which is why I took this opportunity today to ask Senator Ian Campbell about the government’s intentions on the south-east region. As I said, they have an ideal opportunity and, if they do not take this opportunity now, we could well see the loss of very significant marine biodiversity areas in Australia. I believe the package is a comprehensive proposal from the Australian Marine Conservation Society which I understand has the support of many other conservation groups. It establishes a comprehensive, adequate and representative network of marine protected areas. Senator Ian Campbell reiterated today that the government is committed to implementing a scheme that will be—if I understand what Senator Ian Campbell says—of world standard. It will be a truly excellent biodiversity outcome. The proposal also provides some suggestions about how the fishing industry could be restructured, because it needs to be a double package. We need to be doing both. It also makes recommendations for establishing a baseline of a long-term monitoring program to evaluate the effectiveness of the fishing restructuring and to also look at the integrity of the marine protected areas.

We need to take this opportunity to deliver on fisheries restructuring, which is very desperately needed. But to do that we also need to protect our marine environment. In fact, if we do not protect our marine environment we will not adequately deliver the fisheries restructuring package that the government has very generously provided. About a half of the 70 Commonwealth managed fisheries are in some way classified as overfished, and I think there is general agreement that we need to do something about this. Part of doing that is through the restructuring and the buyout but, as I said, it is absolutely essential that we commit to a series of marine protected areas.

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Question agreed to.

BUSINESS
Consideration of Legislation

Senator MURRAY (Western Australia) (3.36 pm)—I seek leave to move the following motion:

(1) That all amendments circulated to the Workplace Relations Amendment (Work Choices) Bill 2005 be referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by Monday, 5 December 2005.

(2) That so much of standing orders be suspended as would prevent the following provisions having effect.

(3) That further consideration of the Workplace Relations Amendment (Work Choices) Bill 2005 be postponed till Tuesday, 6 December 2005.

(4) That the order of the Senate of 1 December 2005 in relation to the allotment of time for the remaining stages of the Workplace Relations Amendment (Work Choices) Bill 2005 be varied as follows:

CHAMBER
Committee of
the whole from 12.30 pm till 2 pm on 6 December 2005
from not later than 3.45 pm till 6.30 pm on 6 December 2005
from 7.30 pm till 11 pm on 6 December 2005
from 9.30 am till 2 pm on 7 December 2005
from not later than 3.45 pm till 4.45 pm on 7 December 2005
Remaining Stages till 6.15 pm on 7 December 2005.
Leave not granted.

COMMITTEES

Reports: Government Responses

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (3.36 pm)—I present four government responses to committee reports as listed at item 13 on today’s Order of Business. In accordance with the usual practice, I seek leave to incorporate the documents in Hansard.

Leave granted.

The documents read as follows—

GOVERNMENT RESPONSE TO THE RECOMMENDATIONS OF THE SENATE SELECT COMMITTEE ON SUPERANNUATION REPORT: PLANNING FOR RETIREMENT

Recommendation 1

The Committee recommends that the Government investigate mechanisms to promote the availability of appropriate part-time positions for mature age workers.

Response

Agreed.

The Government has recognised that Australian workplaces, and the Australian workforce, are likely to undergo considerable change in the future. There will be a large increase in the number of older workers, and with a possibility of increased demand for part time or flexible working hours. The Government recognises the benefits of flexible work practices and supports the promotion of full-time and part-time employment opportunities for mature age workers. The workplace bargaining provisions of the Workplace Relations Act 1996 provide a framework for flexible working arrangements to be tailored to suit the needs of both employers and employees.

The Government has actively encouraged the spread of regular part-time work by removing unnecessary and restrictive award provisions such as limits on the number of hours that can be worked by part-time employees. In the Family Provisions Case in the Australian Industrial Relations Commission, the Government argued for the inclusion of part-time work provisions in all federal awards, and the removal of unnecessary restrictions on the availability of different types of employment in awards.

The Government also provides information and support to employers and employees about flexible working arrangements. The Australian Workplace portal (www.workplace.gov.au) provides fact sheets for employers who are interested in introducing part-time work options, and the Family Friendly Agreements Database (www.wagenet.gov.au/ffac) provides examples of agreement clauses for part-time work options to assist in the development and implementation of working arrangements to suit the needs of both employers and employees.

Measures introduced under the Australians Working Together initiative that are targeted at older workers, actively promote flexible participation. Current labour market conditions provide increased opportunities for mature age people to participate in the workforce, especially through casual and part-time employment. The working credit changes to the income tests for payments to people of workforce age are designed to encourage their take-up of both part-time and short-term full-time work by enabling them to keep more of their payment than previously. This has enabled mature age employees to keep more of their payment and has made it easier for them to get back onto payment if their job ends within 12 weeks.

The Government is encouraging organisations to consider age management strategies for work-
force planning, including flexibility in workforce structures to allow for phased retirement and part-time work options. The Mature Age Employment and Workplace Strategy (MAEWS) seeks to improve labour force participation, taking a holistic approach by focusing on employers, mature age job seekers and mature age workers. The strategy promotes part-time work as a mechanism for improving mature age participation. Further information is at www.jobwise.gov.au.

As part of the Welfare to Work initiative announced in the 2005-06 Budget, the Government is also providing an additional $157.8 million in 2005-06 to assist older Australians and parents make a successful transition back into the workforce.

Recommendation 2
The Committee recommends that the Government consider expanding retraining assistance available to mature age workers under the Australians Working Together programme.

Response
Noted.

Through Job Network, the Government already has in place a broad range of assistance measures that provide mature age job seekers with opportunities for retraining. These include:

- potential for early access to Job Network Intensive Support customised assistance services, which provide one-to-one assistance and support to help job seekers address specific barriers to employment;
- the option for early access to Job Search Training, a tailored 15-day training course designed to build up specific job search skills;
- access to a Job Seeker Account, which Job Network members can use to tailor assistance to individual job seekers;
- access to a Training Account for job seekers aged over 50, which can be used to purchase vocational education or training appropriate to the job seeker’s skills and abilities and the labour market in which they are seeking employment; and
- earlier access to Training Credits for mature age Work for the Dole participants, which are available for job seekers who complete a certain number of hours in Work for the Dole or Community Work.

Established under Australians Working Together, the Transition to Work (TTW) programme provides mature age workers with practical and individually tailored assistance including a one-to-one initial interview and skills assessment, access to courses to upgrade skills and career counselling. TTW is aimed at job seekers aged 50 or over who are starting work for the first time or are returning to work after an absence of two years or more, and are not necessarily on income support.

However, there are indications that one of the greatest barriers to employment for mature age workers is the perception that they have reached the age of (early) retirement. The Government recognises the need to firmly establish a culture of employers judging workers on their merits and people seeing themselves as having ongoing work opportunities, rather than being locked into a fixed date of retirement. The Government believes that mature age people should have equal access to, and be encouraged to take up, available training and retraining opportunities within the workplace environment. This will enable older workers to keep their skills current, increasing their value as employees, enabling greater workplace mobility if desired and ultimately serving to prevent unnecessary unemployment.

The Age Discrimination Act 2004, developed in consultation with business and community groups, prohibits discrimination in a number of employment areas including training.

Recommendation 3
The Committee recommends that the Government look at means of reforming current Commonwealth Government defined benefit schemes to remove the disincentive to continue working beyond certain ages.

Response
Noted.
Defined benefit schemes for civilian employees: Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS)

The Australian Government’s defined benefit superannuation schemes for civilian employees are the Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS).

It is not clear what changes to the CSS and the PSS the Committee envisaged when it recommended changes to those schemes to remove disincentives for members working beyond certain ages. Those schemes have many aged based provisions, for example, they provide retirement benefits from age 55, or a member’s minimum retiring age (although the Superannuation Industry (Supervision) Act 1993 (SIS Act) may require these benefits to be preserved if they are taken as a lump sum). The CSS also includes the so called ‘54/11’ benefit which provides some CSS members with a higher benefit if they resign just before reaching age 55, than if they had remained in employment until age 55 or later. The removal of such provisions from the CSS or the PSS may be inconsistent with the SIS Act which generally precludes accrued rights or benefits in a superannuation fund being altered to the detriment of the member.

While these provisions may be seen by some as incentives for members to retire early, the schemes include other provisions that may encourage mature aged workers to remain in the scheme. For example, employers wishing to retain the services of mature aged workers who would otherwise benefit from the CSS 54/11 provisions may increase the members’ superannuation salary (without increasing take home pay) to address any incentive that these members have to cease working before their 55th birthday.

Also, both schemes support employment arrangements, such as phased retirement through part-time or reduced level work for the final years of employment, which may be offered by employers to encourage employees to continue working beyond the age that their superannuation benefits become available. Scheme provisions readily facilitate such options and equitable accrual arrangements apply. For example, where an employee changes from full-time to part-time work, the member’s existing accrual remains intact and future accruals are calculated on a pro-rata basis, using the equivalent full time salary.

In addition, the Government has introduced changed superannuation arrangements for future Australian Government employees. These will be more flexible than the current arrangements and will be better able to cater for the needs of the public sector workforce, including in respect of older workers.

New Australian Government employees who join Public Sector Superannuation Accumulation Plan (PSSAP) from 1 July 2005 will have fully funded accumulation arrangements instead of defined benefits. Future Australian Government employees will not be faced with any perceived disincentive to continue working beyond certain ages arising from their superannuation arrangements. This is because, unlike the CSS and the current PSS, accumulation schemes do not typically offer age-based benefits to members.

The Treasurer announced the Government’s ‘Transition to Retirement’ policy on 25 February 2004. This policy seeks to encourage older workers who have reached their preservation age to remain in the workforce longer by allowing them to draw down a non-commutable pension while continuing in employment. This policy commenced on 1 July 2005. The Government will examine possible options for applying this policy in the Australian Government superannuation schemes.

The Government has provided significant reductions in tax for senior Australians, in particular through the Senior Australians’ Tax Offset (SATO). Senior Australians of age pension age (65 years for men, and 63 years for women in 2005-06) may qualify for the SATO.

As a result of the 2005-06 Budget tax cuts, from 1 July 2005 single senior Australians eligible for the SATO can earn up to $21,968 without paying income tax or the Medicare levy (up from $20,500). Similarly, the SATO allows senior couples to have combined incomes up to $36,494 without paying tax (depending on the income split).
The Government has introduced a Mature Age Worker Tax Offset to reward and encourage mature-age workers who choose to stay in the workforce. The offset is available to workers aged 55 and over and provides a maximum annual tax rebate of $500 with effect from the 2004-05 income year. This measure recognises that improving the labour force participation of mature-age workers will improve productivity, thereby assisting in securing Australia’s future economic strength.

Defined benefit schemes for the Australian Defence Forces: the Defence Force Retirement and Death Benefits Scheme (DFRDB) and the Military Superannuation and Benefits Scheme (MSBS).

The Government provides two occupational superannuation schemes for members of the Australian Defence Force (ADF): the Defence Force Retirement and Death Benefits Scheme (DFRDB) and the Military Superannuation and Benefits Scheme (MSBS). The DFRDB is a defined benefit scheme and was closed to new members in 1991. It was replaced by the MSBS which is a hybrid defined benefit/accumulation scheme.

A Compulsory Retirement Age (CRA) applies to all members of the ADF and is factored into the design of the DFRDB and MSBS. The CRA is designed to ensure the ADF remains a young, fit fighting force able to endure the physical demands and discomforts of operational military service. For most members of the ADF, the CRA is 55 years but is extended in limited circumstances. The majority of members leave the ADF prior to reaching CRA.

The Government expects that, due to the unique nature of the ADF, the DFRDB and MSBS would be exempted from any effort to remove any perceived disincentives to continue working beyond certain ages in Australian Government defined benefits schemes.

Recommendation 4
The Committee majority recommend that the Government move in the future to make retirees convert a proportion of their pre-retirement savings into a complying annuity.

Response
Not Supported.

The fact that people will be living longer will mean that they are likely to spend more years in retirement. Taking superannuation benefits as an income stream is a good way to support a person’s living standards throughout retirement. At the same time, the Government believes that retirees should have a choice as to how to invest their superannuation benefits in retirement. This choice gives them the flexibility to structure their retirement income arrangements to best suit their individual circumstances.

It also needs to be recognised that, while the superannuation system is still maturing, some retirees will have insufficient savings to make the purchase of an income stream a viable option. It is therefore desirable that these retirees retain the ability to access their superannuation as a lump sum.

To give people more choices in how they make the transition to retirement, from 1 July 2005, people who have not retired may access their superannuation as a non-commutable income stream once they have reached their superannuation preservation age.

This measure will provide people with more flexibility in developing strategies in the transition to retirement. For example, a person might choose to continue to work with their employer on a part-time basis, and use part of their superannuation to supplement their income, instead of leaving the workforce altogether.

With effect from 20 September 2004, the Government also broadened the range of complying income stream products to include the new market-linked income stream. The introduction of this new product has provided retirees with more choice in how they finance their retirement income.

Like other complying income streams, the market-linked income stream is eligible for concessional treatment in the form of a 50 per cent exemption under the social security assets test and assessment for tax purposes against the higher pension reasonable benefit limit.

Recommendation 5
The Committee majority recommend that in moving to make compulsory the taking of complying annuities on retirement, the Gov-
ernment implement transitional arrangements so that individuals can have access to restricted lump sum payments.

Response
Not Supported.

See the response to Recommendation 4.

Recommendation 6

The Committee recommends that the Government consider the appropriateness of the current restrictions on the purchase of complying annuities, to encourage the availability of so-called growth pensions.

Response
Supported.
The Government has implemented changes which meet the terms of this recommendation.

With effect from 20 September 2004, the Government extended ‘complying’ status to market-linked income streams, known as term allocated pensions. Unlike other complying income streams, these products provide income each year that can either rise or fall, depending on the rate of return on the investments supporting the pension. Like other complying income streams, market-linked income streams provide for an orderly draw down of capital over the term of the product and are non-commutable. As the income stream is not guaranteed, some superannuation funds are now able to provide complying income streams for the first time. This increases both choice and competition within the complying income streams market.

Like other complying income streams purchased on or after 20 September 2004, a 50 per cent assets test concession applies to market-linked income streams.

Recommendation 7

The Committee recommends that the Government investigate the opportunities for retirees aged 55 to 65 to access the Newstart Allowance, without genuinely looking for work, while also continuing to access superannuation payments.

Response
Noted.

Under arrangements for the mature aged, brought in on 20 September 2003, people in receipt of income support are required to have a Participation Plan outlining the activities they have agreed to undertake. While some people may be able to satisfy the activity test through approved voluntary work and paid work of at least 40 hours per fortnight in certain circumstances, the overall intention is that the mature aged should continue contact with the labour market and be looking toward employment opportunities. However, this does not necessarily mean that they are required actively to be looking for work but that they are involved in work-orientated activities (eg training courses, preparing for work programmes, etc).

As part of the Welfare to Work initiative announced in the 2005-06 Budget, the Government placed further obligations on Newstart recipients aged 50-64. From 1 July 2006, they will be obliged to seek full-time work in the same way as younger recipients. However, they will not be required to participate in work for the dole and those over 55 can meet their obligations through part-time and voluntary work.

Recommendation 8

The Committee recommends that the Government look at reforming the Age Pension means test to treat personal earnings (salary and wages) in the same manner as other forms of income.

Response
Noted.

Under the Social Security Act 1991 the Age Pension is an annual amount, which is then paid to the pensioner in fortnightly instalments. Generally, income from all sources, including earnings, is also calculated as an annual amount and then taken into account in working out the rate of Age Pension for each fortnight. For example, if a pensioner takes work at $500 per week, this is worked out to be annual income of $26,000. This means that each fortnight $1,000 of income from earnings is taken into account in working out the Age Pension instalments. Once the pensioner stops working, the earnings reduce to nil. Using this method, the pension is only affected while the pensioner is actually earning the income.
However, where an age pensioner works in blocks, or has fluctuating earnings, their specific circumstances can be taken into account to average their earnings over the period of the employment. In addition, ‘once-off’ earnings can be averaged over a year.

These arrangements mean that people in receipt of Age Pension are not discouraged from taking intermittent or casual work. These arrangements are responsive and flexible to customers’ changing employment circumstances (if employment ceases the customer can immediately return to a higher rate of Age Pension).

Recommendation 9
The Committee recommends that the Government revisit the provisions of the Pension Bonus Scheme to increase its attractiveness to individuals working past Age Pension eligibility.

Response
Noted.

The Government will continue to consider a range of participation issues and the Pension Bonus Scheme will continue to form part of these considerations.

Recommendation 10
The Committee recommends that the Government investigate making contributions to a superannuation account on behalf of individuals caring for another person outside of the workforce.

Response
Not Supported.

Carers who are not eligible employees benefit from the Government’s decision to remove the work tests that previously applied to people up to the age of 65 who wanted to contribute to superannuation. Since 1 July 2004 those not employed, who are under the age of 65, no longer have to satisfy a work test to make personal superannuation contributions. This group includes people who are caring for another person outside the workforce but who are not employed. These carers now have access to a tax deduction for these contributions. Carers who are working and make eligible personal superannuation contributions to a superannuation fund can also receive a co-contribution payment provided they meet the eligibility criteria (eg. income, age and residency tests). Those not in employment and who are unable to save enough for a self-funded retirement are currently accommodated for by the Age Pension safety net.

The Government already provides a number of benefits to people caring for other people outside the workforce. Carer Payment is an income support payment paid to people who are unable to support themselves through substantial workforce participation because of the demands of their caring role. Carer Allowance is an income supplement paid to those who provide daily care and attention to a person with a disability or severe medical condition, or who is frail aged. Carer Allowance is not means-tested.

The Government announced in the 2004-05 Budget, a package for carers that included expanding the eligibility criteria for Carer Allowance and a one-off bonus which was paid to all eligible Carer Payment and Carer Allowance recipients in June 2004. This type of assistance is more practical and better targeted than incentives to save for their ‘retirement’.

As part of its election commitments the Government introduced more flexibility for Carer Payment customers by increasing the time a carer can work, train or study without losing eligibility for payment, from 20 to 25 hours per week.

In the 2005-06 Budget, the Government announced that it would provide $317 million for a carer bonus which was paid to eligible carers in June 2005 in recognition of their role of caring for a person with a disability. As a result of this initiative recipients of Carer Payment received a $1,000 bonus payment and recipients of Carer Allowance received a $600 bonus payment for each eligible care receives. The bonus is tax free and is not treated as income when calculating social security payments.

Recommendation 11
The Committee recommends that the Government increase efforts to educate the general population about the importance of planning for retirement.

Response
Supported.
The Government is considering ways to improve awareness among the general population of the importance of planning for retirement. A major Government initiative is the establishment of the Financial Literacy Foundation. The aim of the Foundation is to improve the financial literacy of all Australians. The Foundation works with relevant public, private and community sector organisations to improve the effectiveness of financial literacy information provided in Australia.

Recommendation 12
The Committee recommends that the Productivity Commission investigate the remuneration arrangements for financial planners, especially whether there should be a more direct relationship between the amount of work performed and the fee charged.

Response
Not Supported.
The Government considers that it should not directly intervene in remuneration arrangements for financial service providers or superannuation investment fund managers. The Government believes that it is for the market to determine the level of fees, costs and remuneration applying to financial services provided by advisers.

The Government is committed to ensuring a robust, competitive market for financial services and products, including those for superannuation, through the mechanism of disclosure. Financial services regulation under Chapter 7 of the Corporations Act 2001 requires full disclosure of fees charged by advisers and remuneration they receive from product providers, including commissions in various forms. This is achieved through upfront disclosure before advice is provided in a Financial Services Guide and as part of the Statement of Advice when personal financial advice is given. Disclosure requirements include revealing a non-monetary benefit or interest, for example, ‘soft dollar’ commissions.

The Government believes that it is important to avoid regulating the market in such a way that distortions are created whereby only fee for service financial advice is provided. Such an outcome might have the undesirable outcome that access to financial advisers is denied to those unable to afford fees for service.

Recommendation 13
The Committee recommends that the Government re-examine the deductibility rules for financial planners’ fees to remove the inducement to pay for financial planners’ services through trailing commissions.

Response
Not Supported.
The Government believes that it is primarily for the market to determine the levels and structure of fees and commissions.

The tax deductibility rules on capital and income-producing expenditure are very broad in application. The Government does not believe that a strong case has been made to justify a special exception to the general rules, which would introduce inconsistency and further complexity into the tax laws. It could also cause market distortions and generate calls for the same concessions to be extended to other types of investment advice.

Recommendation 14
The Committee recommends that the Government provide significant additional funding to the National Information Centre on Retirement Investments to expand the scope and availability of the assistance it offers to pre-retirees and retirees.

Response
Noted.
The Government regularly reviews the resources provided to bodies it funds.

Recommendation 15
The Committee recommends that the Government continue to encourage superannuation funds to provide assistance to pre-retirees and retirees beyond the accumulation phase, including the provision of appropriate financial education, advice and retirement products.

Response
Supported.
The Government continues to encourage superannuation funds to provide assistance to pre-retirees beyond the accumulation phase, including the provision of appropriate financial education, advice and retirement products. The establish-
ment of the Financial Literacy Foundation, which is designed to improve the financial literacy of all Australians, complements the role of superannuation funds in this area.

Recommendation 16
The Committee recommends that the Government take steps to ensure the wide distribution of information on the need for lifestyle planning in retirement.

Response
Noted.

The Government continues to monitor the effectiveness of delivery of its retirement information products. The Financial Literacy Foundation, which is designed to improve the financial literacy of all Australians, ensures that such information is widely disseminated. In collaboration with the Australian Taxation Office and the Australian Securities and Investments Commission, the Financial Literacy Foundation established a centralised portal-style website (www.superchoice.gov.au) that will be a source of information and resources on superannuation and super choice. Content for the website will be provided by the Australian Government. The website is promoted as part of a super choice education campaign by the Australian Taxation Office, the Australian Securities and Investments Commission and the Department of Family and Community Services.

Recommendation 17
The Committee recommends that the Productivity Commission investigate the remuneration arrangements for superannuation investment fund managers.

Response
Not Supported.

See the response to Recommendation 12.

Government Response to Recommendations of the Parliamentary Joint Committee on Corporations and Financial Services

Background
On 2 December 2004, the Parliamentary Joint Committee on Corporations and Financial Services (the Committee) resolved to inquire into the Australian Accounting Standards tabled in compliance with the Corporations Act 2001 in the Senate on 30 August 2004 and 16 November 2004. The Committee considered:

- whether the proposed standards are consistent with the Corporations Act 2001 and its regulations (as required under s.334(1) of the Act);
- whether the proposed standards will act in furtherance of the objectives of the Act; and
- any related matter.

On 10 February 2005, the Committee tabled the report of its inquiry into Australian Accounting Standards. The report made two recommendations. The Government’s response to the Committee’s recommendations is outlined below.

Recommendation 1
The Committee recommends that small and medium enterprises be permitted an additional month to report to ASIC for that enterprise’s first reporting year under the new accounting standards.

Response
The Government accepts this recommendation and notes that its implementation has been effected by ASIC relief and changes to the ASX Listing Rules.

ASX has amended its Listing Rules to extend the lodging date for giving half year reports and preliminary final report to the ASX from two months to 75 days. The extension relates only to reporting periods ending on or after 30 June 2005 and before 1 December 2006 and will apply in circumstances where the entity has adopted Australian equivalent International Financial Reporting Standards during the reporting period.

ASIC has granted Class Order relief [CO 05/0637] that allows unlisted entities an additional month to distribute financial reports to members and to lodge financial reports with ASIC. The relief applies to half-years and financial years commencing from 1 January 2005 to 31 December 2005. This will cover the reporting period in which Australian equivalent International Financial Reporting Standards are adopted.

Recommendation 2
The Committee recommends that the Senate and House of Representatives do not disallow the

Response
The Government accepts this recommendation.

Joint Standing Committee on Foreign Affairs, Defence and Trade

GOVERNMENT RESPONSE TO THE COMMITTEE’S REPORT “EXPANDING AUSTRALIA’S TRADE AND INVESTMENT RELATIONS WITH THE GULF STATES” — February 2005

The Government thanks the Joint Standing Committee on Foreign Affairs and Trade for the comprehensive enquiry conducted into Australia’s trade and investment relations with the Gulf States. The report is a welcome and timely study of Australia’s trade and investment relations with the seven Gulf States following the Committee’s last report on ‘Australia’s Relations with the Middle East’ in 2001.

The report makes ten recommendations regarding Australia’s trade and investment relations with the Gulf States. The Government’s response to these recommendations is provided below.

Recommendation 1
The committee recommends that the government give high priority to developing a program of high level visits to the region over the next three years to ensure Australia’s profile is substantially raised.

High level visits to the Gulf region are an integral part of Australia’s efforts to raise our trade and investment profile in the Gulf region. Federal Ministers visit the region regularly, as do State Ministers. High level visitors to the region in recent months include the Prime Minister, Governor-General, Minister for Trade, Minister for Defence Personnel, and the Minister for Agriculture, Fisheries and Forestry, as well as the Premier of New South Wales. The Government also encourages high level Gulf visitors to Australia, and in this context the visit in March 2005 of the UAE Minister for Economy and Planning and the Minister for Transport with a high level official and business delegation is noteworthy.

Recommendation 2
The committee recommends that the government reconsider the 2002 reinterpretation of section 23AF of the Income Tax Assessment Act relating to income tax exemptions. It should do this with a view to undertaking a more comprehensive cost-benefit analysis of the effect of the 2002 change on the national interest.

Section 23AF of the Income Tax Assessment Act 1936 allows Australian firms bidding for overseas projects that are in Australia’s national interest to do so without the cost of having to gross up the wages of Australian workers to cover the Australian tax payable on those wages. This allows Australian firms to compete against firms from other countries that are often subsidised by their respective governments. The Minister for Trade (or his delegate) is authorised under section 23AF to approve eligible projects.

The review in 2002 of Austrade processing and decision-making in relation to Section 23AF applications identified that a number of incorrect approvals had been given. These approvals related to cases whereby Australian labour supply companies were arranging for Australian workers, particularly in the medical services field, to find tax free employment in Gulf states in a way that was inconsistent with the “eligible projects” criteria of s23AF. This did not constitute a reinterpretation of s23AF by Austrade.

Those labour supply companies that had approvals in or prior to 2002 have been contacted and advised that existing approvals would be honoured but that no new approvals would be granted for labour supply projects in the future.

Generally, Australian nationals are required to pay Australian tax on their income earned overseas unless that income is taxable overseas (when section 23AG of the tax act may provide a tax exemption in Australia) or the project on which they are working has been approved as an eligible project under section 23AF. As most Gulf States do not levy income tax, Australians working in the Gulf States should expect to pay Australian tax on income earned in those countries. As matter of equity, Australians working in the Gulf States employed directly or indirectly through labour supply companies should be taxed on the same basis.
It is considered that Austrade officers delegated by the Minister for Trade are exercising powers in relation to section 23AF consistent with the law and the policy intention.

**Recommendation 3**

The committee recommends that the government continue to pursue memoranda of understanding with relevant Gulf nations, to avoid potential problems with the live animal trade.

Australia is continuing to vigorously pursue Memoranda of Understanding (MoU) on the live animal trade with trading partners in the Gulf and Middle East. Four MoUs have been signed to date, and these cover approximately 70 per cent of the trade in live animals to the Middle East:

- the United Arab Emirates (UAE) on 2 December 2004
- Kuwait on 16 March 2005
- Saudi Arabia on 4 May 2005
- Jordan on the 5 May 2005.

Each of these MoUs contains key provisions or agreement that any animals suspected of carrying diseases would be off-loaded into a quarantine facility for further testing.

An MoU with Eritrea on Cooperation on Agricultural Issues was signed on 29 April 2005 which provides for the provision of technical cooperation and assistance to Eritrea and possible use of a regional quarantine holding facility for live animals. Australia may request to use the Eritrean facility in the event of a rejection of a shipment of live animals from Australia by a third country within reasonable shipping distance of Eritrea and in the absence of a commercial market being found within a reasonable time.

The Australian Government will continue to pursue MoUs with Oman, Bahrain, Qatar and Iran as well as other Middle Eastern states, including Israel, Egypt and Syria. Consideration is being given to additional measures which might be placed on those countries that have not signed MoUs in order to mitigate any risks associated with the trade to those countries.

These agreements represent a significant step in meeting the Government response to the recommendations of the Keniry Review ie. having bilateral arrangements in place that provide operational quarantine holding facilities so that animals can be offloaded prior to a final decision being made on the import clearance.

Conclusion of the MoU with Saudi Arabia means the trade in live animals can resume, following the completion of necessary amendments to the relevant orders under the Australian Meat and Livestock Industry (AMLI) Act.

**Recommendation 4**

The committee recommends that the government expedite an investment protection agreement between Australia and Iran.

Australia continues to give ongoing attention to the conclusion of an investment protection and promotion agreement with Iran.

**Recommendation 5**

The committee recommends the Australian government jointly host a symposium to investigate areas of potential technical cooperation between Australia and Iran. The symposium should include the following components:

- Mining
- Agriculture and agricultural training (including dry-land farming, forestry and vocational agricultural training)
- Post harvest technology.

The government will investigate the possibility of such a symposium in the context of the next meeting of the Australia-Iran Joint Ministerial Commission, the timing of which has yet to be agreed.

**Recommendation 6**

The committee recommends the government consider strengthening Australian trade representation in Kuwait.

Austrade regularly reviews outcomes from its resource commitments to ensure it is getting the best possible return on investment.

The opening of the temporary chancery of the Australian Embassy in Kuwait late last year provided another avenue for Australian industry to access information on opportunities in this market. Austrade’s Riyadh office manages our commercial engagement with Kuwait and has already established a close working relationship with the Embassy. In addition, Austrade’s Trade Commis-
sioner (Iraq Procurement) is actively involved in pursuing opportunities in Iraq through Kuwait-based entities.

Austrade is presently awaiting the opening of the permanent Embassy facility in Kuwait with the current temporary facility unable to accommodate an Austrade staff member. When established, Austrade will place a locally engaged Business Development Manager within the Embassy, reporting to and under the management of the Austrade Riyadh office.

Given that the Trade Commissioners Riyadh and Iraq Procurement and their staff regularly service this market, we are satisfied that our interim and future arrangements will meet both Australian industry interests and our needs.

As part of our ongoing assessment of return on investment we will continue to monitor and evaluate the benefits of resource commitments to Kuwait.

Recommendation 7

The committee strongly supports the government’s plans to develop a strategy for the export of defence related hardware and services to the region. The committee recommends the strategy consider:

• What specific opportunities exist for the export of defence related hardware and services
• How the relevant agencies should cooperate, in terms of resourcing and personnel posted to the region, to optimise defence related exports to the region
• The long term export opportunities which would flow from Gulf nationals undertaking military training in Australia.

Defence Exports Strategy for the Gulf States

Defence and Austrade have a long-standing working relationship, both in Australia and overseas. The agencies have complementary roles in facilitating defence exports in order to sustain strategically important defence industry capabilities in Australia for the support of the Australian Defence Force (primarily Defence), and to increase the number of companies exporting for the national benefit (primarily Austrade).

In recognition of the strong defence export opportunities in the Gulf States, Defence has been working with Austrade, the Department of Industry, Tourism and Resources, and other federal and state agencies on the promotion of defence exports to the Gulf region.

Defence directly assists Australian exporters to gain access to Gulf State markets through providing support for focussed industry missions to the region, and coordinating and supporting Australian defence industry attendance at regional trade shows.

Defence Assistance to Australian Exporters

Direct assistance provided by Defence to Australian exporters to access Gulf markets includes:

(a) facilitating industry missions into the region (most recently in September-October 2004) assisted by a senior Australian Defence Force officer to facilitate access to senior military officers in host countries and interaction with their government and industry representatives;

(b) supporting an Australian defence industry presence at the International Defence Exhibition (IDEX), conducted biennially in the United Arab Emirates. The most recent was held in February 2005 and it was attended by the Chief of the Defence Force and supported by the presence of HMAS Darwin; and

(c) hosting visits to Australia by Gulf State officials to inspect Australian defence products. This may involve granting access to Australian Defence facilities and demonstrations of in-service equipment. Recent visits have included logistic and training establishments in the Albury-Wodonga area.

Defence Personnel in the Gulf States

The Defence presence in the Gulf Region is an important asset for defence export promotion activities. Currently, there are three Defence Attache’s (DAs) located in Iraq, Saudi Arabia (also accredited to Kuwait, Oman, Bahrain and Jordan), and the United Arab Emirates (also accredited to Qatar).

The Joint Directive issued by the Chief of the Defence Force and the Secretary of Defence requires DAs, within existing policy guidelines, to
provide assistance to representatives of Australian defence industry seeking to market defence products and services.

Under this directive, on-going support to defence exporters is provided by DAs through the timely dissemination of information on market opportunities and facilitation of company access to senior decision-makers. This support has been instrumental in achieving many of the export successes to date. DAs work closely with the representatives of other Departments and agencies in Australian embassies, and provide invaluable support in-country to Australian visitors and trade missions.

Details of Recent Defence Exports to the Gulf States

Table 1 shows recent defence exports and related activities with Gulf countries and reflects what has been reported to Defence by Australian industry. Items that are not controlled for export under Australian Customs Service regulations are included.

<table>
<thead>
<tr>
<th>Export Item</th>
<th>Exported to</th>
<th>Date</th>
<th>Value ($000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 3 patrol boats</td>
<td>Kuwait Coast Guard</td>
<td>February 2003</td>
<td>30,000</td>
</tr>
<tr>
<td>2 Maritime Training Course</td>
<td>Oman</td>
<td>June 2002</td>
<td>1,000</td>
</tr>
<tr>
<td>3 Safety and Rescue Training Course for Special Forces members</td>
<td>United Arab Emirates (UAE)</td>
<td>July 2002</td>
<td>100</td>
</tr>
<tr>
<td>4 Radars for missile patrol boats</td>
<td>UAE</td>
<td>late 2004</td>
<td>10,000</td>
</tr>
<tr>
<td>5 Apparel</td>
<td>UAE Armed Forces</td>
<td>late 2003</td>
<td>1,500</td>
</tr>
<tr>
<td>6 15 portable communication systems equipment for rapid voice and data links deployment</td>
<td>UAE</td>
<td>mid 2004</td>
<td>250</td>
</tr>
<tr>
<td>7 Asset Management and Planning System (AMPS) logistics software</td>
<td>Kuwait through Kuwait Ship Repair Company (KSRC)</td>
<td>August 2002</td>
<td>300</td>
</tr>
<tr>
<td>8 Fire control systems</td>
<td>UAE (through third party—recon of United States)</td>
<td>late 2002</td>
<td>6,000</td>
</tr>
<tr>
<td>9 Data links for missile patrol boat upgrade program</td>
<td>UAE Navy</td>
<td>early 2003</td>
<td>2,000</td>
</tr>
<tr>
<td>10 Shelters and underground structures</td>
<td>mainly UAE and limited work in Saudi Arabia</td>
<td>2002-03 and 2003-04</td>
<td>estimated 6,000</td>
</tr>
<tr>
<td>11 Security Forces training</td>
<td>UAE</td>
<td>2004</td>
<td>700</td>
</tr>
<tr>
<td>12 2 airborne depth sounder surveys</td>
<td>Qatar</td>
<td>2002 and late 2003</td>
<td>4,000</td>
</tr>
<tr>
<td>13 Mine avoidance sonar for 6 missile patrol boats</td>
<td>UAE</td>
<td>2004</td>
<td>Approx 10,000</td>
</tr>
<tr>
<td>14 10 patrol vessels</td>
<td>Yemen</td>
<td>2003-04</td>
<td>Approx 75,000</td>
</tr>
<tr>
<td>15 Coastal surveillance radar</td>
<td>Bahrain</td>
<td>2004</td>
<td>5,000</td>
</tr>
</tbody>
</table>

Table 1: Defence exports and related activities with the Gulf States 2002-04

Australian Military Training of Gulf Nationals

Defence provides military training in Australia for a number of Gulf State defence officials, who are thereby familiarised with Australia, its defence equipment and industry capabilities. Table 2 shows the number of Gulf State nationals trained in Australia and the military training courses they attended for the financial year 2004-05.
Table 2: Military training courses attended by Gulf nationals in 2004-2005

<table>
<thead>
<tr>
<th>Course</th>
<th>Gulf Country</th>
<th>Number Trained</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Command and Staff Course (ACSC)</td>
<td>Bahrain</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Iraq</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Kuwait</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>UAE</td>
<td>2</td>
</tr>
<tr>
<td>Australian Defence Force Academy (ADFA)</td>
<td>UAE</td>
<td>2</td>
</tr>
<tr>
<td>Combat Officer Advance Course</td>
<td>Iraq</td>
<td>2</td>
</tr>
<tr>
<td>Defence and Strategic Studies Course (DSSC)</td>
<td>Kuwait</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Oman</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Saudi Arabia</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>UAE</td>
<td>2</td>
</tr>
<tr>
<td>Defence Management Seminar (DMS)</td>
<td>Iraq</td>
<td>2</td>
</tr>
<tr>
<td>Maritime Law and Security Seminar</td>
<td>Bahrain</td>
<td>1</td>
</tr>
</tbody>
</table>

Interaction with Gulf Nationals Alumni

The Australian Defence College (ADC) maintains an Alumni website at http://www.alumni.adc.edu.au/ to develop and sustain close relationships between graduates and the ADC. Information such as name, rank, service, course and country of origin is readily available on the website. An online forum and email contact details facilitate communication between ex-course attendees and promote an awareness of the ADC’s ongoing activities.

Recommendation 8

The committee recommends the Government consider strengthening Australian trade representation in Bahrain.

Austrade regularly reviews outcomes from its resource commitments to ensure it is getting the best possible return on investment.

Austrade’s Riyadh office manages our commercial engagement with Bahrain and has established a sound working relationship with the Australian Embassy in Riyadh, which has responsibility for Bahrain. Together with Austrade Dubai and other DFAT posts in the region we are satisfied that Australian industry has access to appropriate levels of Australian government services for Bahrain.

Interaction with Gulf Nationals Alumni

Austrade will keep under review its allocation of resources for Bahrain.

Recommendation 9

The committee recommends that DIMIA consider strengthening its representation across the Gulf region. This should ensure faster processing of visas for key economies in the region in light of the growing opportunities in the Gulf States.

DIMIA regularly reviews it overseas representation to ensure it remains appropriate. It is satisfied with its representation in the Gulf at this time.

DIMIA has put in place processes to give priority to visa applications that are identified as being of significance to Australia’s interests. We rely on DFAT and other Australian Government stakeholders to identify these priority cases.

DIMIA acknowledges the growing opportunities in the Gulf States and has an ongoing commitment to improving access to visa services and processing times.

Since March 2003, nationals from the UAE have been able to lodge tourist visa applications electronically through the DIMIA website. This facility was extended to nationals of Kuwait in March 2004 and then Oman, Bahrain and Qatar in April 2005. This system provides clients with an efficient and simple way of lodging visitor visa applications.

In addition to the above, from May 2004, DIMIA has engaged a business partner in Dubai to operate a visa application collection service. This has resulted in streamlined processing and assisted the post in Dubai to better manage visitor visa processing during the peak for visitors from the Gulf (May to August). We continue to look for opportunities to expand our partnership arrangements — and, in this regard, we anticipate the establishment of a call centre for Gulf clients commencing later this year.

Recommendation 10

The committee recommends the government consider strengthening the resources of the Australian Tourist Commission and Invest Australia in the Gulf region, to raise their profile and capitalise on current opportunities.

In recognition of tourism opportunities from select Gulf countries, Tourism Australia has already
strengthened its resources to capitalise on current opportunities in key tourism source markets. Within its current budget parameters and strategic approach, Tourism Australia is already undertaking relevant and appropriate promotional activities to boost tourism from targeted Gulf Countries.

In the Gulf region, Tourism Australia concentrates its marketing efforts in Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the UAE, as these are the countries that provide the most opportunity for tourism and can be influenced in the most cost effective way by our marketing efforts.

For the current financial year, Tourism Australia has nearly doubled its marketing spend in the Gulf countries from $392,000 to $775,000 to capitalise on tourism opportunities in that region. While the Gulf countries represent a small inbound tourism market, the number of arrivals into Australia increased by 25 percent in 2004. Importantly, the key opportunity for Australia is the length of stay, spend, dispersal, and group sizes for this market.

Tourism Australia employs two Dubai-based trade development representatives and a Bahrain-based PR representative to undertake activity in the region and to provide in-depth market insights into how best to target consumers and the local travel trade.

In the Gulf countries, Tourism Australia’s integrated marketing approach aims to create a stronger brand presence for Australia and build intent for travel among the target groups of extended Arab families and expatriates. Tourism Australia also undertakes activity for the tourism trade to help strengthen the distribution system for Australian tourism product and broaden the understanding and knowledge of Australia.

Tourism Australia’s recent increased marketing focus includes:

- Conducting consumer research to improve understanding of the travellers in the region and how to best target them;
- Launching an outdoor billboard and print advertising campaign to attract travellers from the Gulf countries to holiday in Australia (April to June);
- Coordinating the Visiting Journalists Programme and media relations to generate publicity to promote Australia;
- Publishing Traveller’s Guides in English and Arabic—publications which provide information on Australia and holiday experiences appropriate for the market;
- Working with the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) on a campaign to promote the new E-visa and develop a consumer brochure;
- Developing a dedicated consumer website for visitors from the Gulf countries;
- Participating in the Emirates Holiday Show;
- Coordinating consumer promotions;
- Coordinating travel trade education programs and events to promote Australian travel trade including:
  - Yinala;
  - Arabian Travel Market;
  - Gulf Countries Roadshow;
  - Sales calls to travel agents in Gulf countries;
  - In-store promotional displays for travel agents;
  - Dedicated Australian collateral including maps and Traveller’s Guides; and
  - Trade/operator partner programs.

