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SITTING DAYS—2005

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RADIO BROADCASTS

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- **NEWCASTLE** 1458 AM
- **GOSFORD** 98.1 FM
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- **GOLD COAST** 95.7 FM
- **MELBOURNE** 1026 AM
- **ADELAIDE** 972 AM
- **PERTH** 585 AM
- **HOBART** 747 AM
- **NORTHERN TASMANIA** 92.5 FM
- **DARWIN** 102.5 FM
FORTY-FIRST PARLIAMENT
FIRST SESSION—FOURTH PERIOD

Governor-General

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

Senate Officeholders

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

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

Senate Party Leaders and Whips

Leader of the Liberal Party of Australia—Senator the Hon. Robert Murray Hill
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Nicholas Hugh Minchin
Leader of The Nationals—Senator the Hon. Ronald Leslie 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

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

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

(The above ministers constitute the cabinet)
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<td>Senator the Hon. Christopher Martin Ellison</td>
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<td>Minister for Fisheries, Forestry and Conservation</td>
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<td>Minister for the Arts and Sport</td>
<td>Senator the Hon. Charles Roderick Kemp</td>
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<td>Minister for Human Services</td>
<td>The Hon. Joseph Benedict Hockey MP</td>
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<td>Minister for Citizenship and Multicultural Affairs</td>
<td>The Hon. John Kenneth Cobb MP</td>
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<tr>
<td>Minister for Revenue and Assistant Treasurer</td>
<td>The Hon. Malcolm Thomas Brough MP</td>
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<tr>
<td>Special Minister of State</td>
<td>Senator the Hon. Eric Abetz</td>
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<td>Minister for Vocational and Technical Education and Minister Assisting the Prime Minister</td>
<td>The Hon. Gary Douglas Hardgrave MP</td>
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<td>Minister for Ageing</td>
<td>The Hon. Julie Isabel Bishop MP</td>
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<td>Minister for Small Business and Tourism</td>
<td>The Hon. Frances Esther Bailey MP</td>
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<tr>
<td>Minister for Local Government, Territories and Roads</td>
<td>The Hon. James Eric Lloyd MP</td>
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<tr>
<td>Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence</td>
<td>The Hon. De-Anne Margaret Kelly MP</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Finance and Administration</td>
<td>The Hon. Peter Craig Dutton MP</td>
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<td>Parliamentary Secretary to the Minister for Industry, Tourism and Resources</td>
<td>The Hon. Dr Sharman Nancy Stone MP</td>
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<td>The Hon. Christopher Maurice Pyne MP</td>
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<td>Parliamentary Secretary to the Treasurer</td>
<td>The Hon. Christopher John Pearce MP</td>
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<td>Parliamentary Secretary to the Minister for the Environment and Heritage</td>
<td>The Hon. Gregory Andrew Hunt MP</td>
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<td>Parliamentary Secretary (Children and Youth Affairs)</td>
<td>The Hon. Sussan Penelope Ley MP</td>
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<td>Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry</td>
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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
Gavan Michael O’Connor MP
Shadow Assistant Treasurer, Shadow Minister for
Revenue and Shadow Minister for Small
Business and Competition
Joel Andrew Fitzgibbon MP

Shadow Minister for Transport
Senator Kerry Williams Kelso O’Brien
Shadow Minister for Sport and Recreation
Senator Kate Alexandra Lundy
Shadow Minister for Homeland Security and
Shadow Minister for Aviation and Transport
Security
The Hon. Archibald Ronald Bevis MP

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

Shadow Minister for Defence Industry,
Procurement and Personnel
Senator Thomas Mark Bishop
Shadow Minister for Immigration
Anthony Stephen Burke MP
Shadow Minister for Aged Care, Disabilities and
Carers
Senator Jan Elizabeth McLucas

Shadow Minister for Justice and Customs and
Manager of Opposition Business in the Senate
Senator Joseph William Ludwig
Shadow Minister for Overseas Aid and Pacific
Island Affairs
Robert Charles Grant Sercombe MP

Shadow Parliamentary Secretary for
Reconciliation and the Arts
Peter Robert Garrett MP
Shadow Parliamentary Secretary to the Leader of
the Opposition
John Paul Murphy MP
Shadow Parliamentary Secretary for Defence and
Veterans’ Affairs
The Hon. Graham John Edwards MP
Shadow Parliamentary Secretary for Education
Kirsten Fiona Livermore MP
Shadow Parliamentary Secretary for Environment
and Heritage
Jennie George MP
Shadow Parliamentary Secretary for Industry,
Infrastructure and Industrial Relations
Bernard Fernando Ripoll MP
Shadow Parliamentary Secretary for Immigration
Ann Kathleen Corcoran MP
Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP
Shadow Parliamentary Secretary for Science and
Water
Senator Ursula Mary Stephens

Shadow Parliamentary Secretary for Northern
Australia and Indigenous Affairs
The Hon. Warren Edward Snowdon MP
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The PRESIDENT (Senator the Hon. Paul Calvert) took the chair at 12.30 pm and read prayers.

ANTI-TERRORISM BILL (No. 2) 2005
In Committee

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.31 pm)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 5 December 2005.

Senator BOB BROWN (Tasmania) (12.32 pm)—At this stage we are faced with a very large number of amendments. It is obvious that not all the amendments are going to be dealt with before the guillotine is applied. There will be different priorities regarding the amendments, and I am concerned that, if we now move seriatim into these, we will only get through a small proportion of them and the rest will not be debated at all. Thus, with the committee’s concurrence, we will make general contributions about the amendments that the various parties are bringing before this committee before moving to the specifics.

We only need to reiterate what a farce this committee faces. We have 3½ hours to debate not just extremely important amendments coming from the opposition and crossbenches but scores of amendments from the government itself, and they simply cannot be debated. So the Committee of the Whole is going to vote on amendments and, indeed, the legislation itself without having debated them. That is all the more poignant in view of the fact that we are talking about legislation which is to improve the security of this country and, according to the government, to balance the democratic values of this country with the right of people to have security.

That is not going to be balanced here. There is going to be no balance; there is going to be no adequate debate. What we have is the executive truncating the time for discussion in a way that is unprecedented in this parliament on a bill like this in the last 10 years. Moreover, the outcome of the debate is known before we get under way because every government member is going to support it and, what is more remarkable, the opposition is going to support it. The amendments will not get up. The final vote will be as the government has ordained it. That is the nature of the Senate in 2005.

Very early in the piece, the Greens will move an amendment to incorporate the International Covenant on Civil and Political Rights into this legislation as the measure by which courts might determine the fate of anybody brought forward for infringing this new security legislation. That is, Australia has ratified the International Covenant on Civil and Political Rights, and the Prime Minister, amongst others, has said, ‘This legislation does not infringe on it.’ The Greens are saying, ‘Then let the court take note of that by having the International Covenant on Civil and Political Rights incorporated into the legislation as a de facto bill of rights, and let’s also have the covenants which Australia has ratified or signed on the rights of the child and against torture brought into this legislation as well.’

Then there can be no doubt when a court is looking at the rights of somebody who, for example, is detained without charge over a prolonged period of time, and there is a challenge to that by lawyers who say the Australian norm has always been that a person is charged, and that a person has an opportunity to defend themselves and cannot be held for
a prolonged period of time unless the charge that is made is warranted. The International Covenant on Civil and Political Rights makes it clear that people cannot be detained without knowing why they are being detained and without having an ability to defend themselves. The bill of rights in all countries which have bills of rights—and most countries similar to Australia do—outlines similar safeguards for citizens, but we do not have that in Australia.

The question to the minister is: what is the government’s objection to having the International Covenant on Civil and Political Rights referred to in the legislation as a measure by which the rest of the legislation may be adjudicated? What is the problem with having the international convention against torture and cruel and unusual treatment of citizens who are held referred to in this legislation so that courts may make sure we do not infringe that obligation under that international treaty? What is the problem for the government in citing in this legislation the rights of children, internationally adhered to? If the government has no intention of allowing, and does not want, this legislation to be inconsistent with that international obligation then the test for that, whatever the argument, will be the government agreeing or disagreeing with the Green amendment.

What is going to happen here, however, is that the government is going to vote against the international covenants which uphold the rights of all citizens in Australia. They are a bottom line in civilised society. The government is going to vote against those being incorporated in this legislation because the Howard government knows that this legislation infringes civil and political rights by national standards let alone international standards.

Dr Watchirs, who upholds this measure in the ACT, which is the only jurisdiction in Australia with a bill of rights, said this to the Senate Legal and Constitutional Legislation Committee:

The bill does not comply with the ICCPR in two main respects—the right to a fair trial and the right to liberty. Control orders may impinge on other rights, but I will concentrate on these ones. The fact that the person who is subject to a control order or preventative detention order does not have full access to the information means that they are not given a fair trial. The time frame for an ex parte control order not being limited, like seven days in the UK, but being up to a period of 12 months, depending on when the court confirms it, is also a breach of the right to a fair trial. The problem of confidentiality between a lawyer and a client in preventative detention is also a problem in relation to a fair trial. And, lastly, the lack of ability to communicate to third parties where the person is detained and the fact that they are detained under this act, goes much further than the UK act. I think the five-year penalty for breach of disclosure provisions and breach of control orders is grossly disproportionate. They are civil offences and a civil administrative process, particularly in preventative detention, and to have a criminal offence of five years is not proportionate.

What Dr Watchirs said was echoed by many other representatives coming before the committee, and we saw the advertisement from the Law Council of Australia yesterday.

This legislation breaches Australia’s international commitments, and the government knows it. The Prime Minister knows it. That is why the government will vote against the Green amendment to have the international covenants protecting the rights of Australians written into this legislation so that courts can make the decision about whether a person brought before the court is being treated in accordance with international conventions and a century of developing civilising law here in Australia. There is no doubt this is a reversal, an infringement, of international conventions and there is no doubt the government knows it. What is more extraordin-
nary is that the opposition is going to support, at the end of the day, legislation which excludes reference to these conventions at the same time. That is extraordinary.

The remarkable fact is that we are going to get more of this further down the line. My colleague Senator Nettle will no doubt be drawing the committee’s attention to other matters. But let me say this: what a farce this Senate has been turned into by the Howard government. What a farce that we should be here today going through a process of a few hours debate on some of the most critical issues about how our democracy is defended. Australian citizens’ liberties, their freedom of speech and their right not to be detained without charge are to be stripped away without any guarantee that it is going to help defend us from terrorism. There is no guarantee at all; never has the government been able to cogently argue that this legislation is going to defend us from terrorism. Sure, it makes the bald statement but nowhere is the reasoned, logical argument that should come with that statement.

This legislation is a political document much more than a defence of Australians’ security document. A very dangerous slide to McCarthyism is involved in this legislation being slammed and sledgehammered through the Senate today. We are in a new period of McCarthyism and we need to know that and understand it, and to worry that this time it will not be turned around.

Using a law like this, citizens will be brought before courts for political reasons rather than security reasons. The reach of this law is not defined by and constricted to security. This law’s ability to truncate free speech is not defined by this legislation. We know that inherently this legislation, at the minimum, will lead to self-censorship in this country. Brains far more concentrated on this matter than the Prime Minister’s have made that abundantly clear in the public debate leading to this farce of a debate in the Senate.

The Prime Minister has turned this Senate into a rubber stamp—it is a Star Chamber as far as this legislation is concerned. The rights that we hold dear have been found convicted of infringing on security, as far as the Prime Minister is concerned. Australians’ ability for free-ranging and free speech has to be cut back, the Prime Minister has judged. We are now supposed to be debating whether that is a good thing or not, but the real fact of the matter is that the numbers are with the Prime Minister. What is more, he and this government claim that this is what the people of Australia want. That is not so, but it does not prevent the government from claiming that the people of Australia want their rights stripped back on trust, because there is no argument that in some way or other it is going to increase their security. We maintain that it does the reverse: it erodes the security of the Australian democracy. And we are particularly fearful of what is coming further down the line. This process has not stopped. Attorney-General Ruddock and Prime Minister Howard have more erosions of freedom coming down the line.

Freedom of speech, for goodness sake, is about to be taken away. And the Labor Party, which disagrees with the antisedition components, is going to vote for it. That is how manipulated this process is. I say to the Labor Party: change your mind. This is too important to signal to the government that the opposition is onside. What is more remarkable to me is that it seems that debate in the media has been shut down. Labor is onside; the government wants it—end of debate. We may well come to rue the day.

As far as the Greens are concerned, it is very important that people looking back on this moment know that the opposition caved
in, to a government with a one-seat majority, to taking away Australians’ rights without any return defined in terms of security and to eroding those rights unnecessarily—in particular, the right to free speech and the right not to be held without charge, trial or the ability to have a defence. These are very serious matters, but this debate has been turned into a nothing, a farce and a joke. Where are the government defenders? The chamber is almost empty. I think there must be a great deal of a shame factor on the government side about the whole process. Whatever it is—

Senator Ellison—You are talking—that’s why.

Senator BOB BROWN—Exactly. That is the point. It is because they cannot defend themselves against the point of view that is being put forward at the moment. (Time expired)

Senator LUDWIG (Queensland) (12.49 pm)—What we have today is clearly a truncated debate for the committee stage. I have been in the Senate for six years, and this is the most obscene thing I have seen this government do. To truncate an important bill such as the antiterrorism bill in such a way is to allow only a farcical way of dealing with it in the committee stage. It would have been preferable, and within the government’s ability, to ensure that we could deal in seriatim with the various amendments, go through them, put the arguments, have the debate about the issue and not about the people or the party and then move forward. That is what we have always done in this place. That is what the strength of the Senate has always been.

Instead, the government yesterday put a guillotine motion in place, which effectively cut the second reading debate short and truncated the committee stage to ensure that we would have to, on the run, come up with a way of dealing with the hundreds of amendments that are now before us. We have almost half a book from the government to deal with. As well, there are new explanatory memoranda that they have put out. There are new amendments—at the last count I think there were 74. Some of those require reasonable consideration and explanation by this government, but we are not going to get that. We are going to have to rely on the explanatory memoranda to understand what the government’s position is. Or, hopefully, in the short time available to us, Senator Ellison can run through, as quickly as he can, the way those amendments will operate. That would provide us with an opportunity—only an opportunity—to deal with some of the more substantive issues that have come through.

The difficulty is that, by complaining about the process, I am eating into the time available to me to talk about the substantive matters. That is the difficulty we always face, especially with a government that is so arrogant and out of touch. It is bordering on an un-Australian way of dealing with the Senate that the government has chosen to use its numbers to both guillotine and gag its way through an antiterrorism bill. It is not acceptable. It should not be done. The government has the ability to ensure that there is proper debate but has chosen not to.

Let us look at the major issues that came out and see what the Senate Legal and Constitutional Legislation Committee found. Let us deal with them. We will look at the major issues and some of the minor issues as well. One of the major issues that the committee found was the sunset clause. This government has said that the period is 10 years. Ten years is a lifetime in politics, let me tell you. It is a farce to suggest that 10 years is a position that is going to be acceptable. The Labor Party have said—and we will move amendments to that effect, if we get the opportu-
nity, but I will foreshadow them in any event—that a five-year sunset clause with a five-year review is a better outcome. It provides at least some certainty that (1) the legislation will be reviewed and (2) five years down the track we can look at the legislation and see whether it is still an appropriate, adapted and proportionate response to the security environment we then find ourselves in.

The second issue is in relation to sedition. The Labor Party have said right from day one that we oppose schedule 7. It should not be part of this process. Right from day one we have said that, in terms of the Anti-Terrorism Bill, we do recognise that there is a new security environment. We do think, unlike the Greens, that you have to take the fight to terrorists. You cannot take a backward step. You have to make sure that the people we entrust with our system to protect us and preserve our way of life have the necessary powers to ensure that they can root out these evildoers and put them behind bars and can prevent a terrorist attack so that we can have some measure of security and safety in Australia.

In relation to sedition we say that it was not part of COAG; it was not part of the original agreement. I suspect it is one of those things that Mr Ruddock has been kicking along, like a favourite football, rolling it along the paddock and thinking, ‘This is something that I would like to pick up and run with,’ and he has. He has flicked it up, put it under his arms at the available opportunity and decided to run with it. Well, it is not on. It should not be a part of this system, it should not be a part of this bill and Labor oppose it. We have said that from day one. We are fortified that the committee recommendations equally supported Labor’s position of saying, ‘That should not be here.’ Let us look at some of the comments that were made in the committee report. For example:

Mr Laurence Maher submitted that he had in the past advocated the repeal of the existing sedition provisions under the Crimes Act because they are:

… archaic and unnecessary and, more importantly, contrary to contemporary modern democratic principle as an unjustifiable burden on freedom of expression and freedom of association.

I think that sums it up in a very neat passage. The committee took cognisance of that and recommended that. I heard that some backbenchers got a bit divided about this issue, but at the end of the day they stuck with the government; they stuck with the line.