The introduction of E-visa—an improved visa processing service which allows applicants to apply for visas online for nationals from Bahrain, Kuwait, Oman, Qatar and the UAE—has been an important development for the promotion of Australia in the Gulf region. Previous delays in visa processing in this market made promotional efforts challenging.

Tourism Australia is confident that within its current budget parameters and strategic approach it is already maximising opportunities to grow tourism from select countries within the Gulf region, in keeping with the Joint Standing Committee’s recommendation.

Under Invest Australia’s current strategic plan, Global Returns, the National Strategic Framework for Attracting Foreign Direct Investment,
the Gulf region is serviced by staff in the Sydney office on an individual request basis. Recently some additional commitment has been made to raising Australia’s profile in the Gulf states through the production of promotional material in Arabic.

Invest Australia’s activities are currently under review. A major aspect of the review is the consideration of new markets for investment promotion. The Middle East has been specifically nominated for consideration in this context. The government’s response to this review is expected to be released in 2005-06.

Joint Standing Committee on Migration Report March 2004

“To make a contribution—Review of skilled labour migration programs.”

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Comment/Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. That DIMIA improve the visibility of existing hyperlinks from its website to those of State and Territory governments</td>
<td>Agreed. Recent changes to the DIMIA website promote awareness of regional migration opportunities and highlight links to relevant State/Territory government websites. A “Regional Opportunities” icon now appears on DIMIA’s home page. This icon directly links clients to regional migration information, including relevant State/Territory websites. As part of the Commonwealth’s MedicarePlus package, the Department of Health and Ageing and DIMIA are working with relevant State/Territory authorities to promote awareness via the Internet of the new entry arrangements for overseas-trained medical practitioners. DIMIA’s website is subject to continual improvement and refinement. DIMIA will continue to work with State/Territory Governments to improve links across websites and highlight regional migration opportunities across programs.</td>
</tr>
<tr>
<td>2. That the Minister present to the next meeting of the Commonwealth/State Working Party on Skilled Migration a proposal that States and Territories identify on their websites their preferred settlement areas to assist potential skilled migrants.</td>
<td>Agreed. This is a welcome recommendation that will be pursued with the Commonwealth/State Working Party at the next available opportunity.</td>
</tr>
<tr>
<td>3. That DIMIA continue its practice of analysing and publicising LSIA data and release more promptly updated, de-identified, unit record data.</td>
<td>Agreed. DIMIA has commissioned and published a series of research papers based on LSIA data. Most recently, The Changing Settlement Experience of New Migrants: Inter-Wave Comparisons for Cohort 1 and 2 of the LSIA and Migrant Labour Force Outcomes: A comparison of two cohorts were released in January 2005. The full LSIA dataset has now been made readily available to researchers through the Social Science Data Archive (SSDA) at the Australian National University. The SSDA charges only a nominal administration fee. On receipt of the statistical undertaking (to use data for research purposes only), data are supplied with minimal delay.</td>
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<td>Recommendation</td>
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<td>4. That DIMIA, as part of its monitoring program, identify establishments with a disproportionate dependence on migrant labour and focus its assessment on how well they demonstrate the commitment of their business of training Australian residents or introducing new technology.</td>
<td>Agreed. All sponsors of temporary business entrants are monitored within 12 months after sponsorship approval. Sponsors are required to complete a monitoring form which requests detailed information on: the total number of Australian employees; the total number of foreign employees; and details of training provided to Australians. The sponsor is also required to provide details of how the business has met its commitment to introduce new or improved technology or business skills to Australia if the sponsorship was approved on that basis. For companies with a high reliance on overseas workers, the Department will focus on consideration of their training commitments to Australian employees.</td>
</tr>
<tr>
<td>5. That an indexed fee of $1,000 be charged to each sponsor of a skilled temporary worker to fund scholarships for Australians in areas of existing long term shortages, which are predicted to continue.</td>
<td>Not agreed. The Australian Government is committed to addressing current and future skills needs, but does not support the introduction of an indexed fee of $1,000 for the sponsors of skilled temporary workers as an alternative to such sponsors demonstrating a commitment to the training and skills development of Australians. Instead, the Government is ensuring that the vocational education and training system meets the needs of industry and helps Australians find and achieve their potential through initiatives such as the establishment of Australian Technical Colleges and the New Apprenticeships Scheme. In the Higher Education sector the Government is also providing additional support in a range of ways such as additional Commonwealth supported places and not allowing student contributions to exceed 2004 levels (indexed) for areas of national priority such as teaching and nursing.</td>
</tr>
<tr>
<td>6. That the skilled migration bonus point score for local lawfully gained work experience be increased from the current five points to ten.</td>
<td>This idea could be examined with other options if a shortage in Migration Program demand occurs. Approximately 10 per cent of successful applicants claim 5 bonus points for lawful Australian work experience. Increasing the points available for this item could counteract measures to increase the take-up rate of the new Skilled Independent Regional visa, which relies upon applicants meeting the same minimum skill levels but who can only obtain a score of 110 on the General Skilled Migration points test.</td>
</tr>
<tr>
<td>7. That transition arrangements be made when implementing its recommendations so that existing applicants are not disadvantaged by the changes.</td>
<td>Agreed. Wherever possible advance notice is given of changes to selection criteria (including the passmark). For example, implementation of the recently announced passmark increase for Skilled Independent migrants was deferred until 1 April 2005 for overseas students. A balance must be struck between ensuring greater certainty for potential skilled migrants and the responsible management of Australia's skilled migrant intake in the context of demand and labour market fluctuations.</td>
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<tr>
<td>Recommendation</td>
<td>Comment/Action</td>
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<tr>
<td>8. That the existing mandatory age limit of 45 years for skilled migration be removed.</td>
<td>Not agreed given existence of alternative avenues for migration by skilled people aged 45 and over. The age limit of 45 reflects the fact that as the age of new points tested skilled migrants increases, their ability to find appropriate work and contribute to Australia’s economy declines. This is illustrated in research for DIMIA by Access Economics in 2003 entitled “The Importance of Age in Migrants’ Fiscal Impact” which can be found on the DIMIA website. This research confirms that Skill Stream migrants aged in their early-twenties to mid-thirties on arrival are, on average, significantly positive net contributors to Commonwealth and State/Territory budgets. Conversely, the Commonwealth and States/Territories, on average, would not gain at all or at best only marginally from the admission of migrants aged over 45 on arrival. Longitudinal Survey of Immigrants to Australia (LSIA) data also show that migrants aged 45 years or over at the time of arriving in Australia struggle to secure employment. Data from 1996-97, before this limit was put in place, show that approximately 0.2 per cent of successful Independent applicants were aged 45 or over. However, prospective skilled migrants over 45 may be granted visas in the Employer Sponsored Migration categories if the appointment is exceptional. Analysis of the labour force participation of older workers conducted by DEWR underlines the difficulties faced by many, particularly men aged 45 and over. A 1999 DEWR Submission to the House of Representatives Standing Committee on Employment, Education and Workplace Relations entitled Age Counts showed that the 45 and over age cohort faced significant economic and social barriers in obtaining employment. See response to recommendation 8.</td>
</tr>
<tr>
<td>9. That, in the skilled migration points test, no points be allocated to applicants 45 and over.</td>
<td>This idea could be examined along with other options if a shortage of Migration Program demand occurs. Latest data show that less than 3 per cent of General Skilled migrants are awarded points for Spouse Skills. However, LSIA2 data show that unemployment rates of spouses of skilled migrants are very low (4 per cent). Migrants in the offshore General Skilled Migration category would primarily benefit from an increase in points for Spouse Skills because they are more likely to be accompanied by their spouses than their onshore General Skilled Migration counterparts who tend to be younger and unpartnered. As with recommendation 6, there is the risk that increasing the points at this time could undermine the take-up rate of the Skilled Independent Regional visa.</td>
</tr>
<tr>
<td>10. That weighting given to spouse attributes in the points test be increased substantially to reflect the importance of their support to the primary applicant.</td>
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CHAMBER
Recommendation | Comment/Action
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11. That the requirement that the spouse be aged under 45 years to score points for the “spouse skills” component of the points test be discontinued to retain consistency with the Committee’s recommended changes to the age requirements for primary applicants. | See response to recommendation 8.
12. That the General Skilled Migration booklet list the skilled occupations and migration occupations in demand which require migrants to be registered prior to practising in Australia. | Given that the Skilled Occupations and Migration Occupations in Demand Lists are subject to regular change, it is strongly advised that prospective migrants consult the website for the most recent lists. It is for this reason that these lists are not included in hard copy booklets. These booklets include the website references for prospective applicants to check the current lists. Inclusion of information relating to the registration requirements of Australian occupations is supported and plans are underway, in keeping with the project identified at recommendation 13, to include such information in Booklet 6 and on the DIMIA website.
13. That DIMIA seek the cooperation of assessing authorities in providing migrant-oriented summaries of their Australian assessment, post-arrival obligations, and registration requirements in its Skilled Occupations List publication. | Agreed. A project has been initiated to forge stronger links with the assessing bodies gazetted for General Skilled Migration purposes. This project will address a range of issues, including skills assessment guidelines; information sharing protocols; and settlement-related issues such as requirements specific to each occupation. In this context, DIMIA will examine the potential for enhancing the information on these issues currently provided in the SOL publication.
14. That assessing bodies continue to seek harmonisation of registration requirements across the States and Territories. | Agreed. Effective management and development of the network of skills assessing bodies, including in regard to this issue, is critical given the importance of skilled migration to Australia’s workforce. Options for the enhancement of this function are under active consideration, including in consultation with DEST and DEWR.

Senator SHERRY (Tasmania) (3.37 pm)—by leave—I move:
That the Senate take note of the response to the report of the Senate Select Committee on Superannuation.
I will be brief because of the time pressures imposed by the government’s guillotine of the industrial relations legislation. We have had presented to the Senate the government response to the report of the Senate Select Committee on Superannuation titled Planning for retirement. The first point I make is that the response time highlights the arrogance of this government. Why? Because this report, a very important report from a very important committee, the Select Committee on Superannuation, was presented to the Senate on 29 July 2003. What is the date today? It is now December 2005. This report was presented to the Senate 2½ years ago. Then, 2½ years later, we finally get a response from the government to that important committee report.
There are few public issues more important than retirement incomes. It is certainly one of the major public policy issues not just
in this country but around the world. And we get a response 2½ years later. It must be a record, I think, for a late response to a Senate committee report. Whilst it does flow to some 20 pages, some parts of the response to recommendations made by this important committee in this important report run to one or two sentences. It is an outrage. We see this more and more—the government arrogantly treating the Senate with contempt, treating the Australian people with contempt. When you get a response to a report 2½ years after it has been tabled in the Senate, it is disgraceful. Time and time again we are seeing a Liberal government that is out of touch and arrogant in its approach to the parliamentary process and the Australian people.

Question agreed to.

National Capital and External Territories Committee

Report

Senator LIGHTFOOT (Western Australia) (3.39 pm)—I present the report of the Joint Standing Committee on the National Capital and External Territories entitled Norfolk Island financial sustainability: the challenge—sink or swim. I seek leave to move a motion in relation to the report.

Leave granted.

Senator LIGHTFOOT—I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

On behalf of the Joint Standing Committee on the National Capital and External Territories, I have pleasure in presenting the Committee’s second report for 2005, Norfolk Island Financial Sustainability: The Challenge—Sink or Swim.

Norfolk Island is at the crossroads in relation to decisions that must be made about its future financial sustainability. By isolation and popula-

tion, its internal revenue base is necessarily limited and, there is over reliance on its tourism industry which is facing increased competition from other tourist destinations.

At the same time, there are increasing demands on the Island’s government expenditure to provide adequate government services and ensure key infrastructure is maintained at acceptable levels. These competing pressures are significant and should not be underestimated.

The Committee has examined Norfolk Island’s internal revenue-raising options, and has also considered the ability of the Norfolk Island Government to increase expenditure for government services and asset replacement. It is clear that the challenge has become too great for the Norfolk Island Government alone to confront and resolve.

What is needed is a more coherent long-term strategy which acknowledges the gravity of the present fiscal situation and sets out solutions that would give more certainty to Norfolk Island’s future financial sustainability.

The pathway to increased prosperity will not be easy and will not be quick. The Committee has recommended that Norfolk Island should come under the income taxation and welfare systems of the Commonwealth, as is currently the case for the Indian Ocean Territories.

The implications of this proposal are much more significant than just the fact that some Norfolk Island residents could be subject to personal income tax. Norfolk Island will be able to access the significant expenditure side of the Commonwealth Budget—access of which has been generally denied to date.

The Commonwealth Government will have a greater role in the delivery of services and the upkeep of certain key infrastructure. It is abundantly clear to the Committee that the status quo cannot and should not be maintained. The Committee is of the view that all Australian citizens, irrespective of where they choose to reside in the nation, deserve competent government administration and service delivery to a standard no less than can be expected in any similar demographic and isolated jurisdictions in other States or Territories of the Commonwealth.
The Committee has stated its preference for the Commonwealth to resume responsibility for:

- social security;
- health and aged care services;
- national census and economic statistics collection;
- immigration;
- customs; and
- quarantine.

Commonwealth law should be applied to Norfolk Island, most particularly in the areas of corporations law and trade practices.

A range of State-type services, in-so-far as they do not already exist, would also fall under the Commonwealth’s umbrella, including:

- primary and secondary school education and vocational education and training;
- legal services and the courts;
- telecommunications;
- broadcasting; and
- environment protection.

The Commonwealth would also resume responsibility for the funding and upgrade of Island infrastructure, including the hospital, roads, the school, power generators, a deep water harbour, and the airport.

The Committee makes this recommendation in the interests of fairness, equity and justice for all residents of Norfolk Island, as citizens of the Commonwealth of Australia.

The Committee is of the view that this arrangement would still leave a number of significant matters to be managed and determined by the Norfolk Island Government. The Commonwealth Government will require a local representative body to assist in the provision of appropriate services and to lobby on behalf of the Norfolk Island community. Clearly, the Norfolk Island Government and its Administration are best placed to represent their local community.

The Committee is convinced that the adoption of its recommendations will lead to greater financial sustainability, increased certainty, and a higher standard of living for all those Norfolk Islanders who currently struggle financially.

In conclusion, and on behalf of the Committee, I would like to thank all those who have contributed to this inquiry. I thank the JSC secretariat and my Committee colleagues for their work and support throughout the course of the inquiry and reporting process.

That having been said, Mr President, and on behalf of my Committee colleagues, I commend the Report to the Senate.

Question agreed to.

AUDITOR-GENERAL’S REPORTS

Report No. 19 of 2005-06


COMMITTEES

Membership

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

Senator ABETZ (Tasmania—Special Minister of State) (3.41 pm)—by leave—I move:

That Senator Hurley be appointed as a participating member of the Legal and Constitutional Legislation and References Committees.

Question agreed to.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT AMENDMENT BILL 2005

First Reading

Bill received from the House of Representatives.

Senator ABETZ (Tasmania—Special Minister of State) (3.41 pm)—I move:

That this bill may proceed without formalities and be now read a first time.
Senator ABETZ (Tasmania—Special Minister of State) (3.42 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 bill implements an important commitment made by Australia as a member of the European Bank for Reconstruction and Development (the Bank) to assist Mongolia’s economic and social development.

Australia values the friendly relations we share with Mongolia. Diplomatic relations were established in 1972 and we share a common voice as members of the same constituency at both the International Monetary Fund and the World Bank. More recently a parliamentary delegation visited Mongolia in April this year.

The Bank was established in 1991 to “foster the transition towards open market oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economics.” Mongolia has made progress in implementing economic reform and encouraging private sector growth and the Bank is ideally placed to assist in future private sector development. These amendments will encourage such reforms.

The Board of Governors of the Bank unanimously voted in favour of admitting Mongolia as a country of operations of the Bank, thereby making it eligible to receive development financing from the Bank. The Treasurer, as Australia’s Governor to the Bank, supported this move and voted in favour of Mongolia’s membership of the Bank. Mongolia can only be admitted to the Bank once all member countries have completed their ratification process.

The bill implements this commitment by amending Article 1 of the Agreement Establishing the European Bank for Reconstruction and Development to specifically provide that Mongolia be a country of operations of the Bank.

The bill also creates a regulation making power so that any future amendments to the Agreement can be made by regulation.

I commend this bill.

Debate (on motion by Senator Abetz) adjourned.

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

EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION AMENDMENT (WELFARE TO WORK AND OTHER MEASURES) BILL 2005

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (WELFARE TO WORK) BILL 2005

First Reading

Bills received from the House of Representatives.

Senator ABETZ (Tasmania—Special Minister of State) (3.42 pm)—I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator ABETZ (Tasmania—Special Minister of State) (3.43 pm)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—
EMPLOYMENT AND WORKPLACE
RELATIONS LEGISLATION AMENDMENT
(WELFARE TO WORK AND OTHER
MEASURES) BILL 2005

The Government’s $3.6 billion Welfare to Work package recognises that every Australian of working age has the right, and deserves the opportunity, to participate in the nation’s prosperity.

The best way for people to do this is by having a job and engaging in the economic and social life of our nation.

The economic record of the last decade is an impressive one. Australia’s prosperity is no accident. Unemployment has been reduced to 5.1% and due to the creation of more than 1.7 million new jobs, employment is at a record high with more than 7 million Australians in full time work.

The spectre of unemployment has given away in many places to labour shortages, especially of skilled labour. The unemployment queues of the early 1990s have diminished, but the ranks of the disabled pensioners and sole parent beneficiaries have grown rapidly. Too many children still grow up in jobless households.

At a time of sustained economic growth and unemployment at 29 year lows, it is unacceptable to have 2.5 million or 20% of working age Australians on income support. Of these, more than 1.3 million people are in receipt Parenting Payment or the Disability Support Pension and have few, if any, participation requirements.

It is also unacceptable to have 700,000 children growing up in jobless households, in which 2 or 3 generations of Australians may not know what it is like to have a job, let alone steady employment and regular income.

No one denies the fact that a government must preserve a well-targeted social safety net, while at the same time encouraging working-age people to find jobs and remain employed. These welfare reforms demonstrate the government’s strong commitment to this principle.

At the same time, people on welfare deserve more support and it is vital for Australia’s continuing prosperity that they be given every assistance and opportunity in which to achieve better outcomes.

Increasing economic participation

The bill meets with community standards about the need for a balance of assistance, incentives and obligations to increase participation and reduce welfare dependence amongst working age Australians.

Moving from welfare to work helps people achieve higher incomes and a better standard of living, participate in mainstream social and economic life and achieve a better future for their families. It also reduces the obligation on taxpayers, creating a positive cycle of work, higher incomes and more sustainable and better targeted welfare expenditure.

At a cost of $3.2 billion, the Welfare to Work measures covered by this bill focus on assisting parents, people with disabilities, the mature aged and the very long term unemployed.

This bill will respond to our twin challenges; the imperatives to increase participation for these groups and reduce their level and incidence of welfare dependence.

Newstart Allowance will be enhanced, additional employment assistance will be provided, compliance arrangements will be improved to encourage and reward participation and job seekers will be able to connect more quickly with the workforce through RapidConnect.

Parents—availability to work

Parents out of the workforce for long periods of time are in danger of losing the skills and self confidence necessary for them to return to work. Single parents spend around 12 years on average on income support. It is not surprising that some parents find it difficult to transfer back into work after extended periods out of the labour force.

Under the measures the core requirement for principal carer parents on income support payments will be to look for part-time work, if they have the capacity and availability to do so, generally when their youngest child turns six and is ready for school.

If they are unable to find work they will continue to keep their income support. In many cases parents meeting their requirements through part-time work will retain part rate income support.
These reforms are in line with community expectations and are modest by international standards. From 1 July 2006 new applicants will be eligible for Parenting Payment Single when their youngest child is aged less than 8. For Parenting Payment Partnered applicants this will apply when their youngest child is less than 6. Once their youngest child either turns 6 (for Parenting Payment Partnered recipients) or turns 8 (for Parenting Payment Single recipients) they will typically go on to Newstart. Single principal carer parents in receipt of Newstart Allowance will also have access to the Pensioner Concession Card, the Pharmaceutical Allowance and the Telephone Allowance.

Principal carers on Newstart or Youth Allowance (Other than full-time students or new apprentices) will have a requirement to look for paid work of 15 hours a week or more. Parents qualifying for Parenting Payment Single from 1 July 2006 will have a job search requirement when their youngest child turns 6.

Parents on Parenting Payment Single or Partnered on 30 June 2006 can stay on that payment, under current eligibility provisions, until their youngest child turns 16. However, they will have a job search requirement from the latter of 1 July 2007 or when their youngest child turns 7.

The Australian Government has no intention of placing requirements on parents that could inhibit their ability to care for their children. Parents’ individual circumstances will be taken into account when determining their participation requirements.

Special family circumstances
The Government also recognises that some principal carer parents—for example registered and active foster carers, home educators, and home schoolers, or who have large families or a disabled child—may be unavailable for work because of the need to focus fully on their caring responsibilities.

If a parent has special family circumstances such as these, they will be taken into account when determining their participation requirements under the Welfare to Work changes, and the parent may be eligible for a temporary exemption.

Circumstances where the parent has multiple caring responsibilities or cannot find suitable child care will also be taken into consideration.

Income supplement
All principal carer parents who are registered and active foster carers, home educators or distance educators will be exempt from participation requirements for a period of up to 12 months at a time and will receive a new rate that tops up their income support payment to the equivalent of the Parenting Payment Single rate. This applies for the period of the exemption and is reviewable.

The new rate will be indexed from 1 July 2006 so that it will continue to cover any difference between Parenting Payment Single and Newstart Allowance.

To support these changes, from 1 July 2006, more parents who have children with very challenging physical, intellectual, psychological or behaviour disabilities, will qualify for an expanded Carer Payment. This will be provided for in a separate Bill.

Victims of domestic violence
Principal carer parents who are subject to family breakdown associated with domestic violence will be temporarily exempted from participation requirements. Others who have been subjected to domestic violence will be temporarily exempted from participation requirements under current, more general, exemption provisions.

Additionally, principal carer parents who have undergone a highly stressful family breakdown may be eligible for a period of stabilisation before participation requirements commence. This will give them time to adjust before looking for work.

Improved child care provisions will assist parents returning to the workforce. The measures will provide the additional outside school hours child care necessary to reduce barriers parents face in moving from welfare to work, as well as addressing the current high demand for places. Principal carer parents with part-time work requirements will not be expected to take up work if it occurs outside school hours and no suitable child care is available, or the cost of care would result in a very low or negative financial gain from working.
The Government recognises that some parents may have barriers to overcome as they enter or re-enter the workforce and is committed to providing assistance to those with obligations to seek work and will provide additional employment focussed services to help jobless parents find work.

**Extra Employment Services**

A new Employment Preparation service will be available through Job Network to assist parents with school age children to find work and overcome barriers to employment by equipping them with skills to re-enter the workforce.

The Government will also provide additional employment related services to parents with special needs. Parents who have significant non-vocational barriers, such as substance abuse or homelessness, to overcome before looking for work will be referred to the Personal Support Programme.

Parents with a part-time requirement who are not working may be required to undertake an annual Mutual Obligation activity, including part-time Work for the Dole.

**People with a disability—capacity to work**

The Government is committed to maintaining a sustainable and adequate safety net for people with disabilities who are unable to work. At the same time, the Government believes long-term dependence on the Disability Support Pension is not the best option for people who have the ability to work reasonable hours, without ongoing support, in the open labour market.

Australian Government spending on the Disability Support Pension alone will exceed $8 billion in 2004/05. In 1980, 2.3% of working-age people were claiming the Disability Support Pension (DSP). By June 2005 this proportion had more than doubled to over 5% or 705,000 people.

Only around 10 per cent of DSP recipients are in the paid workforce in Australia while the average among OECD countries is around 30 per cent. The changes to income support arrangements and the increased funding for employment services and the Workplace Modifications Scheme are designed to encourage and assist people with disabilities to test their capacity to work.

From 1 July 2006 the focus will shift to the capacity people have to work—not their incapacity or their inability to work. If people with a disability have the capacity to work between 15 and up to 30 hours per week, without ongoing support in the open labour market then they will not be eligible to claim the Disability Support Pension. They will need to apply for another payment, typically Newstart or Youth Allowance (Other) and will be required to look for work. A person’s work capacity will be assessed by the new Comprehensive Work Capacity Assessment service. People who were receiving the Disability Support Pension on 10 May 2005 will not be affected by these changes.

**Access to other benefits and support**

People with disabilities will have access to the full range of vocational and pre-vocational programmes to help them with job preparation and job search activities. Places in vocational rehabilitation and employment services will be guaranteed for Newstart and Youth Allowance (Other) recipients with disabilities who have part-time work capacity.

These people will also get the Pensioner Concession Card, Pharmaceutical Allowance, the Telephone Allowance and other concessions available to card holders. Job seekers with a disability and a part-time requirement will also be eligible for a $312 Employment Entry Payment.

Mobility Allowance will be increased to $100 per fortnight for people on Newstart Allowance or Youth Allowance (other) with an assessed work capacity of at least 15 hours per week and for those people on the Disability Support Pension being assisted by an employment services provider. If these people increase their hours of work and move off income support and continue to work, they will retain eligibility for this Mobility Allowance.

People with disabilities and a part-time requirement who are not working may also be required to undertake an annual Mutual Obligation activity, including part-time Work for the Dole.

**Mature age job seekers**

Although the participation rate in the labour market has been rising steadily among mature age
Australians, too many mature age people often experience difficulties finding work. Newstart recipients aged 50 to 64 will be required to seek full-time work—the same requirements applying to younger job seekers. People aged 60 or over will not be required to participate in Work for the Dole. Nor will people aged 50 or over unless they are not genuine in their effort to find work. However, job seekers aged 55 or over will be able to fully meet their activity requirements through part-time work and/or voluntary work totalling at least 15 hours a week.

Mature age job seekers will be supported by increased employment assistance. They will also benefit from the new Employment Preparation service, which will be able to assist mature age people to update their skills and prepare them for the modern labour market.

Getting the very long term unemployed back into work

The Welfare to Work measures will also increase the assistance currently provided under the Job Network Active Participation Model to very long-term unemployment benefit recipients. The new Wage Assist measure will provide additional incentives to employers to take on very long term unemployed job seekers into full-time, ongoing employment.

To help develop the work habits needed to enter the labour market job seekers who are not genuine in their efforts to find work may be required to participate in full-time Work for the Dole for 25 hours per week.

Very long term unemployed job seekers with major employment barriers can also be referred to a Comprehensive Work Capacity Assessment to identify if another payment, such as the Disability Support Pension, or a specialist programme such as vocational rehabilitation or disability open employment services, is appropriate.

More generous taper rates for Newstart Allowance

Many people moving from welfare to work, or increasing their earnings, will benefit from the enhanced allowance income test to be introduced under this bill.

Under the current Newstart personal income test, there is no payment reduction for the first $62 of income per fortnight, payment is reduced by 50 cents in the dollar for income between $62 and $142 per fortnight, and 70 cents in the dollar thereafter.

The new income test is more generous. The $62 per fortnight free area is unchanged, but the income range over which the 50 cents in the dollar reduction applies will be increased from $142 to $250 per fortnight, with payment being reduced by 60 cents in the dollar thereafter. The rate at which someone’s income affects their partner’s allowance has also been reduced from 70 cents in the dollar to 60 cents in the dollar. These changes will improve rewards from part-time work and help people move from welfare to work.

Youth Allowance (other than full-time students or new apprentices), Widow Allowance, Partner Allowance, Mature Age Allowance and Sickness Allowance will also be changed in line with the changes for Newstart Allowance.

A fair but firm compliance regime

This bill abolishes the current breaching regime, under which job seekers can incur long-lasting financial penalties regardless of any subsequent efforts to meet their requirements.

The new compliance framework included in this bill will more clearly link participation to payment and will reward those who are willing to re-engage quickly. A job seeker without a record of repeated non-compliance who commits a participation failure, such as missing an interview with an employment service provider, will be given the opportunity to avoid any financial penalty by quickly re-engaging with that provider.

Job seekers who persist with their non-compliance, despite being warned, will lose their payments. As a deterrent to repeated participation failures or more serious failures, such as refusing a job offer, an eight week non-payment period will apply. This bill also introduces a more equitable means of deterring income support recipients from deliberately failing to declare or under-declare their earnings, in the form of a recovery fee set at 10 per cent of the debt incurred.

There will be special arrangements for vulnerable people, such as dependent children, under the
new compliance framework, including case management and limited financial assistance where vulnerable people and third parties may be unduly affected by non-payment periods. Vulnerable clients, such as people with intellectual disabilities, will also be clearly flagged so that their circumstances are taken into account in cases of non-compliance.

Current legislative safeguards relating to the imposition of penalties, such as the need for requirements to be reasonable and the need to consider a job seeker’s reasons for non-compliance, will continue to apply for both vulnerable and non-vulnerable job seekers. In addition, the current review and appeals system will be retained. This allows any job seeker to ask Centrelink to review any adverse decision and, if not satisfied with the outcome of the review, to appeal the matter to an external tribunal.

**Work First approach**

RapidConnect is a ‘work first’ approach designed to provide assistance to job seekers as soon as possible. Connecting job seekers to their Job Network member quickly should reduce frictional unemployment and improve job seekers’ chances of finding a job.

Under RapidConnect, a job seeker who contacts Centrelink to enquire about Newstart or Youth Allowance will be referred directly to Job Network. Job seekers who do not connect with their Job Network member may experience an impact on their income support. This ‘work first’ approach is at the cornerstone of the Government’s welfare to work reforms.

**Conclusion**

The Government firmly believes that the best form of welfare is a job. As Tony Blair, the current Prime Minister of the United Kingdom, has said, “Fairness starts with the chance of a job”.

I note that there has been little support from the Opposition for the Government’s reforms. They refuse to acknowledge that people on welfare have the same aspirations as other Australians. The Opposition will claim that they support the notion that it is important to assist unemployed people into work, however they do not support the movement of people from pensions to unemployment benefits which contain mutual obligation requirements.

The challenge of implementing welfare reform is to get the right balance between obligations and support. This must be accompanied by appropriate incentives and support mechanisms to ensure that job seekers continue to be provided with services. The Government believes that its reforms strike this balance.

The majority of Australians would agree that it is not unreasonable to expect those people who are available and capable of work to participate in the workforce. The economic and social arguments for such reform are both compelling and necessary.

With this legislation, we face important choices: the choice between accepting growing numbers of people on welfare or doing something to help them get a job; the choice between recognising people’s abilities and capacities or continuing to focus on their disabilities and incapacities; the choice between tackling unemployment, or accepting joblessness as the cost of modern society; the choice between the dignity and value that comes from participation in the workforce or the despair and poverty that results from long term welfare.

The Government has made its choice to pursue the necessary reforms responsibly, mindful that these measures are directed at securing the future prosperity of Australia, and providing the opportunity for all Australians to participate in that prosperity.
hours, from 20 to 24 hours a week. This measure is included in Schedule 1.

Increasing the threshold limit of hours for which a family can receive child care benefit will assist parents in maintaining on-going lower levels of workforce participation and help their transition to a greater level of participation once their children are older. It also recognises that child care requirements often exceed actual working hours.

Schedule 2 gives effect to the second measure, which modifies the work, training, study test applicable to those who wish to claim child care benefit for up to 50 hours' care in a week. To be eligible for up to 50 hours of child care benefit for a week for each child in approved child care, claimants and their partners who have work or work-related commitments, or training or study commitments, will be required to demonstrate that they have engaged in these activities for at least 15 hours in that week or for at least 30 hours in a fortnight that includes that week.

This measure ensures that the greatest support is directed to those families with higher levels of work-related participation.

Both measures contained in this bill will apply from 3 July 2006 and demonstrate the Government's commitment to supporting the child care needs of parents in work, training and study.

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

MIGRATION AND OMBUDSMAN LEGISLATION AMENDMENT BILL 2005

Returned from the House of Representatives

Message received from the House of Representatives returning the bill without amendment.

WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005

In Committee

Consideration resumed.

The CHAIRMAN—The question is that the bill stand as printed.

Senator WONG (South Australia) (3.44 pm)—I take the opportunity to comment briefly on the motion proposed by Senator Murray, to which leave was not granted, regarding the debate that is currently before the chamber. I place on record that we thought this was a very sensible proposition from Senator Murray. It would have had the effect of deferring consideration of this bill by the Committee of the Whole until next Tuesday.

I wish to indicate that the Labor Party was supportive and is supportive of this approach. It would have enabled this Committee of the Whole to actually engage in a considered debate and discussion about the amendments to the bill and about the bill itself. I will not reiterate what I said this morning about the opposition and minor parties having around seven seconds per amendment before we had to start debating the government’s amendments. But I want to indicate that the only reason the Labor Party—and, I think, the minor parties—have not moved suspension of standing orders to enable the motion to be moved is that we are conscious that the government has so truncated this committee debate that such a standing orders debate, given the government’s intransigence, would simply limit the already limited time that we have for this discussion. I understand Senator George Campbell has a couple of questions for Minister Abetz, so I will yield to him.

Senator GEORGE CAMPBELL (New South Wales) (3.45 pm)—I want to ask the minister a question, first of all, and then I want to make some comments about the debate that was taking place prior to this debate being adjourned for question time. Minister, this morning you indicated that the explanatory memorandum would be available some
time today. Can you just repeat for us when that particular time was?

Senator ABETZ (Tasmania—Special Minister of State) (3.46 pm)—‘After dinner time’ is, I think, what I said.

Senator Wong—Was it ‘after’, or ‘at’?

Senator GEORGE CAMPBELL (New South Wales) (3.46 pm)—For the purposes of my question, it is academic. I understand that the minister in the other place also made a similar statement, so I presume there was some cross-fertilisation between both of you. Minister, can you—

Senator Abetz—We speak with one voice.

Senator GEORGE CAMPBELL—You speak with one tongue. Well, as long as it is not a forked one! Minister, can I ask you to check with the minister’s office why, when the courier who was delivering the explanatory memorandum arrived at the parliament this afternoon, the courier was sent away and told that the explanatory memorandum was not required until after dinner time?

The CHAIRMAN—Senator Campbell, are you continuing?

Senator GEORGE CAMPBELL—I am asking the minister: will he check with Minister Abbott’s office to find out why the courier, who was here with the explanatory memoranda this afternoon to deliver them, was sent away and told not to bring them back because they were not required until after dinner time?

The CHAIRMAN—The Minister.

Senator Abetz—When Senator Campbell resumes his seat, I will seek the call.

The CHAIRMAN—Minister.

Senator ABETZ (Tasmania—Special Minister of State) (3.48 pm)—Thank you, Mr Chairman. If anything, I would be communicating with Minister Andrews’ office, not Minister Abbott’s office—and it just shows how easily people can get confused in this debate and make little mistakes, such as the assertion that was made by the honourable senator about the courier. As I understand it—and I do not need to check on this—an unapproved draft may have been delivered, but it has not been approved and that is why there is, at this stage, no approved explanatory memorandum circulated.

Senator GEORGE CAMPBELL (New South Wales) (3.48 pm)—I again repeat my question, Minister, and it was not a slip of the tongue because I understand it was Minister Abbott who sent the courier away, not Minister Andrews.

Senator ABETZ (Tasmania—Special Minister of State) (3.49 pm)—I will check to ascertain whether or not Minister Abbott was standing at the security entrance telling a courier to leave the parliamentary precinct. I have got to say that I doubt it. Of course, these things may happen, but I would doubt that Minister Abbott was standing there personally directing traffic in relation to couriers in this place. But it may well be the case, and I will get advice on that.

Senator GEORGE CAMPBELL (New South Wales) (3.49 pm)—I want to come back to the debate that was taking place prior to the adjournment for question time, in respect of the Fair Pay Commission and the use of the terminology ‘fair’. Some of the concerns that we have on this side of the chamber in respect of this new structure are not without solid foundation. You have to ask yourself why the government has found it necessary to put in place a totally new structure in order to deal with wages issues that are not determinations of minimum wages and wage classifications within awards, given that the Industrial Relations Commission has handled that job fairly effectively, I think, for the 104 years of its existence. And
it has, I think, on all occasions carried out or brought down decisions that have, in fact, reflected fairness within them. They may not have always satisfied the various groups that participated in those hearings, but I think they always reflected fairness.

One has to ask the question: why do we suddenly then start to move across to an organisation such as this? We also have to be concerned, I think, when this government starts to use language like ‘Fair Pay Commission’, and so forth, given the Orwellian way in which they have dressed up previous bills on industrial relations and brought them before this chamber in the past.

I think there is a hint in the reasons why they want to move across to the Fair Pay Commission—or the ‘low pay commission’, as it is more commonly known amongst people in the workplace—and that is essentially because Mr Howard’s government has, since its election in 1996, sought consistently to get a lower outcome in terms of minimum wages from the Industrial Relations Commission than it has in fact been able to achieve. The results have seen minimum wages in this country, from 1997, grow by $50 a week more than that argued for by the government, or by something like $2,600 a year. In fact, that is double what the employers—and ACCI in particular—have sought as an outcome on minimum wages over that time. So one has to assume that the underlying reason for creating this new structure and shifting the determination of minimum wages and award wages into that structure is to ensure wages do not grow as fast as they have been growing under the current system.

We had before the committee inquiry into this bill at least two employer groups who let the cat out of the bag, who were unequivocal about what they expected out of the Fair Pay Commission. Mr Steven, representing the Council of Small Business Organisations of Australia, said:

What about a highly-skilled mother who is willing to work at a lower rate in return for the ability to pick up her children …

In other words, he was clearly signalling that people would be prepared to take a lesser rate of pay if there were some other measures that enabled them to operate in a family friendly way. On top of that, we had a submission from Restaurant and Catering Australia, who also argued that they would expect wages to fall as a result of this new commission.

The other area that is significant in relation to this matter is the experience that we have had in this country, in Western Australia, under an industrial relations system which was very similar to that which is being introduced through this legislation and the experience in New Zealand. If you look at the experience in Western Australia, for example, and compare the system of IWAs that operated between 1993 and January 2001 with what has happened under the Gallop government between 2001 and September 2005, it is pretty obvious why the Fair Pay Commission is being established.

Unemployment under the coalition was 7.2 per cent; under the Gallop government, it is 5.8 per cent. Participation rates were higher under the Gallop government than they were under the coalition. Employment growth was slightly higher under the coalition, although for a longer period of time, 3.7 per cent to 3.1 per cent. Real wages growth under the coalition rose by 1.7 per cent; under the Gallop government, 2.5 per cent. Wage outcomes under the coalition were 4.9 per cent; under the Gallop government, 5.8 per cent. Labour productivity under the coalition was 3.81 per cent; under the Gallop government, 6.29 per cent. The minimum wage in March 2000 under the coalition gov-
The government was $368, which was an increase of $92 over six years, as opposed to $484.40 now, which is an increase of $116 over a four-year period. The number of industrial disputes was lower under the Gallop government than it was under the coalition.

I think we also have to look at what happened in New Zealand when the Employment Contracts Act was introduced there. What did they do in 1991, when it was introduced? They swept away awards ensuring minimum pay and conditions for thousands of workers. They created an environment supporting individual contracts over collective bargaining. They outlawed strikes for multi-employer agreements. They supported a ‘take it or leave it’ bargaining system and undermined the role of unions. This is all very familiar in terms of what we are dealing with here today.

But what happened in New Zealand under that type of regime? Productivity fell behind Australia’s productivity growth by some 23 per cent, real wages fell by four per cent and underemployment trebled. Then there was the divergence in wages. A New Zealand Treasury budget report in 1993 said:

An increased dispersion in wages is expected over the next three years. Wages of professionals, managers, and other skilled people, especially those employed in the profitable and productive export sector, are likely to rise above the rate of inflation. On the other hand, the wages of the unskilled, especially part time and young workers (where turnover may be relatively high) will probably have no wage increases and new entrants may start on lower pay rates than existing workers.

There is an abundance of evidence for this. In fact, medium income for those in the 15 to 25 age group dropped from $14,700 in 1986 to $8,100 in 1996. From 1984 to 1998, the top 10 per cent of households increased income by 43 per cent, whilst the bottom 50 per cent of households decreased income by 14 per cent. Ninety per cent of New Zealanders were worse off in 1996 than they were in 1981. The fastest growing industry in New Zealand after the introduction of the Employment Contracts Act was the food bank industry.

When you look at the data that is available on the Western Australian and New Zealand experience, you can understand why the Fair Pay Commission—or the ‘low pay commission’—has been put in place. You can also understand why Minister Macfarlane went on the Alan Jones show and said that we had to have industrial reform and get our wage levels down to the same levels as New Zealand. That was a senior minister of this government on a talkback show clearly spelling out what the agenda was.

I want to complete my comments in this area by quoting to you from an article by Damien Lynch from Tuesday’s Financial Review. It said:

Ineffective management results in lots of wasted time in offices and factories nationwide generating an annual loss of some $US60 billion ($81 billion) in private sector productivity, a report says.

US-based company Proudfoot Consulting found that senior managers were using inappropriate management processes and work control systems.

Proudfoot’s Pacific president Ian Renwood said the international study of company-level productivity showed management systems in Australia were poorer than the global average.

“What drove that was a weakness in senior management,” he said. “They are not putting the right processes and right management systems in place. I don’t think it is fair to put blame on middle management, specifically because they do what they are directed to do.”

That is a fairly damning report of management in this country. Yet here is a government putting in place an industrial relations system and legislation which has at its
heart the restoration of absolute managerial prerogative to the managerial class. They are saying to managers and owners of businesses in this country, ‘You, will have unfettered rights to run your businesses in whatever way you like, and there will be very limited means of redress available to workers in those circumstances.’ Yet here we get a report from an American company saying that our management is in one of the worst states of any management throughout the world.

If you take that in combination with the experience in New Zealand and Western Australia, then I think you have to, and are legitimately right to, express real concern that at the end of the day and over time, this ‘low pay commission’—that is what I call the Fair Pay Commission because that is what it is—will be used as an instrument of state in order to cut wages in this country and to use that to boost the profitability of our companies.

Senator ABETZ (Tasmania—Special Minister of State) (4.04 pm)—I note Senator Wong’s great objection to using committee time for the purposes of doing that which one would normally do in speeches in second reading debates. I note that she did not get up to object to Senator George Campbell’s contribution. I note, once again, the interesting values that are applied in this debate. It is okay if the Labor Party do it, but it is wrong if we do it. This is the wonderful duplicity that I always enjoy. That they do it with a straight face also amuses me.

The one matter that I should deal with at the outset is Senator George Campbell’s suggestion about Minister Abbott personally intervening to ensure that an explanatory memorandum was sent back from whence it came. I suggested with some incredulity that I doubted that the minister would have behaved in such a manner. I am embarrassed to report to the chamber that not only did it not occur, and therefore Senator George Campbell’s assertion is completely without foundation, but also that, if he or his colleagues were to check, they would discover that Minister Abbott has been on leave since 6 pm last night and is not even in Canberra as we speak. He has not been in Parliament House at any time today. Will the Australian Labor Party get up and apologise? This is just another example of the way the Labor Party seeks to throw mud, make an assertion and hope it sticks, without doing any basic research to see if there is any credibility to their assertions.

Senator McGauran—It is bone lazy.

Senator ABETZ—It is lazy, Senator McGauran. What is more, it just goes to show how they dig so deep into their reservoir of mud rather than discussing the actual issues of this bill. The honourable senator quoted from the Financial Review. Allow me to quote from the Australian Financial Review in its editorial of 23 June 2005:

The reality is that the industrial relations system left over from last century never empowered workers. For unions the industrial relations system has always been about the processes of control. The ability to create paper disputes, pull employers into an extensive, complex industrial legal system and to conduct strikes with little chance of a penalty for unlawful action. A national system of workplace relations will reduce the nitpicking now made possible by the present mish mash of state and federal jurisdictions. These unnecessary jurisdictional stoushes are a waste of everyone’s time and, more over, they prevent other more pressing issues from being dealt with expeditiously. The implementation of a single, national system would mean that there is only one set of laws that apply in particular circumstances, such as when a party is seeking relief for unlawful termination or discrimination.

Another important quote from that editorial is:

The parting cries of the IR club members betray flaws in their thinking as well as hostility to the
policies of an elected government and to irresistible forces such as globalisation and economic reform.

We were also told what Mr Macfarlane allegedly said. Mr Macfarlane talked about the totality of wage costs and the costs of employing people. Of course, those opposite straightaway say that therefore must mean the wages. No, it does not. It means the payroll tax that the states, now that they are drowning in the GST money, should have abolished but have not, and workers compensation, which is a huge cost—once again in the state jurisdiction. There is a whole host of on-costs to employing somebody other than simply their wages. As Mr Macfarlane has explained on numerous occasions, that is exactly what he was talking about. But, if the senator opposite is willing to place Minister Abbott in Parliament House when he is in fact in Sydney, why wouldn’t he be willing to place words into Minister Macfarlane’s mouth that were not said in the first place?

Senator WONG (South Australia) (4.09 pm)—Firstly, I refer Minister Abetz to the Hansard of the Senate committee where Restaurants and Catering Australia made it clear: ... restaurants, cafes and caterers could not afford to continue to sustain increases of the magnitude awarded by the Australian Industrial Relations Commission—

and confirmed that they were looking at less overall growth in wages. I suggest to the minister that that is precisely why they indicated their support for the legislation.

I would like to move on to a number of questions I have. The first section I would like to turn to is section 101B on pages 177 and 178 of the bill. This section relates to what are known as protected allowable award matters. Can the minister confirm that, under the provisions of the bill, the so-called protected award matters can be removed by a single provision in an AWA removing them—indicating that the AWA contemplates payment for all such matters as rest breaks, annual leave loading, penalty rates, overtime rates, shift allowances and the like without any requirement that an increased hourly rate must be paid? In those circumstances, if that is the case, Minister, how can the government describe these as protected matters? Isn’t it the case that they are not protected at all, that workers, particularly a new employee—who can be required to sign an AWA—can be required to agree to the removal of all of these conditions without any increase in their ordinary hourly rate?

Senator ABETZ (Tasmania—Special Minister of State) (4.11 pm)—I will commence with Senator Wong’s comments about Restaurant and Catering Australia and their submission to the Senate committee. What Senator Wong fails to understand—and what those opposite continue to fail to understand—is that, when the Australian Industrial Relations Commission awards wage increases under the strictures of an award, the restaurant and catering industry have great difficulty in making their workplace viable.

A classic example of that is in my home state of Tasmania. On the west coast there is a Banjo’s Bakehouse at Strahan. A previous operator of that Banjo’s Bakehouse franchise basically closed shop. The reason? The percentage of wages being paid out was such that they could not make ends meet. Therefore, all those people who were employed at the Banjo’s Bakehouse in Strahan on the west coast of Tasmania were about to be thrown onto the unemployment scrap heap. Some new proprietors came along and said to the workers, ‘We can make this work. Can we get rid of the strictures of the award and have an Australian workplace agreement?’ Today, that Banjo’s Bakehouse franchise operates successfully. Workers have a job and, what is more, no longer are they casual employees—they have permanency.
Under the award certain things had to happen because the Australian Industrial Relations Commission said so. Under their AWA, or Australian workplace agreement, they were able to negotiate sensible arrangements, such as taking their annual leave in winter when it is very quiet. Yes, that does mean that they have to work a bit more over the Christmas and New Year period, because that is when they generate a lot of money in the business. That way, it was win-win: there was a viable small business and workers kept their jobs in a regional work-depleted area of Tasmania. It was win-win—something that the strictures of an award and the Australian Industrial Relations Commission could not deliver because they are so inflexible. Australian workplace agreements did deliver.

Now, because these workers have permanency, guess what? They can go to the banks and get mortgages for houses. It is a great story. They would not have achieved that if they had gone to their local union or, indeed, the Australian Industrial Relations Commission. They got it by being able to break out of the system. Those sorts of good news stories are going to be able to break out even more all around this country. I just happen to know about this case because it is in my home state of Tasmania.

The question that Senator Wong asked was to this effect: would every single item need to be expressly removed and could there simply be a catch-all phrase in the agreement saying words to the effect that ‘all other issues are hereby excluded’? My advice is that each matter has to be expressly excluded. So each item needs to be referred to in the agreement. I dare say it could all be in the one clause—item, next item—but in a way in which each individual employee when reading it would become aware of each individual matter that would not be in the Australian workplace agreement. I think that deals with that issue.

**Senator WONG** (South Australia) (4.15 pm)—I have a couple of points. I do not want to harp on about Banjo’s, but—

**Senator Abetz**—Harp on on Banjo’s. I like that.

**Senator WONG**—It was good, wasn’t it? The minister ought to be aware that there are flexibilities under the relevant hospitality award, which do allow for annualised hours. I do not want to spend a long time talking about the example the minister raised. I just want to say that he seems to be unaware of the flexibilities which already exist within the award system.

I want to go back to this phrase ‘protected matters’. I think the minister in his answer has clarified that all that would be required in an AWA, which a new employee would have to sign if they wanted the job, is a clause that says, ‘Rest breaks, annual leave loadings, overtime, penalty rates et cetera are all removed by this agreement,’ and there would be no requirement for any additional hourly rate of pay. In those circumstances, Minister, I ask two questions. The first is: how can you persist with the lie that is describing them as protected? The second is: does the minister stand by his answer to me in the Senate on 12 October, when he stated: Under our proposals, what you have got you keep. Isn’t it the case that that is entirely inaccurate?

**Senator Abetz**—Are we going to allow the word ‘lie’?

The **TEMPORARY CHAIRMAN** (Senator Moore)—Earlier in the question the word ‘lie’ was used. Senator, would you care to withdraw that?

**Senator WONG**—I withdraw the word ‘lie’. Perhaps I can replace it with ‘inaccuracy’.

CHAMBER
Senator ABETZ (Tasmania—Special Minister of State) (4.18 pm)—I am somewhat sensitive to these things, Madam Temporary Chair, so I am absolutely delighted to receive your protection. People who negotiate conditions under Work Choices will be able to agree on a whole range of issues because of the flexibility that we will be providing. But, because we are a fair, reasonable and sensitive government, we believe that there are certain standards below which you cannot and should not be able to contract. Therefore, we are not allowing the law of contracts to completely dominate here. We are saying that there are certain basic minimum standards below which you cannot contract. For example—and I have used this on a number of occasions—personal leave, or sick leave, is now going to be legislated at 10 days per annum for everybody, which is an increase for some workers in some areas, and cannot be traded away. At the moment, every single one of those days can potentially be traded away. Annual leave is similar. At the moment, the whole lot could be traded away. We are saying that a maximum of two weeks can be traded away if the employee so agrees. I do not hang on every word that I say at question time. I am delighted that Senator Wong does. What I said on 12 October does not spring to mind, but if I said something like, ‘What you’ve got is what you keep’—and I imagine that would have been in the context of current employees on current awards—then that, as I understand it, is the situation.

Senator WONG (South Australia) (4.20 pm)—Minister, as I understood what you said, what you have got you keep, but that only relates to existing employees. Do I understand that to mean that you concede that new employees who are offered such an AWA, and are required to sign it as a condition of employment, will not keep what they have got?

Senator ABETZ (Tasmania—Special Minister of State) (4.20 pm)—I think the logic is finally getting through to the honourable senator. I would have thought that the situation was pretty clear. The people on the other side would like to think that, if you are without a job, what you have got is what you keep—in other words, no job and no prospects for the future. We are saying, ‘If you are currently employed under an award, what you’ve got is what you keep.’ To say that a new employee can somehow assert, ‘What I have got is what I keep,’ would mean no job. A new employee in a new job is a new relationship, and that employee will determine for himself or herself whether the conditions are appropriate for his or her personal needs, family needs, recreational needs et cetera and will sit down with the employer and work out something that is hopefully to their mutual satisfaction.

I know what the mantra is on the other side: ‘The employer can say, “Take it or leave it.”’ Similarly, the employee can say, ‘Take it or leave it.’ At the moment, employers say, ‘I employ under the award and if you don’t like it, don’t bother applying.’ But those on the other side do not worry about that. If it is an award that the employer wants to employ you under, not having any opportunity to discuss that with the employer is okay; that is okay, according to them. But if it is an Australian workplace agreement then that is bad. The reality is this: there is flexibility and new employees will have the opportunity to negotiate with the employer for their mutual benefit. I thank Senator Wong for reminding me of that wonderful example of Banjo’s Bakehouse in Strahan, where workers who were about to lose their employment were able to regain it on a permanent basis because of being able to sit down with their employer and get an Australian workplace agreement.
Senator WONG (South Australia) (4.22 pm)—The minister has confirmed to the chamber that the so-called protected award entitlements are not protected at all and that under this legislation people do not keep what they have got—that is pretty clear. I turn now to the issue of annual leave that the minister raised. Is the minister aware that many awards—in fact most of them—have provisions which give employees the right to take annual leave in certain blocks? Can the minister confirm whether or not the so-called fair pay and conditions standard of annual leave has any protection against employees being required by an employer to take annual leave in single days?

Senator ABETZ (Tasmania—Special Minister of State) (4.23 pm)—I am not 100 per cent sure of the detail of the question, but what I have to say will hopefully be relatively brief, and if it is not exactly on point I am sure Senator Wong will ask her question again. An amendment proposed by the Australian Democrats says:

To avoid doubt, there is no maximum or minimum limit on the amount of annual leave that an employer may authorise an employee to take, provided that an employee shall be entitled to take at least one period of 14 consecutive days of annual leave in each 52 week period.

That is undoubtedly what the senator is getting at. What we are saying is that that unnecessarily restricts the flexibility available to employees in taking their annual leave. What we want is to allow employees and employers to agree to take annual leave in whatever combination of days they desire.

Senator WONG (South Australia) (4.25 pm)—That is a very clear answer, Minister. What the minister has just told us is that under their legislation—the so-called fair pay and conditions standard—Australian employees can be required to take their annual leave in single day lots. This is from a government that say they want to ease the pressure on families and to facilitate family life. They say that ensuring that employees can have more than a single day off is unnecessarily restricting flexibility.

I turn now to the issue of so-called protected award conditions. Can the minister confirm that, similar to the annual leave provisions to which I have referred, there are many other award conditions which do not even have the protection of requiring explicit removal—for example, redundancy pay? Can the minister confirm that under this legislation there is no protection whatsoever for the entitlement of Australian employees to redundancy pay, an entitlement that has been in place for a significant majority of the work force since 1984?

Senator ABETZ (Tasmania—Special Minister of State) (4.26 pm)—What I can confirm for the honourable senator is that we in fact believe in choice and believe in employees and employers being able to sort things out between themselves. I can understand the Australian Democrats saying that they believe there ought be a minimum lot of 14 days, but at the end of the day it might suit somebody, for family reasons, recreational reasons or whatever, to take their annual leave on a single-day basis—one day once a month or however that would operate—because that is what their daily life requires. If that is suitable to them and to their employer, so be it. We do not seek to restrict unnecessarily. The important thing is that they are guaranteed a minimum of four weeks annual leave.

In relation to the issue of redundancy pay, under Work Choices, redundancy pay for genuine redundancies will continue to be an allowable matter, except for small businesses, and will not be removed from awards. Similarly, existing redundancy provisions that are included in agreements will
continue to apply until an employer and employee agree to alternative arrangements.

Redundancy pay has not been included as a specially protected award entitlement for the purposes of agreement making because it is not a fundamental entitlement that is regularly received by specific classes of employees. An actual entitlement to redundancy pay will only arise on the occurrence of a particular set of circumstances. It is only paid in those instances where an employer no longer wishes the job being undertaken by the employee to be done. Further, redundancy pay does not apply universally to all categories of employees. For example, casuals—including long-term casuals—employees of small business and those on fixed term contracts are generally not entitled to redundancy pay provisions.

Senator WONG (South Australia) (4.29 pm)—I thank the minister for his confirmation that redundancy pay is not protected under this legislation. I think that the extent to which the government is prepared to protect the existing entitlements of Australian workers is very clear. In relation to annual leave I ask the minister about clause 92H of the bill. Isn’t it the case that subclause (3) of that clause indicates that the key issue governing whether an employer can require or permit an employee to take a single day’s annual leave or whether they will permit them to take a couple of weeks annual leave is in fact the operational requirements of the workplace? Aren’t we coming to a situation under this bill, if Senator Murray’s amendments are not passed, where an employer can reasonably say that the operational requirements of that workplace mean that every employee in that workplace can only take a maximum of a single day’s annual leave at a particular time? I note there is an unreasonable refusal provision in the next clause, but the overriding qualification or matter determining whether someone can take a single day’s annual leave or more is the operational requirements of the workplace. Minister, on what basis did the government determine to put in place that provision which enables an employer to so unreasonably truncate an entitlement to annual leave, which one would have thought was so important to the Australian way of life—having time off with your family every year?

Senator ABETZ (Tasmania—Special Minister of State) (4.30 pm)—The annual leave guarantee under the fair pay and conditions standard enables an employer to direct an employee to take annual leave in certain circumstances. These circumstances are limited to two situations set out in the legislation: firstly, the annual shutdown of the business and, secondly, where the employee has accumulated an excessive amount of annual leave. These situations are not new or unusual. An employer may direct any of his employees to take paid annual leave for a particular period when the employer shuts down the business or any part of the business in which the employee works. Annual shutdowns are a common occurrence for Australian businesses. For example, many businesses shut down between Christmas and New Year’s Day, during January or over Easter, since these periods are often characterised by slow trading.

An employer may also direct an employee to take a period of paid annual leave if the employee has accumulated an annual leave credit greater than what an employee would ordinarily accrue in a 24-month period. In this situation the employer may direct the employee to take up to one-quarter of his or her annual leave credit. This ensures that there is a balance between the interests of employees and employers. It will enable employees to regularly take periods of leave for rest and recreation. It will also ensure that employers are not required to pay out exces-
sive untaken leave accruals when an employee’s employment ends.

Senator WONG (South Australia) (4.32 pm)—Thank you for your answer, Minister, but you referred primarily to the clause that deals with shutdowns and extensive accumulated annual leave. My question relates to subclause (3) of the clause. This is a provision which indicates that any authorisation by an employer, should this bill be passed, allowing a worker to take annual leave is subject to the operational requirements of the workplace or enterprise. Isn’t this simply giving employers more power to determine that an employee cannot take a long period, two or four weeks, of annual leave but could be required in fact by an employer to take only a single day? Isn’t the government proposing before the Senate a provision that effectively ends the great Australian tradition of four weeks annual leave every year with your family?

Senator ABETZ (Tasmania—Special Minister of State) (4.33 pm)—The language of operational requirements in relation to annual leave and giving the employer the capacity to indicate one way or the other in relation to operational requirements is not uncommon. In fact the terminology of operational requirements that is being picked up in this legislation, as I understand it, is taken from a number of awards that specifically provide for the employer to be able to consider operational requirements in determining whether a person should take annual leave or, indeed, whether they should not. If there are good things in awards we are willing to adopt them, and the terminology of operational requirement, as I understand it, is lifted out of a number of awards that give this sort of power and discretion to employers.

Senator WONG (South Australia) (4.34 pm)—Isn’t it the case that you are only telling half the story? Most awards which have provisions that may deal with the issue of operational requirements also have provisions which preserve blocks of leave to ensure that employees can get, say, two weeks at a time to spend with their families. Why has the government picked up the provision that give employers more flexibility or more power to determine and direct employees to take a single day but has not included in the annual leave so-called fair pay and conditions standard an entitlement for employees to take at least two, three or four weeks annual leave with their families?

Senator ABETZ (Tasmania—Special Minister of State) (4.35 pm)—To correct the honourable senator, there is no more power being given to employers than currently exists, and I think that I made that point clear, especially in the area of shutdowns and accumulated leave. In relation to the other area, the advisers are unable to indicate to me awards where there is absolute right and discretion on the part of the employee to take annual leave. Most awards—or all of them, as far as they are aware—do require some discussion with the employer. We believe in as much flexibility as possible, but subject to certain minimum standards, and we believe that that is what the legislation will represent for Australian workers.

Senator MARSHALL (Victoria) (4.36 pm)—I have been listening with interest to this discussion about the annual leave provisions and so far I have heard the minister confirm that an employer could require an employee to take annual leave in periods of a day. Minister, would the bill enable an employer to require an employee to take annual leave in periods of less than a day?

Senator ABETZ (Tasmania—Special Minister of State) (4.36 pm)—No.

Senator WONG (South Australia) (4.36 pm)—I turn now to the issue of consent on
AWAs. Can the minister confirm that an Australian workplace agreement can take effect without anyone, including the Employment Advocate, being required to consider or determine whether the agreement was consented to? I refer the minister particularly to clause 99B(5) of the bill which makes it clear that the Employment Advocate is not required to consider whether the provisions of the act have been complied with. Minister, doesn’t this simply indicate that the Employment Advocate will be nothing more than a filing mechanism for an Australian workplace agreement? Moreover, doesn’t it confirm that there is no statutory authority which will inquire as to whether consent has been properly given to an AWA or whether coercion or duress have been engaged in? Why is it that the government does not believe that the key issue is whether an employee has consented to an Australian workplace agreement removing their rights to penalty rates, overtime, shift allowance and annual leave loading?

Senator ABETZ (Tasmania—Special Minister of State) (4.38 pm)—Once again we have a mishmash from those opposite. For an AWA to be binding it has to be legal. In other words, it has to comply with the law. The employer, in lodging, has to sign a declaration that it does comply with the law. A false declaration is a criminal offence which will have attached to it severe penalties. That, I think, is a very substantial and severe disincentive to any disingenuous employer who would seek to get somebody to enter into an agreement that is not legally binding. Of course, if it is not legally binding it can and would be set aside.

Senator MURRAY (Western Australia) (4.39 pm)—The problem is that the argument revolves around a situation where the protections that exist at present are taken away. The Australian Democrats have supported Australian workplace agreements as a statutory instrument because they are underpinned by the safety net of a no disadvantage test against the award, which has 20 allowable matters. The no disadvantage test is being taken away and, even if it were not, the 20 allowable matters are being reduced to 16 allowable matters.

Secondly, we support the view that AWAs should operate where negotiations are genuine—and the bill diminishes that protection—and that there should be mechanisms to ensure that employees are not coerced. As a matter of reality that, as you know, is a very difficult matter to enforce because the discussions and the arrangements are often one to one. With the best will in the world it is a difficult one to fight against in terms of duress.

Instead of focusing on that area I want to focus on the annual leave discussion. At the heart of it is this fantasy that choice will exist. Choice only exists in the true sense when there is equality between those on each side. I readily concede that that sometimes occurs. But where you have a very strong union and a weak employer or a very strong employer and a weak employee, equality does not exist and choice is a fantasy. The idea that workers will be able to decide themselves on their leave arrangements as a matter of choice defies the experience of people in employment—their everyday experience refutes that argument. We almost do not need to say it here, because when they listen to that they think: ‘What a nonsense!’

They look at the parliament where a substantial number of people making decisions on these matters have sat in safe seats for, in some cases, over three decades or have run their own small businesses as lawyers, as indeed the minister successfully has and I congratulate him for that. But, really, these are not people who in many cases have felt the heat of being in a subordinate position—
although I suspect that if the Prime Minister said to the Minister representing the Minister for Employment and Workplace Relations, ‘You will work on Christmas Day,’ I am sure the minister would not say, ‘I have a choice and I am going to say no.’ I suspect he would say yes. However, let us leave the personal aside.

Minister, I want to draw your attention to an audit report you might not have had the opportunity to read yet because it is relatively new. It is audit report No. 16 2005-06: The management and processing of leave. In its overall conclusions, item 5 says:

Although all entities had in place leave arrangements in their respective certified agreements that, to varying degrees, enable the entities to manage their leave liabilities, five entities—there were six in the audit—were not managing their leave entitlements in accordance with the arrangements outlined in their certified agreement. This situation contributed to annual leave liabilities increasing by approximately 18 per cent over the last three years, and meant that leave liabilities generally were higher than if the leave arrangements had been fully implemented.

That story tells us that very frequently in the public sector you have a strong and very dominant employer who is able to impose their will on their employees. Even where there is the supposed protection of a certified agreement under existing circumstances, leave liabilities have increased by 18 per cent. That is because the policies of the government have meant that employees in relatively underresourced agencies have often had to work in excess of the time spelt out had all leave been taken, and they were forced not to take the leave. Many of them did so out of goodwill and a sense of duty towards their employer and the job they had to do.

The fact is that under existing circumstances employers succeed in preventing employees from taking the leave that is rightfully theirs, even as defined by certified arrangements. So the fantasy of choice is that you are an equal to your employer. I and my colleagues employed thousands of people during our business lives and I can assure you that they were never equal with me. That is how it is in business and that is why you need the law to in fact underpin those people’s rights. Whilst I would consider myself a fair employer, when I was the boss I was the boss. That is how it is; that is how you run a business. The reason we have workplace law in the way that we do—and it has been developed over 100 or more years—is that people have recognised that reality. That is what the safety net means. If you let the reality of the world apply, those who are least able to bargain, least able to represent themselves and least able to contest a situation will be stood upon. That is how the world is.

The point I want to make to you is often made in this place, but I think it needs to be repeated, and that is that the existing system is already employer friendly, and in my view rightly so, because I have supported the existing system—though not in every respect. But the proposed system says, ‘We are going to give much more power to employers,’ and that results in a reduction in things such as the ability to take leave. It is particularly important in a stressful world, where often two people work as the breadwinners in a family or it is a single parent family, that people have sufficient quality time with their family, friends and so on. That is why the aspect of choice must be put against the reality of how employers will behave, and that is why I draw your attention to the existing inadequacies in our system, reflected in the audit report with the simple statement:

... leave liabilities increasing ... 18 per cent over the last three years ...

I posit that that will accelerate under the new system, and I do not think that is good for the
health or the safety or the society that Australia should aspire to.

Senator ABETZ (Tasmania—Special Minister of State) (4.47 pm)—Senator Murray raised a number of issues. First of all, in relation to the protections and the abolition of the no disadvantage test, as I have been at pains to point out on numerous occasions, the current no disadvantage test has allowed, for example, the trading away of every single sick leave and personal leave day that an employee might have. It also allows the employee to trade away every single day of annual leave that he or she may have.

Senator Murray—Under the no disadvantage test.

Senator ABETZ—Under the no disadvantage test. Are we getting rid of the no disadvantage test? Yes, we are, but—and this is what those opposite can never quite bring themselves to say—what are we putting in its place? We are legislating for certain minimum standards. For example, we are now legislating, for the first time ever, that you cannot trade away any of your personal or sick leave entitlements—guaranteed by law. Similarly, we are saying that you can trade away only a maximum of two weeks annual leave. So if you get four weeks you can trade away only two. Some people get six weeks annual leave, but still they can trade away only two weeks of their annual leave. What we are doing is putting in place legislative safeguards, for want of a better term—so that, rather than an examination being made as against the award as to whether there is no disadvantage, we are ensuring that workers cannot be disadvantaged by putting in these legislative safeguards. So it is, if you like, a no disadvantage test but by another name, below which people cannot contract. Senator Murray says the choice is, I think, a fantasy situation—

Senator Murray—in a number of cases.

Senator ABETZ—Yes, in a number of cases. I agree that there may be bad employers in the system—there will be the odd one, without doubt—and that is why we are legislating to ensure that those bad employers cannot seek to negotiate with their employees below the minimum standards set by the legislation and by the Australian Fair Pay Commission. That is their, if you like, guarantee of a no disadvantage test or rule. Previously it was determined in another manner, but we believe that workers are still being protected because they are now being protected by legislation as opposed to what happened before.

In relation to the one-to-one bargaining of an employee with an employer, there is the absolute right to have a bargaining agent with you. If there is any suggestion or concern that there might be duress, of course the employee is entitled to bring along mum, dad, a trade union official or a parish priest with him or her, so there is that extra safeguard.

I suppose some of us have had somewhat privileged lives; others not quite. I dare say that I have always considered myself to have had a privileged life, but I am not sure that it was necessarily so in financial terms as I was growing up, being the youngest of six kids, but I do not carry a chip on my shoulder and I do not complain about that. As a university student, I sought work as a farmhand and worked as a farmhand, and I drove taxis. I also recall being an apprentice at law. Not having many contacts within the legal system in Tasmania, I readily admit, I happened to score a job as the lowest paid apprentice of my year. Can I tell you that I was very appreciative of that opportunity because, having been given that opportunity—albeit, if I might say, on a very meagre wage; no disrespect to my employer, for whom I have
the greatest respect—within a few years that opportunity allowed me to show my worth, which allowed me in two years to become the highest paid lawyer of my class.

The point I am making is that you can get a contract on a basic or the lowest wage, protected by certain minimums even if it is low. Can I tell you, I was very appreciative of that, because, to use a term at which those on the other side will shudder, it allowed me to get my feet onto the first rung of the ladder of opportunity. And I am very appreciative of that opportunity because it allowed me to show that I was of some financial benefit to the legal practice, and then I was in a stronger position to negotiate. Can I assure Senator Murray and others in this place that, whilst I always considered myself to have had a privileged life, I think I have some relative understanding of circumstances in which people might find themselves.

The important thing is that there are basic minimum standards. The good news is—and I am not sure what the statistics are only 40 per cent, I think, of people who are on the basic minimum wage stay there for about 12 months. It is being checked; I may well be wrong on that. But the fact is that they then move on to higher paying jobs because they have had—and I must say the term grates on me as well, so I apologise to those opposite—the opportunity to get their feet onto the rungs of the ladder of opportunity, which will then lead to increased wages and extra opportunities.

In relation to the audit report, I confess I am not aware of it, Senator Murray. All I would say—and I only postulate this; the audit report may have gone into this in some detail—is that if there is an increased leave liability it may well be that the employer has accrued it through the choice of employees who determine that they do not want to take leave at a particular time for whatever reason. I do not know what the reason is, but it may well be that it is employee initiated, as opposed to employer initiated. I am sure that if I am wrong on that Senator Murray will correct me.

Senator SIEWERT (Western Australia) (4.55 pm)—At the risk of boring people, I want to go back to the safety net. Can you tell me what, in the act, you mean by the term ‘safety net’? Where is it defined? Where is the definition of ‘low paid’ and where does the act define the function of the safety net for the low paid?

Senator ABETZ (Tasmania—Special Minister of State) (4.55 pm)—I understand it follows the common English usage. A safety net is not defined as such. It is a concept such as ‘reasonable man’—or ‘reasonable person’, I suppose, to be politically correct these days.

The TEMPORARY CHAIRMAN (Senator Moore)—That would be better.

Senator ABETZ—Yes. Thank goodness standing orders do not require it, but, nevertheless, I will accept your suggestion, Madam Temporary Chairman, given my admonition to you during question time the other day, albeit mine was tongue in cheek, because I do not take these things seriously, unlike other people.

The TEMPORARY CHAIRMAN—Thank you, Minister.

Senator ABETZ—Nevertheless, I accept your suggestion. It applies equally of course, to people of both sexes. The safety net is as per the common English usage.

Senator MARSHALL (Victoria) (4.57 pm)—Minister, thank you for your forthright answer to my question about whether an employee could be directed to take leave for a period of less than one day. I do not necessarily doubt that what you told me was accurate.
The TEMPORARY CHAIRMAN (Senator Moore)—The minister is listening, Senator.

Senator Abetz—In fact, I am not, for which I apologise.

Senator MARSHALL—Let me start again.

Senator Abetz—If you could, that would be helpful.

Senator MARSHALL—I was thanking you for the forthright answer to my question about whether an employee can be directed to take annual leave for a period of less than one day. You said no, but I would probably be more reassured if you could actually point me to the provision in the bill which determines that. I take you to 92H(2). It is clear there—it states:

To avoid doubt, there is no maximum or minimum limit on the amount of annual leave that an employer may authorise an employee to take.

Annual leave is actually calculated in hours. I may have missed the provision, but I would be appreciative if you could point it out to me to give me that reassurance.

Senator ABETZ (Tasmania—Special Minister of State) (4.58 pm)—As I understand the framework of the legislation, the employer cannot direct in relation to annual leave, other than in circumstances where I indicated operational requirements, but the employee can initiate. An employee can say, ‘I just need an extra hour for lunch,’ for example. The employee can initiate that and ask to have that hour docked from his or her annual leave.

Senator MARSHALL (Victoria) (4.59 pm)—In those circumstances in which an employer can direct it, are they able to direct that annual leave be taken for a period of less than a day?

Senator ABETZ (Tasmania—Special Minister of State) (4.59 pm)—I would have thought it would be pretty hard to argue that an annual shutdown has to be for one hour and 20 minutes or that operational requirements might require a 20-minute shutdown or something of that nature. But, if it does, I indicate to you that, as I said previously, it does not change what is in so many awards around the place: employers can deal with annual leave in relation to operational requirements.

Senator MURRAY (Western Australia) (5.00 pm)—Minister, we are starting to plough our way through the new government amendments. I want you to refer to existing section 527 on page 482 of the bill, which has been substituted by item 213 on page 42 of the new amendments. It refers to section 7C, which is on pages 24 and 25 of the bill. If you look at the new amendment you have put up, which is item 213 on page 42, clause 527(1)(ii) says:

(ii) minimum terms and conditions of employment (other than minimum wages) for employees in Victoria ...

This provision appears to exclude Victorian long service leave. It appears to be at odds with section 7C in the bill, which excludes states’ and territories’ industrial relations laws but does not exclude laws that cover things like long service leave in section 7C(3). What is the purpose of this provision in item 213? Does the provision act to exclude Victorian long service leave provisions? If it does act to do that, why does it do it?

Senator ABETZ (Tasmania—Special Minister of State) (5.02 pm)—I will take that on notice if I may. A Victorian expert has just arrived in the chamber to deal with that specific matter, so we should defer that. Just to clarify in case it is needed, in relation to annual leave I am advised that the employer can only direct an employee to take leave in the case of shutdown or if the employee has
accumulated two years of leave. The employer cannot require an employee to take leave in single days or in any other manner except in the aforementioned situations.

Senator WONG (South Australia) (5.02 pm)—While you are getting advice on the Victorian matter, can I ask about that. I want to indicate to the minister that my question in relation to annual leave relates not to the clause dealing with shutdowns or extensive accumulated leave but to the rights which accrue to the employer under subsections (2) and (3). Isn’t it the case that there is nothing in the legislation which would prevent an employer from refusing to approve annual leave other than in single days and that there is no protection against an employer refusing to approve annual leave that is only a part day? I note that there is no definition of ‘day’ in the legislation. The legislation in fact says that there is no minimum limit and no maximum limit on the amount of annual leave that an employer may authorise. Isn’t it the case, therefore, that under this legislation an employer could in fact say, ‘I’m not approving your annual leave unless it is only for six hours,’ or ‘I’m only approving annual leave on a single day basis’?

Senator ABETZ (Tasmania—Special Minister of State) (5.04 pm)—I refer the honourable senator to proposed section 92H(4), which says:

An employer must not unreasonably—
and that is the test—
(a) refuse to authorise an employee to take an amount of annual leave that is credited to the employee; or
(b) revoke an authorisation ... during a particular period.

So there is the ‘reasonable’ test in there. If an employee disputes that then you move into the dispute resolution system. I would suggest to the honourable senator that, unless an employer can make out a reasonable argument as to why they are doing this, the employee is appropriately safeguarded.

Senator WONG (South Australia) (5.05 pm)—Minister, this is one of only four conditions the government is retaining as a minimum standard in its so-called Fair Pay and Conditions Standard. What the proposed section provides—and I am looking at proposed subsection (3)—is that the criteria for determining whether leave is approved are the operational requirements of the workplace. Why is the government refusing to insert a provision or definition which ensures that an employer cannot approve leave only on the basis of a part day or a single day if they say that the operational requirements of the enterprise require this? There is nothing in the legislation that says what an unreasonable refusal would be. I suggest to the minister that an unreasonable refusal could not be something subject to operational requirements. In other words, the employer could say, ‘My operations require that you only take two, four or six hours annual leave,’ or, ‘My operational requirements are such that you must only take your annual leave in single days.’ There is nothing in this legislation which would protect an employee in those circumstances from having to take their annual leave in that sort of pattern. If this is one of the conditions that the government says it is protecting, why is it not protecting the rights of Australian employees to have a reasonable holiday with their families?

Senator ABETZ (Tasmania—Special Minister of State) (5.06 pm)—As indicated previously, the operational requirements term is used in awards, and I think it is generally accepted as being an appropriate standard. In relation to the test, I have indicated that the employer has to act unreasonably or, in the terms of the legislation, cannot unreasonably reject a request from an employee. If it is determined that that rejection is unreasonable, the employer stands to collect a fine—
and, if it is a corporation, a fine of up to $33,000—for having failed to act reasonably in the circumstances. I would have thought, with great respect to Senator Wong, that it would be very difficult for an employer to continually say, ‘You can have only one hour annual leave because of operational requirements.’

Senator Wong—So for how long can you go? Four hours? Six hours?

Senator ABETZ—Every reasonable situation will need to be determined on its merits, but there is a huge disincentive to the employer to play what I consider to be quite fatuous and silly games with his or her employees, knowing that it would upset the workers. Usually, the workers are the most valuable asset of any enterprise, so why would you deliberately do that in the first place? But even if you did get up every morning swallowing a bucket of lemons and wanting to be as nasty as possible to your employees, there is still the disincentive of having to pay potentially a $33,000 fine for having acted unreasonably. I think in all those circumstances Australian workers can be guaranteed that the likelihood of all those scenarios coming together and merging into a real-life situation is, in my respectful submission to the committee, not only remote but also highly unlikely.

Senator MURRAY (Western Australia) (5.09 pm)—May I suggest that swallowing a bucket of lemons would not only make your lips pucker. Minister, the difficulty with the reasonable test, and it is a well-established word in jurisprudence, is that if you were to challenge it, I assume—and perhaps you can correct me if my assumption is wrong—that you have to go to court, get lawyers, pay costs and so on. I think that is the point that the shadow minister is making. Would it not be easier to avoid any potential litigation, even for a small minority, if a day were at least outlined, for instance, as a continuous period of so many hours? It does not matter what time of day because we recognise that some people operate on shifts. But it would be easier if there were some definition to avoid the situation where, if somebody was unreasonable, the employee would be forced to incur the costs of lawyers, court costs and so on.

Senator ABETZ (Tasmania—Special Minister of State) (5.10 pm)—I have been advised that the provisions in relation to the annual leave proposals are in fact consistent with the family provisions test case, which may be of interest to those opposite. I will read out what I have in front of me. It states:

The annual leave entitlement is consistent with the decision in the family provisions case to provide for annual leave to be carried forward for a maximum of two years from the date of entitlement. However, the standard provides extended flexibility to ensure that employees do not lose their annual leave entitlement once the two-year period is passed. As noted above, an employer may direct an employee to take up to a quarter of his or her annual leave credit once the employee has accumulated an excessive amount of annual leave equivalent to two years worth leave.

I am also advised that a number of awards contain provisions which place discretion on the employer to prescribe when and how an employee may take leave. For example, a number of awards to which the LHMU is a party prescribe:

Annual leave shall be given at a fixed time by an employer within a period not exceeding six months from the date when the right to annual leave accrued and after not less than four weeks notice to an employee. The employee must be allowed to take leave at a time agreed with the employer within four months after it is due. The employer and employee should seek to reach agreement on the time for taking leave, in the absence of which the employer may direct the employee to take leave with 14 days notice.
I do think we want to hear too much from those on the other side about the employer being able to direct annual leave, for some of these current benefits that are allowed under the awards in fact will not be available.

Senator MURRAY (Western Australia) (5.12 pm)—Just for clarification, Minister, were you referring to a federal award there?

Senator Abetz—Yes.

Senator WONG (South Australia) (5.12 pm)—I have a couple points to make. I understand that, in the family test case, the employers through ACCI did seek that all annual leave days could potentially be taken as single days. They did not get that through the commission. The commission put a cap on it, saying that only up to 10 could be required to be taken as single days. So it appears that, what the government is in fact doing through this legislation is giving a group of employers something they could not get through the current commission, and that is the capacity for employees to have to take their annual leave in single days.

Senator ABETZ (Tasmania—Special Minister of State) (5.13 pm)—To respond to Senator Murray—and I must say I have forgotten the detail of his question in relation to Victoria—but the official who has dealt with the matter has written me, if I might say, an embarrassingly short note about this. I trust this is the answer but, if it is not, having forgotten the specifics of the question, I am sure Senator Murray will repeat the question. I am advised that long service leave is expressly excluded under the terms of the Victorian referral of power. That is why we need this specific provision in the bill.

Senator MURRAY (Western Australia) (5.14 pm)—To use the Welsh word for being a little slow, which is ‘twp’, not to be twp—

Senator Sherry—It sounds unparliamentary to me!

Senator MURRAY—Trust me. Minister, you are confirming to us that the Victorian government’s provisions for long service leave will still be protected. That is the answer?

Senator ABETZ (Tasmania—Special Minister of State) (5.15 pm)—I do not think you are twp. You are exactly right.

The TEMPORARY CHAIRMAN (Senator Ferguson)—That is the first Scotsman I have ever heard speaking Welsh.

Senator WONG (South Australia) (5.15 pm)—I am not going to go down the linguistic path. If no other senators want to ask questions about annual leave I will move to a different topic. I want to go to the issue of genuine consent. Minister, is there any provision in the legislation which requires any statutory authority or any individual to confirm or check whether employees have even signed an agreement or, in the case of a collective agreement, that the majority of employees subject to it have in fact consented to a collective agreement? Is there any provision in the legislation that ensures that people have either signed an AWA or, in the case of a collective agreement, voted to consent to an agreement?

While the minister is getting advice on that I will put on the record another question, and that is to confirm an answer given to Senator Siewert in the committee hearings that a person under 18 can waive their requirement to have a parent or responsible adult endorse their AWA. If that is the case, are there any protections against a young person in that circumstance being asked by their employer to waive such a requirement? Does the minister think it is appropriate to have a 16-year-old signing an AWA without discussing it with their parents simply because their employer has asked them to waive the requirement?
Senator ABETZ (Tasmania—Special Minister of State) (5.17 pm)—I will work backwards. In relation to an under-18-year-old, I understand that the need to have the agreement co-signed by a parent or guardian cannot be waived. That is my advice. If that advice is wrong I am sure the officials will tell me so, but that is what I have been advised. In relation to genuine consent to both individual and collective agreements, if there is no consent to an agreement then it is not in fact an agreement. Those who lodge the agreement have to declare that things were done appropriately. If that declaration is false they stand to face substantial penalties, which I think would act as a substantial disincentive to employers trying to pull that stunt. That is why we have those penalty provisions in the legislation.