The committee did recommend an alternative, faced with the view that the government may not remove sedition. Let me make it plain: it was not an alternative in an equal sense. The first position recommended that schedule 7—sedition—be removed. The alternative was to ensure that it at least had some measure of support from the government’s own backbench. And that is what that was: a comfort recommendation for the backbench that they could slide back to, and that is in fact where they went. It was not a surprise to me to see the alternative. It is not an equal alternative. It is a backslide for the Liberal backbench who knew they would not be able to stare down Mr Ruddock. Mr Turnbull and Senator George Brandis knew they were not going to be able to stare down Mr Ruddock. They decided that the only way out was to ensure that they had a backslide position to give them a fig leaf of protection. They do not have to do that; they can take the first position. It is a much better position to adopt. Sedition is not necessary as part of this bill and should be removed.

The other areas that Labor has sought to amend and improve upon are not only the review and sunset provisions but also areas that I suspect Senator Bob Brown was talking about in part. He went to the issue of the ICCPR, the international obligations we
have. The Labor Party takes those obligations very seriously. They exist as guiding principles to ensure that we act in a decent way. That is what they are there for. I was a participating member of the Senate Legal and Constitutional Legislation Committee and it was very pleased to hear from the Human Rights and Equal Opportunity Commission, who also take very seriously those principles and the International Covenant on Civil and Political Rights. What they said is instructive. In relation to issues regarding the right to liberty and the requirement of proportionality, they indicated:

A number of commentators have suggested that the scheme for granting PDOs—that is, preventative detention orders—violates the rights conferred by article 9(1) of the ICCPR, which provides ...

I will not go into the quote; most people will be familiar with it. It goes to the issue of arbitrary arrest or detention. They then went on to say:

It is important to understand that article 9(1) does permit detention for security purposes. However, such detention must not be ‘arbitrary’. The term ‘arbitrary’ has been interpreted as requiring more than mere compliance with domestic law.

HREOC said that the best way to deal with that particular issue was in the recommendation they made. They did not recommend in their submission to the committee that we incorporate the UN convention. In recommendation 1 of their submission—and Labor has incorporated it into its amendments because it was a committee recommendation as well—they said:

The Commission therefore recommends that the Bill include additional sub-clauses (in s105.4(4) and (6)), which require the issuing authority to be satisfied that the purpose for which the order is made cannot be achieved by a less restrictive means.

The Liberal-National coalition have not picked that up. It is something that should be picked up. It is an amendment that we have sought, and I foreshadow that, if we get the opportunity, we will move it. It is one of those areas that provide a test of proportionality. It provides a way of ensuring that, in enacting this legislation and dealing with it, the government’s actions are proportional, appropriate and adapted to the purpose. That is what that clause does. It is one that Labor supports and will move in this committee stage. It is one that the Senate Legal and Constitutional Legislation Committee adopted and suggested that the Attorney-General, Mr Ruddock, should pick up.

He has not picked it up. He has not seen fit to include it in the legislation. That is a great pity, I must say. Obviously, there would have been an improvement to the legislation if Mr Ruddock had picked up all of the committee recommendations. At the end of the day he would have been able to say that he took on board the committee recommendations, was cognisant of the committee’s work and had ensured that there were safeguards and review and oversight arrangements contained within the bill. That is not something that the Attorney-General has decided to do. However—and sometimes in the heat of these debates we miss pointing this out—he did pick up a substantive number of the amendments that the committee recommended. A significant number of amendments have been incorporated into the legislation.

The legislation started from the Stanhope draft—if I can call it that—where this government took an extreme position. The government then removed the shoot to kill legislation. It provided a better and much improved version than that horrible piece of drafting that we originally saw. We then moved to the position where the committee had an opportunity to hear from submitters
about the new draft of the bill. The position now is that there are another 74 amendments which will move the bill further along that continuum to ensure that it is appropriate and proportionate. They will ensure that there are some safeguards.

Right from day one Labor have been in a position to say that we support the antiterrorism laws. We wanted to then find out how we could work to improve them to ensure that they were not going to reduce people’s liberties or impinge upon their freedom of political communication. We wanted to ensure that this type of law would not be used arbitrarily. After the committee hearing, after the government and the backbench of the Liberal Party caved in, we have arrived at a position where we have a bill that is much improved.

There is still more work to be done. Of the issues that Labor has said right from day one still need improvement is that there should be greater scrutiny in this place of how these laws will operate. A fundamental difficulty that always besets us is not that the law may offend but that the way it may operate or be used may offend civil liberties, freedom of political communication and UN conventions. That is why Labor has said that the antiterrorism laws should be subject to greater review in this house. We should be told every three months how they are operating. The government have stuck to a 12-monthly report. They still have an opportunity to accept further Labor amendments, but I doubt that they will. (Time expired)

Senator STOTT DESPOJA (South Australia) (1.04 pm)—I take on board the comments that have been made by my colleagues. When Mr Deputy President was in the chair he asked us some process questions. I suggest that we attempt to move through the running sheet as we normally would for a debate of this kind. Before my colleagues, particularly those on the cross-benches, ask why I am doing this, let me say that it is because this bill should be subject to the usual debate, scrutiny and analysis to which we would subject any bill in the committee stage.

We have a vast array of amendments. That is undoubted. Some of those amendments are more substantial or indeed more controversial than others. I look at my own amendments, many of which were circulated last week, including the Democrat amendment seeking to attach international conventions such as the ICCPR to this legislation. These amendments are in some cases quite broad ranging. Some are in depth and some are more simple than others, but all are constructive. In many cases we have sought not merely to oppose a section or a provision in this legislation but to constructively amend that section in a way that ameliorates the worst aspects of this legislation and, hopefully, provides some safeguards, particularly in line with some of those international treaties and conventions to which my colleagues have referred.

My suggested process—that is, the normal one—may actually mean that we do not get to a number of amendments. I think that that is the inevitability of any truncated, gagged or guillotined debate, as this is. I am really quite content—I am not really happy about it—for the process to be exposed. This process is a farce; it is a joke. There is no point in our being here. We have circulated amendments that are sincere and serious and have a constructive impact on the bill. We are not talking about minimal legislation here. We are talking about arguably one of the most fundamental—and, without a doubt, most serious—pieces of legislation that many of us will debate in our time in the Senate.
Senator Ludwig pointed out, quite rightly, that in his six years in this place this has been one of the more offensive processes that he has been involved in. I would like to say that in my 10 years in this place this is without doubt—

Senator Ludwig interjecting—

Senator STOTT DESPOJA—Yes, and I will raise you. Quite seriously, in a decade in this place, this is the black week of the Senate. This fortnight is a shameful period in the Senate’s history.

Senator Ferguson interjecting—

Senator STOTT DESPOJA—I acknowledge that there are a couple of senators sitting on that side, including Senator Ferguson, who have been here longer. Indeed, the minister has a few years on all of us, and I am certainly not going into the question of how much longer some of us will be here, Senator Ferguson. We will wait and see what the Australian people decide, but I will tell you that they are not happy with this process. This process is a farce. This is a shameful week. Indeed, I suggest that the process that has been put forward by government—gagging debate; truncating debate; circulating amendments at the last moment; explanatory memoranda that do or do not turn up, depending on which bill you are referring to; speeches in the second reading debate for those who are lucky enough to get into the top three, four or five, the rest having to rely on the goodness of the Senate to incorporate their contributions—is positively seditious. This process is guilty of overturning fundamental principles on which the operation of our democracy and parliament rely—that is, having adequate time for debate and analysis.

The house of review is prevented from doing its job, so let us proceed as we would normally proceed: we have our debate in the committee stage and we go through a running sheet. Again, I have not seen the updated running sheet. I acknowledge that the Labor Party have circulated their amendments, but we have a considerable number of amendments that we should go through. I indicate that I had no intention of denying leave to Minister Ellison, on behalf of the government, to move his amendments in relation to clause 2. The Democrats will be supporting those amendments, as we will be supporting a number of other amendments that the government has put forward. But let us not fool ourselves. The changes that have been circulated by the government are not substantial; they are tinkering. The government has tinkered with this bill to deal with some of the dissent, rebellion and division on the back benches. I acknowledge that it is not sufficient rebellion to see people cross the floor on this issue. So the die is cast.

The Labor Party indicated last night how they would vote for this legislation at the second reading stage—that is, unamended legislation in terms of the sedition provisions. But I hear Senator Ludwig’s comments about schedule 7, which are supported by the Australian Democrats. We will seek to oppose—in fact, to delete—that schedule. We acknowledge that the sedition provisions are unnecessary and archaic. We do not support this dead-letter law and we will not be allowing that part of the bill to stay. Certainly the numbers are against us, but I am glad to hear the Labor Party’s reiterated position. I know, and I am confident therefore, that that means they will oppose this legislation if that offensive schedule remains. If they do not, I have heard their justification for that too.

I want to put something on record, because this is a serious point and one that I am really sick and tired of having to debate. Every time someone on the crossbenches, in the Australian Democrats or elsewhere, offers a criticism of legislation such as this
before us because it might involve an unprecedented or extraordinary expansion of intelligence and police powers, a challenge to a traditional legal principle, a contravention of our international human rights obligations or a contravention of, say, the Convention on the Rights of the Child, or we dare to question the role of lawyers in dealing with clients—the list goes on—the response seems to be that we are not specifically questioning the terrorist threat. We are almost accused—in fact, in some cases we are downright accused—of practically supporting terrorism.

Even the comments today about people not taking the terror threat seriously are offensive, because one can argue for necessary powers, proportionate powers, to deal with that evil that confronts us—an evil of which all of us are aware, if not familiar with—but that does not mean that we cannot argue for proportionality in a bill such as this, including safeguards to protect legal principles, human rights and, yes, civil liberties. Being a civil libertarian in this place is apparently bad now. I am very proud to be a civil libertarian, but I have always recognised that certain rights—privacy rights, for example—have to be balanced. They are not absolute. Of course they are not absolute; very few rights are. It is all about balance. This bill does not have balance, but our attempts to try and balance it are a waste of time today.

I am quite happy for us to move through the schedule, and when the whistle blows the whistle blows and we will be through merely—I do not know; does anyone want to take a guess—half-a-dozen or a few amendments. There are amendments that deserve hours of debate. I am not joking about that. I am not talking about filibustering debate; I am talking about serious debate. If we get to two, three, 10 or 20 amendments, let the record show—let the legacy of this place reveal it—that this legislation was not subject to proper debate and scrutiny, just like the other legislation that will be dealt with in this black week of the Australian Senate. The first lot of Democrat amendments will deal with the sunset provision to which Senator Ludwig has already referred. I acknowledge that Labor’s amendment, or the proposal of the committee, to halve a sunset provision—remember, it is a sunset provision that does not refer to everything in this bill—from 10 years to five years is a good start, but I do not think it goes far enough.

To pick up Senator Ludwig’s point about the six years he has been in parliament, I want to make a point—and I do so quite seriously—about how many of us would still be here, judging by what has happened in the past, if we did review this legislation in 10 years. In the last 10 years, certainly since I came into this place, 63 people have come in—not all have stayed—and some have gone. That gives you an idea of the incredibly high turnover in this place. I am not suggesting that it necessarily has to be the same senators reviewing legislation all the time, but doesn’t that give us an idea of some of the issues dealing with consistency and knowledge of legislation? I would have thought that gives us a very clear idea that 10 years is just stratospheric. It is just a ridiculous time frame, and the government knows it. The Senate committee knew it too, and that is why we recommend differently.

The Democrat amendments that come up immediately after the clause 2 amendments proposed by the government deal with the sunset clauses and what we think is a more moderate and appropriate proposal, and that is within the life of the parliament—essentially, a three-year time frame. That time frame deals with control orders, with preventative detention orders and with stop, search and question powers as well. Three years is a much more appropriate time frame, not just given the issues of consistency but
given the extraordinary and unprecedented powers that we are talking about in this bill.

Remember, this bill deals with a 10-year sunset clause that will only apply to preventative detention orders, control orders and police stop, search and question powers. A decade is too long a period to deal with these issues, especially for such intrusive and controversial law. It must not be allowed to continue for 10 years without appropriate analysis, review and reflection. But we will seek through our amendments to see that all schedules of the bills cease to have an effect in three years, with the exception, of course, of schedule 7, which, as we know, has a separate review sunset clause provision.

The next set of Democrat amendments will relate to the human rights obligations. As my colleagues in the committee process heard, I was particularly interested in recommendations from organisations like PIAC and HREOC in relation to attaching international covenants and conventions such as the ICCPR, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. I would like to attach those three particular conventions to this bill, as I said in my second reading debate comments yesterday, not because I think it would be necessarily a restraining force on government, because it does not have any impact. It does not necessarily stop the government undermining human rights or civil liberties, but it reminds the government of what they are doing. It is one way for us to at least assess this legislation and any rights that are potentially breached or are being abrogated through this bill. It makes clear, against that international framework, what is going wrong and what is taking place.

Those were some of the Democrat amendments in this early stage of the legislation. I do suggest that the idea of us having to accommodate the guillotine, while necessary, is offensive. I do not think we should pretend that we are going to try and discuss all the controversial stuff and get it over and done with because the government have truncated the debate. I want us to do this properly. And if the government stop this debate then let the record show that. I do not see any willingness from the government to seriously consider these changes. I do not think they have really given us time to seriously consider their own changes to the legislation—the government amendments that are before us. There are wads of amendments and explanatory memoranda. Yes, most of us are involved in the committee stage, but the process is a joke. I say that with no humour—I think it is a really sad day. I ask the minister: how is that response to the Law Council going? Have they got a response yet to their letter? I was just wondering if the government would like to outline some of their response to that particular letter. The full-page advertisement that appeared yesterday from the Law Council makes very clear not only the problems with the process but with policy. What is the government’s response? (Time expired)

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (1.19 pm)—by leave—I move government amendments (1) and (2):

1. Clause 2, page 2 (table item 10), omit “6 months”, substitute “12 months”.
2. Clause 2, page 3 (table item 14), omit “6 months”, substitute “12 months”.

In view of Senator Stott Despoja’s exhortations to get on with the amendments, I think we should. We have heard much debate in relation to the lack of time and we have seen some 50 minutes used for general comments. I had thought Senator Brown was going to offer something useful in relation to how we might deal with amendments in the commit-
tee stage, but no assistance was forthcoming, and I am quite accustomed to that from Senator Brown. His remarks were disingenuous in that he showed that he was not interested in effectively dealing with these amendments. Senator Ludwig at least put forward Labor’s view of where they thought the important issues lay and he addressed different aspects of the amendments. That was of some assistance to the committee stage; Senator Brown’s contribution, alas, was of none.

Senator Stott Despoja said that we should get on with dealing with the amendments and told us that repeatedly. Can I say at the outset that the government is appreciative of the great work done by the Senate Legal and Constitutional Legislation Committee and that, of its recommendations—in excess of 50—in excess of 20 were accepted in full or in part. Of course there are proposed amendments by the government, and I want to correct something that Senator Stott Despoja said. Those amendments by the government were circulated yesterday—it is not as if they have just been circulated now. They were circulated yesterday, which has given senators adequate time to address them. In fact, they were circulated well before some others which have been circulated in the chamber today. The Attorney-General has agreed to implement many of the Senate recommendations for direct reference in the explanatory memorandum which is accompanying this bill. One of these recommendations is that body searches be carried out by police officers of the same sex as the person being searched. While the reference to body searches is misleading in some respects, the Attorney-General has agreed to implement this recommendation through a legislative amendment at the next available opportunity. The purpose of the amendment will be to make this provision consistent with similar search provisions in other legislation. That is a matter that was raised by Senator Ludwig, I think, and I just want to place that on the record.

In relation to government amendments (1) and (2), as I started to say earlier, these amend the commencement table in clause 2 of the bill for those provisions in proposed schedule 9 that deal with the inclusion of customer information with international funds transfer instructions and the registration of remittance service providers. To ensure sufficient time before the commencement of the amendments to items 5 and 10 of proposed schedule 9 of the bill, recommendation 50 of the Senate committee was that the commencement provision of the bill be amended to provide that those amendments can commence on a date to be proclaimed. It is not usual to leave the commencement date completely open. The commencement, however, has been extended from proclamation or six months to proclamation or 12 months.
Those provisions will commence either on proclamation or, if this does not occur within 12 months of royal assent, they will commence the day after the expiry of this 12-month period. I believe that is in accordance with what the Senate committee recommended. I commend those two amendments to the committee and look forward to dealing with the other amendments in an expeditious manner without debate which, can I say, has been extraneous to this point from some of the speakers we have heard previously.