Senator SIEWERT (Western Australia) (5.18 pm)—I want to follow up on both those answers. The first is to do with the waiver. If I understand you correctly, you are saying that people under 18 cannot waive the right to have a parent or guardian or responsible adult look at the AWA. But my understanding is that young people can still sign a waiver that applies to the seven-day notice or the information sheets, in effect giving them just 24 hours to get their parent or a responsible adult to look at their AWA, on the basis of no information.

Senator ABETZ (Tasmania—Special Minister of State) (5.19 pm)—There were two issues, if I recall. One was the seven days notice and the other was the information sheet. The information sheet requirement cannot be waived; the seven-day notice period can.

Senator SIEWERT (Western Australia) (5.19 pm)—Am I correct in saying, then, that a young person can waive their seven-day requirement, thereby giving their parent or guardian only 24 hours to look at an AWA? To follow that, why is there not the same requirement for the support or approval of a parent or guardian when signing the waiver?

Senator ABETZ (Tasmania—Special Minister of State) (5.19 pm)—They do not have to sign the waiver. One would assume that, given that a parent or guardian is with them when co-signing the agreement, there would be advice from that parent or guardian that it would be appropriate on a particular occasion to waive the seven-day period. The parent or guardian would have to be there with the under-18-year-old in any event. So they will undoubtedly determine between them that that is in the best interests of the employee who is under the age of 18.

Senator SIEWERT (Western Australia) (5.20 pm)—If an under-18-year-old is at work and is given an AWA, their parent or guardian or a responsible adult is not going to be there at the time. They may well be put in a situation where they sign a waiver before their parent or guardian or a responsible adult gets there.

Senator ABETZ (Tasmania—Special Minister of State) (5.20 pm)—No. At the end of the day, for the AWA to come into force, the AWA has to be signed by the prospective employee and the parent or guardian. Therefore, if there were any concern expressed by the young person or by the adult—parent or guardian—then it would stand to reason that they would not sign the ultimate agreement which would have come into force.

Senator SIEWERT (Western Australia) (5.21 pm)—In a situation where they are given only 24 hours to sign an AWA, there is going to be a great deal of pressure on them to sign, particularly for a young person who wants a job. They may not get 24 hours to adequately review that AWA if they have signed their waiver for a longer period. Surely it is better not to let somebody under 18 sign a waiver in the first place.
Senator ABETZ (Tasmania—Special Minister of State) (5.22 pm)—We believe in flexibility. We believe that a person under the age of 18, in the company of an adult parent or guardian, can make those sorts of decisions. If the employer were to start engaging in duress in relation to that particular waiver then of course the penalty provisions would start applying again. I would have thought that, as an employer, for the sake of a seven-day waiver the threat of having the penalty provisions applied to you, no matter how many lemons you had swallowed that morning, would mean it was not in your interests to behave in that fashion.

Senator LUDWIG (Queensland) (5.22 pm)—I am pleased to enter the debate on this. On annual leave—

Senator Abetz—We are backtracking—all right.

Senator LUDWIG—Reading the clause I thought I would give you a jag so you could turn your mind back to it. I was looking at public holidays. Consider an instance where the employer was generous and gave a four-week period of annual leave in a block and in the middle of that four-week period public holidays fell, such as Christmas Day. Christmas Day might have fallen on a Wednesday, Boxing Day on the Thursday and New Year’s Day in the following week—three public holidays. Is the annual leave extended by those three days or are they lost, so to speak, in forming part of the four weeks annual leave? Currently, most federal and state awards provide that usually annual leave is extended by those three days if that is the case. It is not clear whether that is provided for in the bill. I wonder if you could help me with that, Minister.

Senator ABETZ (Tasmania—Special Minister of State) (5.24 pm)—To borrow a word from Senator Murray—and I hope it is not insulting—only someone as ‘twp’—how do we spell that, Senator Murray?

The TEMPORARY CHAIRMAN—I suggest we stick to English, Minister—for my sake too.

Senator ABETZ—I think I will give up on Welsh, if that was the language. Why on earth would an employee seek from the employer to take annual leave on a public holiday?

Senator Ludwig—You seem to have missed the point again. If they went on 20 or 23 December for four weeks—

Senator George Campbell—Which is extremely common.

Senator ABETZ—Of course it is extremely common that people mix and match public holidays with their annual leave. People do that on a continual basis. For example, they take Christmas Day and Boxing Day; apply for annual leave for the 27th, 28th and 29th; take the weekend and New Year’s Day, which is also a public holiday; and then recommence their annual leave. The vast majority of Australians are smart enough on that one, I would have thought, Senator Ludwig. I do not think they even need trade union officials to work that one out for them. I would have thought that any employee, if they wanted to take one week annual leave, for example, over Easter, would know that Good Friday, Easter Monday and, if they were lucky enough, Easter Tuesday as well were part of the public holiday regime. I do not think they would do what you are suggesting.

Look at that: it is nearly 5.30 pm. The work practices are very good and I am now in a position to table a supplementary memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber today. Can I once again assure Senator George Campbell that Mr Abbott has remained
safely ensconced in Sydney all day and has not sought to in any way interfere in the delivery of the explanatory memorandum, which has now been delivered earlier than initially anticipated.

Senator LUDWIG (Queensland) (5.26 pm)—The answer to my question is yes: if a business shutdown occurs and an employee must take annual leave, if the shutdown occurs on December 20 for four weeks, are those three public holidays not added but lost? It is not like other awards—that seems to be the position that you are outlining. It does not say in the bill that a public holiday that falls during a period of annual leave is added to the annual leave. I am happy for you to say otherwise if that is not the case.

Senator ABETZ (Tasmania—Special Minister of State) (5.27 pm)—I will not try the Welsh word. I will just use the Australian word ‘dull’, but without being too insulting to the honourable senator. The current situation as it applies will continue to apply in that regard.

Senator WONG (South Australia) (5.27 pm)—I want to go briefly to the issue of working on Christmas Day. I note that we have now been given, nearly 5½ hours after debate commenced in this chamber on 337 amendments, a supplementary explanatory memorandum of 133 pages. I am wondering when I am going to have time to read this before I and other senators have to debate the amendments. Over dinner, I suppose. I do not know how many minutes per page that is—about 30 seconds a page over an hour, I think. So, not only do we have seven seconds to read each amendment before we commence debate on them, we now have less than 30 seconds to read each page of the explanatory memorandum before we come back after the dinner break.

My question to the minister goes to the issue of Christmas Day. I want the minister to confirm this. Minister, isn’t it the case that under your legislation, including your amendments—under the so-called Work Choices bill—employees are not guaranteed penalties for working on Christmas Day? How can the government justify, on a day such as Christmas Day, Australian workers not being entitled to penalty rates for having to work on that day and not spend it with their families? How can the government justify people not being paid appropriately for working on Christmas Day when they are not able to spend it with their families?

Senator ABETZ (Tasmania—Special Minister of State) (5.29 pm)—Once again, we have the Labor Party professing concern about people being able to spend Christmas Day with their families but then asking, ‘How about giving them an incentive to work on Christmas Day?’ And it would be a great incentive for employees if they were to earn considerably more if they were to work on Christmas Day. I think the Labor Party have to determine what they want. Do they want to provide incentive to workers to work on Christmas Day or for them not to work on Christmas Day?

Many employees currently agree to work on Anzac Day, Christmas Day and other public holidays. Employers and employees will continue to be able to vary Anzac Day and Christmas Day arrangements by agreement, as they can under the current system. It is important that there is flexibility for these provisions to be negotiated at the workplace level.

Work Choices will protect certain award conditions when new workplace agreements are negotiated, including public holidays such as Anzac Day and Christmas Day. I am advised that if you are under an award or agreement that provides penalty rates then, of course, you will get them. A collective agreement, or Australian workplace agree-
ment under Work Choices, will need to set out how the agreement will remove or change employees’ current Anzac Day and Christmas Day arrangements. This change will occur only if the employee agrees. If public holiday arrangements, such as for Anzac Day and Christmas Day, are not specifically addressed in agreements under Work Choices, then the relevant award condition relating to public holidays will continue to apply.

We are also moving an amendment that provides a new statutory right to refuse to work on reasonable grounds on a public holiday. That right would apply to iconic public holidays such as Christmas Day, as well as other public holidays declared in a particular state or territory. The factors a court would consider when assessing whether an employee had reasonable grounds to refuse work would include the terms of the employee’s workplace agreement or contract, whether they received penalty rates, the amount of notice given by both employer and employee, the employee’s personal circumstances—including family responsibilities—and the employer’s operational requirements. If an employee refuses to work on a public holiday on reasonable grounds, they will be protected from dismissal and other prejudicial conduct by an employer. The court could make a number of orders, including a financial penalty of up to $33,000 for a body corporate, an order to compensate and orders for reinstatement. The model dispute resolution process under the bill would apply to disputes about the public holiday entitlement. The entitlement would apply to the same class of employees entitled to the benefit of the standard.

Senator WONG (South Australia) (5.33 pm)—Minister Abetz, I note that in your answer you have refused to guarantee penalty rates for working on iconic public holidays and days which obviously have great significance in our community. You have refused to guarantee that Christmas Day work will be paid at penalty rates. The fact is that penalty rates operate first as a disincentive for employers to roster people on Christmas Day. Far from the rather odd position you put to the chamber, the fact is that penalty rates are being paid to Australians for a number of reasons. One of those is to operate as a disincentive for employers to roster people on those days unless they are required to work for a very good reason. The second very important reason is that most people in the community would think that a person who was required to work on Christmas Day and could not spend it with their family is entitled to be paid appropriately.

There is nothing in this legislation which protects penalty rates for working on Christmas Day. There is nothing in this legislation which means that a person who cannot spend that day with their family is properly compensated. You refer to the issue of Australian workplace agreements. I refer back to my previous discussion. I think you confirmed earlier today that penalty rates, overtime and a whole range of other so-called protected award conditions can be removed by a single clause in an AWA saying that they are removed. That is not protection. Saying they are protected is, frankly, inaccurate. That is not protection. What you are confirming to the chamber today is that Australian employees are no longer guaranteed a penalty rate for working on Christmas Day.

You refer to the fact that they cannot be sacked on Christmas Day. Can they be sacked on Christmas Eve for refusing to work on Christmas Day, or for another reason? Can they be sacked on Boxing Day? Can they be sacked for not turning up for work? The issue is that the government, despite saying they are protecting public holidays, are not in fact protecting them at all. Most Australians understand that we have
penalty rates applying to public holidays for two reasons. The first is that it means that employers will only roster people on if they really require them—there is a disincentive. The second, and perhaps more important, reason is that people are compensated for the fact that they cannot spend that day with their family. What you are confirming today, Minister, is that those guarantees and rights have been removed by this government.

Senator MURRAY (Western Australia) (5.36 pm)—My question is to Minister Abetz so that he can add his response to me to his answer to the question from the shadow minister. I have had a quick glance through the supplementary EM and the government’s new circulated amendments.

Senator Abetz—Which page?

Senator MURRAY—No, I am just referring to a quick look. I could not find it in there. If you were previously paid penalty rates and you are no longer going to be, is that reasonable grounds to refuse to work on Christmas Day?

Senator ABETZ (Tasmania—Special Minister of State) (5.37 pm)—In relation to Christmas Day, Senator Wong is putting forward the proposition that everybody who works on Christmas Day gets paid penalty rates.

Senator Sterle—They do if they are under an award already.

Senator ABETZ—Interestingly, I am not sure that that is necessarily the case, because there are numerous awards that require people to work on public holidays et cetera, but they then trade that away for extra annual leave or whatever. I think I am correct in saying that the journalists award deals with public holidays in this manner; that is, if they are required to work, so be it, but in a union sanctioned agreement, an AIRC sanctioned agreement, they have come to an agreement where I think they get six weeks and four days annual leave. I am not sure whether that is exactly correct, but trade-offs have been made.

Senator Hurley—They are compensated.

Senator ABETZ—The senator opposite says that they have been compensated. Yes, because it was done by way of negotiation—one would assume, by an agreement between the employer and employees. If people can come to a reasonable arrangement between themselves to achieve such an outcome, that is all well and good. The interesting thing is that the union officials from the other side would argue, ‘If the union trades away penalty rates for public holidays, that is good because we did it, but how dare an individual seek to do that without the imprimatur of the trade union involved.’ We say that individuals should be able to make their own arrangements, subject to the safeguards that we have in the legislation.

As for Senator Wong trying to verbal me, what I would ask honourable senators and others in this debate to do is read the Hansard of what I actually said, not that which Senator Wong conveniently seeks to paraphrase and put in my mouth to suit her political purposes.

Senator Wong—Are they protected or not?

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order, Senator Wong—

Senator Wong—He won’t answer that.

The ACTING DEPUTY PRESIDENT—you will get the call when your time comes.

Senator ABETZ—What may or may not be reasonable in any circumstance will undoubtedly need to be determined, but section 170AG, ‘reasonable-ness of refusal’, says: In determining whether an employee has reasonable grounds for refusing a request to work on a public holiday, have regard to:
And then there is a whole host of issues to be considered, including:

(a) the nature of the work performed by the employee;

So I would imagine that if you are a theatre nurse or something like that and you are required for an emergency operation, chances are—I am hypothesising here—you may be required to come in because of the nature of the work. I am not sure. The list continues:

(b) the type of employment ... 
(c) the nature of the employer’s workplace or enterprise ... 
(d) the employee’s reasons for refusing the request ... 
(e) the employee’s personal circumstances—
I might add that all of these are ‘and’, ‘and’, ‘and’. The list continues:

(f) whether the employee is entitled to additional remuneration or other benefits as a consequence of working on the public holiday—
—as a result of which, if they sat at home and not worked, they would be entitled to pay for that particular public holiday even if they were sitting at home.

So, if the employer tries to attract the employee to work on Christmas Day, depending on all the circumstances, an employee may well scratch their head and say, ‘Well, boss, you’ve got to pay me X dollars if I sit at home; what’s the incentive for me to come into work?’ So it would stand to reason that the employer might have to provide, I would have thought, some incentive. Once again, it depends on the totality of the agreements and the arrangements made. Section 170AG is a specific provision in relation to reasonableness of refusal, which I think goes to the very heart of the issue raised by Senator Murray.

Senator MURRAY (Western Australia) (5.42 pm)—I thank the minister for his answer, but I can imagine a circumstance where, for example, a nurse who was previously on an agreement or an award that entitled them to additional remuneration or other benefits as a consequence of working on a public holiday is, after the passage of this bill, moved on to an individual agreement, as an example, and that individual agreement does not cover the issue of public holidays. When Christmas Day arrives and they are asked to work and they say, ‘What am I going to be paid?’ and they are told, ‘It’s for ordinary pay,’ under the ‘reasonableness of refusal’ grounds, would they be entitled to say, ‘No. Last year I was paid penalty rates. I would be prepared to work again on penalty rates but I am not prepared to work for ordinary time’? The simple question is: in that scenario—it is not hypothetical—would somebody be able to reasonably refuse to have to work on Christmas Day for ordinary time?

Senator ABETZ (Tasmania—Special Minister of State) (5.43 pm)—I have some difficulty with the proposition put forward by Senator Murray. I, for the life of me, cannot see why an employee would agree to be moved from an award to an agreement—

Senator Murray—No choice; it is take it or leave it.

Senator ABETZ—If it is ‘take it or leave it’, he or she is in a new employment situation and we are talking about a new employment scenario compared to that which he or she was in before.

Senator MURRAY (Western Australia) (5.44 pm)—For an orderly debate I had better not interject. I will spell it out. Say a person is with the same employer and they have moved from one agreement to another because the employer has provided what used to be known in banking circles as ‘gentle suasion’—in other words, if they do not do it, they do not get the loan; in this case, if
they do not do it, they do not get the job. So they have crossed over onto a new agreement, but they are with the same employer. The previous Christmas they worked for penalty rates. They are willing to work again for penalty rates, but they are not willing to work without penalty rates. The new agreement does not cover that issue. Is it a reasonable ground in that circumstance to refuse to work on Christmas Day?

Senator ABETZ (Tasmania—Special Minister of State) (5.45 pm)—As I understand it, there is protection in the legislation where an existing employee cannot be dismissed for not agreeing to go onto a new agreement. Therefore, I still have difficulty in understanding how that situation would arise. The key protection against employees being forced to bargain away their protected award conditions is the ability of employees to exercise their choice to not approve the workplace agreement, meaning they will remain where they are. There will be protection in the form of remedies available to employees if the employer coerces employees or applies duress or makes false or misleading statements to force employees to agree to an agreement that bargains their protected award conditions away. Then of course there are the financial penalties.

Senator HURLEY (South Australia) (5.46 pm)—I would like to use another example. If I went back to my old job in a pathology laboratory, which obviously required people to work on public holidays for emergency reasons—and in that job people without children normally worked holidays like Christmas so that those with families could spend the time with their families—and I refused to work on Christmas Day because my new agreement, which I needed to sign in order to get the job, said that I would not be paid penalty rates for Christmas Day and I therefore was not willing to make the sacrifice, would that be reasonable grounds?

Senator ABETZ (Tasmania—Special Minister of State) (5.48 pm)—As I indicated, the reasonableness of refusal is set out. We can go through a whole host of individual potential scenarios, but I will not pretend to act as the dispute resolution processor under the new legislation. Each scenario is going to contain its different peculiarities and individual facts and circumstances that will determine whether a particular scenario fits in to what the agreement might be between the employer and employee.

Senator SIEWERT (Western Australia) (5.48 pm)—In this Santa clause, shall we call it, my understanding is that the only recourse for an employee to determine what is reasonable or unreasonable is costly litigation—and the onus is on the employee to prove that the employer was being unreasonable. What dispute resolution mechanism is there besides litigation?

Senator ABETZ (Tasmania—Special Minister of State) (5.49 pm)—There is the dispute resolution process in the act, which is an informal process which hopefully would resolve the matter. If that were not the case, we have individuals who are going to be called workplace inspectors who will be able to potentially take the case for and on behalf of the employee.

Senator MURRAY (Western Australia) (5.49 pm)—Will they be paid penalty rates to do the job on Christmas Day?

Senator Wong—He is not answering that. He doesn’t want to answer that.

Senator Abetz—No; Senator Campbell is on his feet.

Senator GEORGE CAMPBELL (New South Wales) (5.50 pm)—What role would the workplace inspectors have in resolving the disputes? Would it be simply to represent the worker before a court?

Senator Abetz—Yes.
Senator GEORGE CAMPBELL—And
that would be paid for by—

Senator Abetz—The taxpayer.

Senator GEORGE CAMPBELL—What
is going to be the average time it takes one of
these inspectors to get a matter from where it
is a dispute situation into a magistrate’s court
for determination, particularly if it is over the
Christmas-New Year period, when the courts
are in fact closed?

The TEMPORARY CHAIRMAN
(Senator Ferguson)—Senator Campbell, I
cannot ask the minister to stand until you sit
down.

Senator ABETZ (Tasmania—Special
Minister of State) (5.51 pm)—There is the
dispute resolution process. I am not sure how
quickly the Australian industrial commission
would act if something blew up on Christmas
Day, but I would have thought that a sensible
approach to all these matters would be taken
by not only the Australian industrial com-
mission now but also the courts determining
the urgency of the matter.

Senator GEORGE CAMPBELL (New
South Wales) (5.51 pm)—As I understand it,
in a discussion at estimates, Mr Cully indi-
cated that it would take approximately a
fortnight to get these matters before the Ind-
dustrial Relations Commission using the
model dispute settling procedure. That is an
inordinately long period of time taken to get
someone to start to look at a dispute, which
may be a relatively simple issue, in order to
resolve it.

Senator ABETZ (Tasmania—Special
Minister of State) (5.52 pm)—It really de-
pends on each individual circumstance, as I
thought. You might potentially be able to get
an interlocutory application to seek specific
relief. I am not sure in fact how often the
Australian Industrial Relations Commission
has sat on a Christmas Day or Boxing Day if
there is an industrial dispute. I am not sure
whether somebody who is unfairly dismissed
under the current regime would have that
matter determined in the space of 14 days.
As Special Minister of State, I know about
various unfair dismissal cases, and unfortu-
nately from time to time those situations
arise in various electorate offices around the
country. That is on both sides of politics, so I
am not trying to make any point here other
than to point out the fact that by the time
they are resolved literally months have
passed. So let us not have the suggestion that
just because the matter will not be dealt with
in a fortnight under this legislation that it is
somehow inferior to the current system, in
which it takes months.

Senator GEORGE CAMPBELL (New
South Wales) (5.53 pm)—This is an impor-
tant issue, and it was raised with you during
estimates. Minister Andrews’ office said that
he would take it on board. There is a glaring
anomaly in this system. This set of circum-
stances will not only arise in major disputes.
The issue arose over flexibility of hours and
how you resolve a dispute between an em-
ployee and an employer over the amount of
hours the employer might want the employee
to work in the following week if he has been
working at the average. It may be nothing
more than a disagreement. It seems to me
that the structures that have been put in place
to resolve these sorts of disputes are inordi-
nately complicated and may well be unnec-
essarily expensive. There ought to be a
mechanism in the system somewhere or
other by which these can quickly be dealt
with.

Senator STERLE (Western Australia)
(5.55 pm)—I wish to take us back to the
Christmas Day clause. I apologise, but I was
busy chasing through the paperwork trying
to find it. To get back to the question of the
rates of pay for Christmas that are currently
being enjoyed by employees, can you ex-
plain to me what would happen if there was a
transmission of business and there were transitional employees? I read quite clearly that the employer does not have to pay according to the previous agreement once the transitional period ends. If we take the example of the wharf, an employer down there may have a ship coming in. Where previously the waterside workers would have enjoyed penalty rates for two or three days while unloading and reloading the ship over that period, what would happen if there was a new group of employees under a different agreement which did not give them the same pay as previous employees?

Senator ABETZ (Tasmania—Special Minister of State) (5.56 pm)—There would be—and I stand to be corrected—as I understand it the one-year transitional period during which the current provisions would continue. Thereafter, the provisions of the new agreement—whatever they may be—would come into play.

Senator STERLE (Western Australia) (5.56 pm)—I understand that, but in that first 12 months we could possibly have employees on two wage systems—there might be a two-tiered system. There may be employees who receive penalty payments, and there may be a different group of employees on a new agreement who could be working for far less than what is in the other agreement.

Senator ABETZ (Tasmania—Special Minister of State) (5.56 pm)—Yes. That is absolutely correct. I point out that that in fact applies in this chamber as a result of the views of your former leader, Mr Latham. In relation to remuneration of parliamentarians, we have a two-tiered system. People who were engaged previously keep that which they have, and those who came in after the last election no longer get as generous superannuation entitlements. I indicate that that is something that Mr Latham and the Labor Party voted for, believing that that was reasonable and proper. That is this workplace, albeit that it is somewhat and substantially different to other workplaces—and I fully accept that. It is not uncommon that when you have transitions and changes you grandfather certain employees when a new regime comes into play. It is a relatively common practice in all walks of life, and it is one that was given the big tick, as I understand it, by Mr Latham and the Labor Party.

Senator STERLE (Western Australia) (5.58 pm)—Sorry, Minister, but I thought that Mr Howard was the Prime Minister and your lot were in government, but if we can make changes and decisions from this side of the chamber, we welcome the challenge—let us tear up the bill and start again.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Was that a question, Senator Sterle?

Senator STERLE—That was a statement in response to the minister’s answer to my question.

Senator MURRAY (Western Australia) (5.58 pm)—If the chamber is happy, I want to move to another topic. I want to return to general questions on the principle object of the act as it is in the present act. I return to it because the objects set the framework for the entire act. The lead in to item 3(e) of the present act, which is the principle object of that act and which I referred to earlier—says:

The principal object of this Act is to provide a framework for cooperative industrial relations which promotes the economic prosperity and welfare of the people of Australia by:

And then 3(e) says:

... providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement making and ensures that they abide by awards and agreements applying to them;

If ever I have read a summary of what a workplace relations act should do, it is that,
and yet that section was removed from the act. Could you explain to me why the government would remove something which said that the act should provide ‘a framework of rights and responsibilities for employers and employees, and their organisations’, should ‘support fair and effective agreement making’ and ‘ensure that they abide by awards and agreements applying to them’?

Senator ABETZ (Tasmania—Special Minister of State) (6.00 pm)—As indicated in the previous discussions—I think it was before lunch—the issue of fairness and balance are implicit in the object, balancing the needs for a safety net with a need to look after the unemployed, balancing the right to take industrial action with the need to protect the public interest, balancing work and family, and respecting diversity—all those sorts of things. We can talk about some of the words that are used or not used, but the removal of a particular word or words does not of itself mean that the opposite becomes true. In a piece of legislation which talks about minimum standards and safety nets, why do you want a minimum standard? Why do you want a safety net? I would have thought because you have got some sense of fairness about you and that there ought to be a limit below which you cannot contract. That is a sense of fairness, I think, and the Australian sense of fair play. I would have thought that the guarantee of a safety net and of minimum standards indicates that this bill is about being fair to Australian workers.

Why isn’t there in the principal object something that supports fair, good and effective agreements? So we could use the word ‘good’ as well. Why isn’t that in there? Don’t you want good agreements? Of course we want good agreements. We want fair agreements, we want decent agreements and all those sorts of things, but you do not need to apply all the adjectives just to make them such. It is the actual framework that is important and when you start talking safety nets and minimum standards it is quite clear and implicit that that is what you are seeking to achieve.

Senator MURRAY (Western Australia) (6.03 pm)—I have raised that question deliberately because this is not just any old section in the act; this is taking out one of 12 existing objects within the principal object of the act section. I talk about it as symbolic for this reason. In my mind, when I recall the remarks of members and senators from both houses and of ministers including the Prime Minister, I can pretty well categorise them into three categories. A large number do not know what they are talking about because it is not their field of understanding and study and they are basically out of their depth. I do not condemn them for that; I do not expect everybody to be an expert on everything and that is no slight on them at all. Then there is a group who regard the new bill as radical and a complete change from the past, and say so. I respect that because I think that in many respects that is true. Then there is a group which talks about the new bill as being continuous with the past. That is where I have the greatest difficulty with these kinds of different views as to what the bill means.

When you remove something which says that the principal object shall be to provide a ‘framework of rights and responsibilities for employers and employees, and their organisations’, that is highly symbolic to me. When you remove a section which says it ‘supports fair and effective agreement making’—and note the word ‘effective’—that is also highly symbolic to me. When you remove a part of that section which says it ‘ensures that they abide by awards and agreements applying to them’, which is the enforcement issue, that to me is also highly symbolic. I cannot understand why you have taken it out, unless it is the case that you are undermining the rights and responsibilities that people formerly en-
joyed or that you are supporting unfair and perhaps ineffective agreement making or that you do not care if people abide by awards and agreements.

This is not a minor issue to me. I used the phrase earlier that we should not descend into a Rawlsian kind of debate about words which have values attached to them. These are a substantive part of the original objects of the act, which have been thoroughly supported by the coalition, as far as I can understand, since they were passed in late 1996, and yet they are being withdrawn. This goes to the heart of a concern as to what you are taking out of the act. If you have replaced that elsewhere in different parts of the new bill, perhaps that is a partial answer, but as I understand it you have withdrawn it completely.

Senator ABETZ (Tasmania—Special Minister of State) (6.07 pm)—We can go through this and say, ‘Why has this been deleted?’ but I indicate to the honourable senator that, for example—and I could give a dramatic speech on this—the term ‘harmonious workplace’ appears in 3(h) of the bill. Clause 3 says:

The principal object of this Act—that is, this new bill—is to provide a framework for—et cetera, by—

(h) supporting harmonious and productive workplace relations...

In the current legislation the word ‘harmonious’ does not exist. Therefore, it stands to reason that, using Senator Murray’s logic, the previous bill never sought to create harmonious workplace environments. Harmony in the workplace was never to be considered as an objective. Does he believe that? Of course he does not. Nobody does. This time around, in redrafting, we are using the term ‘harmonious’. It stands to reason that to have a harmonious workplace you have to be fair. We can have these plays on various words—you have taken out the word ‘fair’; that means you want an unfair workplace. The previous legislation did not have harmonious in it therefore, by that logic, all the previous workplace relations legislation for the last 104 years was never designed to create a harmonious workplace. I do not believe that and I do not think anybody in this place does, either. We have the word ‘harmonious’ now and we had ‘fair’ beforehand. At the end of the day we could all agree that if you want harmony to break out, as we do, you have to be fair to both sides. Without fairness to both sides you will not have harmony. It is a bit of a semantic play on words but I do not think much actually revolves on it.

In relation to the overarching economic principles of fairness, it should be remembered that the structure of people’s income support these days is substantially different from that which existed during the days of Australia becoming a nation in the early 1900s. We now have a system where we believe that fairness is best addressed through the tax transfer system. This allows the focus to be on family income, and the wages system concentrates on individual income. There are such things paid out as the family tax benefits and the $600, which Labor still believes is not real money but when the mums and dads on low incomes receive it they know exactly what that $600 is all about and that it does buy goods and services and help them make ends meet.

We live in a completely different environment than we did in the early 1900s. When and if we as the government believe there are low-paid workers that are not necessarily getting the money they need because of the number of children et cetera, we seek to adjust that by an appropriate family tax benefit which helps to skew these things. In the past I think wages were set on the basis—and somebody will undoubtedly correct
me if I am wrong on this—of dad going out to work, mum staying at home and there being three kids in the household. Senator Murray is nodding in agreement—or is he going to sleep?

Senator Murray—That was the basis of the Harvester decision.

Senator ABETZ—Yes, that was the basis of the Harvester decision in 1907. We have moved a long way from that to tax transfers, which deliver income equity to families in a more sensible way and not on the basis that there will be no social security or tax transfers and, therefore, if you have six children in the family you will get the pay required for a man who has a missus at home with three kids. Our family tax benefit is a lot more flexible for the totality of the family unit and therefore is, in fact, fairer.

Senator FERGUSON (South Australia) (6.12 pm)—Senator Murray, I want to contribute only for a couple of minutes because I know there are lots of questions that you want to ask. Having sat in the chair while the debate about working on Christmas Day took place, I am reminded that for 25 years I worked on Christmas Day for no extra pay, together with my brother. We were quite happy to do that. If we did not work on Christmas Day we would have had 700 awfully hungry pigs by the end of the day. We certainly worked for no extra pay. As a matter of fact, there were times, when commodity prices were down, when there was no pay at all. As you know, in the cyclical arrangement that exists with commodity prices sometimes you make nothing and sometimes you make quite a bit more.

I want to talk about the only employee we employed full time. I hope the minister is listening; there will be a question for him at the end of this. One New Year’s Day we had been invited to a function 100 miles away. My brother and I were determining whether we were going to come home very late that night or very early the next morning in order to feed the pigs, which had to be done every day of the year—365. Our working man said to us, ‘I’ll do them for you on New Year’s Day.’ We said: ‘No, you do not have to do that. It is New Year’s Day; it is a public holiday. You are entitled to have that day off.’ He said, ‘But I want to work on New Year’s Day because I want the next day off, which is not a public holiday.’ He happened to be a very keen lawn bowler and at that time of the year there were lawn bowls tournaments all around the place.

My question to the minister is this: in making that agreement with my employee under the awards as they existed then, was I breaking the law in not paying him any extra on New Year’s Day because he wanted the next day off? Under the proposed new laws, would he be able to trade that day and work on the public holiday because he did not want to work on the next day, which was not a public holiday? I need some guidance from the minister. I am not sure whether I was breaking the law in not paying him extra pay on the day he did work. He wanted to work—we did not actually want him to, but he said, ‘I want to work that day.’ Under the current proposals, is this the sort of trade-off that he would be able to make, whether he had a written agreement or not?

Senator ABETZ (Tasmania—Special Minister of State) (6.15 pm)—For the protection of the honourable senator, I will treat the matters raised as hypothetical as opposed to confessional. I am beyond giving legal advice these days—I am on a senatorial stipend—but, nevertheless, I will give it my best shot on the basis that he accepts that there is no solicitor-client relationship in relation to the answer that I am seeking to provide.
My understanding is that the answer to the hypothetical situation that the senator refers to is that it would be in breach of the award. I know of other hypothetical situations where, in a certain legal practice, if there was work to be done, a particular secretary may well have said: ‘Work needs to be done. I’ll work till 6.30 to get that document typed up,’ and then the next day, when work was a bit quieter, she may have tapped the boss on the shoulder and asked, ‘Can I go shopping with Mum after lunch?’ and agreement was made accordingly. Can I tell you, in both those circumstances, agreed to by the employer and the employee for their mutual satisfaction and agreement, they were technically in breach of the law.

I remember working as a casual farmhand and wanting to work on a particular public holiday, desperate for every single dollar I could earn to get myself through the next year of university—this is not a hypothetical, nor is it a confessional. The farmer quite rightly said, ‘I’m sorry—if you work on this day I’ve got to pay you double time.’ I said: ‘I don’t want double time. There’s work to be done and I need the money.’ The employer said, ‘I would be breaking the law if I did.’ As a result, the farmer did not have the work done, I did not get money and, as a result, for that particular university year, I was however many dollars worse off. To whose benefit was that? Was it to the benefit of the farmer who needed the work done? No. Was it to the benefit of me as a student, wanting and needing money desperately? No. But somebody from on high in the Australian Industrial Relations Commission determined it would be thus, even if it made no sense for the farmer or for the worker and even if it was of no benefit to either the farmer or the worker. That is why the genuine real-life experiences for many of us on this side of the chamber make us believe, especially for the benefit of small businesses like farms, that there should be the sort of flexibility in the system that allows good and sensible people to make arrangements that suit their requirements.

Senator MURRAY (Western Australia) (6.18 pm)—I move Democrat amendment (1) on sheet 4765 revised, which has been circulated:

(1) Schedule 1, item 1, page 4 (line 7) to page 5 (line 28), omit section 3, substitute:

3 Principal object
The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:

(a) encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market; and

(b) establishing and maintaining a simplified national system of workplace relations; and

(c) providing an effective and fair safety net of minimum wages and conditions for those whose employment is regulated by this Act; and

(d) providing an effective and fair safety net for agreement-making while ensuring that the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise level; and

(e) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances; and

(f) providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that
they abide by awards and agreements applying to them; and

(g) ensuring compliance with minimum standards, industrial instruments and bargaining processes by providing effective means for the investigation and enforcement of:

(i) employee entitlements; and

(ii) the rights and obligations of employers and employees, and their organisations; and

(h) providing employees and employers with mechanisms to assist them to resolve disputes between them by conciliation and, where appropriate and within specified limits, by arbitration; and

(i) balancing the right to take industrial action for the purposes of collective bargaining at the workplace level with the need to protect the public interest; and

(j) ensuring freedom of association, including the rights of employees and employers to join an organisation or association of their choice, or not to join an organisation or association; and

(k) protecting the competitive position of young people in the labour market, promoting youth employment, youth skills and community standards and assisting in reducing youth unemployment; and

(l) assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers; and

(m) respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and

(n) assisting in giving effect to Australia’s international obligations in relation to labour standards.

The amendment substitutes proposed section 3 in the bill and replaces it with many of the same words, but I will draw your attention to some changes.

We believe, as I am sure the government, the opposition and the crossbenchers believe, that you should attempt to get the objectives right, because if you do that you set the framework for the overall legislation in a way that matters. We believe that the changes we have made allow for the bill to be fairer than it would otherwise be. The government argues that the bill is fair. With our amendments, the objectives put more fairness into the Workplace Relations Act.

Our amendment replaces the words ‘economically sustainable’ with the words ‘effective and fair’. Throughout our amendments, we will concentrate on value words which indicate that, to us, workplace relations law is as much about society as it is about the economy, and that is why we use the word ‘fair’; the word ‘effective’ obviously relates to the economic imperatives. We have put back paragraph 3(e), which I questioned the minister on earlier, and that refers to:

... providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them ...

We have introduced a new objective to provide employees and employers with mechanisms to assist them to resolve disputes between them by conciliation and, where appropriate and within specified limits, by arbitration. In that objective, of course, we have referred to the long history dictated by our constitutional imperatives and by the way in
which industrial relations has been developed.

We have taken out the reference in item 3(i) of the bill to illegitimate and unprotected industrial action because we think it is redundant. The provision states:

... balancing the right to take industrial action for the purposes of collective bargaining at the workplace level with the need to protect the public interest ...

Later on in the bill, the issues of illegitimate and unprotected industrial action are picked up on. Frankly, that is the least important of our changes, and if you want to put that one back it would not upset me enormously. What I do want to promote strongly are the two additions we have made.

We argue that unless an economy is genuinely in dire straits, which ours is not, and needs radical surgery, which ours does not, economic reform is not more important than social cohesion. We argue that this bill changes the values that underpin the social contract, which lies at the base of our workplace relations and industrial relations arguments. We argue that employment, wages and working conditions directly affect the standard of living and quality of life of individuals and their families. While it is important that labour market arrangements foster the efficient use of labour and promote participation in the work force, they also need to recognise that labour is a distinctive input and that wider social objectives and relationships are involved, including the relationships between work, leisure and family, providing safe workplaces and the role of workers in society at large.

These objects are not necessarily completely the same as those we would have designed, but we have tried to improve the coalition objects and put back values which matter to us, which we think matter to the Australian people and which we think are missing or understated in the proposal presently before us. So we start essentially with a values statement in our proposed amendment.

Senator WONG (South Australia) (6.23 pm)—Very briefly, I indicate on behalf of the Labor Party that we will be supporting Senator Murray’s amendment. If the government vote against this, they are effectively voting against a reference in the objectives of this legislation to fair wages.

Senator ABETZ (Tasmania—Special Minister of State) (6.24 pm)—I was going to allow this to sneak through but, once again, the government does not need to be verballed by Senator Wong in her suggesting that, if we vote a certain way, it will mean that we believe in something else. We oppose the proposed amendment. The government’s intention is to foster closer cooperative workplace relations between employers and employees. We believe that this will achieve two outcomes: a more flexible, simpler and fairer system of workplace relations and continued national economic prosperity and global competitiveness.

These two outcomes are not mutually exclusive. The government’s record since the introduction of the Workplace Relations Act 1996 demonstrates that economic prosperity, together with workplace relations reform, has significantly advanced the welfare of the Australian people. We oppose provisions to amend proposed section 3 that would entrench conciliation and arbitration as the only mechanisms by which to solve workplace disputes.

In line with the government’s overarching intention to promote a simpler, fairer and more flexible workplace relations system, it follows that employers and employees should have the choice of a wide range of mechanisms by which to solve workplace disputes, should they arise. In relation to the industrial action provision of the proposed
‘Principal object’ section 3(i), the government is cognisant of the need to balance lawful industrial action against instances of illegitimate and unprotected action, which necessitates the inclusion of remedies to correct such breaches.

Question put:

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

The committee divided. [6.30 pm]

(The Temporary Chairman—Senator PR Lightfoot)

Ayes………… 31
Noes………… 34
Majority……… 3

AYES
Allison, L.F.
Bishop, T.M.
Campbell, G. *
Crossin, P.M.
Faulkner, J.P.
Forshaw, M.G.
Kirk, L.
Lundy, K.A.
McEwen, A.
Moore, C.
Nettle, K.
Polley, H.
Siewert, R.
Sterle, G.
Webber, R.
Wortley, D.

Bartlett, A.J.J.
Brown, B.J.
Conroy, S.M.
Evans, C.V.
Fielding, S.
Hurley, A.
Ludwig, J.W.
Marshall, G.
McLucas, J.E.
Murray, A.J.M.
O’Brien, K.W.K.
Sherry, N.J.
Stephens, U.
Stott Despoja, N.
Wong, P.

NOES
Adams, J.
Boswell, R.L.D.
Campbell, I.G.
Colbeck, R.
Eggleston, A.
Ferguson, A.B.
Fifield, M.P.
Hill, R.M.
Johnston, D.
Kemp, C.R.
Macdonald, I.
Mason, B.J.
Minchin, N.H.

Barnett, G.
Calvert, P.H.
Chapman, H.G.P.
Coonan, H.L.
Ellison, C.M.
Fierravanti-Wells, C.
Heffernan, W.
Humphries, G.
Joyce, B.
Lightfoot, P.R.
Macdonald, J.A.L.
McGauran, J.J.J. *
Parry, S.

PATTERNS

Carr, K.J.
Hogg, J.J.
Hutchins, S.P.
Milne, C.
Ray, R.F.

Watson, J.O.W.
Nash, F.
Abetz, E.
Brandis, G.H.
Ferris, J.M.

* denotes teller

Question negatived.

Sitting suspended from 6.33 pm to 7.30 pm

Senator WONG (South Australia) (7.30 pm)—I am not sure whether Senator Abetz has moved government amendment (5) on sheet PN271 yet, but I did have two questions that I wanted to ask. The first is on the issue of the greenfields agreement. I think this was the subject of an amendment from Senator Murray relating to proposed section 96D, although I could be wrong. Can the minister confirm that, under proposed section 96D, which concerns so-called greenfields agreements, the employer actually just makes an agreement with itself? Wouldn’t it be better to call it a provision about ‘employer letter to self’ or some other phrase, rather than ‘agreement’, because there is in fact no other party to the agreement? Can the minister confirm that it is in fact not an agreement at all but simply a unilateral determination of the employment conditions of the prospective employees?

Senator ABETZ (Tasmania—Special Minister of State) (7.31 pm)—We can call things what we like to, but basically, as the senator points out, yes, they would be the terms and conditions under which people would be employed. I move government amendment (5) on sheet PN271:

Schedule 1, item 1, page 4 (lines 20 and 21), omit “providing a foundation of key minimum stan-
...standards for agreement-making while ensuring that’, substitute “ensuring that, as far as possible,”.

**Senator Wong** (South Australia) (7.32 pm)—Senator Murray has just indicated to me that one of the appropriate phrases we could use for the so-called greenfields agreement is ‘industrial onanism’. That is very impressive, Senator Murray! It would probably be more correct.

**Senator Abetz**—Is that Welsh?

**Senator Wong**—No, I think it is English. I go to the amendment just moved by Senator Abetz. Why has the government determined that it needed to include the phrase ‘ensuring that, as far as possible’?

**Senator Abetz** (Tasmania—Special Minister of State) (7.33 pm)—It reflects the language in the current object. The effect of the amendment is to clearly enshrine the primacy of agreement making between employers and employees at the workplace or enterprise level. It seeks to mirror existing section 3(b) of the Workplace Relations Act 1996, which provides a stand-alone paragraph relating to the primary responsibility for employers and employees, as far as possible, to determine agreement making at the workplace or enterprise level. The reference in proposed section 3(d) to key minimum standards for agreement making which this amendment would remove appears in similar forms in other parts of the objects, specifically proposed sections 3(f) and 3(g).

**Senator Wong** (South Australia) (7.34 pm)—I indicate that the Labor Party opposes this amendment.

**Senator Murray** (Western Australia) (7.34 pm)—I think this is quite an important point and it does follow on from earlier remarks. The legislation is set by the objects. For the government to withdraw an original part of the objects is passing strange, particularly given the very strong emphasis the minister put in his earlier remarks—and he might not have used these exact words, but I will use the words in the present clause—on the importance of the words ‘providing a foundation of key minimum standards’. That foundation of key minimum standards, I thought, was one of the aspects of the new bill that the government was hanging its hat on and would appropriately be in the objects. So to remove it has, once again, great symbolism. Perhaps the minister can explain to us, because I do not think this is an exercise in semantics, why that is so.

**Senator Abetz** (Tasmania—Special Minister of State) (7.35 pm)—I will have another shot at it. The effect of the amendment is to clarify the principal objects of the legislation—to reinforce the role of enterprise level bargaining in which the parties themselves should determine employment matters between themselves.

**Senator Murray** (Western Australia) (7.35 pm)—I am not persuaded by the argument. The Democrats will oppose the amendment.

Question agreed to.

**Senator Abetz** (Tasmania—Special Minister of State) (7.36 pm)—There are a number of amendments appearing at item 3 on sheet PN271 and I dare say it would be convenient to move all of those matters together by leave.

**Senator Wong**—Leave is not granted.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Can I clarify things, because there may be some confusion. The amendments that we are considering are government amendments (6) to (8), (10) to (21), (117), (136), (225), (241) and (273), all of which appear on sheet PN271, but leave has been refused to move them together. Is that correct, Senator Wong?

**Senator Wong** (South Australia) (7.37 pm)—I will clarify our position, and perhaps
we can facilitate this with some cooperation from the other side. We have a possible issue with amendment (8), which as yet I have not been able to get advice about in the time frame. As senators will recall, these are the nearly 100 pages of amendments that we got just before midday today.

Senator Abetz—Do you want to go to the Family First amendments first?

Senator WONG—The minister is suggesting that we go to the Family First amendments first. I ask that we possibly leave amendment (8) until a later time and move the others together.

Senator MURRAY (Western Australia) (7.37 pm)—Mr Temporary Chairman Lightfoot, you may not be aware of the earlier debate. One of the difficulties that we have—I cannot speak for the others, but I assume it is the same difficulty that they have—is that the government amendments were circulated not long ago and the explanatory memorandum to those amendments arrived only a short while ago. Consequently, it is not easy to exercise memory because there is no memory; we have not had time to read them all. If the minister could move these amendments in groupings, and subject to the view of the shadow minister, that would make it easier to read them and to refer to them as the minister spoke. For example, if amendments (6) and (7) were moved together, if amendment (8) were moved separately, if amendments (10) to (21) were moved together and if amendments (117), (136), (225), (241) and (273) were all moved separately, that would make it easier for me to follow, since I have not had time to get right through the explanatory memorandum.

Senator ABETZ (Tasmania—Special Minister of State) (7.39 pm)—I will just speak on the procedural point at this stage. I suggest that, if honourable senators do want more time to consider this tranche, I would be happy for the Family First amendments to be considered and then those opposite—

Senator Murray interjecting—

Senator ABETZ—All right. But, rather than moving each one separately, which would potentially be quite time consuming, I would not be opposed to, if you like, moving them en bloc, other than amendment (8). I would simply formally move the amendments—

The TEMPORARY CHAIRMAN—You would need to seek leave to do so.

Senator ABETZ—Yes. Then rather than advancing the reasons for each and every amendment, I would wait for questions from those opposite in relation to those proposed amendments so that we can discuss those issues which are exercising the minds of honourable senators, as opposed to my talking about an amendment in which potentially nobody has a real interest. Just to try to assist the conduct at the committee stage, I float that as a way forward. I am, of course, willing to move each one individually but that would mean a lot of time on my feet.

Senator MURRAY (Western Australia) (7.40 pm)—That is not what I suggested. I am more than happy for amendments (10) to (21) to be moved as a block, for instance, and it is quite possible to move the last five amendments as a block. It is just to make it easier to follow it through. As I am glancing at them now, I appreciate they are all on the one subject. My suggestion is this: the minister moves amendments (6) and (7) together, amendment (8) separately, amendments (10) to (21) together and amendments (117), (136), (225), (241) and (273)—five amendments—together. So there are four sets of amendments.

Senator WONG (South Australia) (7.41 pm)—I indicate that we will give leave to the minister to undertake this in the terms that
Senator Murray has set out, other than amendment (8)—

The TEMPORARY CHAIRMAN—He left amendment (8) out, as I understand it.

Senator WONG—We can defer that to a subsequent time.

Senator Abetz interjecting—

Senator WONG—No. I am asking if we could defer amendment (8) for later consideration because I do not have advice on that particular provision yet. I am happy to give leave for the rest of them to be moved in the tranches according to Senator Murray’s contribution, on the basis that the government agrees to defer amendment (8).

The TEMPORARY CHAIRMAN—Do you concur with that, Senator Murray?

Senator Murray—Yes.

The TEMPORARY CHAIRMAN—Senator Abetz, you will need to seek leave to move the government amendments, with the exception of amendment (8).

Senator ABETZ (Tasmania—Special Minister of State) (7.42 pm)—by leave—I move government amendments (6) and (7) on sheet PN271:

(6) Schedule 1, item 2, page 7 (line 24), omit “activities”, substitute “an activity”.

(7) Schedule 1, item 2, page 18 (line 18), omit “Part XA”, substitute “Parts VI and XA, and in regulations made for the purposes of section 101D”.

Question agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (7.42 pm)—by leave—I move government amendments (10) to (21):

(10) Schedule 1, item 6, page 23 (after line 8), at the end of subsection 7AA(1), add:

Note 3: Part VC (Industrial action) and related provisions of this Act may extend in relation to Australia’s exclusive economic zone, and in relation to Australia’s continental shelf, as prescribed by the regulations. See section 106C.

(11) Schedule 1, item 8, page 24 (line 7), omit “86.”, substitute “86;”.

(12) Schedule 1, item 8, page 24 (after line 7), at the end of subsection 7B(2), add:

(d) section 106C.

(13) Schedule 1, item 8, page 24 (line 10), omit “section 86”, substitute “sections 86 and 106C”.

(14) Schedule 1, item 9, page 24 (lines 29 and 30), omit “for a purpose other than a purpose connected with occupational health and safety”.

(15) Schedule 1, item 9, page 25 (line 11), at the end of paragraph 7C(3)(c), add “(including entry of a representative of a trade union to premises for a purpose connected with occupational health and safety)”.

(16) Schedule 1, item 9, page 25 (after line 11), after paragraph 7C(3)(c), insert:

(4A) To avoid doubt, subsection (4) has effect even if the law is covered by subsection (2) (so that subsection (1) does not apply to the law). This subsection does not limit subsection (4).

(17) Schedule 1, item 9, page 25 (lines 19 and 20), omit paragraph 7C(3)(j).

(18) Schedule 1, item 9, page 25 (line 32), after “with”, insert “such entry for a purpose connected with”.

(19) Schedule 1, item 9, page 26 (after line 4), after subsection 7C(4), insert:

(20) Schedule 1, item 9, page 26 (line 16), after “matter”, insert “, except a law that is prescribed by the regulations as a law to which awards and workplace agreements are not subject”.

(21) Schedule 1, item 9, page 26 (line 19), omit paragraph 7D(2)(c), substitute:
(c) training arrangements;

Senator MURRAY (Western Australia) (7.43 pm)—I suggest that the minister, in moving these amendments, might elaborate slightly. The ones that catch my eye refer to state and territory laws about outworkers, training and occupational health and safety.

Senator Abetz—Which amendments?

Senator MURRAY—Amendments (14) and (15), which relate to occupational health and safety; amendment (16), which is about outworkers; amendment (17), which is about training; and amendment (18), which is also about occupational health and safety. Could you briefly indicate what the import of these are?

Senator ABETZ (Tasmania—Special Minister of State) (7.43 pm)—If honourable senators are agreeable, it would be easier if I dealt with amendments (14), (15) and (18), then amendment (16) and then the remaining amendment, amendment (17), which is tied up with amendments (20) and (21) as well.

The government is moving amendments (14), (15) and (18), the effect of which would be that, generally, state right of entry laws would be excluded by the bill. However, state laws that provide for right of entry and state laws that provide for right of entry in the context of occupational health and safety or outworkers are to be preserved, subject to conditions in the case of occupational health and safety. The purpose of these amendments is to make that clear. Government amendment (16) is consistent with the Senate committee’s recommendations. This amendment would make it clear that state laws protecting outworkers are not excluded by the operation of this bill. This includes provisions that allow right of entry for compliance purposes.

Government amendment (17) is the only one that I have not dealt with. The explanatory notes that I have for it are merged in with those for amendments (20) and (21), but it is only one paragraph. As to the effect of those three amendments, (17), (20) and (21), consistent with the Senate committee’s recommendations, these amendments ensure that federal awards and agreements will interact appropriately with state laws about traineeships and apprenticeships. It is not the government’s intention to exclude the operation of state laws establishing training and apprenticeship frameworks. However, it is the intention that federal awards would override state laws dealing with matters that are directly inconsistent with matters dealt with in the federal award. These amendments combined will ensure that this is the effect. It will allow the regulations to specify particular state laws that would otherwise be capable of operating in spite of an inconsistent federal agreement or award to be overridden by the agreement or award to the extent of any inconsistency.

Senator WONG (South Australia) (7.46 pm)—I am grateful to Senator Murray for alerting us to this aspect of these provisions. In relation to amendment (16), which is, I think, in the tranche that we are discussing, as I understood the minister’s contribution, that is intended to preserve laws relating to outworkers that exist in the states. Does that apply to all legislation—that is, non-industrial legislation or legislation that extends beyond simply employment laws—in relation to outworkers?

Senator ABETZ (Tasmania—Special Minister of State) (7.47 pm)—If the Senate can just bear with us, there is another provision that deals specifically with outworkers.

Senator Wong—I asked about amendment (16).

Senator ABETZ—The answer is: all state laws in relation to outworkers.

Senator MARSHALL (Victoria) (7.48 pm)—A lot of work has been done in respect
to outworker amendments by a number of senators from all parties over the last week, as a consequence of the Senate inquiry. Minister, I will just quote Mr Pratt, a DEWR witness at the Senate inquiry. He said:

Our intention is to ensure that the government’s policy that the unique protections which currently exist for outworkers continue under the new system.

I assume that that policy is still in place. As a consequence of that, as I said, a lot of work was done. Legal advice was sought. A lot of work was done by parliamentary counsel to deal with amendments which became more complicated as more work was done on them. They eventually got to a stage last week where they were generally circulated to interested senators. I understand that government senators passed them on to the minister as well—and, hopefully, to the department.

The amendments that the government has proposed are all over the place in your proposal. We are dealing with one small part of the outworkers legislation. You may have to bear with me. What I am trying to do, and will seek to do through the course of the committee stage, is to ensure the continuation of the government’s policy that the unique protections that currently exist for outworkers will continue under the new system but that the protections will continue in their fullest form and will not be watered down at all. I do have some concerns about the government’s amendments, but I cannot say, Minister, that I am quite sure I have an exact concern about this particular clause. I do not know whether this goes to the issue of protected award conditions. Is that dealt with in the amendment further down?

Senator Abetz—Further down.

Senator MARSHALL—All right. Then I will leave it. Could you comment on whether you agree that the policy position is as I have stated?

The TEMPORARY CHAIRMAN (Senator Lightfoot)—Are you talking to the chair?

Senator MARSHALL—I was talking to the minister.

The TEMPORARY CHAIRMAN—Through the chair, of course.

Senator MARSHALL—Yes. I am happy if you want to give me that commitment, Chairman, but generally in the committee stage we actually do ask questions of the minister and ask him directly to answer. That is what I was doing.

The TEMPORARY CHAIRMAN—I have no objection to that.

Senator ABETZ (Tasmania—Special Minister of State) (7.51 pm)—As I understand it, amendment (16) will be added to the non-excluded matters. A non-excluded matter is as follows:

... matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers) ...

So they are matters related to outworkers generally. When you have terminology such as ‘including entry’ that does not limit the generality of the proceeding. It just confirms that the particular, which is included in the parentheses, is definitely in there. That does not derogate or detract from the general, which is matters relating to outworkers.

I agree with Senator Marshall that many senators took a particular interest in ensuring that outworkers were appropriately looked after. It was very appropriate and generous of him to acknowledge that nobody in this chamber had a mortgage on that issue. I acknowledge the work that the Labor Party have done on this; from my side I want to acknowledge the work of the chair of the committee, Senator Troeth, for her work, as
well as other coalition colleagues. But of course all sides of the Senate saw the need for that.

The amendment will ensure that state legislation prescribing protection for outworkers will not be overridden by the 'covering the field' provisions in the bill. That includes provisions in state legislation that relate to entry of premises and inspection of documents relating to outworkers by union officials; provision of certain award conditions for outworkers such as provisions identifying the persons and entities to whom work can be given out, which includes not only outworkers but also other companies or entities in the production chain; the obligation to maintain work records and the matters that must be set out in those work records; the process for the TCFUA, which is the Textile Clothing and Footwear Union of Australia, to inspect and copy the work records after the provision of two working days notice; the preparation of lists of those to whom work has been given out; the filing of those lists with the industrial registrar at the AIRC and the relevant state branch of the TCFUA; the manner in which payments may be claimed; the terms of engagement of outworkers, such as hours of work, stand-down work on weekends and public holidays and annual leave; and registration requirements. The company or entity must be registered before it gives out any work under these provisions. They will remain allowable award matters to ensure that a workplace agreement made with an outworker will not be able to override award outworker conditions, except where the agreement is more favourable for the outworker than the award. There is quite a list of other things, but I hope that that more than covers the field and allays the senator’s concerns.

Senator MARSHALL (Victoria) (7.55 pm)—Thank you for that, Minister. I now put on the record one of my concerns about the government’s amendments and where I think they do not go quite far enough. If it is not appropriate to be dealt with by this amendment, that is fine—at least your officers listening will have some forewarning about my concerns when we get to the appropriate amendment.

My first concern is in the area of prosecution for award breaches and is in relation to the union’s standing to be able to bring proceedings for breaches of the award in relation to outworkers. The bill in its original form prevents the union from prosecuting for breach of an award unless it has a member employed by the employer whom it is prosecuting. We would argue that the union needs to be able to prosecute when there is not a member employed, in order to continue the industry compliance role that it has played as a social justice issue for many years. Of course, most of the unscrupulous players in this industry do not have a member employed by the union. Generally, those employers who employ union members are more likely to observe their award obligations.

Government amendment (188) adds an additional category of people who have standing to bring proceedings for breaches of the award in relation to outworkers. The amendment provides:

(da) if the term is an outworker term (within the meaning of Division 6A of Part VI)—a person or eligible entity (within the meaning of Division 6A of Part VI) that is bound by the award ...

My understanding is that the outworker term is probably fine. However, division 6A defines an eligible entity and it does not include the union. The union is known as an organisation, not a person, throughout all of division 6A. So I am concerned that it will not apply appropriately to the union. I would certainly be seeking, at the appropriate time
if that is not now, clarification of whether
that needs further amendment.

Senator ABETZ (Tasmania—Special
Minister of State) (7.57 pm)—Technically,
the honourable senator is correct: he is dea-
ing with an issue under another amendment.
But I think nobody is going to stand on pro-
cedure, and it is helpful if we can deal with
these matters as they arise in honourable
senators’ minds. Basically, what we are seek-
ing to do with our amendments is preserve
the status quo. Breaches of awards, under
amendment (188), as Senator Marshall cor-
rectly pointed out, will be able to be prose-
cuted by unions.

The reason the Senator may be confused
about it—and I do not blame him for that—is
that in this particular area a union is not an
entity but is defined as a person. The defini-
tion on page 13 of the bill says that ‘person’
includes an organisation. So, where the
amendment refers to a person, that refers to
an organisation. As one would assume, the
definitions section tells me that ‘organisa-
tion’ includes an organisation registered under the
registration and accountability of organis-
tions schedule. So you go from person to
organisation to the schedule, and I under-
stand that the schedule includes the TCFUA.

Senator MARSHALL (Victoria) (7.59
pm)—Thank you, Minister. I appreciate that.
I will consider what you have said and
maybe get some advice. But, on the surface,
that probably does accommodate my con-
cern. While we are on the issue, I will go on
to the second major area of concern. There
are some minor ones which we will deal with
as the amendments come up, but the major
point is on the protection of award condi-
tions. The bill makes outworker conditions
protected award conditions. You have now
proposed amendments which provide that,
unlike all other protected award conditions
which can be expressly excluded in a work-
place agreement, the outworker protected
award conditions cannot. We support that.
However, we think the operation of this pro-
vision may be limited by the way the provi-
sions are worded. Let me try to explain. A
protected award condition is only protected
where it applies directly to the employee
making the agreement, because the out-
worker provisions would not have effect in
relation to in-house employees. They will not
be protected in agreements between employ-
ers and in-house employees.

Employers in the clothing industry com-
monly have a small number of in-house em-
ployees and give the vast majority of their
work out to contractors and outworkers. We
are concerned that this leaves the way open
for a clothing industry employer to make
workplace agreements with all its in-house
employees which would not contain the out-
worker protected award conditions and that
this would then allow the employer to avoid
the record keeping, registration and inspec-
tion requirements of the award in relation to
any work it gives out to contractors and out-
workers, who it claims are not employees.
This is essential transparency within the con-
tracting chain which is so necessary in this
industry. We are sure it is not the intention,
but we are concerned that, the way this has
been drafted, the transparency would, in fact,
be eliminated by the structure of these
amendments.

Senator ABETZ (Tasmania—Special
Minister of State) (8.02 pm)—With no disre-
spect to the senator, that was one hell of a
question. I was trying to follow it all. I do
not know how many commas it had in it. If I
misrepresent it, I would invite Senator Mar-
shall to indicate that to me so that we can get
around it. What we are seeking to do is main-
tain the status quo. As I understand it—I
suppose this is pretty obvious—if you are an
in-house worker then you are not an out-
worker. That is the current position, and we
would be reflecting that current position in the bill. I trust that answers your question.

Senator MARSHALL (Victoria) (8.02 pm)—Not quite. Our concern is that, if you have some in-house workers, you can still contract out of some of the provisions of the award. Our concern is that this bill does not ensure that you may have contracted out of the protected award conditions for your in-house employees and therefore you are not bound by the award and you use that fact. To avoid being bound by those people you then contract out work to either outworkers or other contractors. That would be using the mechanism of having some full-time employees to avoid the outworker provisions. This may take some consideration. I would be happy to provide some written information to your departmental officers for their consideration. You may want to come back and respond to this later, because it is probably not contained in the amendment we are dealing with right now.

Senator ABETZ (Tasmania—Special Minister of State) (8.03 pm)—I think that is a very good idea. Without inviting an avalanche of written questions from senators opposite, if Senator Marshall could provide a written question with the specifics in it then hopefully I would be in a position to answer it later this evening. I am sure nobody would stand on ceremony if I were to interpose while we were considering another amendment to indicate what our response is.

Senator MARSHALL (Victoria) (8.04 pm)—I thank the minister, and I will do that.

Senator WONG (South Australia) (8.04 pm)—I have one question that relates to amendment 20. I want to clarify whether this gives wider rights to the minister to prescribed laws which in fact can be overridden than the original proposed section 7D(2). Do I need to repeat that question?

Senator Abetz—Yes.

Senator WONG—It appears that amendment 20 inserts the subclause:

... except a law that is prescribed by the regulations as a law to which awards and workplace agreements are not subject.

Doesn’t that have the effect of allowing the minister to prescribe, by regulation, state and territory laws—which may deal with subject matters such as occupational health and safety, apprenticeships et cetera—as being excluded, notwithstanding the general provision? More importantly, does it mean that the minister, in fact, has more power to do that than in the provision originally presented in the bill—which was proposed section 7D(2)(d)?

Senator ABETZ (Tasmania—Special Minister of State) (8.06 pm)—The honourable senator is basically correct in her assessment as to what this will mean. But, of course, if the minister does it by regulation, that regulation is a disallowable instrument and, therefore, can come before the parliament for discussion and vote.

Senator WONG (South Australia) (8.06 pm)—As we have so many amendments in this bill, in the interests of facilitating matters I do not propose to pull that amendment out, but can I indicate that, given that answer, Labor express our opposition to that particular provision. We do not intend to call a division on it, but it is yet another example of more power being given to the minister to unilaterally determine the overriding of awards and, more importantly, the overriding, in this situation, of state and territory legislation.

Senator ABETZ (Tasmania—Special Minister of State) (8.06 pm)—It is not a unilateral action by the minister as such because his decision is ultimately reviewable by the parliament. If he were to do that so-called unilaterally, it would be by way of regulation, which in turn would be a disallowable
instrument on which this parliament would then have an active say and could potentially disallow the minister’s determination.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that government amendments (10) to (21) be agreed to.

Question agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (8.07 pm)—by leave—I move government amendments (117), (136), (225), (241) and (273) together:

(117) Schedule 1, item 71, page 213 (after line 5), at the end of Division 1, add:

106C Extraterritorial extension

Australia’s exclusive economic zone

(1) This Part, and the rest of this Act so far as it relates to this Part, extend in relation to Australia’s exclusive economic zone in the way prescribed by the regulations (if any).

(2) If the regulations prescribe modifications of this Act (other than this section) for its operation in relation to Australia’s exclusive economic zone under subsection (1), this Act has effect (in accordance with that subsection) as modified in relation to Australia’s exclusive economic zone.

Australia’s continental shelf

(3) This Part, and the rest of this Act so far as it relates to this Part, extend, in the way prescribed by the regulations (if any), in relation to a part of Australia’s continental shelf that is prescribed by the regulations.

(4) If the regulations prescribe modifications of this Act (other than this section) for its operation in relation to a prescribed part of Australia’s continental shelf under subsection (3), this Act has effect (in accordance with that subsection) as modified in relation to that part.

Note: The regulations may prescribe different modifications relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.

Definitions

(5) In this section:

modifications includes additions, omissions and substitutions.

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.

(136) Schedule 1, item 71, page 289 (after line 18), at the end of subsection 116B(3), add:

Note: In this Part, references to independent contractors are not confined to natural persons (see subsection 4(2)).

(225) Schedule 1, item 359, page 522 (after line 32), at the end of clause 2, add:

(5) A reference in this Schedule to an independent contractor is not confined to a natural person.

(241) Schedule 1, item 359, page 534 (after line 20), at the end of subclause 18(3), add:

Note: In this Schedule, references to independent contractors are not confined to natural persons (see subclause 2(5)).

(273) Schedule 1, item 360, page 599 (after line 22), at the end of clause 1, add:

(2) A reference in regulations made for the purposes of clause 9, subclause 19(1), clause 37 or subclause 42(1) to an independent contractor is not confined to a natural person.

Senator WONG (South Australia) (8.08 pm)—This is a very technical issue, but what is the intent of this tranche of amendments, particularly (117), which is the extraterritorial extension? Could the minister explain the intention of amendment (117)?
Senator ABETZ (Tasmania—Special Minister of State) (8.08 pm)—The effect of amendment (117) is that a proposed section 106C would authorise regulations to be made to modify the way that the industrial action part and the rest of the act insofar as it relates to that part would apply in relation to Australia’s exclusive economic zone and Australia’s continental shelf. The purpose of the amendment is to allow the regulations to be made to apply to this part of the act dealing with industrial action in the zone and the continental shelf. This reflects arrangements made in other parts of the bill to apply the act to these areas.

Senator MURRAY (Western Australia) (8.09 pm)—The question in my mind, Minister, and one of the reasons that I wanted these amendments dealt with separately, is: does that mean that the law will be different as applicable to those parts of Australia and its designated control territories to that which is on the mainland?

Senator ABETZ (Tasmania—Special Minister of State) (8.10 pm)—The wonderful impact of international agreements, as I understand it, dictates that there are certain limits in relation to what the Australian government can do in its economic zone and, therefore, potentially, a different regime needs to apply. Via the regulation power, the minister will be able to make the appropriate and necessary adjustments. Once again, that will be a disallowable instrument. So, if any honourable senator has a concern, that would come before this parliament for the potential of a disallowance motion.

Senator WONG (South Australia) (8.11 pm)—I am conscious that the House of Representatives has reviewed the area of independent contractors and that the government will be considering legislation in this area, I understand, fairly early in the new year. I just want to be assured that no inclusion of this definition will have an unintended or unforeseen consequence with respect to existing tax law. As the minister is well aware, the alienation of personal services income legislation specifically deals with independent contractors as natural per-
sons. I assume it cannot then be transferred by this amendment to mean that it could be applied to entities. I am sure the government would have cross-checked these things, but I would like to be told that there will be no unintended outcomes from this.

Senator ABETZ (Tasmania—Special Minister of State) (8.14 pm)—I do not know whether Senator Murray was trying to praise me when he said, ‘As the minister is well aware,’ and then spoke about certain alienation of income provisions in the tax act, knowing that I would have to confess that I in fact do not know. I am more than willing to fess up that no, the minister is not well aware of those provisions, so I am not able to assist the senator. I freely admit that. I can indicate that the definition is one that will apply to this legislation, and the tax legislation may well have a different definition applying in it.

Senator MURRAY (Western Australia) (8.15 pm)—I have the same assumption. I am more than happy for my question to be taken on notice and for an answer to be given tomorrow. I would just like to be assured that there are no crossover effects which we are not aware of.

Senator ABETZ (Tasmania—Special Minister of State) (8.15 pm)—Without claiming any knowledge about the tax act, I can express a degree of knowledge about the bill before us. The section is so drafted that it does limit it in relation to those matters than can and cannot be in awards, and that is all that ‘independent contractor’ refers and relates to on this particular occasion. So you cannot extract that definition if it may somehow be helpful for some other purpose. It is limited to this particular piece of legislation, and it does not seek to have application elsewhere.

Senator MURRAY (Western Australia) (8.16 pm)—The difficulty is that there are in fact people in the transport industry, for instance, who are governed by the award in terms of their wages and conditions but for tax purposes have been classified as independent contractors rather than employees. There is the further complication that in some states the definition of employee means that those who would otherwise be regarded as self-employed entities are in fact deemed to be employees. It does get very complicated, and I am not—and you are certainly not—in a position to work out whether these changes have any effect at all. I assume, as you do, that they do not. All I want to be assured of is that there are no unintended consequences arising from it.

Senator ABETZ (Tasmania—Special Minister of State) (8.17 pm)—Once again, I state that my firm advice is that this definition only has application to this particular piece of legislation. Unfortunately, it may be common these days for the term ‘person’ or ‘entity’ to have a meaning in one piece of legislation but a different meaning in another piece of legislation. Therefore, I dare say that other terms, such as independent contractor, might have a particular definition for workplace relations but a different definition for purposes of the tax act. However, my firm advice is that this definition only applies to this particular piece of legislation. So just in case there is an inventive and creative tax accountant listening to this debate, I think he can put away his pencil in relation to this particular definition, because it will not be changing the tax laws.

Question agreed to.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.19 pm)—by leave—I move Family First amendments (1) and R(3) on sheet 4744 revised:

(1) Schedule 1, item 9, page 25 (line 14), omit paragraph 7C(3)(f), substitute:
The observance of, and the rate of payment of an employee for, public holidays;

R(3) Schedule 1, item 71, page 160 (after line 3), after Part VA, insert:

**PART VAA—GUARANTEED PUBLIC HOLIDAYS**

**Division 7—Public holidays**

**Subdivision A—Preliminary**

95AA **Employees to whom Division applies**

This Division applies to all employees whose remuneration and conditions would be determined by an award if they were not determined by an individual or collective agreement.

**95AB Definitions**

In this Division:

- **employee** means an employee to whom this Division applies under section 95AA.
- **public holiday** means a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:
  - a union public holiday; or
  - a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph as a public holiday.

**Subdivision B—Guarantee of public holidays**

95AC **The guarantee**

1. An employee is entitled to the benefit of each public holiday.

2. Where an employee does not work on a public holiday, the employee must be paid either:
   - for the number of hours ordinarily worked by the employee on a daily basis; or
   - 7.6 hours in the case of employees who work an average of 38 hours per week over the employee’s applicable averaging period (pro rata in the case of employees who work less than an average of 38 hours per week over the employee’s applicable averaging period);
   whichever is the greater.

3. An employee who works on a public holiday must receive at least in addition to payment for the hours worked, an additional day’s annual leave or an additional day’s leave to be taken at a time which is mutually agreed between the employer and employee.

The issue at hand here is making sure that public holidays are guaranteed for all. From what I understand from reading the bill—and this can be clarified with a response—if an individual is given a contract for employment that states that they are willing to work on public holidays for ordinary pay and that is the only contract that they are given for that employment, I assume they have either got to accept that or decline the job. If they had no other employment, they would have to accept that job—reluctantly—knowing that they would be working on public holidays for ordinary pay. Obviously, you could say that they have accepted that willingly and that could be argued quite well, but unfortunately a lot of people out there cannot bargain very well. The issue at hand is to make sure that the existing parameters for public holidays will continue to exist.

What I want to do is guarantee what the Prime Minister said on Melbourne radio about this. The Prime Minister was asked by the radio announcer:

Prime Minister, is Anzac Day sacrosanct as a public holiday?

The Prime Minister responded:

Absolutely.

The radio announcer said:

Okay so it won’t be up for negotiation.
The Prime Minister said:
Absolutely not.
The announcer then asked:
What about Christmas Day?
The Prime Minister responded:
Look, no, no, the answer’s no. Nothing is going to change in these areas.
He was asked:
But are they up for negotiation?
The Prime Minister responded:
No, they’re not.
I want to make sure that this bill does not undermine public holidays for those people who are not in a position to bargain them back. I would like to seek clarification on this point: if an employer of a prospective employee has on the table only one contract and that contract says that the employee is willing to work on public holidays for ordinary pay, is that a condition for accepting that particular job?

Senator WONG (South Australia) (8.24 pm)—I rise to indicate Labor’s support for Senator Fielding’s amendments. I commend him for moving them. As we have indicated, we are opposed to the bill and will be voting against it, but we hope that Senator Fielding might have some success in ameliorating this aspect of it. These are amendments which go to preserving what public holidays are in this country.

Senator ABETZ (Tasmania—Special Minister of State) (8.26 pm)—The wonders and marvels of modern communications allow people who are completely bored to watch these proceedings on Sky TV, I understand, and somebody has just text messaged me—and I trust that is not against standing orders—on my mobile phone.

Senator Siewert—As long as it is silent.

Senator ABETZ—It was on silent—that is why you did not hear anything. It reads: ‘Mum had nearly seven weeks annual leave per year. No extra pay for working public holidays including Christmas Day. Her phone number is ...’ The person who is being referred to was in fact a cleaner at the Royal Hobart Hospital. That was union sanctioned. A Labor state government was the employer. It was agreed between them that people would have to work from time to time on Christmas Day and the trade-off was—and the unions were involved in this—seven weeks annual leave.

I say to those opposite that this claim that Christmas Day is available to everybody in the Australian work force is simply not the
case. Trade unions have recognised the need for extra flexibility and that these sorts of things need to be taken into account. Some people do work on Christmas Day, unfortunate though it is. The employer recognised the need for it, the unions saw the need for it and agreed to it, and the trade-off was getting seven weeks annual leave—which might beat by one day that which the journalists union was able to negotiate with the newspapers. I believe they have six weeks and fours days.

In relation to Senator Fielding’s amendments, I accept that he has moved them but what I would invite him to do is look at the last raft of government amendments on the first sheet of amendments. They deal with public holidays. I would like to think that we would deal with some of his concerns with those amendments.

Senator Ronaldson—Which one is that?

Senator ABETZ—It is schedule 1, item 6, amendments (71), (72), (170), (171), (240) and (360), Senator Ronaldson. In the left-hand column underneath all those numbers it says ‘public holidays’ in parentheses. It is two down from Senator Fielding’s amendments. We have a raft of amendments dealing with public holidays. The government’s proposed amendments in relation to public holidays will provide a more appropriate level of protection than the Family First proposals. The Family First amendments would not protect an employee who chooses not to work on a public holiday, and for many employees a day off in the future would not necessarily be sufficient compensation in return for having to work Christmas Day.

With our amendments it will be possible to refuse to work on a Christmas Day and if there is a dispute about that then the test of reasonableness comes into it. Part of that test is, as I understand it, whether or not penalty rates are going to be paid or, indeed, whether there are other trade-offs. As I was able to read out that text message, if you had traded off that for the benefit of three weeks extra annual leave to the norm, then chances are most people would say that is a pretty reasonable deal, and therefore if you are asked to work on Christmas Day that might be reasonable. But, at the end of the day, I do not want to set myself up as guiding any future dispute resolution body or anybody else who might have to make determinations on these matters. We have 170AG that deals with reasonableness of refusal and we have subparagraphs (a) to (l)—(l) being ‘any other relevant factors’, which is basically a catch-all that might not be included. In that list (f) indicates whether the employee is entitled to additional remuneration or other benefits as a consequence of working on the public holiday.

I think that we are now providing a suite of amendments that will deal with the protection of public holidays and I would say to Senator Fielding that our raft of amendments are superior to his—and he will undoubtedly tell me that his are superior to ours, and that is where we will need to leave the debate. The important thing is that there are protections in relation to public holidays, and a lot of people have traded and negotiated, in relation to working on Christmas Day, for other benefits.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.32 pm)—Could the minister clarify this point for me? Say a prospective employee applying for a job goes to the interview and quite likes the job and then, before signing the agreement, has a look at it and finds typed in there: ‘I am willing to work on public holidays for ordinary pay.’ If the prospective employee who is going for the job says, ‘I really want to work but I really do not want to work on public holidays,’ and the employer says, ‘That’s the job and those are the conditions,’ could the
Senator ABETZ (Tasmania—Special Minister of State) (8.33 pm)—It is difficult to answer these questions without knowing all the circumstantial and other factors. That is why the legislation appropriately has in 170AG(1) ‘other relevant factors’, because I think it is very difficult to try to prescribe everything. If an employee were to sign an agreement which says, ‘I am willing to work public holidays for ordinary pay,’ that would be a potential factor to be taken into account. But if the normal circumstances of the particular business—let us say it is a takeaway shop—were that they in fact normally close on Christmas Day but they might be open on Boxing Day for the tourist traffic and if the employer, without notice, were to say to the employee, ‘I know that it is only two days before Christmas but I have decided to open Christmas Day and you have to be there,’ then I would imagine any dispute resolution would say in those circumstances that it would be unreasonable, there was insufficient notice et cetera and the person can reasonably refuse to work. If the employee knew at all times that they were going to be open on Boxing Day for the tourist traffic and that was in the employee’s mind in signing on, then that would be a matter that the dispute resolution body would consider in determining whether the employer was acting reasonably, keeping in mind that if the employer is found to have acted unreasonably and if it is a corporation then the penalty is a maximum of $33,000. That is a fairly strong disincentive, I would have thought, for an employer to pull that stunt.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.35 pm)—I would like to focus on that a little bit further because I am not too sure that I have clarity in my mind with the responses, Minister. I understand that there have been some amendments to what constitutes duress. In the explanatory memorandum it does say that duress would not exist for someone signing a new employment contract. So for a prospective worker who is going to be employed the conditions of an individual agreement would not be considered duress because it is a new job and they can either take the job or leave it. I think that is quite a good clarification, because we were not sure whether it was for existing employees or whether it was for new employees. A question still remains—and this gets to the heart of guaranteeing public holidays for all Australian workers. The issue at hand is that you have got potentially, from what I can read within the bill, an employer who can offer jobs for new employees and the contract that they can put in front of new prospective employees says, ‘You will agree to work on public holidays for ordinary pay.’ The choice they have is either to accept that contract or go and try to find another job. Could you clarify that for me please, Minister?

Senator ABETZ (Tasmania—Special Minister of State) (8.37 pm)—What I might do—without, hopefully, those opposite standing on ceremony—is deal with the information I would have supplied later on in relation to the government’s proposed amendments and thus explain the regime we propose. Our amendments would provide a new statutory right to refuse to work on a public holiday on reasonable grounds. That right would apply to what are now being described as iconic public holidays such as Australia Day, Good Friday, Anzac Day and Christmas Day as well as all other public holidays declared in a particular territory or state.

The factors that would be considered when assessing whether an employee had reasonable grounds to refuse work would include: the terms of the employee’s workplace agreement or contract—so the exact
matter that Senator Fielding has raised would be considered; whether they receive penalty rates; the amount of notice given by both employer and employee; the employee’s personal circumstances, including family responsibilities; and the employer’s operational requirements.

If an employee refuses to work on a public holiday on reasonable grounds, the employee would be protected from dismissal and other prejudicial conduct by an employer, and a court could make a number of orders, including a financial penalty of up to $33,000 for a body corporate, an order for compensation and orders for reinstatement. The model dispute resolution process under the bill would apply to disputes about the public holiday entitlement. The entitlement would apply to the same class of employees entitled to the benefit of the standard.

Once again, without seeking to delay or pontificate too much, chances are that if the dispute resolution tribunal heard that you had signed on agreeing to work for ordinary pay on public holidays but somewhere else in the agreement you had—for example, like the nun I just referred to—seven weeks annual leave, which is way above the norm, then the dispute resolution body may well take into account the fact that you have some considerable benefit with seven weeks annual leave, which would provide substantial compensation in the event that you were required to work on a public holiday.

I referred earlier to the example of the cleaner in the Royal Hobart Hospital. Chances are most of us would agree that, like it or not, cleaning services do need to be undertaken at public hospitals even on Christmas Day and therefore a work force is required for the health and recuperation of the patients in the hospital. Therefore, those that have to undertake that work on that particular day should be compensated. In this case the union sanctioned agreement was to provide six weeks annual leave.

Without being too prescriptive as to what any future dispute resolution body might determine, I think there are sufficient safeguards to ensure that the average employee will not be required to work on Christmas Day. In my own legal office with my employees, the thought of opening the door on Christmas Day would not enter my head. My employees would have to be there as well and other consequences would flow. I think, in fairness, that when all those protections we are proposing are included in the legislation they overcome the Family First concern.

Senator RONALDSON (Victoria) (8.42 pm)—The difficulty I have with what underlies Senator Fielding’s views in relation to penalty rates and public holidays is that his scenario is that you have an employer who will try to negotiate away—

Senator Fielding—Mr Temporary Chairman, I raise a point of order. I was not referring at this stage to penalty rates. I have been fairly careful with the words I have chosen. I am dealing with public holidays here. I have not referenced the words ‘penalty rates’ at this stage. I would like to continue. I have not mentioned penalty rates.

Senator RONALDSON—I thought you mentioned them earlier on.

Senator Marshall—Have you become the minister all of a sudden?

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

Senator RONALDSON—Senator Marshall, I think I am entitled to make a contribution to this debate without you interrupting.

The TEMPORARY CHAIRMAN—Order, Senator Ronaldson! I was about to draw Senator Marshall’s attention to the fact that he was interjecting. Senator Ronaldson,
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you have the call—and do not speak over me.

Senator RONALDSON—The assumption in relation to the penalty question on public holidays is that you have an employer who potentially may have to pay double or treble penalty rates trying to negotiate that down to normal rates. The assumption in that is that the job would be available at either double or treble time or normal time. I put it to the chamber that the assumption that that job will always be there at double or treble time is simply not correct and indeed it may be that that job can only be offered in the terms of the arrangement that Senator Fielding was referring to. I think we need to be careful that we are not, particularly in relation to small business, lumbering them with an impression that this would be done to reduce their requirements to pay double or treble time. It may well be that the job would not be available under those scenarios. That is the matter I wish to raise.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.45 pm)—I appreciate the minister’s patience on this issue, I suppose. The issue at hand here is making sure that there is a guarantee for all Australians. For example, an employee has in their contract, ‘I’m willing to work public holidays,’ and in fact they prefer not to, but they realise the only job on offer has that written into the contract. I want to confirm whether that is legal and it is not duress to offer a job that has that if you take this job you will be required to work on public holidays at ordinary pay, and you can either take that job on those conditions or not take that job. Could you answer yes or no to that question, please, Minister?