Senator NETTLE (New South Wales) (1.24 pm)—Three hours before this legislation is guillotined through the Senate, I thank you for giving me the call. As one of the 13 senators who was involved in this Senate inquiry, I did not have the opportunity yesterday to give a speech in the second reading debate on this legislation because the government has gagged and guillotined this legislation through the parliament. We had the second reading vote, which was, of course, supported by the opposition. So I will take this opportunity now, in the 15 minutes that I have got, to make my contribution. Because I know that we will not have the opportunity to fully debate and discuss all of the over 100 amendments in this committee stage, I will choose to spend the 15 minutes that I have got discussing the crux of this legislation—that is, detention without trial or charge.

I will not get to discuss or debate proposed schedule 4 of the bill and a Greens amendment later on, so I will speak now about the fact that this legislation, for the very first time in Australia’s criminal law, will allow people to be detained without trial or charge. We have already got that in immigration detention. People are locked up in immigration detention without being taken before a court, without being charged. In our immigration law, this government allows detention without trial and detention without charge. We have all seen the scandals that have been created by allowing this to occur. People are locked up and maybe some questions are asked; maybe they get the opportunity to go before a court on very limited grounds down the track. That is what is being proposed for the very first time in criminal law.

It is a massive, monumental and significant step that this government is taking. Because it is so significant, we have seen a full-page advertisement in Australian newspapers from the Law Council representing lawyers across this country. It says:

The Law Council particularly objects to the introduction of control orders and preventative detention orders.

That is, detention without trial. When the president of the Law Council was asked on ABC radio yesterday what concerns him most about this legislation, he said:

The control orders and preventative detention which allow Australians to be taken off the street and held for up to 14 days and have their liberty curtailed for up to a year without charge. In other words, there is insufficient evidence to charge them and that makes a class of people unknown to the Australian law.

He goes on to say:

We are most concerned because it is going to take abuse and misuse of these laws by the police forces, and/or spy agencies, before people realise what rights they have allowed this government to take, with the opposition right behind the government. They will notice only when something goes wrong.

This is the president of the Law Council expressing his concerns on the detention without charge or trial that is being introduced for the first time ever into our criminal law.

I have spoken on this in here before. In fact, I had to incorporate my speech in the second reading debate which talked about the Magna Carta and the 800 years in which our legal system and legal systems around the world have been based on the concept
that people should only have their liberty taken away from them if they are charged and brought before a court and a jury. I quoted from the Law Council advertisement in yesterday’s newspapers in the chamber yesterday and I will read it out again. I have three quotes. One of them is by Winston Churchill. He said:

The power of the executive to cast a man into prison without formulating any charge known to the law, and particularly to deny him the judgment of his peers, is in the highest degree odious and is the foundation of all totalitarian governments whether Nazi or Communist.

That is exactly what this legislation does. It allows for people to be locked up without charge, without the opportunity to go before their peers for 14 days, or for their liberty to be curtailed for 12 months.

This legislation for the very first time brings into Australian law concepts such as house arrest. Australians are not very familiar with the concept of house arrest. I spoke at a rally to mark the more than 10 years that Aung San Suu Kyi, the leader of the democracy movement in Burma, has been held under house arrest by the military dictatorship. Members of the Burmese community who are now living in Australia came up and talked to me about this legislation because they understand well the impact of house arrest. This legislation allows for somebody—whomever it may be—to experience over 10 years of house arrest. It says that people can be locked up under house arrest for 12 months under these control orders. Then, when that control order lapses, another one can come into force, and another and another. That is what the military dictatorship in Burma has done to the leader of the democracy movement, whose party won the elections in 1990, and that is what this legislation gives the Australian government the power to do now or in the future.

During the Senate inquiry process there were government senators who support this legislation who asked: ‘Why do you keep focusing on the negatives? Why do you keep focusing on the fact that people can be detained for 12 months under house arrest?’ The reason we keep focusing on that is that it is in the legislation. I am not saying that the first time the government use this legislation they are going to lock up a democracy activist for 10 years. But I know, because it is written there in black letter law, that the government have the power to do that. That is what this legislation does, and that is why we have heard, time and time again, how concerned lawyers across this country are about this legislation.

A mother will come to one of these lawyers and say, ‘I want you to represent my son, who has been locked up under one of these orders.’ That lawyer will not be allowed in there for the first 48 hours of this person being arrested. They will not be able to be there when they start the process of questioning, which they may well do. That lawyer will not be able to get the reasons and rationale for why their client has been detained, and that lawyer’s argument against their client being locked up will be significantly restricted in any court that they are able to go to. Effectively, all that is left for that lawyer to do is to go to a court and say, ‘My client has been locked up.’ The judge will ask, ‘Why is that?’ The lawyer will reply: ‘I don’t know. They won’t tell me. They say he is a terrorist risk. I can’t get any information about it.’ How can a lawyer take a case of somebody being deprived of their liberty or locked up away from any contact with family and friends if they do not even know why this is being done? It is similar to the case of Scott Parkin. His lawyers were not given the information about why he was deported from this country because there are already in place, supported by both the major
parties, laws that mean that lawyers cannot access the information and the reason that their client is being deported or locked up.

That is what exists right now. That is what happened to Scott Parkin. He left this country and his lawyers did not know why. That is what this legislation will do. It will say people can be locked up, people can have their liberties taken away, their lawyers cannot know why and their lawyers cannot go before the full range of courts to argue the case against them. No wonder lawyers in this country are upset. They know that they are going to have to represent their clients without the full weight of the law or all the tools of legal profession because this legislation will restrict them. It will take away their capacity to go to particular courts; it will take away their capacity to find out what has happened to their clients; it will take away their capacity to argue their client’s case in court. No wonder the lawyers are upset. When we see them printing these advertisements and talking about people being locked away and not getting to come before a court, we cannot help but think of other Australians who face these same dilemmas—people like David Hicks who are taken away, who are not brought before a court and who are not able to have their lawyers represent them. These are the kinds of powers in this legislation and that is why the lawyers are concerned. That is why they flagged the concerns of Robert Menzies, Winston Churchill and others.

I will quote again from John North, the president of the Law Council. He was asked yesterday on ABC radio about whether the world had changed in the past five years and, when it comes to conflicts, whether some rights have to be suspended for the greater good. Here is the answer from John North. He said:

Look, the world goes through periodic changes where we have greater and lesser threats. Look at the quotes there—

He is referring to the quotes from Winston Churchill and Robert Menzies in the advertisement—

from those people, who have lived through far, far greater threats to humanity than we face at the moment with terrorism, and they all recognise the need to hang on to your fundamental laws and to rely on a robust criminal justice system that is operating.

They are not my words; they are the words of the president of the Law Council of Australia. That is why it is important that the chamber today supports the Australian Greens amendment, which is No. 3 on the list of amendments. I let the committee know now that we will be dividing on that amendment. We will be dividing on the issue of whether or not this Senate believes that, for the very first time in Australia’s history, we should bring into our criminal law the capacity to detain people without charge or trial and to take away the rights of their lawyers to defend them in those circumstances. For the Australian Greens, that is one of our most significant amendments, and we will be asking the chamber to support us when we get to the guillotine vote on that amendment. I indicate that the Australian Greens will call for the Senate to divide on amendment No. 3 on Greens sheet 4755 because we want to ask the chamber, ‘Do you support detention without trial?’

We know that the government and the opposition support detention without trial of asylum seekers, because that is what operates in this country. We want to ask the Senate, ‘Do you support detention without trial and the taking away of the right to a lawyer?’ I take this opportunity, because it is the only one I have had in this debate, to indicate that the Senate will be dividing on that amendment and the Greens will be holding strong to a principle that has existed for over 800 years in the Magna Carta and around the globe. The basis of our legal system, the
Magna Carta, is just upstairs on the second level of this building if anyone wants to go and have a look at it. That is what our legal system is based on. We do not want to see that ripped up. We want to support and uphold it. That is why we are moving this amendment—because we do not support detention without trial.

**Senator Faulkner** (New South Wales) (1.38 pm)—Since September 11, 2001, catapulted us into a new era of global terrorism, the opposition has worked tirelessly to make sure that Australia has both the laws to protect human life and the safeguards to protect civil liberties. In the last parliament we were determined to make sure that any legislation that became law would get the balance right. When the government presented slapdash, poorly drafted legislation, we helped them out. We sought the views of experts. We consulted the community. We corrected the government’s mistakes. We amended and improved their proposed legislation. In this parliament, however, the government has complete control. No longer can the Senate or the Senate’s committee system clean up the government’s mess. The Howard government is still presenting slapdash, poorly drafted legislation, but the Senate is powerless to correct it. The Australian people are going to be faced with the consequences.

The Anti-Terrorism Bill (No. 2) 2005 contains extraordinary measures. The government’s failure to adequately justify or defend those measures is also extraordinary. Under international conventions, which Australia has signed, there must be an actual or imminent emergency threatening the life of the nation to justify measures this extreme. Suspending basic rights such as freedom from arbitrary detention demands a very high bar of justification. The Howard government has not even come close. The terrorism alert level has been set at medium since 2001. It has never been set at high or extreme.

Nor has the government made any case proving the inadequacy of our existing laws. It is to the contrary. After the recent raids and arrests in Sydney and Melbourne—conducted with the existing legislative framework, of course—AFP Commissioner Mick Keelty appeared on The 7.30 Report. This was on 8 November last month—less than a month ago. In response to Kerry O’Brien’s question:

... does it demonstrate that current powers are adequate?

Commissioner Keelty said:

Well, I think they are...

On 19 May this year at the hearing into the operation of ASIO’s existing powers, Dennis Richardson, then Director-General of ASIO, was asked by Senator Robert Ray:

... are you arguing for any increased powers in the existing legislation...

Mr Richardson’s answer was quite unambiguous: ‘No,’ he said. Then Senator Ray asked him:

Director-General, you are satisfied that the existing powers equip you to do the job you need to do?

Again, Mr Richardson’s answer was quite clear and unambiguous: ‘Yes,’ he said. I am not surprised that Mr Richardson was satisfied with the existing powers. After all, ASIO have reported that they have not even needed to use the existing detention powers. If ASIO are not using the detention powers they have, why is the government creating new, unprecedented powers and new, unprecedented offences? The government has made no case for a new extraordinary danger and no case for the inadequacy of existing laws and measures?

The Howard government cannot or will not give the Australian people a good enough
reason that this bill should contain extreme measures such as the new sedition provisions. I will tell you one obvious reason why we are here today debating these laws that will strip Australians’ hard-won and precious civil liberties and freedoms. That obvious reason is the government’s enthusiastic participation in the invasion and occupation of Iraq. I have said before, and I want to say again in today’s debate, that Australia’s involvement in the Iraq war has made our country less safe. Australia’s involvement in Iraq has increased the risk that Australians at home and abroad face. It has increased the risk that Australians at home and abroad will be the targets of politically motivated violence.

Don’t take my word for it. Take the word of Dennis Richardson, former Director-General of ASIO; of AFP Commissioner, Mick Keelty; of Dr Rohan Gunaratna, head of terrorism research at Singapore’s Institute for Defence and Strategic Studies; of New South Wales Police Commissioner, Ken Moroney; of Victoria’s Deputy Commissioner, Operations, Bill Kelly; of Clive Williams, Director of Terrorism Studies, ANU; of ONA and ASIO reports; of the former chief of the Defence Force, the late Admiral Alan Beaufort; of another former CDF, General Peter Gratton; of Richard Woolcott, former Secretary of the Department of Foreign Affairs and Trade; of Admiral Mike Hudson, former Chief of the Navy; of Vice-Admiral Sir Richard Peck, former Chief of the Navy; of Air Marshal Ray Funnell, former Chief of the Air Force; of Major-General Alan Stretton, former Director-General of the National Disaster Organisation; and of Paul Barratt, former Secretary of the Department of Defence. All these people have said in the past two years that Australia’s involvement in the Iraq war has increased the terrorist risk to our nation and our people.

John Howard refuses to acknowledge this. He refuses to acknowledge this self-evident truth. John Howard, the man wholly and solely responsible for Australia being in Iraq, will not level with the Australian people and tell them what the consequences of our involvement in Iraq are. What makes this whole fiasco worse is that the involvement which has put Australians at greater risk was based on a lie. The government’s response is the deeply flawed and poorly conceived legislation before us today.

A government has a responsibility to maintain order and uphold the law. A government has a responsibility to protect the lives and property of its citizens. And a government has an obligation to respect the human rights and civil liberties of its citizens. This dual duty to protect and to respect is not some novel creation of the post September 11 age. The struggle to restrain the power of the state with laws that safeguard the rights of citizens is a long one and it has been fought through times darker and more dangerous than our own. Time and time again our history has shown that when a government is allowed to ignore its citizens’ liberties in the pursuit of public safety then that government itself ultimately threatens both liberty and safety.

This slipshod legislation makes only the briefest and most cynical gestures towards fulfilling the duty to protect and to respect. Too busy chasing a brief advantage they find in the politics of fear, the Howard government has barely pretended to try to get the legislation and the balance right. In the past the Senate has done that job for them, but no longer. Now John Howard has complete control in the Senate there is no check on his cynicism. There is no check on his arrogance. Hard-won and much-prized civil liberties will be the price.
Senator McGauran (Victoria) (1.49 pm)—I seek leave to incorporate Senator Russell Trood’s contribution in the committee stage.

Leave granted.

Senator Trood (Queensland) (1.49 pm)—The incorporated speech read as follows—

Like most senators I am very conscious that this bill has attracted widespread public attention and more than its fair share of controversy. While some of the debate and commentary has been rather extreme, indeed almost hysterical at times, there has also been a great deal of measured and thoughtful consideration of the bill.

In particular, I recognise that many in the community have a deep and abiding concern for the implications of the bill.

And rightly so.

The provisions of the bill give powers to our state and federal police services and intelligence agencies that have few precedents in Australian legal history.

Detention Orders, control orders and expanded stop, question and search powers and the restrictions that surround them are not usually part of our criminal justice system.

I agree that these represent significant intrusions on our liberties as Australian citizens.

They curtail rights of movement, association, speech and legal process that we in this democracy have taken for granted ever since responsible government in the 19th century.

Because these liberties are our birthright, and they are the very foundation of our democracy we should not quickly, easily or carelessly give them up.

To stand in this great chamber of democracy and pass laws that clearly restrict the liberty of the citizen is something I do only very reluctantly.

Indeed, it is my view that we could only justify doing so if we satisfy two tests.

First, that adequate safeguards have been put in place to ensure that there are no abuses of the extraordinary powers given to the police and other agencies, and

Second, that there is a compelling and justifiable reason to give up our rights.

I am persuaded that these conditions have been met in relation to the bill.

With regards to safeguards the bill is immeasurably improved from the time it first came to my attention.

Over the last two months my Coalition party colleagues and senators from all sides of the chamber have done a remarkable job to improve the bill.

I won’t go into the detail Mr President, but judicial and administrative processes, rights to legal representation, conditions of control and detention, oversight by the Ombudsman and the Inspector General for Intelligence and Security, opportunities for review and oversight, defences to the sedition provisions and more.

I know some will argue that the safeguards do not go far enough.

That the balance struck between the preservation of rights and the need for new and invasive powers leans too far in the direction of invasion. And consequentially the cost is too great.

Certainly the sedition provisions need further attention. I am delighted the Attorney-General has agreed to review them and trust it will be speedy.

But the bill has to been seen as a package and as such I believe that overall it strikes the right balance.

The second issue, Mr President is the threat. Do we face so serious a challenge to our national security as to justify the compromises we are being forced to make with our rights and liberties?

Well no doubt men and women of goodwill could disagree on this subject, but to my mind the answer is clear.

We now live in an era of growing insecurity. There are of course many sources of this insecurity but one of the most visible and dangerous is undoubtedly the Al Qaeda network with its bloody commitment to the use of terrorism to achieve its goals.
Al Qaeda confronts us with a threat unlike any in our recent history.
It presents us with the modern face of international terrorism
Earlier this year, the US State Department’s National Counter-terrorism Centre reported that in 2005 651 significant terrorism incidents. Resulted in 9000 injuries and 651 deaths.
No doubt 2005 will be an equally bloody year in this grim record.

Some of the places where the attacks have occurred in recent years are very familiar to us:— London, Madrid, Jakarta and Bali.
Others are less so: the Yemen, Kenya, Saudi Arabia, Tunisia to name but a few.
Whether near or far, the names remind us that terrorism is a global phenomenon and if the terrorists decide to strike, few places are immune from their reach.
The source of this threat is the same everywhere.
It is Osama bin Laden’s al Qaeda’s global network of Islamic fundamentalists whose radical jihadist agenda would see the world transformed to its own image.

But the al Qaeda network of today is very different from that perpetrated the 9/11 attacks in the US.
That al Qaeda was a hierarchical unitary organisation. It had a clear centre of gravity in Afghanistan and all the hallmarks of a rather lumbering bureaucracy.

Much of that organisation has now been destroyed.
Leaders killed capture or arrested Training Bases discovered and destroyed Weapons seized along with manuals, tapes and great deal of propaganda material.