Senator ABETZ (Tasmania—Special Minister of State) (8.46 pm)—If only life were that simple, with yes or no answers. I will try another approach to answer what is a genuine concern of Senator Fielding. I will try to explain it. I accept that these provisions are now in government amendments, so the honourable senator has not had much time to consider them.

An employee can refuse to work public holidays on reasonable grounds, and that is guaranteed in clause 170AF(1),(2) and (3). Any term of a workplace agreement or award to the contrary is of no effect. That is in clause 170AF(4). However, before the senator gets too excited about that, the legislation states that any term of an agreement or award that said the employee had to work would be subject to the right to refuse to work on reasonable grounds, which would be the legislative underpinning.

I go back to the example that I was text messaged about earlier this evening. Once again, if there were an understanding between the worker and the employer as to what the arrangements might be—given that I would assume rosters at public hospitals would be done weeks, if not months, in advance and you indicate, ‘Yep, I will be available’—then chances are that it would be unreasonable for the employee to refuse to work, all of a sudden, just on the whim of it, other than for peculiar circumstances which are set out in clause 170AG(a) to (l).

I think we have sufficient flexibility combined with guarantees to make the system work. In the example of the hospital, I think everybody agrees that we need cleaners in hospitals, even on Christmas Day. If everybody were given the absolute right of refusal to work on Christmas Day, you could end up with the situation of having no cleaners in our public hospitals on Christmas Day. As a result, there has to be some capacity to insist, and therefore the test of reasonableness has been brought in.

I am continually criticised for being too soft on my staff, but if I asked my staff to
come in to file on Christmas Day, to put things away and tidy the office a bit, chances are that most people would say that is an unreasonable request and the staff would be quite entitled to refuse, because the work could be done during the quieter period of the new year in any event, if there were no demanding operational requirements for the filing to be done on Christmas Day. I dare say that I have tried to take two extreme examples to make the point. As I said, if only life were as easy as to answer yes or no, but painting those two extremes I think makes the point in relation to them. But, of course, there will be areas in between where it will be an on balance decision as to whether something is or is not reasonable, and there is a huge disincentive for the employer to be unreasonable. If it is determined that the corporation has been unreasonable, the disincentive is the penalty of a potential maximum fine of $33,000.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.51 pm)—Maybe I will cover it by putting the question in a slightly different way. For example, I am going for a new job and I feel that I cannot bargain and say, ‘I don’t want to work on those days,’ and I sign the contract that says I will work on public holidays for ordinary pay because I am desperate. Two years down the track, I have been a faithful employee. If I went to the employer and said, ‘I really don’t want to work on public holidays anymore; I really want to spend some time with my family on those days,’ has the employer got the right to refuse so that the employee is not able to take the public holidays off, knowing that quite clearly, in the way the bill is written, there was consent and no duress, because the employee signed the contract up front?

Senator ABETZ (Tasmania—Special Minister of State) (8.52 pm)—The test is one of reasonableness. For example, if in those two years you have been a loyal employee in my electorate office, never having to work on Christmas Day, and then, all of a sudden, I make a ridiculous demand to do filing on Christmas Day and you refuse, I have no doubt the employee would be protected by the legislation.

To use the other extreme example, of the public hospital: you have been a good, loyal employee, have been willing to go on the roster and have worked on Good Friday for the past two years—and usually these things are arranged, discussed, massaged et cetera between staff to try to share the burden—but you are then asked to work on Christmas Day because other employees in the roster system have had to work on Christmas Day for the previous two years and the employer said: ‘Look, the other good, loyal employees have been working for the last two Christmases so, in fairness, I think it might be your turn to work on Christmas Day to allow them to celebrate Christmas Day with their family.’ I think if the employee is given sufficient and proper notice and the roster is determined months in advance then it would be reasonable for the employer to make that sort of request, given that the employee knew of the potential and possibility of having to work on Christmas Day.

What each particular circumstance will involve and how it will be determined will revolve around the peculiar facts. We can try to make hypothetical constructs all night. I have deliberately used two extremes, and I feel confident—as much as one can be in these circumstances—of answering yes or no, as you sought in those two extremes. There will be cases in the middle, but the great disincentive for employers to be unreasonable is that if they are found to be unreasonable they will suffer a severe financial penalty. As a result, I think the test of reasonableness in practice will be skewed more towards the employee, because the employer
faces the very real risk of being found to have been unreasonable and being required to pay a substantial penalty, so that I think it would not be worth requiring an individual worker to work on Christmas Day.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.55 pm)—I appreciate the minister’s responses. I will summarise my concerns. I am not convinced that it is right for the starting point for some new people moving into the workforce to potentially be having a contract that says they will be working on public holidays as a condition of employment. I think that things like Anzac Day and Christmas Day were never meant to be treated in such a way—certainly not in Australia. I understand the dilemma in that it potentially causes some hindrances to smaller businesses, but I think that, realistically, Anzac Day, Christmas Day and some of those public holidays are sacrosanct, as the Prime Minister said, and I am concerned that this bill undermines that. Some of the changes—and I have been through the changes that the government has put forward—go some of the way. But, to me, the bill still potentially undermines that, going forward.

Most employers will do the right thing, but you only need one to start and all of a sudden it puts pressures on the others, particularly when it comes to being competitive and if labour costs are very important to them. I tend to think that the bill is sending the wrong signal to Australian families. Public holidays are family days and therefore I am putting forward that there should be another day off for those people. They will get paid on the day and they can take another day off to spend with their families for those particular days. I think that is fair and reasonable. But I understand the minister’s arguments and that he says that what he is putting forward is fair and reasonable. I suppose that is where we are going to have to disagree.

Senator WONG (South Australia) (8.57 pm)—I want to make a couple of comments, as Senator Fielding has concluded his questioning on this area. First, I want to go back to Minister Abetz’s contribution earlier and point out that it was quite misleading to suggest that the compensation proposed by Senator Fielding was insufficient, and that was why the government did not want to support it, without mentioning the fact that no compensation other than ordinary pay for working on a public holiday—no additional compensation at all—is guaranteed in his legislation. It is a rather bizarre argument to say that additional compensation proposed to this chamber by a senator is insufficient when your own bill very clearly leaves open the possibility of Australians working on public holidays for ordinary pay.

I also want to go back to the Tasmanian hospital text message. Obviously I do not know the particular provisions of that agreement; I presume neither does Senator Abetz. If the agreement allows for seven weeks annual leave and if that additional annual leave was negotiated in respect of working on public holidays then, in effect, if there are 11 or 12 public holidays a year, the employees are getting around 15 days extra leave. So there is still some correlation, one would think, between working on public holidays and the additional days of leave. It is essentially a double-time arrangement through which they get additional leave. As I said, I do not know the terms of that agreement or the circumstances of it.

I do want to make this point, and it really is the point that Senator Fielding was attempting to get an answer on: the government’s own amendments to its bill tabled today do set out a right to refuse to work on a public holiday provided it is reasonable but
they do not impose any requirement that you get either an additional day’s leave or additional pay. Senator Fielding is quite correct in the way he posits the question to the minister. Australians, I am sure, will come to understand this. I agree with Senator Fielding that even good employers will be in a situation of having to compete with employers who choose to take a different road in relation to paying on public holidays. In essence, we are looking at a ‘race to the bottom’ approach to industrial conditions.

It is perfectly legal under this legislation, even with the government’s so-called protections on public holidays, for a new employee to be given exactly the AWA that Senator Fielding has outlined, which says, ‘A term of your employment is that you will work on public holidays for ordinary pay.’ Even if the person can refuse to work on a public holiday, as Senator Abetz keeps going on about, they can have an agreement which says, ‘You are to work for ordinary pay on public holidays with no penalty rates and’—perhaps more importantly—‘no additional day off to spend time with your family as compensation for having to work that day.’ It is absolutely clear that that is quite possible under the government’s legislation.

I want to put another technical point on the table: it is not just new employees. We have been focusing on that issue because it is an obvious one. The government has been quite proud to indicate that a new employee can be presented with an AWA that simply removes things such as penalty rates, overtime, annual leave loading and so forth on a take-it-or-leave-it basis. But, under the provisions which relate to unilateral terminations of agreements by employers, when a collective agreement or AWA expires—currently under the legislation the conditions continue—the employer, I think after 90 days, can unilaterally terminate the current arrangements, and the employee reverts to the minimum four conditions and minimum appropriate rate of pay. So, under the legislation the government wants this chamber to pass, as an existing employee in this country you could have a situation where your agreement technically expires and your employer after 90 days says: ‘I’m not going to negotiate a new agreement. I am unilaterally terminating the agreement and—guess what!—you lose the entitlements that we negotiated a year ago in relation to public holidays, annual leave loading, penalty rates and additional leave.’

This pernicious legislation, which attacks the rights of Australians to have time off with their families in the way it treats public holidays, is not just an issue for new employees; it is an issue for existing employees. Let us be very clear about what is being proposed. The minister can get up all he likes and say, ‘We’ve got this right of refusal.’ That does not relate to the key issue, which is being paid appropriately on that day and being able to have another day off to have time with your family. That, as I understand it, is one of the kernels of the amendments proposed by Senator Fielding. The minister can get up—because he seems to have a one-track kind of response to all of the issues we raise about penalty rates; just press the button on the tape and away he goes again—and say, ‘Unions have negotiated them away.’ The point is that unions may have negotiated with their members agreements where penalty rates are not paid. But do you know what? Both under the terms of legislation and—I think I can say this—because of the involvement of employees, they get just compensation for that. Under the no disadvantage test you can trade them away but you cannot be worse off overall.

It is reasonable to say, ‘We’ll work ordinary time on a public holiday, but we want an additional day of annual leave so that we can spend time with our families,’ because
the point is actually getting time off with your family. The minister can get up and obfuscate all he likes, saying, ‘We’ve got this fantastic right to refuse to work and as long as it’s reasonable then you’re protected.’ I think that when most Australians come to understand exactly what that right means, they will say, ‘Whoopy-do—I can still be asked to work at ordinary time, I can still lose any day off with my family on that day unless I can reasonably refuse and it can still become an ordinary working day.’ That is the reality of the legislation being proposed by the government and that is the reality of their opposition to Senator Fielding’s amendments.

Senator MURRAY (Western Australia) (9.04 pm)—I think it is time that I added some remarks to the debate surrounding this amendment. I have appreciated the tripartite contribution so far because it has begun to unwrap and expose the issues to their fullest extent. The shadow minister is quite right—the proposition consistently put by members of the government that you can already trade away public holiday benefits has never been accompanied by the qualification that it is subject to just compensation. The great virtue of the 1993 act and the 1996 act was that they enshrined the very process of compensation through the no disadvantage test, and through common law agreements, statutory individual agreements and collective agreements being connected directly back to award conditions. That is the great virtue of the present system.

One of the reasons I have been so happy that the public holidays matter has been widely debated is that it has exposed a great Australian concern that the pendulum has swung too far. It is no good just saying, ‘This is how things are now; we’re going to let them go on and in fact get a little worse,’ when in fact Australians are saying, ‘Enough is enough.’ The very reason Senator Fielding sits in this chamber as a representative of Family First is that there is a whole stream of opinion in this country that says that the family-work balance is out of kilter. The very reason that Labor senators get so much support for their campaigns is that Australians are saying that the family-work balance is out of kilter.

In my state of Western Australia, I was absolutely overjoyed that the Gallop government, having been foolish enough, in my opinion, to support further deregulation of trading hours, were sensible enough to put that proposition to the people at a referendum. The people of Western Australia, by 55 per cent to 45 per cent, said: ‘Listen, chums, this has gone far enough. We actually want our weekends to be preserved for our families and friends and for a better family-work balance.’ I would bet you £2 to a bag of manure—if they were both legitimate currencies, which of course they are not—that, if you put the proposition to the people of Queensland, New South Wales, Victoria or anywhere else about their present trading conditions and the way in which family members are virtually forced to work over weekends, they would like to see a reregulation. They are revolted, frankly, by the 24/7 mentality.

Senators on all sides would be well aware that, during the Senate committee inquiry, it became quite apparent from the submissions from employer groups and from some of the statements of employer groups that they have that 24/7 mentality. If they belonged to any religion, it would be the religion of the worship of mammon. They thought that you should be able to earn a dollar at any moment, at any time of the day, and that people represent labour units of production. That is a philosophy that is rejected outright by many members of the Liberal Party, the National Party, Family First, the Democrats, the Greens and the Labor Party, yet here we are
allowing legislation to come through which seeks to advance that very proposition: that the family is inferior to the company; that the individual is inferior to the entity.

I argue that the public holiday issue is symbolic of that problem. It is symbolic of a circumstance where Australians feel that the corporate drive for a 24/7 mentality and for the continual making of money out of people denies them the things that we have fought for over several hundred years and arrived at, where our progressive, First World, liberal democracy says, 'You’re going to have appropriate leisure time and a proper balance between family and work.' What we are seeing here is a general public rejection of the idea that you should have to work on a public holiday. For some, it is a religious day, such as Christmas Day or an Easter day; for others, it is an iconic day, such as Anzac Day, which matters enormously to them because of their social and cultural heritage; and for others, it is a good fun day like 1 January or a good sense day like Boxing Day. Whatever the motives are, Australians do value that time with family, friends and relatives. We all recognise that to have fun with your family, friends and relatives, restaurants, pubs and so on have to be open. It has always been thus: if you are in that business, you are in that business. We all recognise that if you are a cop or a nurse there is a road accident to attend to. But the witnesses at that hearing were talking about having the option to open their shop on a public holiday. I am really not sympathetic to that.

This debate produces the ability of workers to say to those corporates who want to force them to work when they do not need to work or do not choose to work: 'If you are going to oblige me to work, there must be just compensation.' It is enshrined in our Constitution as a value to which we all attach significance, and this sort of legislation leads us towards that view. The great virtue of the fight put up by Senator Joyce, and supported by other members of his party and members of the Liberal Party, was that he was recognising the legitimate point being made by Australians. The great virtue of numbers, of course, is that the government had to respond. But they were not dragged willingly, as far as I could see; they were dragged kicking and screaming. Fortunately, members on the government benches were able to ensure some additional advances.

The virtue of Senator Fielding’s amendment is that he has made it very simple. If you are going to work on a public holiday and you are not going to get paid double time, you can take a day’s leave instead some other time. That is a really simple proposition. You would think that is pretty fair and that they are likely to accept it. The government will not accept it because in their legislation there is no guarantee of just compensation. For me, the great benefit of this debate is drawing the line between those who are saying that Australians are right in starting to resist the 24/7 mentality and the endless emphasis on the corporation, and coming back to the view that we have to start emphasising society, the family, the days off and the days that are valuable.

Where have we got to with this? We have got to this position: Senator Fielding has moved his amendment. If he wants an extra voice to go to a division on the amendment, I will give it, and we will have a division and the government will reject it. The government will say that we are going to leave it entirely in the hands of employers to be fair in this matter, and that is not good enough. Not all employers are fair. You acknowledge it continually in your answers. Everyone has heard it a thousand times. There are wonderful employers but we know there are some bad eggs. This amendment protects people from the bad eggs. This amendment is not about the good employers. This amendment
would not matter one bit to the good employers because the good employers will do the right thing.

The amendment that Senator Fielding is proposing, and my amendment to follow, try to ensure that the worst employers do the right thing. If somebody is forced to sacrifice a proper family-work balance or to give up a day which matters to them from a religious point of view or to give up a day which matters to them because their grandfather died on the fields of Flanders—I think somebody in the lower house had somebody in that circumstance—then they can be properly compensated for it. I do want to put on record that this is not a peripheral issue to me. Despite the fact that public holidays, at the maximum, constitute perhaps three per cent or four per cent of the year, this is a symbolic issue. It is symbolic of the giving away of wages and conditions to put more money in the pockets of companies when workers deserve to have that money or that time available for their families.

Senator SIEWERT (Western Australia) (9.15 pm)—Is it not the case that the amendment that the government is proposing, as opposed to Senator Fielding’s, is really about being seen to be doing the right thing to protect public holidays? When you think about it, we are trying to protect workers in industries that are likely to be operating on public holidays. Then a provision is introduced for reasonable grounds. An employee wanting Christmas Day off in one of those industries would have to argue very strongly to find reasonable grounds. The grounds might be found to be unreasonable, so they would have to work and they would get no extra provision for that. So, while we are supposedly trying to protect holidays, for those who really need protection for those holidays this provides none because the grounds of reasonableness are so broad—and the onus of proof is on the employee—that in fact it is not going to protect these employees. The way that you protect these employees is by including provisions to ensure that they get well compensated for the work that they do, which is what this provision is trying to do. If the government were genuine about its Santa clause, it would in fact be trying to do exactly what this amendment is trying do—that is, protect those workers who are required to work on these days anyway.

Senator ABETZ (Tasmania—Special Minister of State) (9.17 pm)—If we have a look at the Family First amendment—and let us drill right down into it—we see that it basically says that if you have to work on Christmas Day or another public holiday you are entitled to normal wages but you might be given a day off in lieu somewhere else. If we are to believe that which has been spoken about the importance of Christmas Day—Senator Murray waxed lyrical about families getting together et cetera, and I can understand that—how does it assist families if you say, ‘Yes, you have to work on Christmas Day but you can have a day off in the middle of March,’ when all the other friends and family of course will not have that day off? It stands to reason that it would be highly unlikely that they would then all be able to have that particular day off and still get together for that much vaunted family barbeque or whatever it might be.

If we believe in the sanctity of Christmas Day, by making it so easy for an employer to require an employee to work on the basis of substituting another day, any time, anywhere, the chances are that the employer would make a simple economic decision. They might say: ‘Is it worth my while to employ somebody on Christmas Day? If the takings are worth it, that is fine and, when business is quieter’—let us say in the middle of winter in the tourism industry—‘we will get them to take a day off then.’ The chances are that the employee will not be able to have a proper
family day with other members of the family on that occasion and the employer may well find it economically viable to make the employee work.

Let us look at what we have sought to do. With respect, that is where other contributions have been incorrect. An employee cannot be forced to trade away their right to reasonably refuse to work on public holidays. I think that protection is a lot stronger. With respect to the Greens senator, I think that proposed section 170AG, subsections (a) to (l), does point out a whole host of reasons which would allow somebody to refuse to work on a public holiday. I think that, therefore, a lot more people would be likely not to work on Christmas Day.

I also take issue with Senator Murray, who says: ‘If you want to have fun on Christmas Day or Boxing Day you go to a restaurant, and it has always been thus.’ With great respect, Senator Murray, it has not always been thus. In fact, I know that there were many criticisms of the Tasmanian tourism industry, not all that many years ago, for not being open on public holidays—on a Monday night if it were a public holiday et cetera. The reason was—you have guessed it—penalty rates. The employers just shut their joints. It was seen as a huge disincentive to the tourism industry. As a result, unions and employers got together and started to deal with these issues on an enterprise level.

It is like the matter of newspapers on Christmas Day. I know that that was a revelation for the Leader of the Opposition in the Senate during question time recently. If you want newspapers on Boxing Day it means that people have to work on Christmas Day to produce the newspapers. Can I tell you, the chances are that I could exist without a newspaper on Boxing Day, but there is undoubtedly—

Senator Murray—How are you going to light the barbie?

Senator ABETZ—I am old-fashioned in that regard. I prefer the wood barbecue as opposed to the gas barbecue, and a Boxing Day newspaper comes in very handy to light the barbecue. Senator Murray, I stand corrected in that regard. But in relation to shops being open 24/7 and those matters, Senator Murray, they are matters for the states to determine. As we found out this week, the New South Wales state government has determined that pubs and clubs can now be open on Christmas Day and have extended hours on Sundays as well. The restriction on those trading hours does not fall within the province of the federal government. There has been a trend within the community to want to go out to restaurants even on a Sunday and to have the sort of fun that you are referring to. Even 10 years or possibly 15 years ago it would have been highly unlikely that that sort of conduct would have been engaged in by a family. Now it is quite regular. Families who want to have that family time together in the restaurant can do so by virtue of people having to work on those public holidays. Whether we like it or not that is a trend.

I know that some people do not like extended hours. The people of Western Australia voted in a referendum at the last state election and I think 58 per cent voted no to the shop trading legislation. That is a state matter—and good luck to them—and that obviates some of the issues raised here. When state governments embark upon a course of deregulating and opening shops, pubs and clubs et cetera even on Christmas Day it necessitates people working in those facilities. If you want to enjoy a restaurant on a Sunday or a public holiday, people will be required to work. But, at the end of the day, what our amendment does is to say that you cannot trade away the right to reasonably
refuse to work on a public holiday. That is, potentially, the protection offered.

Senator Murray went on as to why Family First is represented in the chamber. Let me say that the alternative was such that I am absolutely delighted that Senator Fielding is in this place. Whilst I would not want to seek to deflate Senator Fielding, it would be fair to say that the primary vote of Family First was not that overwhelming to make out Senator Murray’s assertion. Although, I must say, I personally identify with a lot of the family values of Family First.

Moving on to a matter that Senator Wong raised in relation to the expiry of the agreement and what would occur in those circumstances, what she was saying was right, up until the fact that we have amendment (112), which will deal with the matters that she has raised. Therefore, what she asserted was right, subject to the fact we have amendment (112) to deal with that issue.

Senator Wong (South Australia) (9.26 pm)—We are happy, given how many amendments we have, to proceed to a vote soon. I am not sure how many long contributions the minister wants to make, but I want to make a couple of—

Senator Abetz—I respond to long contributions.

Senator Wong—I do not think mine have been that long, Senator. We on this side of the chamber are very conscious of the amount we have to get through by 3.30 pm tomorrow, given the guillotine and the unreasonably short time frame you have permitted the chamber to sit in relation to this bill.

I want to make two points. I do not have the Launceston cleaners agreement but I do have the Launceston hospital nursing staff enterprise bargaining agreement. The public holidays clause in that particular agreement allows shift workers to elect to take payment for public holidays at the rate of double time or be paid at the ordinary rate and have a day added to their annual leave entitlement at ordinary time. That should clarify, certainly in relation to nursing staff, that, if they have to work the day, they get another day off to spend time with their family.

Very briefly, I want to deal with an issue that Senator Murray raised and which Senator Abetz also spoke about—that is, the issue of family values. What we on this side of the chamber find extraordinary is the way the government can say one thing but do another. The Prime Minister mouths concern for family time, for barbecues, for Anzac Day and for Christmas Day. He mouths all the right platitudes. But what the government do is quite another matter. What they do is exactly what Senator Murray has identified, and that is to put through a piece of legislation which does not prevent but in fact permits, and arguably facilitates, a situation where employees in this country are asked to work public holidays for ordinary time and not get any additional day off. It is important when we are talking about some of the philosophy to which Senator Murray referred, the philosophy behind this legislation, to recognise the distinction and the difference between what this government say and what they do. It is not good enough, Minister, to say that you support families and to talk about the importance of family time when what you do is put through legislation that permits public holidays, which are important family time, to be eroded in this way.

If you want to know the real reason why penalty rates for public holidays are not included in the government’s amendments, it is pretty clear if you look at the public statements from Peter Hendy, and from other employers to the inquiry, as Senator Murray has said, who have said, ‘We do not actually want the protection of penalty rates for public holidays.’ The restaurant and catering association made that very clear before the
inquiry. Peter Hendy from ACCI has made that very clear. The reality is that you mouth all these platitudes about families but, at the end of the day, in this legislation and in your amendments, you are doing the bidding of some of your political mates by not putting in any protection of penalty rates or additional leave for public holidays. That is why Senator Joyce and his colleagues have been sold a pup. They have not saved Christmas Day at all. What we see is the government, yet again, doing the bidding of one constituency against the wishes of the vast majority of the Australian people. I think this is something we would probably win in a referendum. I think if you put this to the vote, we might actually do all right. I do not think there are many Australians out there who think that Anzac Day, Christmas Day, Good Friday or various other public holidays—for whatever reasons, whether they are spiritual or cultural—should be treated like any other working day.

Senator ABETZ (Tasmania—Special Minister of State) (9.30 pm)—If it is the Labor Party view that these days should not be treated the same as other days—and I happen to have some degree of sympathy for that—it sounds very hollow for the senator to assert that if she has not written to the New South Wales Labor government asking them to desist from allowing clubs to be open on Christmas Day. Well should Senator Stephens be shaking her head on that point, because that is just disgraceful. Of course, with extended trading hours—

Senator Wong interjecting—

Senator ABETZ—Have you finished?

Senator Wong—How many times are you going to say the same thing?

Senator ABETZ—No, you have not finished. Tell me when you have finished and I will continue. It is a matter of consistency in this debate. Senator Wong did seek to fling across the chamber to me the assertion that I mouth family values but do not practise them. If that is the ruler by which she would measure me, I would invite her to apply the same ruler to herself and the Australian Labor Party. We have seen them put forward proposal after proposal. In my own home state of Tasmania the state Labor government went to the last election saying, ‘We will not extend trading hours.’ What have they done? They have extended them. They tried it in Western Australia but they put it to a referendum and the people rejected it. In New South Wales, the state Labor government is extending trading hours for clubs and pubs. If Senator Wong and the Labor Party are so concerned, surely their federal executive and others could exercise some influence and ask them to desist. Because, if employers could not open pubs, clubs and shops on Christmas Day, guess what? Employers would not even think about employing people on those days if it was illegal to open their shop, club or pub. So it is quite disingenuous to suggest that we as a government should—

Senator O’Brien—Or the hospital. Let us throw that one in there. Are you saying that we should outlaw work on some days?

Senator ABETZ—My goodness! Senator O’Brien you have made a fantastic contribution by not saying anything thus far. You have now opened your mouth in such foolish way that even your colleagues are embarrassed. I suggest you desist from trying to contribute to this.

Opposition senators interjecting—

Senator ABETZ—So now we have the sanctity of Christmas Day all of a sudden rubbed out. Because people can work in hospitals on Christmas Day, they should also be allowed to work in the pubs, clubs and shops. That is what Labor Senator Kerry O’Brien is now asserting. If that is what you are asserting you cannot uphold the argument
that somehow Christmas Day, and other public holidays, have a degree of sanctity about them. If you honestly believe they have a degree of sanctity about them what you ought to do—

Senator Wong—We are saying that they should not be treated like every other day.

Senator ABETZ—Senator Wong interjects and says that they should not be treated like every other day. So what on earth are state Labor governments all around the country doing increasing trading hours for the pubs, clubs and shops to allow exactly that to occur? You cannot have it both ways. That is one of the great difficulties when you operate in a political and policy vacuum like those on the other side do. I think at least Senator Fielding may be of the view that it is not a flash idea to open pubs and clubs on Christmas Day. Therefore, there is a degree of consistency from Senator Fielding and I accept that position as being reasonable. But you cannot say that it is so bad to have workers working on Christmas Day and then say, ‘But, by the way, we will allow employers to open.’

Senator Wong—Madam Temporary Chair, I raise a point of order. The minister is completely misrepresenting the Labor Party’s contribution to this debate. That position was articulated very clearly. We recognise that there are people who have to work on Christmas Day, I think Senator Murray said the same thing. We all recognise that. We say that they ought not be treated like any other working day and that employees ought to be given an equivalent time off.

Senator ABETZ—That was a very helpful point of order, once again showing how the Labor Party are wallowing in their policy vacuum and have no idea how to escape the difficulties that they have got themselves into.

Opposition senators interjecting—

Senator ABETZ—The Royal Hobart Hospital, for example, have seven weeks annual leave which was agreed to. This indicates that people do work on Christmas Day and trade things off. For the benefit of those opposite—with respect, I think Senator Fielding has a better understanding of this than those opposite—I will go through what we are proposing. First of all, an employee is entitled to a day off on a public holiday, subject to an employer—

Senator Forshaw—With pay?

Senator ABETZ—Yes. The bill goes on to say:
An employer may request an employee to work on a particular public holiday.
So the employer can make the request—but it is only a request. The employee then has the right to respond by refusing that request and taking the day off if the employee has reasonable grounds for doing so.

Senator Wong—What is reasonable?

Senator ABETZ—Then of course the question arises as to what is reasonable. I will not go back to the very stark examples I used of the hospital or of my electorate office asking somebody to do filing on Christmas Day. Another important part of the bill is:
A term to the contrary in:
(a) a workplace agreement; or
(b) an award;
has no effect.

Senator Joyce—It is illegal.

Senator ABETZ—Senator Joyce, you are quite right: it has no effect. I know there will be a number of people claiming credit for this—and Senator Joyce is one of them—but, if I might allow some of the glory to be shared, I think you, Senator Fielding, quite
rightly could claim some credit in this regard as well because I think the concerns you expressed are being dealt with in this amendment. So a term to the contrary has no effect.

Somebody interjected, ‘What is reasonable in these circumstances?’ We have a list of 12 reasons to have regard to in determining whether an employee has reasonable grounds for refusing a request to work on a public holiday. The 12 reasons listed are:

(a) the nature of the work performed by the employee;

In those circumstances, the stark examples that I have used before are apposite. The list goes on:

(b) the type of employment (for example, whether full-time, part-time, casual or shift work); and

(c) the nature of the employer’s workplace or enterprise (including its operational requirements); and

(d) the employee’s reasons for refusing the request; and

(e) the employee’s personal circumstances (including—

and we specifically put this in—

family responsibilities); and

(f) whether the employee is entitled to additional remuneration or other benefits as a consequence of working on the public holiday;

That is another one of the reasonable tests. The list goes on:

(g) whether a workplace agreement, award, other industrial instrument, contract of employment or written guideline or policy that regulates the employee’s employment contemplates that the employer might require work on public holidays, or particular public holidays; and

(h) whether the employee has acknowledged or could reasonably expect that the employer might require work on public holidays, or particular public holidays; and

(i) the amount of notice in advance of the public holiday given by the employer when making the request; and

(j) the amount of notice in advance of the public holiday given by the employee in refusing the request; and

(k) whether an emergency or other unforeseen circumstances are involved;

And then we have the catch-all phrase:

(l) any other relevant factors.

So when you take the totality of our legislative regime in this particular situation of public holidays, I think it is well balanced and covers the needs of both the employer and the employee in a way that is basically skewed towards the employee being able to, quite rightfully, refuse to work on public holidays and the employee being protected if that refusal is reasonable in all the circumstances.

These government amendments that we are introducing are a victory for a number of people in this place—and of course everyone who sees them as such will claim them as their own. I think it is a substantial improvement on where we were previously. Having said that, the attempt to try to suggest that this regime of amendments will have no effect in protecting Christmas holidays is an unsustainable and illogical proposition to try to put to this chamber and to the Australian people.

Senator STERLE (Western Australia)

(9.42 pm)—I have sat here for the last six or seven hours listening to the minister waffle on and on and avoid the truth at all opportunities. Minister, why do you insist on standing there insulting the intelligence and the ethics of generations of hardworking Australians who are not afraid to work on Christmas Day or any public holiday, but who want to be able to keep the minimum rates and conditions that they have been afforded all these years and not have something rammed
down their throats that suits your mates in the ACCI? Why can’t you come straight to the truth and say it as it is? What you are doing is giving the bad apples—or the bad eggs, as Senator Murray was saying—the opportunity to do the worst things possible to workers. So don’t fluff around the edges; come straight to the point and tell the people the truth.

Senator ABETZ (Tasmania—Special Minister of State) (9.43 pm)—I was wondering when Einstein was going to enter the debate. What a highly intellectual contribution from Senator Sterle. No wonder—

The TEMPORARY CHAIRMAN (Senator Moore)—Minister, that point needs to be withdrawn.

Senator ABETZ—What?

The TEMPORARY CHAIRMAN—The reflection on Senator Sterle that you just made.

Senator ABETZ—Einstein? All right, he is not an Einstein. I think we are all agreed, Madam Temporary Chairman. I am more than willing to withdraw it.

The TEMPORARY CHAIRMAN—Do you withdraw that comment, Minister?

Senator ABETZ—Yes, absolutely! He is no Einstein. Thank you, Madam Temporary Chairman—it has been my delight to make the point doubly in relation to Senator Sterle. With contributions like that from a former trade union official, you cannot help but sympathise with Mr Latham when he talks in his diaries about saying to Mr Combet and Sharan Burrow: ‘If you want me to take the trade union movement seriously, make sure you don’t send the trade union rejects into the Senate.’ I think we have a classic example with Senator Sterle’s contribution of exactly what Mr Latham was talking about. The first contribution for quite some time by Senator Sterle in this debate just goes to show how bankrupt his contribution in this place—

Senator Sterle—Try telling the truth for once—just for once. Come on! Because you cannot. Don’t worry—your nose won’t grow another inch.

The TEMPORARY CHAIRMAN—Senator Sterle, that last comment was inappropriate.

Senator Sterle—I withdraw that.

Senator RONALDSON (Victoria) (9.45 pm)—Let us be absolutely clear about what we are debating tonight. We have two effective iconic events. We all agree on the term ‘iconic events’. But let us be very clear about what this amendment does and about what Senator Wong and Senator Murray were saying. The iconic event for those opposite is actually the day off or the just compensation. This amendment makes the iconic event the event that we believe is iconic, such as Christmas Day. The government’s amendment actually protects the right of Australian workers to have Christmas Day off, and under the amendment that is our iconic event.

Opposition senators interjecting—

Senator RONALDSON—If you interject I will go on longer; if you let me finish I will sit down. The day is the iconic event. You are saying that your iconic event is the day off or the just compensation. So let us be absolutely clear about what the demarcation lines are here. This amendment allows Australian workers to have off the iconic event day, which is Christmas Day. You are saying that the iconic event is not Christmas Day, not the family day—your iconic event is the day off or the time in lieu, whatever it might be. Let us be absolutely sure what we are all talking about.

Senator FORSHAW (New South Wales) (9.47 pm)—I am only going to make a very short comment, because it would be handy if
we got to vote on this. People have been listen-
ting to and participating in this debate about amplifications to the provisions regard-
ning public holidays for quite some time. The
very fact that that has been happening tells
you one thing. It tells you that this legisla-
tion, when it started out, was a serious un-
dermining, if not removal, of many of the
rights and entitlements that public holidays
attract. The very fact that we are having that
debate tells you that the government were
about taking away rights and entitlements.
They now come back in here and say,
‘We’ve actually addressed some of the con-
cerns of Senator Joyce, particularly, and
Senator Fielding,’ and they make a big song
and dance about that. However, the point
that was just made by Senator Ronaldson was
quite wrong. The whole principle of an enti-
tlement in awards to a day off for public
holidays derives from the gazettal of public
holidays in the states and territories of this
country. Anybody who knows anything
about industrial law and the way in which
industrial awards, agreements et cetera oper-
ate in this country knows that they reflect
and, indeed in many cases, advance the spe-
cific entitlements that are laid down by stat-
ute for employees to gazetted public holi-
days.

So when Senator Ronaldson suggests that
we have some other iconic view and it is
different to theirs, it is a nonsense argument.
This is essentially sophistry that we hear
from the government. It is false argument.
You put up a proposition yourself and then
you answer it yourself as well. That is what
Senator Abetz has been doing and that is
what Senator Ronaldson has done. What we
are saying and has been said by Senator
Fielding and others throughout this debate is
that the issue is about the entitlement of em-
ployees to the day off with pay or to some
other mechanism whereby they receive that
same entitlement in another form—a day in
lieu, a penalty rate or whatever. That has
been negotiated for years and years, but it
has always been underpinned by the state
gazettal of public holidays. The big problem
with this legislation as a whole is not just
what it does to employees’ rights under
awards, agreements et cetera but also what it
does to the state systems and laws that pro-
vide standards and minimum standards for
all employees across the states, because this
legislation seeks ultimately to override most
of the state systems.

Senator FIELDING (Victoria—Leader
of the Family First Party) (9.50 pm)—I think
the issue here is trying to work out what is
fair and reasonable. The issue is that you
have someone who is able to take the day off
on reasonable grounds. Let us say they get
paid $100, which is normal pay, for taking
the day off, and they are off with their family
on that particular public holiday. Then you
have someone who has potentially signed a
contract that has in it, ‘I will work on public
holidays for the same amount of pay—
$100—and get nothing more than the person
who actually takes the day off.’

The issue at hand is that you can have—
potentially in the same workplace—two peo-
ple, one taking the day off, spending it with
their family and being paid $100 for that day
in ordinary hours; and the other working on
that day, getting paid $100 and not spending
time with their family. That is the dilemma
with this bill. The government has made
some changes that go part of the way. The
protections that they have there are well and
good, but we can add to them. I do not think
it is fair and reasonable for someone who is
required to work on that day rather than
spend time with their family, and not be enti-
tled to another day off sometime, to be paid
exactly the same as someone who is able to
take that day off. I do not think that when
Australians voted for the government last
year they knew that this was going to be in
this bill. That is not fair and reasonable, and I will continue to argue that case.

Senator MURRAY (Western Australia) (9.52 pm)—When I sit in these debates, every now and again it is brought home to me how valuable the interchange between all sides is. Senator Forshaw’s recent contribution added clarity to a point that had not been made or, if it had been made, had not been made clearly. Essentially, what he has just said is that the present system, with all its flaws, acts to discourage people working on public holidays. It acts to discourage employers from making employees work on public holidays, and so people get proper time with their family. The new bill, even as amended by the government today, acts to encourage people to work on public holidays. That is the key difference between the two. I thank Senator Forshaw for his contribution.

Senator JOYCE (Queensland) (9.54 pm)—I have listened to the debate, and I appreciate what Senator Wong has said. I have been watching Senator Fielding and Senator Murray. There was a consensus in the government that iconic days such as Good Friday, Anzac Day, Christmas Day and Australia Day be protected. Within this legislation, not only those iconic days but also any other gazetted public holiday are protected. Within this legislation, not only those iconic days but also any other gazetted public holiday are protected. We heard earlier in the chamber about the issue of certain show days on the west coast of Tasmania. Under this legislation, those are also protected, because it specifically talks about gazetted public holidays in regions as well. It is a very encompassing move.

Senator JOYCE (Queensland) (9.54 pm)—I have listened to the debate, and I appreciate what Senator Wong has said. I have been watching Senator Fielding and Senator Murray. There was a consensus in the government that iconic days such as Good Friday, Anzac Day, Christmas Day and Australia Day be protected. Within this legislation, not only those iconic days but also any other gazetted public holiday are protected. We heard earlier in the chamber about the issue of certain show days on the west coast of Tasmania. Under this legislation, those are also protected, because it specifically talks about gazetted public holidays in regions as well. It is a very encompassing move.

There is a proposition that has been put by many that this process can be somehow circumvented. That is not the case. It is illegal to put forward an AWA that contradicts section 170AF(4), which states that you cannot put in a workplace agreement a term that is contrary to the protection of iconic public holidays. Let us look at some of the reasonable reasons for refusal. One of the key ones that I like is paragraph (e), which reads ‘the employee’s personal circumstances, including family responsibilities’.

The proposition in the legislation is that under law the employee at home with their family gets paid for ordinary hours. As Senator Ronaldson has so rightly pointed out, our motivation is to protect these iconic days—not the day in lieu but the iconic days that we are speaking of. If an employer feels that it is absolutely essential to have an employee come to work and not be with their family during these iconic days, then there is no point them just offering what the employee is going to get at home in any case—ordinary hours. Let us say, for instance, that they are getting paid $20 an hour. It is no good offering somebody $20 an hour to come to work when they are getting paid $20 an hour to be at home. If you offer them $22 an hour to come to work, why would they come to work for $2 an hour? It makes no sense. You would have to offer up front something substantially more than ordinary hours, which is what they are getting for being at home.

Senator Forshaw—You’ve been doing it in the pastoral industry for years.

Senator JOYCE—If you do me the dignity of listening, you will hear the answer. It is up to the employer what they offer. They can offer a day in lieu; they can offer double the rate, triple the rate or whatever. The beauty of this legislation is that it is at the employee’s discretion to take it or not. The employee is protected by law, whether they decide to take it or not.

In fact, that is more protection than you get at the moment, because under the penalty system an employer can say: ‘Do you want a penalty? Do you want to bang on about a penalty? I’ll give you a penalty: I’ll give you
50 per cent above the award, so instead of $20 an hour it is now $30 an hour, but you must come—you have no choice. You must come away from your family and work at the local hamburger shop on Christmas Day because I tell you so. And if you do not turn up, you are sacked. 'There is nothing to fall back on. The government has gone beyond the current protection mechanism. It is absolutely ridiculous to harp on about the penalty rate as the great saviour of these iconic days. It is not. This amendment is the great saviour of those iconic days, because this amendment says that it is illegal to make the employee work against their wishes.

I acknowledge the great work that has been done by our Liberal colleagues—Senator Ronaldson and others—but this is driven by the National Party. We actually read the legislation. Hearing what some people on the other side of the chamber said tonight, it is quite obvious that they do not or that they are trying to mislead the Australian people.

They say that this is minor tinkering at the edges. It is amazing how much attention this ‘minor tinkering at the edges’ is getting. It is amazing how much of the debate this minor tinkering—this protection of iconic holidays—is getting. It is absolutely fundamental that they be maintained. To give us our due, the coalition have put in place greater strength than was ever there before, because you did not have the choice before. I would suggest that anybody who wants to get someone out and away from their family on Anzac Day, on Christmas Day or on Good Friday—the days that we are protecting—is going to have to offer substantially more than what might have been obtained under a penalty. We do not even have a definition of what a penalty is—a penalty could be anything.

Senator Forshaw—Read an award, you goose!