All testifying to bin Laden’s murderous intentions.
The threat we face today is very different.
Bin Laden and his henchmen have engineered a remarkable transformation of their organisation.
Shown themselves to be frighteningly resilient, flexible and adaptable.
As a result they still represent a very formidable threat.
It is not a threat that we face alone. It is threat that confronts many states.
Hoffman in evidence before US congress recently argued that the al Qaeda movement had now reconstituted itself into four distinct elements

- Al Qaeda Central: the remnants of the pre 9/11 al Qaeda organisation. It is believed this hardcore remains centred in and around Pakistan and continues to exert some coordination in mounting attacks, collecting intelligence, planning operations and approving their execution.
- Al Qaeda Affiliates and Associates: these are the formally established insurgent groups who have benefited from bin Laden’s largesse or spiritual guidance and received training, arms and money: Groups like Abu Masab al Zarqawi’s force in Iraq, Jemaah Islamiya in Southeast Asia and Laskar-e-Tayyiba.
- Al Qaeda locals: an amorphous group of al Qaeda adherents likely to have some previous terrorism experience in places like Chechnya and Algeria and therefore some direct connection with al Qaeda.
- Al Qaeda Network: these are the home grown Islamic radicals who have no direct connection with al Qaeda, but are nevertheless willing to carry out terrorist attacks in solidarity with or support of al Qaeda radical agenda.
The last of these categories is the newest of al Qaeda’s incarnations. It adds a fresh and very worrying dimension to the terrorist threat.
It was terrorism in this group that helped conduct the Madrid bombings, who killed Theo Van Gough in the Netherlands in November 2004 and perpetrated the London attacks in July this year.
As Hoffman remarks, they are identified by a deep commitment to their faith - admiration of bin Laden and the cathartic blow he struck against the US on 9/11, a shared sense of enmity and grievance towards the United States and a profoundly shared sense of alienation from their host nations.
It is easy to suggest that all of this remote from Australia and its interests.

Of course Bali, London and Jakarta tell us otherwise—Australians were casualties.

Beyond those attacks though, we have declarations from the al Qaeda itself stating that Australia is a target.

On 22 May 2003, Ayman al-Zawahiri, bin Laden’s top lieutenant, calls on Muslims to ‘burn the ground under the feet’ of Western crusaders and urges Muslims to attack the embassies and commercial interests of the US, Britain, Australia and Norway.

On 10 August 2005, an English speaking man with an apparent Australian accent, appears in a videotaped message calling for war on the West.

The threat may not be imminent, and it maybe a low priority. But on the basis of these statements we would utterly foolish if we did not regard it as is real and credible.

Faced with this threat, I am very aware that some of the 300,000 Muslims who now live in Australia feel apprehensive and uneasy. Indeed some, I believe have been subject to disgraceful racial abuse.

There can be no excuse for this behaviour.

There is precious little evidence that Muslims in Australia feel the kind of disaffection and alienation from society that exists among some Muslims groups in countries in western Europe

• We are fortunate that overwhelmingly Muslims in Australia are anything but disaffected.

• They make a significant contribution to Australian society.

• Overwhelmingly, they are decent law abiding citizens who are rightly appalled by the monstrous acts of terror committed in the name of Islam.

• I suspect that many would wish to have removed from among their ranks, the people who so disgracefully bring Islam into disrepute.

But we have to be realistic and acknowledge that there may be some whatever their faith who sympathise with al Qaeda and would be happy to act as agents of terror.

What is a government to do? Ignore the danger? Neglect the threat? Hope that it might go way?

None of those things. It does what any responsible government must do and pursue policies that will help protect its citizens by offering us some chance of preventing an attack before it materialises.

That is the intent of this bill.

I will be the first to acknowledge that this alone or by itself is not an adequate counter terrorism strategy. It doesn’t come any where near it.

It is only a small part of what we will have to do before al Qaeda is defeated and the scourge of terrorism brought to an end.

Not least any strategy must address the factors that cause the despair and destructive visions that cause people to embrace rather than reject al Qaeda and its bloody strategy.

This bill is part of the strategy

Like all senators, I hope the powers it gives to the government will only ever need to be used sparingly, better still, let us hope that they will never have to be used.

Though on present evidence that seems unlikely.

But if the powers are never used we will all be relieved and grateful.

Let us hope that is the case.

In the meantime, let us make sure we are prepared.

Let us do everything that is reasonably acceptable in our democracy to avoid the spectacle of a terrorist attack on our own soil.

I commend the bill to the senate.

Senator BOB BROWN (Tasmania) (1.49 pm)—I would like to flag at the outset that I would like the government, before this committee is finished, to follow up on theasservation by Mr McDonald from Attorney-General’s during the committee hearings that a request was made by the Director of Public Prosecutions to the government on 30 March this year to change the word ‘the’ to ‘a’, and that that request was repeated after the London bombings in July. It is extremely important for a government that says that it is es-
sential that we have new laws, and that the old ones are not good enough, to tell us—and I would like the minister to do so before the day is out—why it took until last month for that change to be made. That was done at a time when it was hazardous, to say the least, and compromising, to say the obvious, to police operations and surveillance for this highly publicised change of ‘the’ to ‘a’, requiring the recall of the Senate, to be made through the Prime Minister’s request. It is a very serious matter. It comes out of the inquiry. I want to know why, when the request was made by the DPP last March, the government did not take action through any of the changes to the Crimes Act that have been made since then to make the simple change of ‘the’ to ‘a’ without compromising the police action in the way we saw last month.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.51 pm)—I will take that on notice. It does not really relate to the amendment before us. I will take that on notice and get back to the committee.

The TEMPORARY CHAIRMAN (Senator Murray)—The question is that amendments (1) and (2) on sheet QR323 from the government be agreed to.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (1.51 pm)—by leave—I move Australian Democrats amendments R(1A), R(10D), R(18B) and R(18D) on revised sheet 4764:

R(1A) Page 4 (after line 14), after clause 4, add:

5 Sunset provision

The amendments made by the Schedules to this Act excluding the amendments made by Schedule 7 cease to have effect on the third anniversary of the day on which Act receives the Royal Assent.

R(10D) Schedule 4, item 24, page 40 (lines 2 to 6), omit “10” (twice occurring), substitute “3”.

R(18B) Schedule 4, item 24, page 90 (lines 6 to 11), omit “10” (twice occurring), substitute “3”.

R(18D) Schedule 5, item 10, page 101 (lines 11 to 19), omit “10” (three times occurring), substitute “3”.

In my second reading contribution and my first contribution in this committee debate, I touched on the issue of the sunset provisions. I am conscious of the recommendations of the Senate committee and indeed of the comments that have been made by Senator Ludwig on behalf of the Australian Labor Party, but the amendments that I am moving on behalf of the Democrats effectively amend the operation of the sunset clauses in the legislation. We believe, as I have stated previously, that the sunset clauses as they currently stand are entirely inadequate.

The bill currently contains a 10-year sunset clause that will deal with only preventative detention orders, control orders and police stop, search and question powers. The Australian Democrats believe that 10 years is far too long a period of time. We believe that for a number of reasons. Specifically, because this legislation is so broad ranging, because it has such deleterious impacts on human rights and civil liberties, including some fundamental freedoms and legal principles that we have come to accept in a democracy and in our country in particular, because it has an intrusive nature, and because of the controversial nature of these provisions and the bill as a whole, we believe that 10 years is far too long a period of time for this legislation to operate without due consideration, without reflection and without some kind of review by the parliament.

Instead of the sunset clauses that have been proposed by the government in this legislation, the Democrats are seeking to
amend the legislation so that all schedules of
the bill will cease to have effect in three
time. That is the equivalent of the life
of a parliament, so we believe that it is not an
unreasonable or inappropriate period of time
for a sunset clause to operate. I put again on
record the obvious exception, and that relates
to schedule 7. The Australian Democrats
recognise that that has a separate sunset clause or review provision. Indeed, it is a
schedule that we oppose in general anyway.

The first amendment seeks to amend sec-
tion 104.3(2) of the bill to decrease the sun-
set clause that applies to control orders from
10 years to three years. The amendment deal-
ing with preventative detention amends sec-
tion 105.5(3) and seeks to reduce the 10-year
sunset clause there to three years. In relation
to the sunset clause on the stop, question and
search powers, we seek to amend section
3UK so that that sunset clause changes from
10 years to three years. We have made clear
a number of times why the bill deserves re-
lection, examination and analysis in at most
three years, which is pretty comparable to
the life of a parliament. We commend those
amendments to the Senate and hope that they
will have support from at least the cross-
benches and the other non-government par-
ties, even though we recognise the numbers
in this place and that the amendments do not
have the support of the coalition.

Senator LUDWIG (Queensland) (1.56
pm)—One of the issues that Senator Stott
Despoja mentioned was dealing with the
amendments in seriatim, but because we are
in the Committee of the Whole we can move
to the amendments that we want to deal with.
That is partly why I went to what I consider
to be the most serious amendments that La-
bor are moving in the opportunity that I had
to address the Senate during the committee
stage. Those amendments are those that we
want to put to the government and have them
blink over—although we suspect and know
that they will not.

The other amendments are still equally
important, and if we have an opportunity to
argue those in due course, we will. But I did
not want to be in the position of not being
able to put these serious issues before the
Senate. I wanted to put them so that the pub-
lic will be aware upon reflection somewhere
down the track that the Labor Party moved
substantive amendments to ameliorate the
effects of this legislation, in line with the
committee report, in addition to those that
the government moved, and that we argued
for those here, notwithstanding the govern-
ment’s truncated committee stage.

In respect of the amendments that Senator
Stott Despoja has moved, we have taken the
view of the joint committee. The committee
arrived at a reasonable review period. They
did not arrive at that without some considera-
tion of the issues involved. The Parliamen-
tary Joint Committee on ASIO, ASIS and
DSD and the Sheller review both came to the
view that there should be a five-year review,
with a sunset clause, for that legislation.
There is a view that five years will allow
sufficient time for these matters to be worked
through to see whether they fail or work and
whether there are deficiencies. I have no
doubt that the government will rectify any
serious matters that are deficient in any
event.

Senator Stott Despoja—Really?

Senator LUDWIG—Yes. I am perhaps a
bit more confident about that than you might
be. I am talking about serious procedural
flaws that may not allow the legislation to
operate as intended. We already have gov-
ernment amendments which address that in
part. The government have sought to put
amendments that look like they correct an
oversight of theirs, and I will deal with that
later. When you look at this legislation, the
five-year review that the Labor Party have sought is a better position. We will hopefully move amendments to that effect. We think those amendments will allow the legislation to operate as intended. If there are serious flaws, they will come to light.

Progress reported.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Leader of the Government in the Senate) (2.00 pm) — by leave — I inform the Senate that Senator the Hon. Ian Campbell, the Minister for the Environment and Heritage, will be absent from question time today, 6 December, until Thursday, 8 December inclusive. Senator Campbell will be absent due to his attendance at the 11th Conference of the Parties in Montreal on behalf of the Australian government. During Senator Campbell’s absence Senator the Hon. Ian Macdonald has agreed to take questions on behalf of the portfolio of Environment and Heritage, and questions relating to the portfolio of Transport and Regional Services for the Hon. Warren Truss.

QUESTIONS WITHOUT NOTICE

Mr Oday Adnan al-Tekriti

Senator KIRK (2.01 pm) — My question is to Senator Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs. I refer the minister to her comments in question time yesterday, when she indicated that she would make further inquiries about Mr Oday Adnan al-Tekriti—in particular the issue of whether he had been involved in war crimes in Iraq, as has been suggested in the media. Is the minister now able to provide any additional information to the Senate about the status of these claims or any other claims against Mr al-Tekriti? Can the minister also indicate whether either she or her department have any continuing concerns about the decision by the Administrative Appeals Tribunal that allowed Mr al-Tekriti to remain in Australia?

Senator VANSTONE — I thank the senator for the question. In particular, I thank the senator for pointing out in her question that what Mr al-Tekriti is accused of is as reported or suggested in the media. I take it that the senator, with her background in law, is making it very clear that she does not accept at face value allegations made through the media—nor, for that matter, does the government. The senator has asked me whether I have any more information on that matter. As at today, no. Any more information that I might be able to get in relation to that matter will of course take some time to obtain. If I had it today, it would imply that I had it yesterday or the day before.

The situation in relation to Mr al-Tekriti is, as was explained here yesterday and has been explained by the Prime Minister in the other place, namely that the immigration department did have some concerns. They are not properly reported as being ‘Immigration found that he had perpetrated crimes against humanity’. The immigration department is not charged with the task of making such a finding. As the senator would know, that is the province of courts, not immigration departments—and, in particular, not individual officials within immigration departments.

Nonetheless, it is fair to say that the decision maker had concerns and refused a visa. The refusal was then taken to the Administrative Appeals Tribunal. As was indicated yesterday, we were not happy with that and in fact lodge an appeal, but after a period of time—and I am not sure how long that period was at this point—it became clear, as a consequence of legal advice, that that appeal would not succeed. It may well be a matter that goes to points of law rather than issues of fact. Nonetheless, it is fair to say
that the department’s decision was overturned. There will be further inquiries in relation to this matter. Mr al-Tekriti now has a temporary protection visa.

There were many who criticised temporary protection visas, but I imagine at this point they are quite happy that we have them, because at the expiration of the term of his temporary protection visa or at any such time prior to that, should we come into possession of information which would enable us to successfully cancel the visa, we would probably be able to do it. I say ‘probably’, Senator Kirk, because some of your colleagues, before launching this campaign, did not turn their minds to the non-refoulement obligations in relation to people who seek refugee protection. What I mean by that is that it may well be by the hand of people involved in publicising this that, whether or not such information is found, it may be very difficult to return Mr al-Tekriti.

Senator KIRK—Mr President, I ask a supplementary question. Does the minister have and has she sought at any time to use any powers under the Migration Act or involve herself in any other way in the handling of the al-Tekriti case? Given that the minister has in the past used her discretion to deport Australian residents, can she indicate whether, in her informed opinion, Mr al-Tekriti should be deported? Or is the minister now powerless to decide who comes to this country and the circumstances in which they come here?

Senator VANSTONE—I think whichever genius wrote that question—and I am sure the senator would not fall into this trap—would rather be a journalist than in parliament, such is the glib reference to the government’s policy. The government do have the capacity to decide who comes here and the circumstances in which they come. We have a system that does that. That system properly involves checks and balances, and the check in this case was a review by the Administrative Appeals Tribunal. We and others might not like the outcome, but that is the outcome that has been arrived at through proper process. Nonetheless, the process is still open, and I refer you to the remarks I made in my original answer—that, should further information become available, it would still be in the province of the minister to cancel the temporary protection visa or, for that matter, a permanent visa, if it were later given. This government have shown a willingness to cancel visas where it is appropriate. I wish the opposition supported the government when they did. (Time expired)

DISTINGUISHED VISITORS
The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery today of a former distinguished senator for Queensland, Lady Flo Bjelke-Petersen. I warmly welcome you, Flo, back to Canberra and to the Senate chamber. I also note the presence in the President’s gallery of a member of the New South Wales parliament, the Hon. Don Harwin MLC. I also welcome you to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE
Welfare to Work

Senator TROOD (2.07 pm)—My question is to the Special Minister of State, Senator Abetz, representing the Minister for Employment and Workplace Relations. Is the minister aware of recent comments in the media from various groups about the government’s Welfare to Work policy? What is the government’s response to these comments? Is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Trood for his excellent question. I have seen reports
from a number of organisations that seem to hold quite bizarre and contradictory views. They say on the one hand that the current welfare system has not eased poverty, yet they oppose our reforms and say that we should keep the current system going. Organisations like the Brotherhood of St Laurence and ACOSS like to lecture us but their proposals are no different from Labor’s: just keep doing the same thing, hand out more money and hope for the best. It is a road to nowhere.

Major welfare reform is needed in Australia, and I ask those opposite whether they agree with this summary:

There can only be two purposes to the public provision of welfare: to move people back into work and to develop their skills and self-esteem—offering incentives for an active life, lifelong learning, personal savings and the social status of work while also demanding individual responsibility in return. Welfare dependency can kill a society, suffocate self-esteem and the stability of a normal life.

Do you know who said that? None other than their would-be Prime Minister, Mr Mark Latham. He then went on to say,

It is the perpetual dilemma of centre left parties supporting the active role of government but not knowing when to stop.

There are currently 700,000 children growing up in households in Australia where no parent has a job. These welfare kids are much more likely to leave school early, become unemployed or teenage parents and end up on welfare themselves. We say the children of Australia deserve better. Families where no parent is working are more likely to have mental health issues, lower rates of immunisation and greater risk of juvenile delinquency. Contrast this with research that shows that young people whose parents work, even in a low-paid or casual job, have the benefit of positive role models in their lives and subsequently fare much better. But Labor refuses to see this, preferring the sit-down money mentality and culture. Indeed, Ms Macklin once notoriously declared that it was better to have no job than a casual job—and under Labor she would be the Deputy Prime Minister.

I wonder who said this? Listen to this very carefully: ‘We also believe that the best form of welfare is a job for people to move out of that cycle of poverty.’ A bit tough? It was Mat Rowell, the CEO of the Tasmanian arm of ACOSS, on ABC radio in Tasmania this morning. It shows that some people understand the need to get people from welfare and into work.

Those opposite continually attack us without advising us what their alternative policy is. I urge those on the other side to put away their negative carping and come forward with a policy that embraces the principles so rightly enunciated by their former leader, Mr Latham. I trust that Senator Faulkner had something—(Time expired)

Senator Bartlett—Mr President, I raise a point of order. I ask that you, as Presiding Officer, inform those organisations that have just been misrepresented and smeared by the minister so that they have the opportunity to reply to his misrepresentations. It is one thing for him to smear senators in this place but those organisations should have the right of reply to his misrepresentations.

The PRESIDENT—Order! There is no point of order. The Hansard is available.

Mr Oday Adnan al-Tekriti

Senator LUDWIG (2.12 pm)—My question is to Senator Vanstone, the Minister for Immigration and Multicultural and Indigenous Affairs. In light of public concern about the decision to allow Mr al-Tekriti to remain in Australia, will the minister now revisit the government’s earlier decision not to appeal the findings of the Administrative Appeals Tribunal, which allowed this apparently to
happen? Will the minister advise when the case was first brought to her attention and whether she was involved in the decision not to pursue the matter before the AAT—in other words, to drop the appeal? If the government’s concern about Mr al-Tekriti was serious enough to try to deny him a visa in 1999, why couldn’t the minister, it seemed, be bothered with proceeding with an appeal against the decision which allowed him to remain in Australia? Doesn’t the government’s refusal to at least appeal the AAT’s decision, which could allow Mr al-Tekriti, where there were serious concerns, to remain in Australia, seriously undermine the integrity of Australia’s immigration system?

Senator VANSTONE—I thank Senator Ludwig for the question. The answer to the question is no. The decision to refuse him a visa was made in around 1999-2000, but in any event the refusal was in 2001, I think. I am sorry—let me take that back. Without being specific on dates, I can say that the decision to lodge an appeal and the decision, in particular, to withdraw from the appeal was a decision made in October 2003 and was signed off by the then minister at the time. So the short answer to your question is no, I was not involved.

I am not at all sure that it would now be possible to launch an appeal on something that was that long ago but, in any event, Senator, the point that I made was that advice from counsel to the previous minister was that the appeal would not be successful. It would be folly, for the purposes of some media circus, to have an appeal that you did not think would be successful. In fact, I would argue that that would be an abuse of process. What I have said is that the government is certainly interested in any further information, and not just on Mr al-Tekriti but on anybody living in Australia who may or may not have committed such crimes as would warrant their current visa being cancelled. That applies not just from today. It has always applied and it will apply from today on and in particular in relation to Mr al-Tekriti.

Senator LUDWIG—Mr President, I ask a supplementary question. I refer the minister to the Prime Minister’s remarks yesterday that he had requested further options from the minister for handling the al-Tekriti case. Can the minister now advise the Senate whether she has been able to provide any further advice to the Prime Minister about this case? In particular, does her advice include the options of revisiting an appeal against the decision of the AAT which allowed Mr al-Tekriti to remain in Australia or any other option?

Senator VANSTONE—Senator, what discussions and when I have them with the Prime Minister will be up to him. But I think it is fair to say to you that I have not yet had that discussion. In other words, I have not reported back to him on what range of options may or may not be available. I will certainly include any remarks about the potential for refoulement of Mr al-Tekriti in those remarks when I do make them to the Prime Minister.

Welfare to Work

Senator PAYNE (2.16 pm)—My question is to the Minister for Family and Community Services and the Minister Assisting the Prime Minister for Women’s Issues, Senator Patterson. Will the minister outline to the Senate how the government is continuing to increase its support for people with disabilities, including particularly in rural and regional Australia? Can the minister advise the Senate whether she is aware of any alternative policies?

Senator PATTERSON—I thank Senator Payne for her interest and her question. Last week I was pleased to announce that the Howard government will provide $4 million over two years in supplementary funding for
disability business services in rural and remote areas. This will increase their funding from $700,000 in the past 18 months to a projected $2.4 million in the coming year. That is an increase in funding from $38,000 a month in the past 18 months to $200,000 a month over the next year, which is a fivefold increase. It is part of a support package aimed at helping to maintain the future viability of services located in rural and remote Australia, which face unique challenges due to their location. Every single one of the estimated 120 business services located in rural and remote areas will benefit from the funding. This will see services receiving between $15,000 and $60,000 more per year. The first payments will be made before Christmas.

The package also includes grants of up to $75,000—and I would appreciate it if senators could promote this in their areas—to help business services build new alliances with other services in their regions. I was in Armidale last week, on Wednesday, and saw a number of business services in that area which are working together to drive and promote themselves and to make themselves known in their region. Grants of up to $2,000 are also available to help services attend events, such as industry and trade days, where they can show their wares, show people what they do and show that they are competitive and deliver high-quality goods and services.

This package is in addition to the estimated $200 million the Howard government is committing to support the disability business sector across Australia in 2005-06. It will further provide services with long-term assurance. However, the efforts of the Howard government to assist disabled members of our community do not end there. A major part of the government’s Welfare to Work agenda is to support people into paid work who would otherwise be left languishing by Labor. As I said yesterday, I am impressed by people with disabilities who have gone out and participated in employment to prove their critics wrong. Those people have shown that it is ability, not disability, that counts.

One of those people is Dean Clifford, who works at Ken Mills Toyota in Queensland. Dean has a very serious genetic skin disorder called epidermolysis bullosa, or EB, and was given a five-year life expectancy at birth. Dean is now 25 years old. He spoke at the Prime Minister’s Employer of the Year Awards. I think that any of us who were there could not help being moved by his story. He spoke about the barriers he had to overcome in life. He also spoke about the sense of fulfilment that his job provides him with. He told us how he has to spend four hours every morning having his skin bandaged before he goes to work. Dean is part of the business and marketing at Ken Mills Toyota and is also a motivational speaker who travels the country telling his inspirational story. Dean has the support of Ken Mills Toyota, and Toyota Australia also sponsors Dean’s activities as a motivational speaker. He has spoken at many conferences, including the annual conference of the Association of Competitive Employment, ACE, the peak body for open employment services. Their goal of open employment means regular work in the real world, with award based wages and conditions, alongside people without a disability. This government will continue to support people with disabilities who are able to work and will not leave them on the scrapheap, as some of those opposite did and would do. The government applauds the efforts of the many thousands like Dean, who are an inspiration to us all.

Mr Robert Gerard
Senator SHERRY (2.20 pm)—My question is to the Minister for Finance and Administration, Senator Minchin, representing the Treasurer. Is the minister aware of the
Treasurer’s comments yesterday, when asked if other members of cabinet supported his proposal to appoint Mr Gerard to the Reserve Bank board, that:

... all of the South Australian cabinet ministers started swinging from the rafters saying, ‘What a wonderful idea it is ...

Given that the sham tax arrangements of Gerard Industries were before the courts in South Australia with widespread media coverage before cabinet unanimously agreed to the appointment of Mr Gerard, can the minister explain why he was swinging from the rafters in support?

Senator MINCHIN—Yes, I am aware of those remarks. Actually, I was able to watch them live from my office yesterday. One of the great things about our Treasurer of course is that he has a colourful turn of phrase. Indeed, that is one of the many attributes he will bring to the prime ministership one day when he does succeed Prime Minister John Howard. I look forward to the colour, movement and light that he will bring to the House of Representatives, as he does.

I do not normally comment on what goes on in the cabinet room, but I can assure you that Amanda Vanstone and Robert Hill and I at least were not swinging from any rafters. I am not aware there are rafters in the cabinet room. Some may have been tempted to dance on the table, but I was not conscious of that either.

Honourable senators interjecting—

The PRESIDENT—Order! I know this is a humorous question but can we return to order, please.

Senator MINCHIN—In any event, on a more serious note, I can only repeat what I said last week, that I supported the decision, as did all South Australians and, indeed, the whole cabinet. The decision was a unanimous decision to appoint Mr Gerard to the board. The fact is that we did support the proposition that the Reserve Bank board would be enhanced by having a leading manufacturer on the board and by having someone outside the Sydney-Canberra-Melbourne triangle. To have a South Australian on that board probably for the first time was something we all welcomed. There was unanimous agreement that Mr Gerard was a fit and proper person to appoint to that board. We note with regret his decision to resign from the board in the face of the publicity surrounding this matter and, of course, he has now been replaced by Mr Roger Corbett, who will bring considerable skills to that position.

Senator SHERRY—Mr President, I ask a supplementary question. The minister still has not revealed whether he read the Adelaide Advertiser coverage of Mr Gerard’s tax shams. Did the minister’s enthusiasm for a South Australian Liberal Party mate cause him to completely ignore the obvious inappropriateness of Mr Gerard’s appointment to the Reserve Bank board? Does this mean that, to use the Treasurer’s words again, the ‘flexibility and agility’ of ministers from South Australia extends to agreeing to government appointments even if they were obviously improper?

Senator MINCHIN—I can only confirm the total cabinet support for the appointment of Mr Gerard at the time that appointment was made.

Economy

Senator FIERRAVANTI-WELLS (2.24 pm)—My question is also to the Minister for Finance and Administration, Senator Minchin, representing the Treasurer. Will the minister inform the Senate of any recent indications of investment in the Australian economy? Will the minister outline the causes and the benefits of these developments?
Senator MINCHIN—I thank Senator Fierravanti-Wells for a serious question on serious matters pertaining to the health of the Australian economy—a much more important question than the questions we get from those opposite. I am pleased to report that last week the Bureau of Statistics published its figures on new capital expenditure for Australia for the September quarter, which showed a very remarkable growth of 2.9 per cent in real terms. What is particularly impressive is that that substantial growth came on top of a 10.6 per cent real growth in the previous June quarter. We in this country are seeing a sustained and continuous boom in capital investment. In fact, in the year to September new capital investment overall grew by no less than 23 per cent in real terms. There was 32 per cent growth in buildings and structures and 19 per cent growth in equipment, plant and machinery.

It is well known that the Australian mining industry has been investing very heavily in response to the extraordinary demand for our products, particularly from China. In the September quarter, the mining industry saw a rise in overall investment of some 11 per cent in one quarter. What I think is particularly pleasing, particularly for those of us who come from the manufacturing states of South Australia and Victoria, is that the manufacturing industry saw new capital expenditure up 15.6 per cent in the quarter and 42.6 per cent for the year—up nearly half, which was extraordinary. Investment in manufacturing continues to exceed investment in the mining sector, which may come as a surprise to many Australians.

Those strong investment figures help explain some of the trade figures that we are seeing with this strong investment. Indeed, since we came to office nearly 10 years ago, private new capital expenditure has more than doubled in real terms in Australia, which does underline the level of business confidence which we have been able to generate under our government. With strong corporate profitability and good balance sheets, what is going on in investment is not financed by excessive corporate debt.

The reason these figures are good is two-fold. This new capital investment is a major contributor to current GDP growth, and that will no doubt be reinforced tomorrow with the national accounts figures. It does represent a major long-term expansion in the productive capacity of this country. This investment does allow our economy to grow faster in the future and produce more output per unit of labour and therefore be in a better position to export to the world. It is no good just sitting around hoping that this investment will occur of its own volition. It does not. You have to create the right economic climate for these sorts of investment figures and with settings that do underline business confidence.

We do need to continue with our program to continuously improve the performance of the Australian economy. That is where our workplace relations reforms are just so important, together with the agenda for reform that we are negotiating with state and territory governments under the auspices of COAG. We also have to maintain a very stable macroeconomic climate with this growth necessitating continuing budget surpluses, low debt and low inflation so that we have stable interest rates and therefore underline that business confidence. Those very strong investment figures are very good news for everyone interested in strong growth and strong growth in real wages and employment. That shows what is possible if we do
maintain our efforts to make the Australian economy more productive, more innovative and more internationally competitive.

**Welfare to Work**

**Senator Allison** (2.28 pm)—My question is to the Minister representing the Treasurer. I refer to the Treasurer’s plan to strip ‘bad parents’ of social security payments and to redirect them to other carers, based on his observations of Indigenous communities. I ask: how does the Treasurer expect that this will assist those parents? Have studies been done of the social welfare needs of Aboriginal children compared with non-Aboriginal children? How will the Treasurer be deciding which parents will have their parenting payments redirected and which will not?

**Senator Minchin**—I have not had the benefit of time to read the Treasurer’s article in the magazine *Looking Forward*, but I look forward to that opportunity. I invite Senator Allison to also read that article; maybe many of her questions will be answered therein. I am delighted that the Treasurer is demonstrating his widespread interest in a whole range of issues that come before the government and this nation. Our interest as a government, and the Liberal Party’s interest in particular, through the *Looking Forward* magazine, is to generate ideas and policy debates, because these are substantive issues. I am not in a position to answer the details of those questions. I invite Senator Allison to read the article with great interest.

**Senator Allison**—Mr President, I ask a supplementary question. I invite the minister to read the article. Perhaps he could also explain why we would need to cut parenting payments when the government also claims that the new IR legislation will create jobs for the most disadvantaged. Minister, the government is likely to post a surplus of $12 billion to $14 billion, we understand, in 2006. Do you not think that some of that money could be used to solve the problem of half a million children under 18 who are estimated to be living in poverty? Will you acknowledge the Brotherhood of St Laurence’s report, which is out today, that shows almost no improvement in the level of poverty in Australia since 1996? Just what are you going to do about these children?

**Senator Minchin**—The Democrats fail to understand that the best thing any government can do about poverty is to maximise the opportunity for jobs to be created in this country. That is what we are focused upon. That is what our whole reform agenda is focused upon: ensuring that this economy remains productive and competitive to maximise the number of children who can live in families with parents who are in the work force and are able to generate higher living standards for their children. I am advised that we have actually halved the number of children living in jobless families in Australia. So we are getting on with the job. There remain problems, and I refute the accusation from Senator Allison that the Treasurer suggested cutting payments. He is simply saying that in families where the parents are not exercising appropriate responsibilities that is a problem that society and the government need to address.

**Working Holiday Program**

**Senator Nash** (2.31 pm)—My question is to the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Vanstone. Will the minister inform the Senate of responses received from overseas visitors and peak horticultural bodies to the government’s expansion of the working holiday-maker visa program?

**Senator Vanstone**—I thank the senator for her question. Obviously, she is particularly interested in agricultural areas and the problems that they have in bringing the harvest in. I have announced before that the
Australian government now offers a second 12-month working holiday-maker visa to those working holiday-makers who have done at least three months seasonal harvest work in regional Australia. The expansion of that program is a new step under the Working Holiday Program which allows international visitors aged between 19 and 30—still young and fit enough to swing from the rafters, no doubt—to supplement their travel funds through incidental employment on a reciprocal basis with many other countries.

Opposition senators interjecting—

Senator VANSTONE—You do have to be pretty fit to go picking fruit. Ripened fruit has proven to be a good meal ticket for at least 500 visitors who have applied for this second working holiday-maker visa since its introduction only four weeks ago. We can be sure from the response received in just over four weeks that this is going to make a significant difference to rural areas, where farm labour is so important. It represents about half of the overall operational cost for horticultural businesses. It is a critical factor in ensuring the smooth running of the field preparation, the planting, the maintenance and the harvesting and packing activities on the farm. The changes to the visa do provide, I think, a significant incentive to people to get out there and help us bring the crops in. That in turn will provide farmers with a wealth of fit, mobile and enthusiastic workers when they are most needed for farm labour.

It also gives a boost to the tourism industry, because the working holiday-makers who stay longer may or may not choose to do more fruit-picking in that second year but they will at least be available for a whole range of jobs, in particular in the tourism industry that relies so heavily on working holiday-makers. We bring working holiday-makers from places as diverse as Korea, Japan, Estonia and Sweden. As a result, the horticultural industry has boosted its numbers in recent years. It has found difficulty in the past bringing the crops in. The National Farmers Federation and Growcom, the peak horticultural industry body, have welcomed the expansion of this visa.

It is under the coalition that the Working Holiday Program has doubled. Labor did not have the brains to see what could be done with the working holiday-maker program. We came into government and doubled it. That has made a significant difference to those people who have a labour shortage in bringing in their crops. We have taken a strategic approach to immigration across the board. We have quite deliberately and dramatically increased the skill component of our migration without particularly reducing the family component. That, combined with what we are doing in the working holiday area, is clear evidence of our strategic approach as opposed to Labor’s simply laissez faire attitude. We have 19 reciprocal working holiday agreements. We had an 11 per cent increase in the number of people seeking these visas in the last year. All in all, Senator Nash, it is a tremendous success.