Senator Ronaldson—I rise on a point of order, Madam Temporary Chairman. Senator Forshaw should withdraw that remark. Senator Joyce is one of the people in this chamber who is making a contribution and a substantial one. He does not deserve that sort of response from Senator Forshaw and the senator should be forced to withdraw that.

The TEMPORARY CHAIRMAN (Senator Moore)—I hear your point of order, Senator Ronaldson. The term ‘goose’ has been used on several occasions in this chamber and I do not accept that as a point of order.

Senator Abetz—Madam Temporary Chairman, I raise an interesting point of order in relation to that. Calling somebody ‘Einstein’ has to be withdrawn but calling somebody a ‘goose’ doesn’t have to be. That is an interesting approach to the standing orders. I am willing to abide by them but I think there is a degree of inconsistency.

The TEMPORARY CHAIRMAN—Minister, I hear what you are saying. My decision is on the basis of previous practice in this place. It is a common expression and I do not accept that it is a point of order at this stage.

Senator Joyce—Thank you very much, Madam Temporary Chairman. I can understand that to refer to a senator on the other side as ‘Einstein’ should definitely be withdrawn, but to refer to them as poultry is quite all right.

The TEMPORARY CHAIRMAN—Senator Joyce, are you actually reflecting on my judgment? I am just questioning whether that is what you are doing.

Senator Joyce—No, I am not. So for my colleagues on the other side, I would like to conclude by saying: let us get this on the
record. It is very important that the Australian people who are watching this tonight, both of them, see that to put something in an AWA which is illegal, and that is to ask them to work on public holidays, has been covered by the National-Liberal coalition at 170AF. A reasonable reason to not go to work, a reasonable refusal, can be that you want to spend time with your family. This is something that categorically lifts those iconic public holidays out of the mix and embargoes them as days to be spent with the family, days to reflect upon the greater nature of Australia, days to respect those who have died for our country. I am very proud to have been a part of the team with my National Party colleagues such as Senator Nash, and Senator Ronaldson to have given that to the Australian people and enshrined that in this legislation.

Senator SIEWERT (Western Australia) (10.02 pm)—I would like to clarify a point that was made earlier. When I was asking about a dispute about reasonableness I was told that there was a model dispute resolution process. I have now looked that up. Say an employer and an employee cannot agree about what is reasonable and they go to the dispute resolution process. As I read it, the legislation says:

An employee who is a party to a dispute must, while the dispute is being resolved:

(a) continue to work ...

Therefore, the employee will have to keep working while that dispute is ongoing and while they are in dispute over what is reasonable or unreasonable. If that person is asked to work quite close to Christmas the dispute will not be resolved. That is my understanding of this process. They may therefore be required to work during that public holiday. Is my interpretation correct? But what you also need to understand is that if the employer has acted unreasonably in making that demand then they face the potential of a $33,000 financial penalty, which hardly makes it worth their while to act in that unreasonable manner. So there is a huge disincentive for the employer to unreasonably require an employee to work, as indicated to you.

Senator WONG (South Australia) (10.04 pm)—If Senator Siewert has no further questions, I am going to respond to some of the contributions from Senator Joyce. I do not know whether he wants to hang up or whether he wants to ignore me—that is fine. Senator Joyce might be quite a nice bloke but since he has come into this place he has demonstrated a capacity to be sold a pup by this government on a number of occasions. This is the bloke who campaigned in Queensland against the sale of Telstra and then voted for it after saying he did not want to sell it. This is the bloke who voted to sell Telstra and was told by the Labor Party, and it was public, that there were going to be job cuts and he then says: ‘Oh, they didn’t tell me that. That is a bit sneaky.’ And now he comes in here and says, ‘We’ve saved public holidays.’

Well, you have not saved public holidays. And your contribution, frankly, Senator Joyce, shows you do not understand this legislation. You certainly do not understand this provision. We have got the National Party congratulating themselves because they have saved Christmas Day while voting for a piece of legislation which permits, and in fact facilitates, people getting paid ordinary time for this day and which permits, and in fact facilitates, the loss of penalty rates, redundancy pay, overtime, shift allowances and a whole range of other things, including the loss of certainty of rostering. I would have thought if one were concerned about family life, one would want to keep those
things. But I will leave all of those arguments shortly.

The point I want to make is this: Senator Joyce seems to be making a contribution which suggests that there is some absolute right to refuse to work on a public holiday. That is not the case. If you read the provision that the government has put to you, it is quite clear that the employee may only refuse the request if they have reasonable grounds for doing so.

Let us understand what the current situation is. The current situation is that generally most employees get the public holiday off. They do not have to go and beg and say, ‘I do not want to have to work and this is why.’ Most employees get the day off. Those that do not are generally compensated appropriately under our existing system. Senator Joyce clearly misunderstands what a penalty rate is. One of the prime policy reasons behind penalty rates—which I think under current awards is 250 per cent, double-time and a half—is for them to operate as a disincentive for employers to roster people on. So generally they have been a disincentive and generally under industrial agreements and awards most people get the day off. What you want to put in place is a process whereby you can go and say: ‘I do not want to work. Is that okay?’ And, perhaps more importantly, you are going to have to explain why. So unlike now, when most people get the day off, you will have to rock up to your employer and say, ‘Look, I have these family arrangements,’ which you may not want to disclose. You may not want all your personal circumstances laid out for the boss to see in order to justify your request or your refusal to work.

There is no absolute right guaranteed, Senator Joyce. You have not achieved that. What you have achieved is a process where an employee can seek to refuse, has to tell their boss the reasons why and has to establish, prove, that it is reasonable for them to refuse to work on that day. And you think that is an advance on the current system? It is not.

We are digressing onto 170AG. I did raise this with the minister privately and I understand that there may be a slight amendment to that section so perhaps we should defer discussion of that section a bit longer—without wanting to truncate debate; obviously, that is a matter for the chamber. The Labor Party are keen to vote on Senator Fielding’s amendment before we rise. We hope we can get through that and perhaps a couple of others.

Senator Joyce—My Labor colleagues on the other side keep gilding the lily, getting around the issue and not talking the truth. The truth of this issue is that a penalty is not a right of refusal. What you currently have in place is a penalty rate. That is not a right of refusal. You can be ordered to work on Christmas Day. You do not have a right of refusal. You can be ordered to work on Christmas Day. It is the coalition that is protecting the iconic nature of these days—probably for the first time. They are talking about the reasonableness of refusals; 170AG is really a statement of the obvious reasons you would not want to go to work. We have had to tabulate it but it is really a statement
of the obvious. Look at the obvious one—the employee’s personal circumstances. How encompassing can that be? ‘I cannot go to work on Christmas Day because of personal circumstances; 170 AG says that is all I need to say and I have said it.’

Senator Wong—It does not say that.

Senator Joyce—It says:

170AG Reasonableness of refusal—
I refer you to (e), which says:
(e) the employee’s personal circumstances (including family responsibilities) ...

It is not exclusively family responsibilities but includes family responsibilities. How many more do we want to talk about? Do we want to talk about the nature of the work? I say: ‘Look, I do not think it is necessary for this hamburger shop to be open on Christmas Day. I do not think that is going to save people’s lives.’ There is a range of mechanisms here that are at the discretion of the employee.

If an employee has the capacity to go to work he probably has the capacity to tell his employer that he does not want to work on Christmas Day. Maybe I am jumping to conclusions but I believe that as a human being if God has given you a mouth, ears and a tongue to speak with you have the capacity to say to your employer: ‘I choose not to work on Christmas day.’

That is what we try to do on this side; we try to give you choice. That is what it is about. We protect that choice with legislation. It is amazing to see how many of my Labor colleagues have turned up for this debate that is just ‘tinkering at the edges’. All these people and their advisers are turning up for a debate that is just ‘tinkering at the edges’. They are arguing against us protecting workers on Christmas Day. That is an amazing thing to see. The debate has lost reason and has become rhetoric.

The argument has been won. The coalition has protected the iconic public holidays for probably the first time in history. The amendment reads:

In determining whether an employee has reasonable grounds for refusing a request to work on a public holiday, have regard to:

(a) the nature of the work performed by the employee; and
(b) the type of employment (for example, whether full-time, part-time, casual or shift work); and
(c) the nature of the employer’s workplace or enterprise (including its operational requirements); and
(d) the employee’s reasons for refusing the request; and
(e) the employee’s personal circumstances (including family responsibilities); and
(f) whether the employee is entitled to additional remuneration or other benefits as a consequence of working on the public holiday; and
(g) whether a workplace agreement, award, other industrial instrument, contract of employment or written guideline or policy that regulates the employee’s employment contemplates that the employer might require work on public holidays ...

On and on we go with all these conditions the National-Liberal coalition has put in place that protect the employee.

It is very good to see Senator Boswell here tonight. He has been another key advocate of protecting the iconic nature of Christmas Day, Anzac Day, Boxing Day and Good Friday. They define what the Australian character is. And that is what we are trying to do—put choice back into the definition of what the Australian character is. We will listen to the rest of this debate as the fear of the truth takes the Labor Party to try and gild the lily and say it is something that it is not. It is protection of workers’ rights on these iconic days.
Senator FORSHA (New South Wales) (10.13 pm)—I have a question for the minister and I would probably even be interested in hearing what Senator Joyce’s response is. Minister, can you explain the application of these provisions that we have been discussing for some time? It is said that they enshrine the entitlement of workers to the iconic public holiday. How does that operate when the actual public holiday—Christmas Day, Boxing Day, New Year’s Day or Anzac Day—falls on the weekend and another day is gazetted in lieu of that day? How does that operate now? Is the protection available if the person says they do not want to work on, say, Christmas Day when it is the Saturday but the actual day that has been gazetted for the public holiday is the following Monday? This can apply to most public holidays with the obvious exception of Good Friday. The point is—I would like to hear the answer to this—that what you have been saying for the last hour and a half or so is a nonsensical proposition when you look at the provisions of 170AE, which pick up the very fact that public holidays falling on weekends, for instance, are invariably gazetted as public holidays on a weekday.

Senator MURRAY (Western Australia) (10.15 pm)—I have listened to this debate with some consternation, particularly with regard to the contribution of Senator Joyce. Through you, Madam Chair: Senator Joyce, you must avoid giving the wrong impression. I am sure it was not your intention but you implied that getting attention was the most important thing. Getting attention matters not at all. What you have to deal with in this place is the public interest and what is important from your perspective as a senator. Whether or not you have any attention, your job is to pursue the public interest. But I am sure you did not mean it in that sense, because it almost sounded as if the whole purpose of your actions was to get publicity, not to get an outcome, and I am sure that is unfair to you. I am quite sure you did not mean that.

Senator Joyce—I didn’t.

Senator MURRAY—Just be aware that the way you expressed yourself gave the wrong impression. I am also concerned, Senator Joyce, about the projection of your own qualities and abilities onto others. For instance, you are a person with a great deal of character, courage and gumption and you have been able to stand up to not only your own party but also the government, and indeed you have been able to cross the floor. But you cannot transfer that great courage to your colleagues, because if you look at the Liberal and National parties you will see that the number of them who have ever had the quality and character necessary to stand up to their colleagues and cross the floor is quite limited—there are very few of them. So you cannot assume that everyone has the same courage and character as you do.

You have another ability, which is the ability to make your point and to be quite fearless in doing so, and I admire you for that, as many do, but many people cannot do that. The point of the debate that we have had so far is that statute has been constructed so that people who cannot stand up to others are protected. That was the point of Senator Forshaw’s contribution. By gazetting public holidays, employees who did not have your qualities and character to be able to stand up to a boss were protected by statute. The statute said that the public holiday is available to them.

The development of statutory law meant that the employee did not have to face up to the employer and say, ‘Employer, I don’t want to work on Christmas Day,’ because the disincentive, the discouragement, was there in the form of penalty rates and so on, so it cost the employer if they wanted to try and
make employees work. As much as possible was done in statute for a person who is weaker, more disadvantaged or whatever. I am the sort of person who can stand up for myself, and probably most of the people in this chamber are, because that is the nature of politics, but a lot of people cannot. They cannot confront their boss. The disincentive of penalty rates was designed to discourage employers from pushing their employees to work, and that is what we are concerned with.

It is all very well to impute motives to the Labor Party and so on, but there is a long tradition in the Labor Party of a connection to working people and a sense of a bond with them. Maybe sometimes that is exaggerated and sometimes that is misplaced, but the fact is that bond exists. What Labor are saying is that this legislation—and I agree with them—acts to encourage some employers to oblige employees to work on a public holiday. Even with the protections, to say that it is a reasonable situation that you can argue why you should not work on a public holiday is fanciful.

I know hardly any employers—including, I might say, from major companies; never mind those from small companies—who know the law. I really do not. I have met many union officials—I do not mean this about the very best, because they are pretty good—but the ordinary shop stewards and so on do not know the law. They know their award—that is a different matter—but if you asked them, ‘What is section 170G(2)’? or something, they would say, ‘What the blazes are you talking about?’ as I would too.

It is a bit fanciful to expect a waitress, who is perhaps educated to standard 9, to come along and say, ‘You want me to work on Christmas Day. Hang on, let me look at 170AG. Oh yes, here it is. This is what my reason is.’ Life just is not like that. The problems we have are that you are changing a system and hoping the new system will work well—and, frankly, I hope you are right, because then our fears will have been misplaced and that would be a great outcome. But, if you are wrong, the ordinary person will be put in a situation where their powerlessness in the face of an employer is increased and where the discouragement to the employer to not employ people on public holidays will be reduced, and that is not a good outcome.

**Senator WONG (South Australia) (10.21 pm)**—I will be very brief because Senator Fielding has been extremely patient with others in the chamber. We would quite like to vote on this and Senator Murray’s amendment and perhaps have some discussion, because we have already started discussion on the amendments moved by the government, which are the ones on which Senator Joyce’s contribution was made. Senator Joyce, I will flag that one of the things we will be exploring is exactly what right you have given, because we have concerns that the right of refusal for employees will in fact be very difficult to enforce. We certainly will be asking questions about that. Frankly, my suggestion to you is that you might have negotiated a theoretical right because in effect it will not be refused. In any event, the Labor Party has indicated its position on Senator Fielding’s amendment, and we would quite like to vote on it reasonably soon.

**Senator ABETZ (Tasmania—Special Minister of State) (10.22 pm)**—I will respond to Senator Forshaw’s contribution; he has asked about public holidays. They are defined in proposed section 170AE, ‘Definition of public holiday’, which then lists the public holidays. The specific dates are actually mentioned: 1 January, 26 January, Good Friday, Easter Monday, 25 April, 25 December, 26 December and ‘any other day declared by or under a law of a State or Terri-
tory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than—and then you have a few exclusions, which include, for example, if Anzac Day is on a Saturday. I do not think they do that anymore, in fact, but, if it does fall on a Saturday, they make the following Monday a public holiday. So, if you believe that Christmas Day or Good Friday is the iconic day and the important day, then of course that is the day on which you have the right to refuse to work on reasonable grounds.

Can I say that the marches et cetera are not deferred until the Monday; they are in fact held on the Saturday because that is the iconic date. Can I suggest to honourable senators opposite that if Christmas Day falls on a Saturday, my kids will not be saying, ‘No, we won’t open the presents on Christmas Day, 25 December, we will wait until Monday, the substituted public holiday, to open the presents.’ I do not think I would get away with that in my family. I am pointing out that I think we have a very good, robust regime, as Senator Joyce has indicated.

It might be appropriate at this stage of the proceedings to give credit to Senator Joyce for the work that he has done on this matter. Senator Joyce, Senator Murray tried to praise you, but it was the sort of faint praise of saying you have had the courage to cross the floor et cetera. I tell you, Senator Joyce, that some others in this place have crossed the floor as well and the only time we have to cross the floor is when we are so hopeless as to be unable to convince our party colleagues. All my colleagues who have not crossed the floor are better advocates than us because they have been able to convince the party room of their position, whereas those of us who have crossed the floor from time to time have not been as effective advocates as. Having said that, we on this side have the freedom to do so—unlike those opposite. Of course I look forward to the outcome for Mr Harry Quick, the member for Franklin, who crossed the floor last night. I think that was Senator Forshaw’s only matter.

**Senator FORSHAW** (New South Wales) (10.26 pm)—Minister, I appreciate that you have responded, and I think you have actually acknowledged that I am right. Let me explain it to you. What you have just said is that, under that proposed section of this legislation, the refusal that an employee is entitled to on reasonable grounds relates to the iconic day, the exact day—let us say Christmas Day, 25 December. Are you listening? It relates to the exact day. You talked about kids opening their presents on Christmas Day on a Saturday. I have a question from listening to your interpretation and explanation. If Christmas Day falls on a Saturday, which is not a normal working day for many employees as it is already a day off for them because it is a weekend, they are entitled to refuse to work on that day—but in ordinary circumstances they are not required to work on that day. They are not going to get paid for that day because it is a—

**Senator Joyce interjecting—**

**Senator FORSHAW**—Hang on, just listen. It is a weekend. It is a Saturday. You can laugh all you like. That is why the state gazettes the Monday as the public holiday if Christmas Day, Boxing Day or New Year’s Day falls on a weekend, as the public holiday coincides with a day that is not a normal working day. So they get a day off for Christmas Day that they already have off and for which they have not been paid because they presumably have been paid for five days of the week. They are then entitled under the gazetted law of the state to have the Monday off as well—

**Senator Joyce**—They’ll get it off anyway. It’s Boxing Day!
Senator FORSHA—No, the Sunday is Boxing Day, you dope, and Monday becomes Christmas Day and Tuesday will be gazetted as Boxing Day.

The TEMPORARY CHAIRMAN (Senator Moore)—Senator Forshaw, I ask that you—

Senator FORSHA—No, this is a serious point. It is a very serious point.

The TEMPORARY CHAIRMAN—I am asking you to—

Senator FORSHA—I withdraw the remark.

The TEMPORARY CHAIRMAN—Thank you, Senator Forshaw.

Senator FORSHA—This is a serious issue. If—

Senator Joyce interjecting—

Senator FORSHA—I would like you to explain this. If Christmas Day falls on the Saturday, they already have that day off as a normal day off. The gazetted public holiday is a weekday. Are you saying that they have the right to refuse to work on a day when they would not otherwise be required to work but they are not entitled to refuse to work on the gazetted public holiday on the Monday? Is that the explanation—because that is what you just said. I put to you that that is precisely what this amendment does. Therefore, it does not protect the public holiday entitlement of the iconic Christmas Day when it falls on a day other than a weekday, and that applies—

Senator Ronaldson interjecting—

Senator FORSHA—Senator Ronaldson, just sit there and you might learn something. That applies for most public holidays in the year except for Good Friday and Easter Monday. Every other day potentially can fall on a weekend and therefore would ordinarily be gazetted as a public holiday. You say that you have saved Christmas Day for people, Senator Joyce, but if it falls on a Saturday they already get the day off. They are not required to go to work if they work Monday to Friday. You have in fact given away the public holiday on the Monday. There is no right under your provision for an employee to rock up on the gazetted public holiday and say, ‘Boss, I don’t want to work on Monday—the gazetted public holiday,’ There is no right of refusal under this provision.

Senator ABETZ (Tasmania—Special Minister of State) (10.30 pm)—This is the sort of language one would expect from somebody who opposed using wide combs for shearing. That really is from that era. In relation to normal Saturdays, an employer could require an employee to work. However, there will be this guaranteed right of refusal under the legislation in the event that Christmas Day falls on a Saturday—a right of refusal which the employee would otherwise not have had. Those opposite laugh and thereby disclose their absolute ignorance about these issues or because they simply do not want to know.

The simple fact is that there are now many industries, such as the building industry and others, that do require people to work on a Saturday and there is no right to refuse to work on a Saturday. Christmas Day is important. I absolutely agree that it is. But I do not think that substituting it for opening of presents on another day would be good enough for my kids and I do not reckon it would be good enough for all the kids. Of course, the one bloke who does work on Christmas Day, Father Christmas, would find it very difficult to go delivering the presents on the substituted holiday. If we actually believe in the iconic nature of days such as Anzac Day, we would agree that the marches will not be on the Monday of that long weekend; the marches will be on 25 April, irrespective of whether it is a Saturday or a Sunday. That is
where we are going to be providing a legislative right to an employee to refuse to work on the basis that they are able to establish reasonable grounds.

As I think I have set out on numerous occasions, and Senator Joyce has as well, those reasonable grounds are quite extensive and skewed in favour of the employee. If the employer is found to have been unreasonable in demanding that the employee work, there is a substantial fine of some $33,000. I do not think you have to be an Einstein—and I use that word generically; I do not apply it to any specific senator—to work out that chances are it is not worth while for an employer to behave unreasonably given the nature of the financial penalty that they may face in those circumstances.

Having said that, much as I accept the sentiment behind Senator Fielding’s amendment I really do say, with respect to him, that there is a greater degree of protection in our legislative regime. I invite him to consider that. It is only on that basis that we will be voting against his amendments. We think the right of refusal to work is more important than just giving a substituted holiday somewhere else for those very important iconic days.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.34 pm)—I will make a concluding remark. We have talked about a lot of other amendments and I think it is worth while bringing this particular amendment forward. I would acknowledge that the guarantees in the amendments put forward by the government will give some improvement. But the issue is still that, if someone has to work on that day when it is family time, they need another day somewhere for that family time. That is the issue at hand at the moment. It is fair enough that someone can actually be requested to work and someone can reasonably refuse. Some-one may have to go to the law courts to make that happen, but put that to one side. I think it is good that someone can actually reasonably refuse to work on a public holiday. The issue is that, if they work on that public holiday, I think it is more than fair and reasonable that they be entitled to another day to spend with their family. You will find that, at some stage in the same workplace, one worker may be getting $100 to take the day off and another worker may be getting paid $100 to work on that day and will not be able to spend time with their family on another day.

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

The committee divided. [10.40 pm]
(The Chairman—Senator JJ Hogg)

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AYES

Allison, L.F. Bishop, T.M. 
Brown, C.L. Conroy, S.M. 
Evans, C.V. Fielding, S. 
Hogg, J.J. Kirk, L. 
Lundy, K.A. McEwen, A. 
Moore, C. Nettle, K. 
Polley, H. Siewert, R. 
Sterle, G. Webber, R. 
Wortley, D. 

NOES

Abetz, E. Barnett, G. 
Brandis, G.H. Campbell, I.G. 

CHAMBER
I move Democrat amendment (38) on sheet 4765 revised:

(38) Schedule 1, item 71, page 160 (after line 3), at the end of Part VA, add:

Division 7—Public holidays—Preserve Christmas Day

Subdivision 1—Preliminary

94ZZC Employees to whom Division applies

This Division applies to all employees.

94ZZD Definitions

In this Division:

employee means an employee to whom this Division applies under section 95AA.

public holiday means a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region.

Subdivision 2—Guarantee of public holidays

94ZZE The guarantee

(1) An employee is entitled to the benefit of each public holiday.

(2) Where an employee does not work on a public holiday, and normally would (as determined by previous months' work pattern), the employee must be paid, either:

(a) for the number of hours ordinarily worked by the employee on a daily basis; or

(b) 7.6 hours in the case of employees who work an average of 38 hours per week over the employee's applicable averaging period (pro rata in the case of employees who work less than an average of 38 hours per week over the employee's applicable averaging period); whichever is the greater.

(3) An employee, who is not a salaried employee, who works on a public holiday must be paid not less than two and a half times the basic periodic rate of pay for each hour worked.

The debate so far has had a bit of politics, a fair bit of detailed technical stuff, a bit of passion and some moments of humour. I now want to inject a moment of great sadness as I advise the chamber that, as a Western Australian senator, I have to work on public holidays without compensation. It works like this: when the eastern staters have their holidays I am over in the west working, then I travel over east when it is a Western Australian holiday and I am over here working. The only compensation I get is to share those days with people like Senator Abetz and other members of the chamber.

Senator Abetz—You would not change it for the world!

Senator MURRAY—I suggest to the chamber that we not have much debate on
this amendment, because it deals with the issue of public holidays again, and I think the substantive amendment we then need to debate is the government’s amendment on public holidays. We produced this amendment prior to seeing the revised Family First amendment. That was similar to ours but they then revised it. There is not much difference between the two except that we upped the ante to 2½ times the ordinary time earnings instead of twice. I guess our attitude is that we value Christmas Day a bit higher. But we had exactly the same motivation as Senator Fielding in putting that forward. Therefore, I do not need to repeat the motivation for the amendment. I indicate as well to the chamber that I do not feel it necessary to have a division on it unless the debate gets overheated.

Senator ABETZ (Tasmania—Special Minister of State) (10.47 pm)—To Senator Murray and other senators: I think that in general terms the issue of public holidays has in fact been canvassed at some substantial length. In opposing Senator Fielding’s amendments I read out in full the government’s amendments. Therefore, it might be worth while to treat that which has just passed as having been the cognate debate on public holidays and just move, if senators are so minded, to the vote in relation to these matters. I do not seek to delay the committee. If there are further questions, of course that would be an entitlement. But, for the reasons outlined to Senator Fielding, we also oppose Senator Murray’s amendment.

Senator WONG (South Australia) (10.48 pm)—We do not propose to debate this issue again in relation to this amendment. We do have a number of issues in relation to the government amendments, so we will not be agreeing to truncate that debate at this stage. I indicate that we are supporting Senator Murray’s amendments.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Ferguson)—We now move on to government amendments. Minister, if you seek leave you can move them together.

Senator ABETZ (Tasmania—Special Minister of State) (10.49 pm)—I seek leave to move the government amendments together.

The TEMPORARY CHAIRMAN—Is leave granted?

Senator MURRAY (Western Australia) (10.49 pm)—Mr Chairman, I need your guidance. The minister may in fact be able to move them all together, but I intend to move an amendment to government amendment (160), which is in that batch. I do not know whether you, as chair, would prefer to deal with that in isolation or group them all together. I will still move that amendment.

The TEMPORARY CHAIRMAN—Senator Murray, I will probably need guidance too, but I think we can separate (160) from the others, if that is okay.

Senator WONG (South Australia) (10.49 pm)—We ask that both (160) and (274) be separated from the rest.

The TEMPORARY CHAIRMAN—I suggest that leave be granted for all government amendments to be moved together, apart from (160) and (274).

Leave granted.

Senator ABETZ (Tasmania—Special Minister of State) (10.50 pm)—I move government amendments (9), (66), (187), (189), (193), (210) and (267):

(9) Schedule 1, item 6, page 22 (after table item 4), insert:

4A Division 1A of Public Section
Part VIA holidays 170AM

(66) Schedule 1, item 71, page 104 (lines 25 to 32), omit the definition of public holiday in section 92A, substitute:
public holiday means:

(a) a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:

(i) a union picnic day; or

(ii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday; or

(b) a day that, under (or in accordance with a procedure under) a law of a State or Territory, or an award or workplace agreement, is substituted for a day referred to in paragraph (a).

(187) Schedule 1, item 170, page 385 (after line 31), after paragraph (b) of the definition of applicable provision in section 177A, insert:

(ba) section 170AF (public holidays); and

(189) Schedule 1, item 171, page 388 (after table item 6), insert:

6A section 170AF (public holidays) (a) an employee to whom section 170AF applies; (b) an organisation of employees (subject to subsection (3)); (c) an inspector

(193) Schedule 1, item 171, page 388 (after line 21), after paragraph 177AA(3)(c), insert:

(ca) section 170AF; or

(210) Schedule 1, item 240, page 473 (after line 11), after Division 5 of Part XV, insert:

Division 5A—Public holidays

507A Additional effect of Act—public holidays

Without affecting its operation apart from this section, Division 1A of Part VIA also has effect in relation to the employment of any employee in Victoria, and for this purpose:

(a) each reference in that Part to an employer (within the meaning of that Part) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Part to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria; and

(d) section 170AH has effect as if Part VIA had been modified in a corresponding way to the way in which Division 1A of Part VIA is modified by paragraphs (a), (b) and (c).

507B Additional effect of Act—enforcement of, and compliance with, section 170AF

Without affecting its operation apart from this section, Part VIII also has effect in relation to section 170AF as that section applies because of section 507A, and for this purpose:

(a) each reference in that Part to an employer (within the meaning of that Part) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Part to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the employment of an employee
(within the meaning of this Division) in Victoria; and
(d) each reference in that Part to section 170AF is to be read as a reference to section 170AF as that section has effect because of section 507A.

(267) Schedule 1, item 360, page 595 (after line 29), after Part 7, insert:

PART 7A—RELATIONSHIP BETWEEN PRE-REFORM AGREEMENTS ETC. AND PUBLIC HOLIDAY ENTITLEMENT

30A Relationship between pre-reform agreements etc. and public holiday entitlement

Division 1A of Part VIA (public holidays) does not apply to an employee if the employee’s employment is subject to any of the following instruments:

(a) a pre-reform certified agreement;
(b) a pre-reform AWA;
(c) a section 170MX award.

I have just learned a new word, and it is not Welsh; it is a French word. I want to move an amendment to the chapeau of clause 170AG. I am told by the advisers that the lead-in sentence to the clause is a ‘chapeau’. And the amendment is—

The TEMPORARY CHAIRMAN—Minister, if I could just intervene for a minute. I think that applies to amendment (160), which is the one that we are dealing with separately.

Senator ABETZ—You are quite right, Chair. Thank you.

The TEMPORARY CHAIRMAN—Minister, your French is not as good as your Welsh!

Senator ABETZ—in that case, I will defer the amendment to the chapeau.

Senator MURRAY (Western Australia) (10.52 pm)—Can the minister confirm that nothing in the reference to Victoria in amendment (210) contradicts or interferes with the way in which the referral of powers was originally granted—that the referral remains intact and unaffected?

Senator ABETZ (Tasmania—Special Minister of State) (10.53 pm)—I can confirm that.

Question agreed to.

Senator ABETZ (Tasmania—Special Minister of State) (10.53 pm)—I move government amendment (274) on sheet PN271:

(274) Schedule 1, item 360, page 600 (line 12) to page 604 (line 29), omit Divisions 1 and 2, substitute:

Division 1—Preserved individual State agreements

Subdivision A—What is a preserved individual State agreement?

3 Preserved individual State agreements

If, immediately before the reform commencement:

(a) the terms and conditions of employment of an employee were determined, in whole or in part, under a State employment agreement (the original individual agreement); and

(b) that employee was the only employee who was bound by the agreement, or whose employment was subject to the agreement;

a preserved individual State agreement is taken to come into operation on the reform commencement.

Subdivision B—Who is bound by or subject to a preserved individual State agreement?

4 Who is bound by or subject to a preserved individual State agreement?

(1) Any person who:

(a) immediately before the reform commencement, was bound by, or a party to, the original individual agreement, under the terms of that agreement or a State or Territory industrial law as in force at that time; and
(b) is one of the following:
   (i) an employer;
   (ii) an employee;
   (iii) an organisation;

is bound by the preserved individual State agreement.

(2) The employment of a person is subject to the preserved individual State agreement if, immediately before the reform commencement, that employment was subject to the original individual agreement.

Subdivision C—Terms of a preserved individual State agreement

5 Terms of a preserved individual State agreement

(1) A preserved individual State agreement is taken to include the terms of the original individual agreement, as in force immediately before the reform commencement.

(2) If, immediately before the reform commencement, a term of another State employment agreement determined, in whole or in part, a term or condition of employment of the employee who was bound by, or whose employment was subject to, the original individual agreement, then, to that extent, that term of the other State employment agreement, as in force at that time, is taken to be a term of the preserved individual State agreement.

(3) If, immediately before the reform commencement, a term of a State award determined, in whole or in part, a term or condition of employment of the employee who was bound by, or whose employment was subject to, the original individual agreement, then, to that extent, that term of the other State employment agreement, as in force at that time, is taken to be a term of the preserved individual State agreement.

(4) If, immediately before the reform commencement, a provision of a State or Territory industrial law determined, in whole or in part, a preserved entitlement of the employee who was bound by, or whose employment was subject to, the original individual agreement, then, to that extent, that provision, as in force at that time, is taken to be a term of the preserved individual State agreement.

(5) In this clause:

**preserved entitlement** means:

(a) an entitlement to:
   (i) annual leave and annual leave loadings; or
   (ii) parental leave, including maternity leave and adoption leave; or
   (iii) personal/carer’s leave; or
   (iv) leave relating to bereavement; or
   (v) ceremonial leave; or
   (vi) notice of termination; or
   (vii) redundancy pay; or
   (viii) loadings for working overtime or shift work; or
   (ix) penalty rates, including the rate of payment for work on a public holiday; or
   (x) rest breaks; or

(b) another prescribed entitlement.

6 Nominal expiry date of a preserved individual State agreement

The nominal expiry date of a preserved individual State agreement is:

(a) the day on which the original individual agreement would nominally have expired under the relevant State or Territory industrial law; or

(b) if that day falls after the end of a period of 3 years beginning on the commencement of the original individual agreement—the last day of that 3 year period.

7 Powers of State industrial authorities

(1) If a preserved individual State agreement confers a function or power on a
State industrial authority, that function must not be performed and that power must not be exercised by the State industrial authority on or after the reform commencement.

(2) However, the employer and the persons bound by the preserved individual State agreement may, by agreement, confer such a function or power on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

8 Dispute resolution processes

(1) A preserved individual State agreement is taken to include a term requiring disputes about the application of the agreement to be resolved in accordance with the model dispute resolution process.

(2) Any term of the preserved individual State agreement that would otherwise deal with the resolution of those disputes is void to that extent.

9 Prohibited content

A term of a preserved individual State agreement is void to the extent that it contains prohibited content of a prescribed kind.

Note: The Employment Advocate can alter the document recording the terms of a preserved State agreement to remove prohibited content of a prescribed kind (see clause 19).

Division 2—Preserved collective State agreements

Subdivision A—What is a preserved collective State agreement?

10 Preserved collective State agreements

If, immediately before the reform commencement:

(a) the terms and conditions of employment of an employee were determined, in whole or in part, under a State employment agreement (the original collective agreement); and

(b) that employee was one of a number of employees who were bound by the agreement, or whose employment was subject to the agreement;

a preserved collective State agreement is taken to come into operation on the reform commencement.

Subdivision B—Who is bound by or subject to a preserved collective State agreement?

11 Who is bound by a preserved collective State agreement?

Current employees

(1) Any person who:

(a) immediately before the reform commencement, was bound by, or a party to, the original collective agreement, under the terms of that agreement or a State or Territory industrial law as in force at that time; and

(b) is one of the following:

(i) an employer;

(ii) an employee;

(iii) an organisation;

is bound by the preserved collective State agreement.

Future employees

(2) If:

(a) an employer who is bound by a preserved collective State agreement employs a person after the reform commencement; and

(b) under the terms of the original collective agreement, as in force immediately before the reform commencement, the person would have been bound by that agreement; that person is bound by the preserved collective State agreement.

12 Whose employment is subject to a preserved collective State agreement?

Current employees

(1) The employment of a person is subject to a preserved collective State agreement if that employment was, immediately before the reform commence-
ment, subject to the original collective agreement.

_Future employees_

(2) If:

(a) an employer who is bound by a preserved collective State agreement employs a person after the reform commencement; and

(b) under the terms of the original collective agreement, as in force immediately before the reform commencement, that person’s employment would have been subject to that agreement;

that employment is subject to the preserved collective State agreement.

_Subdivision C—Terms of a preserved collective State agreement_

_13 Terms of a preserved collective State agreement_

(1) A preserved collective State agreement is taken to include the terms of the original collective agreement, as in force immediately before the reform commencement.

(2) If, immediately before the reform commencement, a term of a State award would have determined, in whole or in part, a term or condition of employment of a person who would have been bound by, or whose employment would have been subject to, the original collective agreement, then, to that extent, that term, as in force at that time, is taken to be a term of the preserved collective State agreement.

(3) If, immediately before the reform commencement, a provision of a State or Territory industrial law would have determined, in whole or in part, a preserved entitlement of a person who would have been bound by, or whose employment would have been subject to, the original collective agreement, then, to that extent, that provision, as in force at that time, is taken to be a term of the preserved collective State agreement.

(4) In this clause:

*_preserved entitlement_* means:

(a) an entitlement to:

(i) annual leave and annual leave loadings; or

(ii) parental leave, including maternity leave and adoption leave; or

(iii) personal/carer’s leave; or

(iv) leave relating to bereavement; or

(v) ceremonial leave; or

(vi) notice of termination; or

(vii) redundancy pay; or

(viii) loadings for working overtime or shift work; or

(ix) penalty rates, including the rate of payment for work on a public holiday; or

(x) rest breaks; or

(b) another prescribed entitlement.

_14 Nominal expiry date of a preserved collective State agreement_

The _nominal expiry date_ of a preserved collective State agreement is:

(a) the day on which the original collective agreement would nominally have expired under the relevant State or Territory industrial law; or

(b) if that day falls after the end of a period of 3 years beginning on the commencement of the original collective agreement—the last day of that 3 year period.

_15 Powers of State industrial authorities_

(1) If a preserved collective State agreement confers a function or power on a State industrial authority, that function must not be performed and that power must not be exercised by the State industrial authority on or after the reform commencement.
(2) However, the employer and the persons bound by the preserved collective State agreement may, by agreement, confer such a function or power on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

15A Dispute resolution processes

(1) A preserved collective State agreement is taken to include a term requiring disputes about the application of the agreement to be resolved in accordance with the model dispute resolution process.

(2) Any term of the preserved collective State agreement that would otherwise deal with the resolution of those disputes is void to that extent.

15B Prohibited content

A term of a preserved collective State agreement is void to the extent that it contains prohibited content of a prescribed kind.

Note: The Employment Advocate can alter the document recording the terms of a preserved State agreement to remove prohibited content of a prescribed kind (see clause 19).

Division 2A—Effect and operation of a preserved State agreement

15C Effect of a preserved State agreement

(1) Except as provided in or under this Part, or otherwise in or under this Act, a preserved State agreement has effect according to its terms.

(2) This Part has effect despite the terms of the preserved State agreement itself, or any State award or law of a State or Territory.

(3) None of the terms and conditions of employment included in the preserved State agreement are enforceable under the law of a State or Territory.

15D Effect of awards while a preserved State agreement in operation

An award has no effect in relation to an employee while the terms of a preserved State agreement operate in relation to the employee.

15E Relationship between a preserved State agreement and the Australian Fair Pay and Conditions Standard

The Australian Fair Pay and Conditions Standard does not apply to an employee if the employee is bound by a preserved State agreement, or the employee’s employment is subject to a preserved State agreement.

15F Relationship between a preserved State agreement and public holiday entitlement

Division 1A of Part VIA (public holidays) does not apply to an employee if the employee is bound by a preserved State agreement, or the employee’s employment is subject to a preserved State agreement.

15G When preserved State agreements cease to operate

(1) A preserved State agreement ceases to be in operation if it is terminated under clause 21.

(2) A preserved State agreement ceases to be in operation, in relation to an employee, when one of the following comes into operation in relation to the employee:

(a) a workplace agreement;
(b) a workplace determination;
even if the nominal expiry date of the preserved State agreement has not passed.

(3) If a preserved State agreement has ceased operating in relation to an employee because of subclause (2), the agreement can never operate again in relation to that employee.

Senator WONG (South Australia) (10.53 pm)—Labor are opposed to amendment (274)—one of the government amendments lobbed on us today—because our understanding is that it completely rewrites the provisions in relation to the preservation of state agreements.
Senator Murray—Mr Temporary Chairman, I rise on a point of order. I have the minister for fun next to me; I cannot quite hear what Senator Wong is saying.

The TEMPORARY CHAIRMAN—Your point of order is upheld, Senator Murray.

Senator Wong—We see this amendment as limiting the state legislation which underpins state awards. It goes to the philosophical and practical issue of the grab for power and jurisdiction which is at the heart of the government’s legislation. Labor are opposed to amendment (274); I am not sure what the minor parties’ positions on this are.

Senator Murray (Western Australia) (10.54 pm)—I thank the shadow minister for her question about amendment (274). I confess quite freely that I have not completely grasped amendment (274) in the time that we have had it and the explanatory memorandum available to us. In the overall scheme of things, with respect to the hostile takeover of the state systems I have remarked that it is messy, inadequate, incomplete and likely to leave substantial numbers of persons unclear about their status as to whether they fall in or out of state systems. I have not intended to address those issues at all in my party’s contribution to amending the bill. As you would have noticed, none of our amendments deal with that issue. We have just tried to amend those areas that we could attend to at the time. Frankly, the answer with respect to this amendment is: I do not know.

Senator Wong (South Australia) (10.56 pm)—Perhaps the minister could indicate to us what the intent of the amendment is.

Senator Abetz (Tasmania—Special Minister of State) (10.56 pm)—I understand there was a Professor Andrew Stewart, who was of the view that these sections as originally drafted had a degree of vagueness and could have been tightened up. The drafters listened to the learned professor in that regard, and that is what is sought to be achieved in these amendments.

This amendment substitutes new divisions 1 and 2 of part 2 of schedule 15 and inserts a new division, 2A, of part 2 of schedule 15. The amendment relates to preserved state agreements—that is, transitional agreements covering employees regulated by a former state employment agreement. The amendment is primarily intended to improve the readability of the provisions and clarify their operation. It makes it clear that employees regulated by a former state employment agreement will continue to receive the terms and conditions of employment they were entitled to before reform commenced, whether those terms are derived from a state employment agreement, a state award or a state or territory law relating to certain minimum entitlements.

The amendment also inserts a consequential amendment, clause 15F, which provides that the new division 1A of part VIA—entitlement to refuse to work on a public holiday on reasonable grounds—does not apply to employees bound by a preserved state agreement. This is because the employers and employees are likely to have reached a bargain in relation to public holidays in their former state employment agreements. This entitlement would apply to employees if they make a federal workplace agreement or if their preserved state agreement is terminated. Those are the reasons for these amendments. I commend them to the Senate.

Senator Murray (Western Australia) (10.58 pm)—If the purpose were to clarify a previously unclear law then, obviously, we would support it. But I would make the point that I and my party have not had time to review this fully.

Question agreed to.

Progress reported.
The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! It being 10.59 pm, I propose the question:

That the Senate do now adjourn.

Labor Party Policy

Senator SANTORO (Queensland) (10.59 pm)—This evening I would like to complete a task I began some weeks ago to expose the constantly widening gap between federal Labor’s claims of fitness for government and the daily experience of Labor in government at a state level. The federal opposition leader stands on one side of this crevasse of credibility, staunchly looking in the other direction, asking us to admire the view. It is federal Labor’s willful blindness to its state party’s low flying performance which lies at the heart of its inability to be honest with the Australian people. This is the party which tells us that six state industrial relations systems are the key to economic growth, and that there is a wonderful benefit from separate industrial arrangements for the residents of Tweed Heads and Surfers Paradise.

I am well known as a federalist, but does the opposition really tell us that if we faced a tabula rasa for workplace legislation in Australia today, its preferred design would be a random assortment of work practices delineated by state boundaries? This is the party whose foreign affairs pixie tells us at his hourly news conferences that we should develop a common vision with our Asian neighbours in order to align our opportunities with theirs. I do not in any way disagree with the principle of that message, though for once I think we would all like some detail—

The ACTING DEPUTY PRESIDENT—Excuse me, Senator Santoro. I am not sure but did you refer to the shadow minister for foreign affairs in a disrespectful way?

Senator SANTORO—I did describe him as a foreign affairs pixie, Mr Acting Deputy President.

The ACTING DEPUTY PRESIDENT—I think you are getting to the point where you are nearly crossing the line. I think it would be appropriate if you withdrew that.

Senator SANTORO—I will withdraw that, if you feel that that is offensive. Coming back to my speech, may I tentatively suggest that support for a common vision between New South Wales and Victoria might make all the offshore posturing just a little more believable. But this is emblematic of federal Labor and their desperate hope that people will believe state Labor is an entirely different party which happens by bizarre coincidence to go by the same name. Federal Labor hopes no-one will judge the Labor brand by Premier Lennon’s decision to travel to the very north of his state—Melbourne, to be exact—to freeload at the races off a company for which he is about to open a national Pandora’s box of internet wagering. And they certainly hope that nobody in Queensland could associate the unique performance of the local Labor crew with the prospects of their representatives in the nation’s capital.

I will leave it to my Tasmanian colleagues to judge the wisdom of making Hobart the Vegas of the South, but I would like to say a few more words about the situation in my own state. Many senators will have noted that a few weeks ago our Nobel Laureate Peter Doherty presented Hedley Thomas of the Courier Mail with the National Press Club and Medicines Australia award for 2005 Health Journalist of the Year. I would like to offer my warm and genuine congratulations to Hedley Thomas for winning this award, as well as the Best News Feature award, but with one minor caveat. Like the watering of the Flemington track before Mahybe Diva’s historic third win, Hedley Tho-
mas and his Queensland colleagues have been presented in the health journalism race with the ideal running conditions, and it does not look like the Arthur Daley of Alice Street is going to get it right anytime soon. So perhaps next year’s awards should be handicapped to take the home ground advantage away from Queensland. Or perhaps there should be a stewards’ inquiry to determine whether, after all, the management of Queensland Health has been little more than a cunning ruse to ensure more journalism awards for Queensland.

Hedley Thomas’s outstanding series of articles have been titled, ‘Exposing a sick system’, and my only minor criticism of his excellent scrutiny of the smouldering wreck which is Queensland Health is that he took the word ‘sick’ too literally. It is not the health system particularly which is sick; it is the whole Labor government system. The most telling comment from the health inquiry in Queensland is not the recommendation for extradition and prosecution of Dr Patel; it is the assessment of the inquiry’s head, as reported in today’s Courier Mail, related to Premier Beattie’s protestation that, as the Premier, he was prepared to act to continue his government’s record of openness and accountability. The inquiry has found that this claim was ‘inconsistent with the facts’. In other words, what Peter Beattie calls a record of openness and accountability is in fact a litany of spin, deceit, and contempt for the people of Queensland.

This week we have also learnt from Queensland nurses that the government’s promises of a quick fix to its health woes are, like so many promises of this government, little more than administrative notes. We were told in Monday’s Courier Mail by nurses, who can only speak on condition of anonymity for fear of political reprisal by the workers’ champions, that the claim of sufficient nurses coming through the system are inconsistent with the demands of medical practice. They are saying that the government has failed to understand that a healthy medical service needs experience and expertise, not just certification—a conclusion that the Patel experience should have hammered through to even the greenest of health ministers.

I trust that, if any of my colleagues remained under the impression that the health ministry was an isolated incident of incompetence, they will have been disabused of this quaint notion by my exposition on Tuesday of QFleet, interstate immigration tax proposals, the fluoridation debacle and the belief that telling fire ants they are eradicated will cause them to pack their little ant bags and hitch a ride on the next container out of Fisherman’s Island. I want to briefly return to QFleet, only because I am aware that leading federal opposition figures have recently travelled to Queensland in the hope that they can reverse the forlorn experience of the federal Labor party in our state. QFleet is, one might propose, one of the wonders of the modern world. It is not simply a list of worthless vehicles in the annals of Queensland Treasury. Like the pyramids, it is a visible and lasting monument. It is visible as one flies into Brisbane, and the first thing one might notice driving from the airport to the city. If the Beattie government persists in its fleet management competence, perhaps one day QFleet will join the Great Wall of China as the other man-made object which can be viewed from space.

But the prosecution brief against Labor government is far from complete. The skills they have brought to health and fleet management have not been allowed to languish in those limited areas. For example, we have the Labor attitude to education. Premier Beattie tells us that he is the education Premier, who will make Queensland the smart state. It even says so on our car number-
plates—including those in the QFleet graveyard. But in a recent state-wide survey, only 17 per cent of Queenslanders supported the view that schools are teaching the fundamentals of mathematics and written comprehension. Simultaneously, we have small business leaders telling us that the state education system is producing unemployable graduates. But Rod Welford tells us that everything is okay, no doubt in deference to his teachers’ union head, Steve Ryan, who told the Sunday Mail on 11 September this year that:

While it’s important that children can spell and add up, the reality is that they have things like spellcheck, which can have an impact, and the curriculum is much broader than the 3Rs.

Perhaps that is true, but you cannot learn business studies if you cannot add up, and you cannot even comprehend peace studies if you cannot read.

For those interested in Indigenous issues, an area on which federal Labor continually claims the moral high ground, the Queensland government’s Meeting Challenges, Making Choices initiative to combat violence and alcohol abuse in Cape York may be of interest. When Peter Beattie presented in parliament his own department’s damning review of the strategy, he highlighted a reduction in hospital admissions for assault during the program. As the Courier-Mail noted on 6 October, he failed to mention the failure to make any headway with school attendance or child protection or the rise in drink-driving and alcohol offences. The most telling assessment of this antialcohol abuse program was from the Apunipima Cape York Health Centre Chair, Bernie Singleton, who noted that the initiative might have been more effective if it actually included an alcohol rehabilitation program.

At the heart of government, senators may want to consider the Labor concept of democracy. When the candidate who had the majority of votes from party members for the seat of Bundaberg was recently unceremoniously replaced in a factional deal, Premier Beattie said—and, remember, I am not making this up:

Frankly, I would have thought in a democratic process, you accept the outcome of the process.

These responses go to the heart of Labor practice in Queensland. As long as a response—any response—is available, then the problem does not exist. We have an education system based on the premise that, if you cannot spell, Microsoft will do it for you, an Indigenous antialcohol program which is great except for the absence of any alcohol rehabilitation, and an assertion that overturning a majority vote for a private factional deal represents the finest traditions of democracy.

But in the final analysis we cannot beat their attitude to health. Those interested in energy policy in Queensland sat slack-jawed recently when the spinner-in-chief said of the Forster inquiry:

A year ago we were in the middle of the Somerville report. We’ve moved on, we’ll do it for health.

As everyone in Queensland knows, the only reason the electricity system did not completely collapse earlier this year is that we had an unseasonably small number of storms, despite which, 80 per cent of the capital works budget is still reported as being spent on new connections. We all know that the Beattie government has moved on from the Somerville report, because none of the recommendations are being seriously addressed. That is exactly what he is promising for the health system: that the government will move on to something else.

The people who offered us the cut-price Keating antics of Mark Latham believe that the ability to dance on a tightrope above a pit of policy crises is more important than policy
vision or good management. They deride the tireless commitment of our government to big-picture reforms in telecommunications, work practices, taxation and border protection, preferring to elevate the clever phrase and the half-truth as the measure of good government.

**World AIDS Day**

Senator MOORE (Queensland) (11.09 pm)—Today, 1 December, is World AIDS Day. The value of a defined day is that it gives us time to genuinely reflect on the issues of HIV and AIDS in our Australian community and our world community. Despite the number of causes that we are highlighting by wearing ribbons and colours at the moment, it has been particularly gratifying that a considerable number of people in this place have been wearing the red ribbon today—which draws public attention to the issue of AIDS and to the fact that we understand the problems and are prepared to do something about them.

Certainly in Australia there is an awareness that HIV and AIDS is an issue that should be addressed. Over the last couple of years there has unfortunately been an increase in the incidence in our community. That is particularly confronting when for over 20 years there have been AIDS education programs in the country and an awareness of how horrific and how damaging this condition can be. The fact that the figures say that there has been a slight increase locally is a challenge to all of us.

We particularly need to look at the issues across the world. The government has been proactive. It is an area where there must be cross-party support. I believe that today is a chance for all of us to really focus on the issues and to support what I think is an increasing call for a partnership approach to the issues of HIV. That requires the involvement of communities, governments at all levels, the medical profession, media and the very valuable area of research. These areas all need to be consulted and involved because no one response will work.

I think it is time to talk about the issue. Even though, as I have said, it is over 20 years since we became aware of the issue, there sometimes is a tendency to have these discussions quietly and in private, as though it is something we should not talk about. If there is one message for today it is that it is appropriate that we talk about these things, because only by open communication can we reach a solution. It is critical that we empower people with the knowledge, information and skills to access the best services, to be open about the fact that they need support, to always make informed decisions about treatment options and to be aware of the ways that people can continue to work and be active in their community—and not to hide the condition.

This evening I want to particularly highlight some of the things that have been addressed at the international level. I have talked many times in this place about the Millennium Development Goals. One of the key goals is to look at the issue of HIV across our world. I hope that people in this place have taken the opportunity to visit the amazing photographic display upstairs in Parliament House. This display is jointly sponsored by AusAID, our international Australian government aid agency, and the very worthy NGO, Oxfam. When I visited the display I talked to the people who are working on it, particularly Matthew Willman, the photographer, and the amazing Thabisile Khoza who share with us their living experience. Looking at those photographs, we see that AIDS is about people. The display focuses particularly on Africa because of the high-profile need in that area. The display talks to us about and confronts us with the sheer size of the problem. Looking at the
wonderful, positive, lively images of people moving forward in the South African community, the sheer figures just confound you. The Australian population is just over 20 million people. In sub-Saharan Africa alone there are over 25.8 million HIV affected people. I do not think there is any way that we can understand those kinds of numbers, but we need to know and to accept that that is the size of the problem in the area.

I want to talk about the issue of women and the fact that internationally now we see that the face of AIDS is increasingly the face of women across the whole of Africa, Asia and PNG, which is our nearest neighbour. Women continue to be disproportionately infected by HIV, and globally there are around 17.5 million women living with this virus. In several southern African countries more than three-quarters of all young people living with HIV are women. In many countries, social and cultural factors often mean that women have limited or no say over their sexual relations and experiences. I think that it is important tonight that we in Australia look at ways to support research and aid that looks particularly at breaking down the stigma associated with HIV and at ways to work to support women.

Women are eight times more likely than men to contract HIV from a single unprotected sexual act, yet up until now they have lacked a protective technology that they can control. While we know about condoms and the way that they can act as an effective protection against HIV, their availability is limited in many countries and many women, because of cultural and local factors, are not able to insist on their use. In Australia, we have done a lot of work on education programs to give women the power to demand this. We need to be able to extend those education programs, but in many countries at the moment that is just not possible.

There is a particular new technology called microbicides, which involves a range of methods used to prevent the transmission of HIV, specifically designed to be used by women. They work by blocking the HIV receptor cells, strengthening the vaginal lining and destroying or inactivating the actual virus. Women can initiate and control the use of these microbicides, and it is not dependent on male cooperation. They offer a real option and an ability to negotiate the terms and nature of sexual relations. They can be made available in many forms and the benefit is that they can be a discrete method for women to control and prevent HIV infection. We know that women have been the leaders in many parts of the world in the campaign to prevent the transmission of HIV. If you look at the display upstairs, you can see the incredibly important role of women in Africa, the Pacific including PNG and eastern European countries. The empowerment of women to be able to protect themselves and act in their own best interest must be an essential part of any campaign against HIV.

Currently there are trials going on across the world, but in particular in parts of Africa, to see whether they can develop a better use of this particular form of protection. There is the real problem that, up until now, pharmaceutical companies have had little incentive to research and develop microbicides as a medication, because it is for the use of women, predominantly in poor countries. Pharmaceutical companies cannot always be relied on to fund research, so it is up to governments and individual donors to take the lead and put some pressure on companies, highlighting the need to fund research and development in this area. There have been positive moves. After the recent G8 conference there was a move, including by governments of the world and some pharmaceutical companies, to look realistically at this process. Even with an injection of funding,
which I trust we will be able to attain, it is not something that is going to happen immediately. We are looking at a medium- to long-term result.

What we need to achieve out of days like today is put the issue on the table. I thought that I was relatively well educated on these areas, because I have been working with people in the field, but I did not know about this particular form of protection until very recently. We need to identify and talk openly, and we need to see whether there is some way forward so that we will be able to look at a range of options—not just the education of people or the necessary support when they become ill but genuine ways to attack the virus and to stop people becoming infected. We have this opportunity, and we have a responsibility. The Australian government has developed significant funding programs, with a long-term program going into 2010. I hope that we will be able to expand that process and to widen the options. I hope that, in a few years time when we stand together to talk about what is happening in the world on AIDS Day, we will be able to say that this particular technology has been developed and is working.

Brigadier Arnold Potts

Senator ADAMS (Western Australia) (11.20 pm)—I wish to speak tonight about a community project in my home town of Kojonup, in the Great Southern region of Western Australia. Recently, more than 60 people attended a public meeting to discuss a proposal to commemorate Kojonup’s most famous son, Brigadier Arnold Potts. A veteran of both world wars and particularly of the infamous Kokoda Track, Brigadier Arnold Potts is one of Australia’s greatest and yet least recognised war heroes.

Early last year, a group of people under the auspices of the Kojonup Historical Society set about putting the wheels in motion to build a long-overdue tribute to Brigadier Potts. The committee, comprising six members, has since become an independent, incorporated body to oversee the establishment of a permanent and fitting memorial to Brigadier Potts in the town of Kojonup. These six people—Eric Wright, John Mathwin, Terry Taylor, Wendy Anderson, John Hassell and Richard Huston—are the driving force behind the project, which is also being supported by the Kojonup Shire Council and the Kojonup Historical Society. The committee have chosen well-known Perth sculptor Greg James to create a life-sized, bronze statue of Brigadier Potts.

The committee plan to locate the AW Potts Kokoda Track Memorial at the junction of the Broomehill Road and Albany Highway, where locals and visitors can stop and learn more about this inspirational man. I understand the project will cost a minimum of $50,000 to complete, and the committee are exploring avenues of possible funding. My purpose tonight is not only to highlight the work of this enthusiastic committee, but also to pay tribute to the life and memory of an exceptional Australian soldier so that future generations will know something of his incredible achievements and fighting spirit.

Arnold William Potts was born on the Isle of Man on 16 September 1896. In 1904, his father, a teacher, brought the family to Western Australia. Arnold Potts attended Guildford Grammar School in Perth where he excelled in rowing, football, athletics and shooting. Even in his school days his leadership abilities came to the fore. He was appointed to several prefect positions during his time at Guildford Grammar and served as a colour sergeant in the school’s cadet unit.

After completing his education at Guildford Grammar he enlisted in the 16th Battalion in January 1915, following the outbreak of the First World War. He arrived at Gal-
lipoli in July of that year with a reinforce-
ment draft of the 16th Battalion and took part in the 16th Battalion’s brave assault on Chunuk Bair. Coincidentally, Potts and his men witnessed the New Zealand assault on Chunuk Bair during which my grandfather was killed. In December, 19-year-old Sergeant Potts was placed in charge of the evacuation of the 20 remaining men of C Company from Gallipoli’s sad shores. He was subsequently commissioned in Egypt after the evacuation of Gallipoli.

Then came service on the Western Front as the officer commanding the 4th Light Trench Mortar Battery. He won the Military Cross for gallantry at Mouquet Farm in 1916 as a company commander and was subsequently mentioned in despatches. In July 1918 he was shot through the chest by a German sniper at Hamel, but Arnold was obviously made of tough stuff. Despite this almost fatal injury he survived against the odds and, after a month in a French hospital, he recovered sufficiently to be transferred to England to recuperate.

After the end of World War I, Arnold Potts returned to his family in Kalgoorlie, Western Australia. But he was keen to go on the land and soon purchased his own farm, Barrule, situated on what is now Potts Road, some 15 kilometres south-east of Kojonup. This property is only four kilometres from our family farm. In 1926 he married his long-time sweetheart, Doreen—known as Dawn—Wigglesworth in the Guildford Grammar School chapel. A son, David—now deceased—and two daughters, Judith and Nancy, were born to the couple over the ensuing years.

Hard on the heels of the Great Depression, which hit the Potts family farm very hard, came the announcement by Prime Minister Robert Menzies on 3 September 1939 that Australia was again at war. The soldier in Arnold Potts had already seen the warning signs that war was on its way. To quote from Western Australian author Bill Edgar’s excellent biography on Potts, Warrior of Kokoda:

In the Great Southern, a group of First World War veterans put their heads together and decided to support the formation of a militia unit. The 25th Light Horse Regiment was reborn. Arnold Potts was a prime mover. His company was armed with Vickers machine guns. Young men, mainly of farming stock, flocked to the 25th. The Potts magnetism played no small part in drawing them from far and wide.

At the start of World War II, Potts was appointed as second in command of the 2nd 16th Infantry Battalion, with the rank of major. The battalion embarked for the Middle East as part of the 21st Brigade, subsequently serving in the Syrian campaign against the Vichy French.

By August 1941 he had been promoted to lieutenant colonel, been awarded the Distinguished Service Order and had a mention in despatches for his outstanding leadership during the Syrian campaign. In March 1942, Potts had returned to Australia, where he was promoted to brigadier and then given command of the 21st Brigade, which consisted of the 2nd 14th Battalion from Victoria, the 2nd 27th Battalion from South Australia and the 2nd 16th Battalion from Western Australia. Potts was approaching his finest hour as a soldier. Indeed, I believe that present and future generations of Australians should always be grateful and pay tribute to Potts for the events which were about to unfold under his leadership.

In August 1942, Brigadier Arnold Potts led his brigade up the infamous Kokoda Track in the Owen Stanley Ranges of Papua to confront the advance of the Japanese Imperial Army, who were intent on taking Port Moresby. It is now recognised that but for the tactical withdrawal and the defence of the Kokoda Track, Port Moresby would have
been overrun, leaving Australia virtually defenceless against a Japanese invasion. Although heavily outnumbered and outgunned, Brigadier Potts, leading by personal example, inspired his men to fight a series of desperate delaying actions along the Kokoda Track. They battled experienced Japanese forces who were intent on capturing vital airfields around Port Moresby and who had, until then, swept all before them in their advance south.

Potts chose the strategy of staging a fighting withdrawal, rather than obeying orders to move forward and attempt to recapture the village of Kokoda. He understood that to stand against forces which outnumbered his men in excess of five to one would mean annihilation and potential disaster for Australia. In consequence of Brigadier Potts’s independent decision, the delays and attrition inflicted upon the Japanese troops eventually forced their retreat. Controversially, Potts was relieved of his command of the valiant 21st Brigade and sent to Darwin to command the 23rd Brigade, which he later led against Japanese forces in Bougainville. He was twice mentioned in despatches for service during that period.

There is no doubt among those who fought in Papua that Brigadier Potts’s actions played a crucial part in the successful battle for Australia. Speaking at Kokoda in 1999, the former Australian High Commissioner to Papua New Guinea, David Irvine, said, ‘Gallipoli made Australia, Kokoda saved Australia.’

After the end of World War II, Potts returned to farming at his Kojonup property. He was actively involved in district and state affairs and held office in many local organisations. In 1948 he stood as a Country Party candidate for the federal seat of Forrest but, in one of the very few unsuccessful undertakings of his life, was defeated at the ballot box. In 1960 he was awarded an Order of the British Empire for his services to the community and to the state of Western Australia. Arnold Potts died on New Years Day, 1968 and was honoured with a full military funeral. I think it would be fitting to conclude with a quote from Mr Keith Norrish OAM, a veteran who fought under Brigadier Potts’s command in the Kokoda campaign. He said:

How Pottsy maintained our morale and aggression throughout the fighting on the track was a miracle, and his leadership inspirational. The actual task given to us was impossible and had our Commander obeyed orders, the 21st Brigade would have been isolated, bypassed and decimated, while the Japs moved on Moresby against no real defence. The fall of Moresby would have had disastrous consequences for Australia. In retrospect, Potts did achieve the impossible. Justice will be done when the Kojonup community completes this wonderful project.

**Health Services: Hawthorn House**

**Senator WEBBER (Western Australia)**

(11.29 pm)—I rise to make a brief contribution tonight in three capacities, firstly, as a member of the Senate Select Committee on Mental Health, secondly, as a Senator for Western Australia and, thirdly, as a long-term resident of the suburb of Mount Hawthorn in the inner north of North Perth. This morning I attended a breakfast hosted by Senator Helen Coonan, an annual get-together mental health breakfast, as she is the parliamentary patron of the Mental Health Council of Australia. At that function we were brought up to date by John Mendoza, Professor Ian Hickey and Sev Ozdowski on the work that the council has been conducting. In fact, Sev Ozdowski mentioned the fact that his speech that morning was his third last speech in his capacity as human rights commissioner, and I would like to place on record my thanks to him for the sterling job he has done. I would also like to place on record my thanks to all three of those men for the enormous contribution they made in compiling and launching
the *Not for service* report on the state of the delivery of mental health services throughout our nation.

In my suburb of Mount Hawthorn there is a proposal from the state government for us to start to address some of the challenges surrounding the delivery of mental health services. We have an old, small, government-run community hospital called Hawthorn hospital. It has delivered health services in that area for some 76 years. It was first a hospital and then an aged care facility. It has been closed for the last two years and the state government is now proposing to use it as what we call in medical parlance a ‘step-down facility’ for those who have had intensive psychiatric treatment and need an intermediate step in making their transition back into the community. The state government is proposing to use the Hawthorn hospital, or Hawthorn House as it would now be called, as a step-down facility.

Unfortunately, this seems to have created a great deal of community anxiety and concern. I think the proposal is that there would be no more than 20 people there at any one time and 14 staff there at all times. The health department have given a commitment that with all of the residents there will be no history of drug abuse, violence or any of the extremely socially unacceptable mental health challenges that we confront, so it would seem to me that these will be people suffering from more long-term depressive illnesses. It was somewhat disappointing to discover that in my own suburb we are still confronting the deep stigma that is attached to those suffering from some form of mental illness, and a lack of community support and care for those people.

So on Tuesday evening last week I attended my local council meeting in the town of Vincent where this was an issue for debate. I was really concerned about a campaign mounted by an organisation called the Residents Advocacy Group. If the materials they have been circulating about people with mental illnesses coming into ‘my’ suburb is a symbol of their advocacy, I certainly do not want them advocating on my behalf, ever. The allegations they made about people suffering from depressive illnesses and the stigma they attached to these people are just outrageous. We have come nowhere if this is an example of what goes on in a reasonably trendy and well-to-do suburb in Perth these days.

I attended my council meeting along with a lot of other residents of Mount Hawthorn who had mixed views. The permission to use Hawthorn House, as it will now be called, was passed by council five votes to four. I want to place on record my congratulations to the councillors who supported this proposition, as they have come under an enormous amount of pressure from the supposed advocacy group. In fact, I particularly want to place on record my congratulations to Councillor Maddalena Torre, who not only is a local councillor but is also a psychologist. She said at one point in the council meeting:

> With mental illness running at a rate of one in five: ‘The community is more of a threat (to itself), than this centre is, and that’s a fact.’

Indeed she is right. The advocacy group, by saying that they do not want that support structure in their suburb, are saying that they do not want to support one in five people in their local community. They should take a long, hard look at themselves.

Once the council had made its decision, and it was a hard-fought decision, I felt somewhat enlightened—I thought that things were actually going to be okay in my part of the world. So I was a little taken aback when I got my local newspaper the following Friday. It talked about the council decision to allow this and on the front page it said,
Mayor flags reversal of Mt Hawthorn Hotel vote. It would seem that we have come nowhere really. I can only imagine the pressure that was put on those five councillors at the council meeting this week, when people like me could not attend, not only by Mayor Nick Catania but also the Deputy Mayor, Councillor Steed Farrell.

I also want to place on record—and in doing this I am having a go at a few members of the Labor Party—my disappointment at the lack of outspoken support from the state member for Perth. Mental health is one of the challenges that we must face up to as a community. We cannot duck this issue; we cannot fall for the ‘not in my backyard; it will affect my property values’ argument. We must as a community make the hard decisions and support some of these most vulnerable members of our community. It is really concerning when you have people like the deputy mayor labelling his colleagues’ decisions to support the hostel proposal as ‘the height of hypocrisy’. I am deeply concerned about the conduct of those four councillors and the state member for Perth. I call on them to have a more enlightened approach in dealing with mental health issues and to get on board and help protect some of the most vulnerable members of our community.

The PRESIDENT (11.37 pm)—With the indulgence of the Senate I would like to welcome my fourth grandchild, Harry William Calvert Barclay, who was born this day into our world.

Senate adjourned at 11.38 pm

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

Broadcasting Services Act—Broadcasting Services (Australian Content) Standards 2005 [F2005L03716]*.

Civil Aviation Act—

Civil Aviation Regulations—
Instruments Nos—

CASA 317/05—Authority and permission—helicopter winching operations [F2005L03719]*.

CASA EX52/05—Exemption—to produce a modification or replacement part [F2005L03768]*.

Civil Aviation Safety Regulations—
Airworthiness Directives—Part 105—

AD/DA40/6—Nose Landing Gear Leg [F2005L03821]*.

AD/S-76/74—Main Rotor Assembly Lower Bifilar Support [F2005L03820]*.

Commonwealth Electoral Act—Certificate of the Electoral Commissioner as to the numbers of the people of the Commonwealth and of the several States and Territories and the number of Members of the House of Representatives to be chosen in the several States and Territories, dated 17 November 2005.

Customs Act—

Tariff Concession Orders—

0506769 [F2005L03771]*.

0511535 [F2005L03774]*.

0511804 [F2005L03776]*.

0511815 [F2005L03777]*.

0511818 [F2005L03779]*.

0511819 [F2005L03780]*.

0511963 [F2005L03744]*.

0511965 [F2005L03750]*.

0512079 [F2005L03752]*.

0512083 [F2005L03754]*.

0512089 [F2005L03760]*.

0512183 [F2005L03762]*.

0512185 [F2005L03781]*.

0512189 [F2005L03784]*.
0512191 [F2005L03785]*.
0512197 [F2005L03788]*.
0512198 [F2005L03789]*.
0512265 [F2005L03792]*.

Defence Act—Determinations under section 58B—Defence Determinations—
2005/50—Housing assistance rates—annual review.
2005/51—Army completion bonus scheme.

Environment Protection and Biodiversity Conservation Act—Amendments of lists of
exempt native specimens, dated—
28 October 2005 [F2005L03798]*.
7 November 2005 [F2005L03763]*.
26 November 2005 [F2005L03848]*.
27 November 2005—
[F2005L03813]*.
[F2005L03814]*.
28 November 2005—
[F2005L03806]*.
[F2005L03810]*.
[F2005L03821]*.
[F2005L03827]*.
[F2005L03828]*.
[F2005L03832]*.
[F2005L03841]*.
[F2005L03842]*.
29 November 2005—
[F2005L03815]*.
[F2005L03819]*.
[F2005L03822]*.
[F2005L03825]*.
[F2005L03836]*.
[F2005L03839]*.
[F2005L03845]*.
[F2005L03846]*.
30 November 2005 [F2005L03847]*.


National Health Act—
Arrangement No. PB 35 of 2005—
Highly Specialised Drugs Program [F2005L03741]*.
Declaration No. PB 29 of 2005 [F2005L03722]*.
Determinations Nos—
PB 33 of 2005 [F2005L03725]*.
PB 34 of 2005 [F2005L03724]*.
Telecommunications (Consumer Protection and Service Standards) Act—NRS Levy Formula Modification Determination 2005 (No. 1) [F2005L03816]*.
* Explanatory statement tabled with legislative instrument.
QUESTIONS ON NOTICE
The following answers to questions were circulated:

Anti-Money-Laundering Laws
(Question No. 1284)

Senator Ludwig asked the Minister for Justice and Customs, upon notice, on 5 October 2005:

With reference to anti-money laundering (AML) laws:

(1) Are there plans for the proposed AML regime to apply retrospectively?

(2) Can the Minister confirm whether retrospective application was considered; if so, why; if not, why not.

(3) Can the Minister confirm that there will be two tranches of legislation – the first to cover financial institutions, and the second to cover real estate agents, jewellers and lawyers; if so, when will each tranche be released; if not, why not.

(4) (a) Will financial institutions, jewellers, real estate agents and lawyers covered by the proposed regime have to perform identity checks for existing customers; if not, why not; if so, how far back will the checks have to be undertaken; (b) what will the penalties for failure to comply with the retrospective changes; and (c) will these penalties be different to penalties for breaches after implementation.

(5) Can details be provided of the responsibilities of each government agency outlined in the new regime.

(6) What input into the laws have government agencies and departments had including: (a) which agencies and departments were consulted (b) the nature of the consultation (c) whether: (i) any meetings were held, (ii) the date of those meetings, and (iii) invitees and attendees at those meetings and (d) what feedback was sought from agencies and departments regarding their new duties and responsibilities under the new regime.

(7) (a) As at 1 September 2005, which recommendations of the Financial Action Task Force (FATF) 40 +9 recommendations have been implemented; and (b) how and when were they implemented.

(8) As at 1 September 2005, which of the FATF 40 +9 recommendations have not been implemented and for each of the recommendations that have not been fully implemented: (a) what is the status of the recommendation; (b) what progress is being made on implementing the recommendation; (c) is there a time frame for implementing the recommendation and (d) why has the recommendation not been fully implemented.

(9) Does the bill include a timetable for the implementation of the legislative regime, if yes, can a copy of the timetable be provided and if not, why not.

Senator Ellison—The answer to the honourable senator’s question is as follows:

(1) No.

(2) Retrospective application was not considered.

FATF Recommendation 5 recommends that customer due diligence obligations apply to new customers and to existing customers on the basis of materiality and risk.

The Government has consulted on an appropriate approach to verifying the identity of existing customers of businesses affected by the proposed AML/CTF reforms. All approaches considered related only to the provision of services after the new AML/CTF reforms have entered into force.
I announced on 11 October 2005 that the first tranche of AML/CTF reforms will cover services provided by the financial sector, the gambling sector and bullion sellers. Professionals such as lawyers and accountants will be covered only to the extent they provide financial services in competition with the financial sector.

I plan to release an exposure Bill setting out the first tranche of reforms this year for four months public consultation. The Government will consider a second tranche of reforms applying to real estate agents, jewellers and specified non-financial professional services after the first tranche is implemented.

(a) Businesses will have to re-verify the identity of some existing customers where specific risk triggers are identified. These risk triggers will be developed in consultation with industry during consultations on the exposure Bill and will be set out in AML/CTF Rules.

There will be no general requirement for businesses to re-verify the identity of all existing customers. The risk triggers will ensure existing customers will have their identity re-verified where warranted by materiality and risk. The risk triggers will relate to activities undertaken only after the new AML/CTF obligations come into force.

(b) There will be no retrospective changes.

(c) Refer to the answer to question 4(b).

The following agencies will have responsibilities under the new regime:

- The Australian Transaction Reports and Analysis Centre (AUSTRAC) will continue in its role as Australia’s financial intelligence unit and will have an enhanced role as the AML/CTF regulator.
- The Australian Customs Service will continue its role with respect to declarations of over AUD 10,000 brought into or taken out of Australia. This role will be extended to cover the disclosure of bearer negotiable instruments brought into or taken out of Australia.
- The Australian Federal Police will continue to be responsible for investigating offences against Commonwealth AML/CTF legislation.
- The Commonwealth Director of Public Prosecutions will continue to be responsible for prosecuting offences under the new AML/CTF system.
- Law enforcement, national security and revenue agencies currently identified in the Financial Transactions Reports Act 1988 (FTR Act) will continue to have access to financial transaction reporting information (to be known as AUSTRAC information in the new regime).

Further details will be available with the exposure Bill.

(a) The Attorney-General’s Department has consulted extensively with other departments and agencies on AML/CTF issues affecting their areas of responsibility such as their policy responsibilities, regulatory role, investigative powers and access to information. Departments and agencies consulted are:

- The Department of the Prime Minister and Cabinet
- The Department of the Treasury
- The Department of Finance and Administration
- The Department of Family and Community Services
- The Department of Foreign Affairs and Trade
- The Department of Industry, Tourism and Resources
- The Office of Small Business
- The Department of Transport and Regional Services
• The Department of Communications Information Technology and the Arts
• The Department of Human Services
• The Department of Immigration and Multicultural and Indigenous Affairs
• Centrelink
• Australian Securities and Investments Commission
• Australian Prudential Regulatory Authority
• Australian Taxation Office
• The Australian Transactions Reports and Analysis Centre
• The Australian Customs Service
• The Office of Regulatory Review
• The Australian Crime Commission
• The Australian Competition and Consumer Commission
• The Commonwealth Director of Public Prosecutions
• Australian Federal Police
• Office of the Privacy Commissioner
• Australian Security and Intelligence Organisation
• The Reserve Bank

(b) The consultations have included a wide range of inter-departmental meetings and bilateral discussions.

(c) (i) I can confirm that meetings were held.
(ii) Due to the staff time and other costs associated with identifying every occasion on which the Department had consultation meetings with other departments and agencies, the invitees and attendees and what was discussed, I am not prepared to authorise the work on the basis of the diversion of resources that would be required.
(iii) Refer to the answer to question 6(c)(ii)

(d) All agencies affected by proposed changes to their responsibilities under the exposure Bill have been fully consulted on these proposals.

(7) (a) and (b) The Financial Action Task Force (FATF’s) Mutual Evaluation Report on Australia dated 14 October 2005 provides an assessment of Australia’s implementation of the FATF 40 + 9 Recommendations based on Australia’s current AML/CTF system as at 1 September 2005. The Report is available at http://www.fatf-gafi.org/document/32/0,2340,en_32250379_32236982_35128416_1_1_1_1,00.html

(8) The FATF 40 Recommendations on AML
Australia’s AML system addresses requirements under 31 of the 40 Recommendations on AML.

(a) Refer to the FATF Report (link provided at answer for question 7(a)&(b)) for the status of implementation of all recommendations as of 1 September 2005.

(b) As stated above, I plan to release an exposure Bill this year that will introduce significant reforms to our anti-money laundering system, and will progress the implementation of these recommendations. The Government will consider a second tranche of reforms following the implementation of the first tranche of reforms as outlined in the response to question 3 above.
(c) Due to the potential impacts on business, the Government will discuss with industry appropriate timeframes for implementation during the consultations on the exposure Bill.

(d) Implementation requires extensive consultation with industry. The Australian Government is continuing to consult with industry on the proposed AML reforms to minimise the impact of the new AML reforms on legitimate businesses.

The FATF 9 Special Recommendations on CTF

Australia’s CTF system addresses requirements under eight of the 9 Special Recommendations on Terrorist Financing.

(a) Refer to the FATF report (link provided at answer for question 7(a)&(b)) for the status of implementation of all recommendations as at 1 September 2005.

(b) The Government is improving Australia’s implementation of the FATF Special Recommendations on Terrorist Financing through the Anti-terrorism Bill (No 2) 2005, which contains provisions that:

- remove any doubt that Australia’s comprehensive terrorist financing offences extend to criminalisation of the collection of funds for a terrorist organisation or an individual terrorist
- require providers of remittance services to register with AUSTRAC
- require businesses that currently report international funds transfer instructions to AUSTRAC to transmit customer information with these instructions when sending them, and
- require the disclosure to Customs or AFP officers on request of any bearer negotiable instruments, such as travellers’ cheques and bills of exchange which are brought into or taken out of Australia.

The exposure Bill referred to above will maintain and build on the Anti-Terrorism Bill (No 2) 2005 reforms under the new AML/CTF system.

In addition, on 27 September 2005, the Council of Australian Governments (COAG) agreed that the Australian Government would consult with States and Territories about the possible enactment of laws to prevent the use of non-profit or charitable organisations for the financing of terrorism.

(c) The Anti-Terrorism Bill (No 2) 2005 was introduced to Parliament on 3 November 2005. Timeframes for the proposed reforms to be contained in the exposure Bill will be discussed with industry as set out above.

(d) Implementation requires extensive consultation with industry. The Australian Government is continuing to consult with industry on the proposed CTF reforms to minimise the impact of the new CTF reforms on legitimate businesses.

(9) The exposure Bill does not include a timetable for implementation. The Government will consult further with industry about appropriate implementation periods and any options for staggered implementation during the exposure Bill consultation period once industry has had a chance to see the detail of the proposed new AML/CTF obligations.

**Solomon Islands**

(Question No. 1341)

**Senator Bob Brown** asked the Minister representing the Minister for Foreign Affairs, upon notice, on 3 November 2005:

(1) Who is responsible for appointing magistrates in the Solomon Islands to deal with the previous troubles.
(2) Has a magistrate been appointed outside Honiara; if so, where.

(3) Is the Regional Assistance Mission to Solomon Islands (RAMSI) required to help track down:
   (a) caches of weapons on islands such as Malaita; if so, has RAMSI searched for and found any
       weapons on Malaita; and
   (b) previous members of the Malaita Eagle Force now on Malaita; if so, what success has been
       achieved, particularly in places such as Malu’u, in arresting such members.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) All Magistrates are appointed through the Solomon Islands Judicial and Legal Services Commission. The Commission is given authority under the Constitution of Solomon Islands (s.118). The Commission is chaired by the Chief Justice of the High Court, Sir Alfred Palmer. Justice Palmer is a Solomon Islands national.

(2) The Solomon Islands Government has appointed five Magistrates outside Honiara. At present, Magistrates have been appointed in the eastern and western regions and in Malaita Province. Provincial circuit tours are undertaken by Honiara based Magistrates to all areas in Solomon Islands. RAMSI provides support for the conduct of provincial circuit courts.

(3) (a) Yes. Yes.
   (b) Yes, where members of the Malaita Eagle Force have allegedly committed a crime in Solomon Islands.
   Since the commencement of RAMSI, Participating Police Force records indicate 19 persons have been criminally charged on Malaita for a total of 66 offences. 15 of these arrests occurred at Malu’u.

Laos

(Answer No. 1346)

Senator Bob Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 3 November 2005:

(1) What has happened to the 173 Hmong people recently arrested after leaving their jungle sanctuaries in Laos?

(2) With reference to the SBS television program Dateline, of 19 October 2005, what measures has the Government taken to ensure the safety of these people?

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) According to the Lao Government, the 173 Hmong who came out of remote areas of the Xaisomboun Special Region in June 2005 and featured in the recent SBS Dateline report have been resettled in a village in Phou Kout District, Xieng Khuang Province.

(2) Australian officials raised the case of the 173 Hmong with the Lao Vice Minister of Foreign Affairs on 8 June 2005 and offered the Lao Government assistance in addressing the humanitarian needs of these people.

Intelligence Services

(Answer No. 1352)

Senator Bob Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 7 November 2005:

(1) With reference to the judicial inquiry into the Australian Secret Intelligence Service held 10 years ago: was the present director of the Australian Security Intelligence Organisation, Mr Paul
O’Sullivan, or the then Australian Ambassador to Egypt, called to give written and/or oral evidence to the inquiry; if so, when and where was such evidence received, and to whom was it given.

(2) Did the subject of the evidence relate to the service of either man in Cairo.

(3) With reference to an article by Mr Paul Malone in The Canberra Sunday Times of 24 July 2005, in which he quoted the former New South Wales Supreme Court judge who conducted the inquiry as saying ‘we didn’t go into those allegations’ (referring to the allegations about events in Cairo): is the quote correct.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) (2) and (3) The public report of the Commission of Inquiry into the Australian Secret Intelligence Service, released in March 1995 by the Honourable Gordon J. Samuels AC QC and Mr Michael H. Codd AC, provides a public account of the proceedings of the Inquiry. Consistent with previous practice of Australian governments with respect to intelligence matters, it is not appropriate for the Government to make further comment.