Welfare to Work

Senator CAROL BROWN (2.36 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. I refer the minister to his answer in question time yesterday, when he asserted that people will not be worse off as a result of the Howard government’s policy on changing the welfare system. Is the minister not aware of advice from the Department of Employment and Workplace Relations indicating that 60,000 people with a disability and 77,000 single parents will be on lower welfare payments as a result of the government’s policy? Did the minister
fail to read his brief or does he know something the department does not know?

Senator ABETZ—I always appreciate a question from my penpal. In relation to the question, I answer in this way:
The first task in ending poverty does not relate to material goods.

Senator Wong—Oh, right!

Senator ABETZ—I indicate that I am quoting Mr Latham, and it was Senator Wong’s deciding vote that made him leader. One would have thought that she would have agreed with his views. Allow me to continue. He said:
The first task in ending poverty does not relate to material goods. It is a social task—connecting people with others, rebuilding their self-esteem and confidence, creating a new common purpose in their lives.
That is exactly the purpose—

Senator Chris Evans—Mr President, on a point of order: I know the minister likes his little game of ‘who said it’, but it is reasonable for the Senate to expect that he actually try and answer the question. He was asked particularly about the people who will be on lower payments as a result of the welfare policy changes. I would ask you to draw his attention to the question and ask him to make his answer relevant rather than go on one of his frolics, quoting whomever he fancies at the moment.

The PRESIDENT—On the point of order, the minister has over three minutes left to bring his answer to finality and I am sure he will come to that matter.

Senator ABETZ—You can understand why Senator Evans is so sensitive at the mention of Mr Latham, given that Mr Latham saw fit to sack him. But allow me to continue. Mr Latham said:
The first task in ending poverty does not relate to material goods.

In other words, it does not relate to the actual payments made to those people. The important social task is connecting people with others and rebuilding their self-esteem. That is exactly what our Welfare to Work proposal is all about: connecting these people with a welfare payment, combined with a $3.6 billion investment in ‘connecting people with others, rebuilding their self-esteem’ so that they can then get into employment. Getting them into employment is vitally important for the re-creation of their self-esteem. Even the Labor Party know this now. They are willing to talk the talk—Senator Wong did it in her minority report—but they still cannot bring themselves to walk the walk, to actually develop a policy that allows people to reconnect with the community at large. Indeed, Mr Latham lamented this about the Labor Party:

How can a Labor Party not know what to do about poverty? This is the issue that ... makes us radically different from the other parties ...

Senator Chris Evans—Mr President, on a point of order that goes to the question of relevance: you said that you would allow Senator Abetz more time to come to the point. I think you have been more than generous. He has made no attempt whatsoever to address the senator’s question. I ask you to call him to order because Senate question time is becoming a farce if ministers are allowed to read prepared quotes. Senator Abetz might be a huge fan of Mr Latham’s—that is his business—but the senator asked him a particular question.

The PRESIDENT—Senator Evans, I have taken your point of order, but some points of order are becoming rather long. Senator Abetz, I would remind you that you have over a minute left and to return to the question.

Senator ABETZ—I never voted for Mark Latham. I can lay my cards on the table fair
and square. Unlike others on the other side, I never voted for Mr Latham. Every now and then, a kernel of truth did come through in the quite disoriented mutterings of Mr Latham, and this is one of those occasions when he hit the nail on the head.

The PRESIDENT—Minister, before we get another point of order, I remind you of the question.

Senator ABETZ—Mr President, with great respect, I would invite you to look at the Hansard and read the question for yourself.

The PRESIDENT—I will.

Senator ABETZ—You will see that this question is all about our Welfare to Work policy and then trying to truncate that policy into one particular small area rather than looking at the totality of our policy. It is to misrepresent our policy most grievously to suggest that it is just this one area of welfare payment that one should consider, because that would be wrong. What we have is the welfare payment, the $3.6 billion investment and the new taper rates, and those new taper rates will enable people to earn more income without impacting on their social welfare payments. (Time expired)

Senator CAROL BROWN—Mr President, I ask a supplementary question. Isn’t it the case that, as well as being worse off because of lower payments, many people who actually find work under the government’s policy will be financially worse off than they would have been on welfare? Isn’t it the case that, after they have given back 75c of every dollar they earn to the Howard government, many Australians will end up paying to work? Why is it the Howard government’s policy to make work less financially attractive than welfare?

Senator ABETZ—Once again, the honourable senator has unfortunately got it wrong. She had a string of questions and I think the answers were no, no and no. I would invite her to also look at the new taper rate which makes it more advantageous for people to engage in employment—even in casual employment, which those on the other side say is worse than no work at all. We on this side say casual employment is better than no employment. That is the great divide in this chamber and in this country. We actually have a Welfare to Work policy, whereas those opposite have a welfare to nowhere policy—something that Mr Latham lamented five years ago and, lamentably, it is still the case today.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I would like the Senate to acknowledge the fact that His Excellency the Iraqi Ambassador is in the public gallery with a delegation. I welcome you to the Senate and I hope you enjoy your visit here.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Welfare to Work

Senator SIEWERT (2.43 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Is the minister aware that, according to the Australian Public Service employment database, between 1996 and June 2004 the proportion of Commonwealth public servants with a disability declined from 5.5 per cent to 3.8 per cent? In the light of the government’s new Welfare to Work policy, does the government have any evidence to suggest that the private sector will be more willing to employ people with disabilities than the Commonwealth government?

Senator ABETZ—I was not aware of those exact figures, but we as a government seek to make it as attractive as possible for employers to engage people with disabilities
in their work force. That is why we now have a $555 million program to do exactly that for the benefit of disabled people. Mr President, you and I know an outstanding example of somebody who has significant disabilities, who is an inspiration to many people and who has in fact gained himself employment. I of course speak of Erick Pastoor, the former Liberal candidate for Denison. We as a government are willing to engage with those people to assist them into work. We, indeed, are even a coalition party that is willing to endorse people with disabilities to assist them.

Senator Bob Brown interjecting—

Senator ABETZ—Mr President, we have got a terrible echo in this chamber, otherwise it is Senator Brown continually interjecting. I am not sure what it is but I would invite him to desist. Can I indicate that Senator Siewert, I am sure, has more than enough gumption to ask her own questions and does not need the paternalism of Senator Brown to intervene on her behalf. He is still at it!

Under the Welfare to Work program, for the first time we as a government will be concentrating on people’s abilities rather than their disabilities. That is a very important change in relation to that which has existed in the past. You can say to people: ‘You’re disabled; you’re on welfare,’ and draw the line on them. We as a government say that is not good enough. What we have got to do with them is concentrate on them as individuals and ask the question: are they able to work 15 hours or more per week? And, if so—

Senator Bob Brown—Mr President, I raise a point of order. The question from Senator Siewert was about the government’s record of halving the employment of disabled people in recent years at a time when it is trying to force disabled people into work. It is a question of failed example, and the minister should be answering that question.

The PRESIDENT—There is no point of order. I believe the senator is answering the question correctly and he has one minute and 34 seconds to complete his answer.

Senator ABETZ—Mr President, it was quite obvious that Senator Brown was out of the chamber before, because clearly Senator Siewert must have written her own question on this occasion and Senator Brown was not aware of it. The question also included: ‘Why does the government think that its proposals will assist the disabled people?’ So there was another leg to the question, and that is exactly what I am answering at the moment. Here we have Senator Brown, the so-called ‘new’ Leader of the Australian Greens, showing comprehensively that he is not worthy of that title. We as a government want to concentrate on people’s abilities, not on their disabilities, and that is why we are investing in their future.

Senator SIEWERT—Mr President, I ask a supplementary question. Is the minister aware that over the same period the proportion of public servants in the Department of the Prime Minister and Cabinet with a disability has more than halved, from 4.6 per cent to 2.2 per cent? Is the minister concerned that the department responsible for the coordination of government policy is itself incapable of implementing policies to offer job opportunities to people with disabilities?

Senator Bob Brown—How hypocritical!

Senator ABETZ—Mr President, is that going to be required to be withdrawn?

The PRESIDENT—I did not hear it, I am sorry.

Senator ABETZ—I would have thought allegations of hypocrisy and people being hypocritical—
The PRESIDENT—If that is what was said I ask you to withdraw, Senator Brown.

Senator Bob Brown—I commented on the Prime Minister’s department’s record.

The PRESIDENT—If you made an unparliamentary remark I ask you to withdraw it.

Senator Bob Brown—I did not.

The PRESIDENT—Okay.

Senator ABETZ—Mr President, if this male Greens party leader had any respect for his female colleague he would allow an answer to be given to her question without him trying to dominate the show for his own personal glory. Why the numbers in the Prime Minister and Cabinet office might be lower than before I do not know. It may well be that the employment opportunities are now such that people are willing to engage in employment without necessarily registering themselves as disabled. The raw figures of themselves do not necessarily indicate a lot, other than for us as a government to reaffirm and reconfirm to the Australian people that we are concerned to ensure that people with disabilities get a fair go. That is why we have got a $555 million package to assist them.

Welfare to Work

Senator WEBBER (2.50 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. I refer the minister to his comments in question time yesterday where he incorrectly asserted that the government’s policy was to improve the Newstart taper rate to make work more financially rewarding for single parents and people with a disability? Isn’t the minister being deliberately misleading by comparing the old and new taper rates for Newstart allowance rather than comparing the Newstart taper rate with the taper rate for the disability support pension and parenting payment single? Doesn’t the government’s policy of putting people on Newstart rather than the pension mean that work will be less financially rewarding for these people even after the new Newstart taper rate is taken into account?

The PRESIDENT—Senator Webber, I remind you that you cannot accuse anybody of being deliberately misleading. I ask you to withdraw that part of your question.

Senator WEBBER—I withdraw ‘deliberately’.

Senator ABETZ—in relation to the new taper rates for Newstart, the following is the situation. The income test free area of $62 remains. From $63 to $250, it is going to be tapered at the rate of 50c in the dollar. Previously it was from $63 to $142. In other words, that is now going to be extended out to $250. Then, above $250, 60c in the dollar is going to be the adjustment, whereas previously it was 70c for each dollar above $143. Therefore, those facts speak for themselves and, as a result, Senator Webber’s assertion is once again incorrect.

Senator WEBBER—Mr President, I ask a supplementary question. The minister obviously does not understand. He is comparing Newstart taper rates with Newstart taper rates, not disability support pension taper rates with Newstart taper rates when you make people change benefits. Under the government’s policy, if a single mother works part-time while receiving parenting payment single, not Newstart, doesn’t she end up working for less reward when she is dumped onto the dole on the day of her child’s eighth birthday? Is that not because, under the government’s policy, the taper rate is worse for part-time workers on Newstart than it is for workers who are getting parenting payment single, and so the government takes back more of the single mother’s earnings?
Senator ABETZ—By the time the mother has a child that has attained the age of eight years, she will have been engaged with the welfare system for a period of two years, receiving training to ensure that she becomes job ready. We have indicated to this place on a number of occasions that there is going to be a shortage of 195,000 people to fill jobs over the next five years. There is a labour shortage in this country. We need people available to fill those jobs. As a result, getting more people off welfare into work is not only going to be of benefit to the individual and the kids in those family units but also, of course, to society at large.

Regional Telecommunications

Senator McGauran (2.54 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister advise the Senate how the Howard government has delivered improved mobile phone coverage in rural and regional Australia. Will the minister advise the Senate of any developments in the delivery of this service and is the minister aware of any alternative policies?

Senator COONAN—I thank Senator McGauran for the question and for his interest in the issue. I know that senators on this side of the chamber would be pleased to know that, to date, the government has provided targeted funding of more than $150 million to improve mobile phone coverage in regional and rural areas. Coverage will extend to more than 98 per cent of the population and around 18 per cent of the land mass will have mobile phone coverage. The government has now allocated a further $30 million under the Mobile Connect package to extend mobile coverage even further; in particular, to smaller, regional communities which attract tourists or seasonal workers along highways. These programs are making a significant difference, transforming the face of telecommunications in Australia and nowhere is this more apparent than in rural and regional areas.

The quality of services in regional areas will be transformed once again as Telstra rolls out its new 3G network throughout Australia to replace the existing CDMA network. Telstra’s 3G network will provide equivalent or better coverage to the existing CDMA network, using the same spectrum. An added bonus is that the new network will provide a wireless broadband service to people living within the existing CDMA coverage area. No longer will GSM users be frustrated when they travel to rural areas and cannot get coverage because they do not have a CDMA phone. Telstra has given a commitment to continue operating the CDMA network until the new network is providing either equivalent or better coverage. Where the government has funded CDMA mobile phone towers, Telstra is under contract to maintain coverage at the same level for at least 10 years. The government will ensure that Telstra meets its legal obligations and its commitments for equivalent or better coverage. So, as well as vastly improved mobile coverage, under this government, consumers will now enjoy a new, faster network, wireless broadband across the network and compatibility with city phone users.

Senator McGauran asked me whether I was aware of any other arrangements. One might ask how it compares with the kind of treatment rural mobile phone users received under the last Labor government. We all know Labor’s legacy in rural and regional Australia is characterised by neglect and indifference.

Opposition senators interjecting—

The PRESIDENT—Order! There is too much noise on my left. Senator Sherry!

Senator COONAN—Unlike the government’s responsible approach, the Labor gov-
ernment simply closed down the analogue network and left rural phone users stranded without a service. Labor proceeded to corporatise Telstra—

Opposition senators interjecting—

The PRESIDENT—Order! There is too much noise on my left. Come to order!

Senator COONAN—I know that this information is a challenge to the Labor Party. In any event, Labor proceeded to corporatise Telstra and simply abandoned the bush to its fate. We know from an extraordinary contribution that Senator Conroy made a couple of days ago that targeted spending for telecommunication services in rural and regional Australia is now regarded by the Labor Party as pork-barrelling. He does not believe that rural and regional Australians have a right to decent services irrespective of where they live. It is about time the Labor Party stop sitting on the fence and stand up for something they believe in. It is about time that they had something to say about rural and regional services. This government will continue to be committed to those in rural and regional areas and will deliver fair services irrespective of where people live.

Health Care Cards

Senator FORSHAW (2.58 pm)—My question is directed to Senator Patterson, the Minister for Family and Community Services. Is the minister aware of a recent Audit Office report which found that significant problems exist in the administration of the seven million health care cards issued by the government each year? Didn’t this report find that in July and August 2004 alone, there were over 655,000 invalid uses of health care cards at a cost to taxpayers of $78 million? Given the scale of the problem and the cost to the taxpayer, why has the government made the new PBS Online initiative optional for pharmacists? Didn’t the Audit Office note that the PBS Online initiative, which would allow pharmacists to electronically verify concession cards at the point of use, would strengthen the arrangements for health care cards and that no equivalent alternative existed for pharmacists who chose not to use the system?

Senator PATTERSON—This question really falls under the responsibility of Mr Hockey, whom I represent in this chamber. One of the reasons that we had significant changes of—

Senator Conroy—that is why we asked you!

The PRESIDENT—Order!

Senator PATTERSON—The changes of the way in which the government was structured were in order to bring together all the services that the government delivers through payments through Centrelink, through the Health Insurance Commission and through payments to pharmacists into one portfolio, and to address them in a holistic way. When we came into government we found the ramshackle state in which some of those services were left, the way in which social security was run and the lack of consideration and failure of consideration of privacy issues. I can go back through Hansard after Hansard for the way in which that was run. The way in which HIC was run was nothing short of disgraceful.

What we have done is, through various ministers, reform those services over time, including reforming HIC, reforming the way in which information is gathered—for example, in terms of the health insurance card and the ability of people to get pharmaceutical benefits. Now we are able to identify people who are receiving a medication in excess of what they are entitled to, which was never done by Labor. Mr Hockey is addressing major changes to ensure that we deliver those services as efficiently and effectively as possible to reduce the likelihood of fraud.
and to ensure that those people with entitlements get their entitlements and that those who are not entitled do not.

Senator Chris Evans—Mr President, I rise on a point of order. The question goes to relevance. As fond as I am of Senator Patterson’s reminiscing and the descriptions of what Mr Hockey is up to, the question was actually about the Audit Office report that found invalid uses of health care cards. Could you ask her to bring herself to the question, please?

The President—The minister has nearly 2½ minutes, and I did hear her talking about the HIC. I remind her of the question again.

Senator Patterson—Thank you very much. I know that Mr Hockey will have looked very carefully at that audit report. If he has anything to add to the answer I have given, I am sure he will give me the answer. Mr Hockey is very focused on making sure those services are delivered to Australians—

Senator Chris Evans—No, he’s focused protecting his mates!

The President—Order!

Senator Patterson—We deliver these services to the Australian community—hundreds of thousands of transactions a day—through the HIC, through Centrelink and through the Child Support Agency. They will all be reformed under Mr Hockey and they will deliver those services more effectively and more efficiently. I have no doubt that Mr Hockey has looked at the Auditor-General’s report and will respond to it if he has anything to add.

Senator Forshaw—Mr President, I ask a supplementary question. I thank the minister for acknowledging that she represents Mr Hockey in this chamber, but I note that she did not answer the question. She did not even mention PBS Online or pharmacists once. Can the minister confirm that Centrelink advised the Audit Office that there is a risk that individuals will deliberately underestimate their income to be eligible for the maximum rate of family tax benefit A and, therefore, a health care card? Can the minister now indicate how many health care cards have been found to have been incorrectly issued in this way and what is the annual cost to taxpayers? I ask the minister, could you at least, at the end of question time, answer the question—not go for a trip down memory lane?

Senator Patterson—I thank the honourable senator for his question. It is obvious that Labor does not know what is going on, because one of the measures in the last budget was to use people’s incomes from their tax return of the previous year to ensure that they did not give us estimates—

Senator Chris Evans—They have already got their health care card!

Senator Patterson—or underestimate their income. They will have to demonstrate that their income has changed in comparison with their tax assessment of the previous year. That is one measure that will—

Senator Forshaw—Mr President, I rise on a point of order. The supplementary question was very simple and very straightforward. I asked you how many health care cards had been misused. If you cannot answer it, say you cannot answer it and take it on notice so we can all go.

The President—I heard the point of order, but you are quite right: the minister has 30 seconds left, and she can answer the question how she likes.

Senator Patterson—I was answering the question by saying, from my point of view and from the point of view of my portfolio, what will be done—through changes brought about in the budget last year that will come into effect—to reduce the likeli-
hood that people underestimate their income and get a health care card to which they are not entitled. The honourable senator on the other side should have a look at what has been going on, rather than make an assumption that something is not happening. We are constantly reducing the likelihood of people using any system fraudulently, unlike Labor. I will not go back and reminisce, but I can remind them of how we have saved $57 million a week since we first came into government. (Time expired)

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

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

East Timor

Senator HILL (South Australia—Minister for Defence) (3.05 pm)—On 30 November, Senator Bob Brown asked me a question in relation to funding East Timorese NGOs. I seek leave to incorporate the answer in Hansard.

Leave granted.

The answer read as follows—

Senator Brown asked the Minister for Defence, representing the Minister for Foreign Affairs without notice, on 30 November 2005:

Is it true that the Government has stripped funding from 13 East Timorese NGOs because they signed an advertisement critical of Australia? Is this decision being reviewed? Will this funding be restored?

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

No. The Australian Government has not withdrawn funding from 13 East Timorese NGOs. The Government recently withdrew funding support from one East Timorese NGO - Forum Tau Matan.

The Government’s position is that all funding proposals submitted by NGOs and other community organisations, will be considered on a case-by-case basis and in accordance with the guidelines governing Australia’s various funding mechanisms.

Mr Oday Adnan al-Tekriti

Senator VANSTONE (South Australia—Minister for Immigration and Multicultural and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) (3.05 pm)—During question time I answered a question by Senator Ludwig and gave one date, then corrected it to another. I would now like to change it back to the first date, which was correct. I seek leave to have a second to explain the date issue to Senator Ludwig.

Leave granted.

Senator VANSTONE—Senator Ludwig, in the answer I indicated to you that I thought it was 2001 when the AAT decision was made, and then corrected it to 2003. In fact, my first answer was correct. The decision of the AAT was in 2001, as was the decision to pull out of the appeal.

Nursing Home Safety Standards

Senator PATTERSON (Victoria—Minister for Family and Community Services and Minister Assisting the Prime Minister for Women’s Issues) (3.06 pm)—Senator McLucas asked me a further question to those she asked on 30 November regarding fire safety in nursing homes. I asked the Minister for Ageing to give me any other information that she thought might be relevant to the question that Senator McLucas asked, and I seek leave to have the answer incorporated in Hansard.

Leave granted.

The answer read as follows—

SENATOR JAN MCLUCAS—My question is to Senator Patterson, the Minister representing the Minister for Ageing.
(a) Has the Minister now received advice about the sanctions that will be imposed on residential aged care facilities that do not comply with new fire safety standards by 31 December this year?
(b) What will these sanctions be?
(c) How will residents know if their aged care facility has failed to meet the required fire safety standards and whether it will be subject to sanctions?
(d) Can the minister also advise whether residents will be given the opportunity to leave facilities that do not meet fire safety standards?

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

(a) There are a number of options available to the Department of Health and Ageing where approved providers either fail to meet the requirements of the 1999 Certification Assessment Instrument or fail to notify the Department that they meet these requirements. These options may include a review of their suitability to be certified or, where it is considered appropriate, the imposition of sanctions.

(b) The Aged Care Act 1997 has a number of sanctions available to be imposed on an approved provider where it has been demonstrated that they have not complied or are not complying with one or more of their responsibilities under this Act.

(c) The Department of Health and Ageing has in place a comprehensive information strategy to advise residents should any approved provider fail to notify the Department of compliance with the 1999 Certification Assessment Instrument or where a decision has been made by the Department to impose sanctions.

(d) All residents of Australian Government funded aged care homes have the freedom to come and go from the homes in which they are currently residing. This includes the choice to permanently re-locate to another home should they choose to do so.

QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS
Mr Oday Adnan al-Tekriti
Senator LUDWIG (Queensland) (3.06 pm)—I move:

That the Senate take note of the answers given by the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to questions without notice asked by Senators Kirk and Ludwig today relating to Mr Oday Adnan al-Tekriti.

What we have clearly heard today in question time is that the government has said that it will investigate the case of an Iraqi man who is a former bodyguard of Saddam Hussein and who has been granted a visa to stay in Australia. This man unlawfully arrived in Australia about six years ago. The facts as reported are that he was through Indonesia, on a boat and with a false passport.

As the reports show, DIMIA originally rejected Mr al-Tekriti’s attempts to gain a protection visa, stating that they had serious reasons to believe that he may have committed certain acts in his former role in Iraq. That is where the story gets a bit hazy. The reports are also unclear. But it is clear that there is an onus on this government to come clean and explain to the Senate and the Australian people what in fact occurred, how it occurred, what they knew, whether there has been any investigation by the Australian Federal Police, whether there was any investigation at the time of his arrival of any criminal record, whether there was anything available to ascertain who he was and whether there were any outstanding allegations that needed to be met other than serious concerns. It is clear that what occurred post his arrival was that, in 2001, this matter came before the Administrative Appeals Tribunal where the person exercised his right to appeal. There is nothing untoward about that in itself. We know that he was then granted a protection visa,
although it was in June this year. So there is the gap.

This is an immigration department that prides itself on getting it right, although its record, quite frankly, is abysmal. It has not got it right on many occasions. What it has also said in estimates to the opposition many times is that it does appeal these matters. It takes matters to the Federal Court and often to the High Court because it wants to make sure that it is right. In this instance, by October 2003, after the Administrative Appeals Tribunal decision in 2001, it seems that the matter was not progressed. We have some insight there. Senator Vanstone did not say that the department did not pursue the matter but that it was under Mr Ruddock’s ministership that it was not pursued. That is really a slight hospital pass to Mr Ruddock from Senator Vanstone. She says: ‘It’s not my fault. I didn’t do it. I wasn’t there. It was Mr Ruddock.’ But, of course, this is a department that has a bad record. We have some explanation. There is something strange about the set of circumstances which has led to the newspaper reports that we see.

I should have prefaced my remarks by pointing out that in Australia Mr al-Tekriti is entitled, as he would be in other countries, to the presumption of innocence. But it does demand a clear explanation from this government as to what happened. When you look at ministerial oversight of this department by both Mr Ruddock and Senator Vanstone, you will see that we have had Cornelia Rau locked up for 10 months, we have had Vivian Solon deported, we have had people transported in vans from Woomera in South Australia for lengthy periods without proper rests and we have had reports into the problems that beset DIMIA. Here we have another one. There seems to be something strange about this case that requires or demands further and better particulars. That is what we do not have from the government. We have obfuscation again. (Time expired)

Senator EGGLESTON (Western Australia) (3.11 pm)—The opposition is drawing a very long bow in trying to suggest that there is anything improper, wrong or unfair about the way this particular individual has been treated. In seeking to draw comparisons with the Alvarez and Rau cases I think Senator Ludwig is wide of the mark. We all know that Australia is a signatory to the United Nations convention on human rights, which was signed way back in the 1950s. We do offer people who have a genuine fear of persecution refuge in this country. I must say that we have a very fine record in that regard. Of the nations of the world, Australia has one of the highest percentages of refugees as a percentage of our migration intake. In fact, Australia takes around 13,000 refugees per year. Australia is consistently, in fact, ranked in the top three, along with the United States and Canada, for offering refugee resettlement. We work closely with the United Nations Commissioner for Refugees to determine the priority for resettlement. We do take care to ensure that we are fair in the way we operate our refugee program.

In this case, from what I can gather, Mr al-Tekriti came from Iraq to this country and was considered for a protection visa. People have raised some objections because it has been alleged that this individual was part of the protection detail or guard of Saddam Hussein. Nevertheless, he came to Australia and was assessed under the United Nations convention rules and against the requirement that he have a well-founded fear of persecution. He was found, in fact, to be a genuine case. As I understand it, this case was considered extensively by the Commonwealth Administrative Appeals Tribunal. He was not to be excluded from refugee protection. This
Mr al-Tekriti fled Iraq in 1999. His father had been murdered for speaking out against the regime of Saddam Hussein. Mr al-Tekriti arrived here in Australia in 1999 on a boat from Indonesia. When he first arrived he sought a protection visa but this visa was refused because at the time there were ‘serious reasons for considering that he had committed war crimes or crimes against humanity’. So at the initial stage his protection visa was refused by the department. He appealed to the AAT, the Administrative Appeals Tribunal, against this decision and the decision was overturned in June 2001. The reason for it being overturned was that the AAT found that there was in fact no evidence that he had been involved in crimes against humanity. It is for this reason that he holds a temporary protection visa today.

In the last few days concerns have come to light that perhaps the decision made by the AAT may not have been the correct decision, and that is the reason this matter is being raised in the Senate today and in the newspapers. The reason it has been raised in the Senate and questions are being asked of Senator Vanstone is to see whether Senator Vanstone has been making inquiries in relation to this matter. That was the nature of the questioning here today: whether she had made any further inquiries of the department or whether she has any continuing concerns in relation to Mr al-Tekriti.

We are told that an appeal was lodged against the decision of the AAT but that it was withdrawn. This is where the concerns of the opposition lie. We would like to know the reasons for the withdrawal of the appeal. The problem we have is that this matter has not received the attention of the public. This information has not been released into the public domain. This is a matter which has been kept quiet and it is not something that the minister has made public. Assuming, of course, that it is something that is not going
to breach the privacy of Mr al-Tekriti himself, this is something that ought to allay the concerns that there are in the community. Our shadow minister, Mr Burke, and the Premier of South Australia have said that this is a matter that should be made public. This is what we in the Labor opposition have also said. We believe that this is a matter that requires further investigation.

We are not saying at this stage that there is any suggestion that Mr al-Tekriti’s temporary protection visa ought to be cancelled. All we are suggesting is that it requires further investigation and that the reasons for the decision of the AAT ought to be further investigated and made public. This also has to be seen in the broader context. Coming from South Australia where individuals and groups such as the Bakhtiyaris were deported in circumstances where there seemed to be very little investigation, we would like to see this matter handled much more sensitively.

**Senator Barnett (Tasmania) (3.21 pm)**—I stand to take note of the answers given by Senator Vanstone to the questions from the opposition which related to Mr al-Tekriti, who is from Iraq and who is now living in Australia. The answers also related to allegations made by the Labor Party about the government’s response to the Cornelia Rau case and the Vivian Alvarez case, and the role of DIMIA in those two particular matters. I wish to address both of the allegations made by the Labor Party, because they are potentially what you would call in politics ‘cheap shots’. These are matters which need very circumspect consideration.

Firstly, with respect to the al-Tekriti matter, this was a matter that was considered by the Administrative Appeals Tribunal at the Commonwealth level. The tribunal found that he was not excluded from refugee protection. That particular finding is binding on the Commonwealth and on the department of immigration. He was assessed as a person who had a well-founded fear of persecution—that is very important. In terms of the evidence put to the AAT, this was found to be justifiable; it was substantiated. The decisions made by the Administrative Appeals Tribunal, albeit that it is not a judicial body—as you would know, it is an administrative body—are taken objectively and are based on the facts put before the tribunal. In this case, the decision was made that he was entitled to the protection visa.

Senator Ludwig and Senator Kirk have asked why the minister or the government do not release further and better particulars and why they do not release more information. Let us be circumspect about this. We are talking about a protection visa for a man who is from Iraq and who has a well-founded fear of persecution. Where is he from? Iraq. Where is his family from? Iraq. Let us think of the potential concerns that could be facing his family in Iraq if those further and better particulars were made public. What sorts of concerns would they be facing? We in this chamber do not know. You want to make public and spray about all this information about this man’s family when he is under threat and has a well-founded fear of persecution. Releasing matters private to him and his family is entirely inappropriate.

In my view, the minister’s answers were entirely appropriate and proper. They put due consideration of family members first. This is an issue that the Labor opposition simply refuse to acknowledge. Those family members may be at home in Iraq and at risk of persecution. I do not know, but this is a matter that the minister needs to take into account. That is the point.

**Senator George Campbell**—It is because he is married to a Liberal member of parliament.
Senator BARNETT—No. You do not know the situation in Iraq. You do not know the details. I had a briefing on Monday of last week with a very senior military official from Iraq and I can assure you that his family’s position in that country—and that of many others—remains very much at risk and is of great concern. These are the issues that the Labor opposition ignore when they ask these questions. There is the possibility that this is a cheap shot. Maybe it is simply that they have gone overboard in wanting more information. The response has been given by the minister, and the minister’s response was appropriate.

In response to the opposition’s views with respect to Cornelia Rau and Vivian Alvarez, the government has provided an apology to both those people. Are they trying to stir the pot again and make false and misleading allegations against the minister? The minister responded with an apology on 6 October. (Time expired)

Senator CROSSIN (Northern Territory) (3.26 pm)—The real issue at stake in the debate today regarding the answers from Senator Vanstone is the fact that we do not have a minister who is in control of her department and who takes responsibility for her department’s actions. As we get to the end of the year, if we had to do a report card on the performance of this minister and her oversight of the department, we would only have to go and look back at the litany of press releases and press comments throughout the year. This department’s performance has been a litany of errors. There is example after example of mishaps, cover-ups and inconsistencies, and this is yet another example.

Back in July, we had the headline ‘Vanstone pressed to explain latest bungle’ in the Sydney Morning Herald over the Hwang children and the requirement to place them in a detention centre. If you remember, they were snatched from school. In July in the Australian, Mike Steketee wrote, ‘Something rotten in Immigration’. Then in October in the Age, Michelle Grattan wrote, ‘No contrition from a joking Vanstone’. ‘Immigration reform reaches a dead end’ was a headline in the Sydney Morning Herald in October. The list goes on and on. And today we have critical comments about cultural problems in the department of immigration in a commentary about the state of the Public Service, and we have another comment in the Age about this minister and the way in which this department is being managed and handled badly.

There is a litany of evidence that shows us that this minister is not on top of the issues in her department and that she does not have a handle on the mishaps, mistakes and inconsistencies that come before the press on almost a weekly basis. This is a minister who presides over a department that has no consistent checks and balances. This is a minister who presides over a department that has systemic failures in its processes and procedures. The department has an inhumane culture, is resistant to scrutiny and resists any evidence or truth about matters being aired or made public. It has a culture of cover-up.

This is a department that has an attitude of indifference to human rights issues, and it is a department that has poor communication within the department, between the department and the minister’s office, and, more particularly, from the minister’s office down through the department levels. This is a minister who presides over a department that lacks integrity and accountability—a department where processes are ineffective, to the point where this department is now becoming incompetent. As Kim Beazley said and is reported as saying in the media today:
The immigration department is a turnstile of incompetence. There is just one event after the other.

What is the issue here today that we want to ask the minister about but she refuses to give us answers for? The bodyguard of Saddam Hussein entered this country and was denied a temporary protection visa in 2000—probably quite rightly so from the evidence that has come before the public in the last 48 hours. That decision was overturned by the Administrative Appeals Tribunal in 2001. We want to know why. On what basis was it overturned? Was there political interference in that decision? Were they directed to overturn that denial of a visa? Is it linked to any relationship with a particular person in the Liberal Party in this country? And why was there a decision to pull out of the appeal?

We are after some real answers to some questions. When we asked questions in relation to the Vivian Solon and Cornelia Rau cases, we got an international embarrassment. The answers highlighted international mismanagement regarding the way in which this minister cannot properly manage her department and is not on top of the issues. We want some more answers about this. We want to further expose and continue to expose a minister who is not competent in managing a department—a minister who refuses to take responsibility and accept responsibility for the continual mishaps, mistakes and cover-ups that this department presides over, and this is just one more example of that.

Senator BARTLETT (Queensland) (3.32 pm)—It is probably a noteworthy thing I am about to say—one that the sharp-eared media reporters in the gallery might listen to. I would like to defend Minister Vanstone in regard to this matter. That is not something I do terribly often in regard to visa controversies, but I have found some of the coverage of this particular issue in some of the press a bit confusing. That is not because I do not understand the issues—I think there is no area I know better than this area—but because the different concerns that are raised are almost conflicting. We can see that in the quite strange scenario we have had in the last 20 minutes or so.

We have had the quite unusual situation of conservative members of the government standing up and saying: ‘We can’t send people back to Iraq—it is too dangerous. We have a duty to protect people from refoulement and from being sent back to places where they mightn’t be safe.’ I could not agree more, but I wish I had heard it for the many other cases and examples where this department seems to have gone out of its way to ignore that very serious obligation just because the people they are sending back are a bit inconvenient.

I have no doubt that the issues surrounding this person who has got a lot of coverage are inconvenient, but, from the facts that I am aware of and that are on the public record, it is a case where the system seems to have worked. A person had allegations against them in regard to their activities in Iraq, and those allegations were deemed to be of some substance by the immigration department and were such that he was not granted a visa. He appealed that to the independent tribunal, as is his right—and, I would very strongly argue, as is absolutely essential—and that tribunal, in considering all the evidence independently, found that the evidence did not stack up and that the case was not such that he should be denied a visa under the exclusion provisions of the refugee convention. I argue that that is a sign of the system working well: the department do not like somebody because they are possibly a bit suss and there are some allegations around that do not sound good, but when the allegations are actually tested by an inde-
pendent tribunal they have found that the evidence does not stack up.

I would contrast this case to—interestingly, a little curiously and slightly paradoxically, in that the same journalists who revealed this case in the Fairfax papers also revealed today this case—the case of Mr Noori, who has been in Villawood for the last six years and whom I have spoken of in this chamber a couple of times and written about on my web site. He was also denied a visa for the same sorts of reasons—allegations of inappropriate activities that meant he would be excluded from protection under article 1F of the refugee convention. That was on the basis of anonymous allegations made about his alleged involvement in a unit of the former communist Afghan government. The big problem with that was that, when he went to the AAT to appeal that, he was not given the opportunity to find out what those allegations were, to counter them or to defend himself.

It has taken six years, all the way up to the full bench of the Federal Court and back down to the AAT again—because the court found that he was denied natural justice—for him to now get the chance to answer the allegations and clearly demonstrate that he is not the person who allegedly committed the activities. The bizarre thing is that, despite that decision of the AAT, I think nearly two months ago, he is still in detention. His wife and his two or three children have been out in the community for six years. They are now Australian citizens. They have grown up without him. And he is still jailed nearly two months after the AAT found that he did not have a case to answer. My understanding is that that is because it is only now that ASIO has decided to do the character and security checks, when it has had the last six years to do that.

However, that is an example of what happens when the system goes wrong. I do not personally know this person who has had the coverage in the last day or two. I know a few people who do know him and vouch for him in terms of how he has behaved in Australia. I do not think any of us are in a position to judge one way or the other the full details of what he may or may not have done back in Iraq, but the fact is that those decisions about what he may or may not have done have to be based on solid evidence, not just hearsay or fearmongering. He has the right, the same as anybody else, to have that evidence tested independently in a tribunal. I would be very concerned if those sorts of rulings were undermined or potentially overturned because of political pressure about allegations that are proved not to stack up once they have been independently assessed. I also emphasise that, in the test under the refugee convention, the threshold for being suspected of being associated with a group of people who may have committed a war crime is much lower than the threshold under the Crimes Act for being personally responsible for committing one. It is a much lower threshold, and despite that this person has not reached it. (Time expired)

Question agreed to.

PETITIONS

The Clerk—Petitions have been lodged for presentation as follows:

Trade: Live Animal Exports

To the Honourable President and Members of the Senate in the Parliament assembled.

This petition of undersigned citizens of Australia calls on the Australian government to end the export of live animals from Australia to the Middle East.

Australia has strict laws to protect the welfare of animals—based on sound scientific research and community expectation. It is therefore ethically and morally unacceptable to export Australian
animals long distances to countries where they will endure practices and treatment that would be unacceptable or illegal in Australia.

We, the undersigned therefore call on the Australian government to end this trade and in doing so restore Australia’s reputation as a compassionate and ethical nation.

by Senator Bartlett (from 1,980 citizens).

Information Technology: Internet Content

To the Honourable the President and Members of the Senate in Parliament assembled

We, the undersigned citizens of Australia draw to the attention of the Senate the common incidence of children being exposed to Internet websites portraying explicit sexual images. These images may involve children/teens, sexual violence, bestiality, and other disturbing material. Many such websites use aggressive, deceptive or intrusive techniques to induce viewing. We submit to the Senate that:

• Exposure to pornography is a form of sexual assault against children and should be considered, like all sexual abuse of children, as a serious matter causing lasting harm.

• It is not adequate to charge individual parents with the chief responsibility for protecting their children from Internet pornographers determined to promote their product, OR to expect parents to teach children to cope with the damaging effects of pornographic images AFTER exposure.

• It is the primary duty of community and Government to prevent children being exposed to pornography in the first place by placing restrictions on pornographers and those businesses distributing such material.

• Internet Service Providers (ISPs), should accept responsibility for protecting children from Internet pornography, including liability for harm caused to children by inadequate efforts to protect minors from exposure.

Your petitioners therefore, pray that the Senate take legislative action to restrict children’s exposure to Internet pornography. We support the introduction of mandatory filtering of pornographic content by ISPs and age verification technology to restrict minor’s access.

by Senator Heffernan (from 1,106 citizens).

Petitions received.

NOTICES
Presentation

Senator Marshall to move on the next day of sitting:

That the following matter be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 20 June 2006:

The role and performance of the Commonwealth Scientific and Industrial Research Organisation (CSIRO) in the light of current Government policy, and the organisation’s attempts at refocusing its research endeavours, taking into account the following:

(a) the evolving role of CSIRO as a public research institution, and the ability of CSIRO to initiate and manage change;

(b) the challenge of commercialisation, enhancement of the CSIRO ‘brand’, and the dilemma of choosing a national or global approach to research development;

(c) intellectual property concerns, including the rewarding of researchers;

(d) managing competition in the research sector, including competition between public research bodies, between the CSIRO and the private research sector, and the obligation of CSIRO to cover the research spectrum; and

(e) management culture within the CSIRO, including its corporate profile, communication performance and community engagement, and its capacity to instil a modern research culture and to recruit and retain research personnel.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) 13 Australians face the death penalty in Vietnam, Kuwait and Indonesia,
(ii) Australia ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty on 2 October 1990, and

(iii) the protocol gives effect to Article 6 of the ICCPR which refers to the abolition of the death penalty and gives effect to an international commitment to abolish the death penalty by ratifying states; and

(b) calls on the Government to lead an international campaign for the ratification and implementation of the optional protocol by all remaining states, in particular, those states such as Singapore, Vietnam, China and Indonesia that continue to use the death penalty.

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

That the following bill be introduced: A Bill for an Act to amend the Fisheries Management Act 1991, and for related purposes. Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Bill 2005.

Senator Ellison to move on the next day of sitting:


Senator Ellison to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the law relating to the jurisdiction of the Federal Magistrates Court, and for related purposes. Jurisdiction of the Federal Magistrates Court Legislation Amendment Bill 2005.

Senator Hill to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Defence Act 1903, and for related purposes. Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005.

The PRESIDENT to move on the next day of sitting:

(1) That:

(a) At the commencement of each Parliament, 6 Senators and 7 Members of the House of Representatives shall be appointed to meet together as a Joint Committee on the Parliamentary Library. The Senators and Members shall be appointed in accordance with the practice of their respective Houses and shall comprise: 3 Senators nominated by the Leader of the Government in the Senate, 2 Senators nominated by the Leader of the Opposition in the Senate, 1 Senator nominated by minority groups or independent Senators, 4 Members nominated by the Government whip or whips, and 3 Members nominated by the Opposition whip or whips or by any independent Member.

(b) The nomination by the minority groups and independent Senators shall be determined by agreement between them, and, in the absence of agreement duly notified to the President, any question of the representation on the committee shall be determined by the Senate.

(c) The members of the committee hold office as a joint committee until the House of Representatives is dissolved or expires by effluxion of time.

(d) The committee shall:

(i) consider and report to the Presiding Officers on any matters relating to the Parliamentary Library referred to it by the President or the Speaker;

(ii) provide advice to the President and the Speaker on matters relating to the Parliamentary Library;

(iii) provide advice to the President and the Speaker on an annual resource agreement between the Parliamentary Librarian and the Secretary of the Department of Parliamentary Services; and
(iv) receive advice and reports, including an annual report, directly from the Parliamentary Librarian on matters relating to the Parliamentary Library.

(e) The committee shall elect 2 of its members to be joint chairs, 1 being a Senator or Member, on an alternating basis each Parliament, who is a member of the government parties and 1 being a Senator or Member, on an alternating basis each Parliament, who is a member of the non-government parties, provided that the joint chairs may not be members of the same House. The joint chair nominated by the government parties shall chair meetings of the committee, and the joint chair nominated by the non-government parties shall take the chair whenever the other joint chair is not present.

(f) Each of the joint chairs shall have a deliberative vote only, regardless of who is chairing the meeting.

(g) When votes on a question before the committee are equally divided, the question shall be resolved in the negative.

(h) Three members of the committee shall constitute a quorum of the committee, but in a deliberative meeting a quorum shall include 1 member of each House of the government parties and 1 member of each House of the non-government parties.

(i) The committee may appoint subcommittees, consisting of 3 or more of its members, and refer to any such subcommittee any of the matters which the committee is empowered to consider.

(j) The quorum of a subcommittee shall be 2 members.

(k) The committee shall appoint the chair of each subcommittee, who shall have a deliberative vote only, and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(l) Members of the committee who are not members of a subcommittee may participate in the public proceedings of that subcommittee, but shall not vote, move any motion or be counted for the purpose of a quorum.

(m) The committee and any subcommittee shall have power to meet in private or public session and to report from time to time.

(n) The President and the Speaker may attend any meeting of the committee as they see fit, but shall not be members of the committee and may not vote, move any motion or be counted for the purpose of a quorum.

(2) That a message be sent to the House of Representatives seeking its concurrence in this resolution.

Senator Nettle to move on the next day of sitting:

That the Senate—

(a) notes that 7 December 2005 is the 30th anniversary of the invasion of East Timor by the Indonesian military;

(b) expresses its sincere condolences to the families of the 200 000 victims that have died following this invasion;

(c) notes:

(i) the New South Wales inquest into the deaths of the Australian and New Zealand journalists and camera operators in East Timor, known as the ‘Balibo 5’, will begin in 2006, and

(ii) that East Timor is still the poorest country in our region; and

(d) calls on the Government to dramatically increase Australian aid to East Timor so it exceeds the United Nations recommended target of 0.7 per cent of gross national product.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.37 pm)—I, and
also on behalf of Senators Stott Despoja, Crossin, Troeth, Stephens, Kirk, Adams, Payne and Nash, give notice that, on the next day of sitting, I shall move:

That petitions tabled in the Senate on 6 December 2005 relating to the management and prevention of gynaecological cancers and sexually transmitted infections be referred to the Community Affairs References Committee for inquiry and report by the last sitting day in March 2006.

I seek leave to table those petitions.

Leave granted.

Senator Bartlett to move on the next day of sitting:

That the following matter be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 30 November 2006:

The funding and resources available to meet the objectives of Australia’s national parks, other conservation reserves and marine protected areas, with particular reference to:

(a) the values and objectives of Australia’s national parks, other conservation reserves and marine protected areas;

(b) whether governments are providing sufficient resources to meet those objectives and their management requirements, with particular reference to climate change, biodiversity and sustainable tourism;

(c) any threats to the objectives and management of our national parks, other conservation reserves and marine protected areas;

(d) the responsibilities of governments with regard to the creation and management of national parks, other conservation reserves and marine protected areas, with particular reference to long-term plans; and

(e) the record of governments with regard to the creation and management of national parks, other conservation reserves and marine protected areas.

Senator Stephens to move on the next day of sitting:

That the following matter be referred to the Economics References Committee for inquiry and report by 30 October 2006:

Fiscal and regulatory barriers to the deployment of competitive manufacturing technologies in Australia, with particular reference to:

(a) Australia’s competitive advantages with respect to the deployment of competitive manufacturing technologies;

(b) Australia’s competitive disadvantages with respect to the deployment of competitive manufacturing technologies in other countries;

(c) whether the capital intensity and risk profile of deploying competitive and leading edge manufacturing technologies is a barrier to investment in Australia;

(d) how the Australian fiscal and regulatory regime compares to other countries in this regard;

(e) options available to address any barriers, including managerial capability and competency or competitive disincentive; and

(f) any related matters.

Senator Marshall to move on the next day of sitting:

That the following matter be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 17 August 2006:

The viability of a contract labour scheme between Australia and countries in the Pacific region, for the purposes of providing labour for selected rural industries, taking into account the following:

(a) labour shortages in rural and regional Australia;

(b) the availability and mobility of domestic contract labour, and the likely effects of such a scheme on the current seasonal workforce;

(c) social and economic effects of the scheme on local communities;
(d) likely technical, legal and administrative considerations for such a scheme; and
(e) the economic effects of the scheme on the economies of Pacific nations.

Withdrawal

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.38 pm)—I withdraw government business notice of motion No. 2, relating to the consideration of legislation.

Postponement

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Siewert for today, proposing the reference of a matter to the Foreign Affairs, Defence and Trade References Committee, postponed till 7 December 2005.

Business of the Senate notice of motion no. 2 standing in the name of Senator Bartlett for today, proposing the disallowance of Schedule 7 of the Migration Amendment Regulations 2005 (No. 8), postponed till 7 December 2005.

Business of the Senate notice of motion no. 3 standing in the name of Senator Ludwig for today, proposing the disallowance of Schedule 7 of the Migration Amendment Regulations 2005 (No. 9), postponed till 7 December 2005.

Business of the Senate notice of motion no. 4 standing in the name of Senator McLucas for today, proposing the reference of a matter to the Community Affairs References Committee, postponed till 7 December 2005.

General business notice of motion no. 298 standing in the name of Senator Stott Despoja for today, proposing the introduction of the Privacy (Equality of Application) Amendment Bill 2005, postponed till 8 December 2005.

General business notice of motion no. 334 standing in the name of Senator Bartlett for today, relating to sexual assault on children in Australia, postponed till 7 December 2005.

General business notice of motion no. 346 standing in the name of the Leader of the Australian Democrats (Senator Allison) for today, relating to sexual health education, postponed till 7 December 2005.

General business notice of motion no. 347 standing in the name of Senator Murray for today, relating to public appointments by the Government, postponed till 7 December 2005.

General business notice of motion no. 349 standing in the name of Senator Stott Despoja for today, relating to Radio Adelaide, postponed till 7 December 2005.

LEAVE OF ABSENCE

Senator SIEWERT (Western Australia) (3.39 pm)—by leave—I move:

That leave of absence be granted to Senator Milne for the period 6 December 2005 to 9 December 2005, on account of parliamentary business overseas.

Question agreed to.

PARLIAMENTARY ZONE

Approval of Works

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.39 pm)—I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposals by the National Capital Authority for capital works within the Parliamentary Zone, being the construction of kiosks, and the installation of artworks at Reconciliation Place.

Question agreed to.

HOCKEYROOS

Senator ELLISON (Western Australia—Minister for Justice and Customs) (3.40 pm)—At the request of the Minister for the Arts and Sport, Senator Kemp, and Senator Lundy, I move:
That the Senate—

(a) congratulates the Australian Hockeyroos for their outstanding performance in the Champions Trophy held in Canberra from 26 November to 4 December 2005, demonstrating that the Hockeyroos are well on their way to once again becoming world champions in women’s hockey;

(b) commends the hosts, Hockey Australia and Hockey ACT, and their many volunteers for facilitating such a tremendous event;

(c) commends the Australian Capital Territory Government for contributing $4.5 million towards the development of hockey facilities in the Australian Capital Territory allowing Hockey ACT to bid for and stage a magnificent event;

(d) congratulates all those involved in ensuring that the profile of women’s hockey in Australia continues to grow; and

(e) acknowledges the important contribution of the Australian Sports Commission and the Australian Institute of Sport in developing the Australian Hockeyroos and in supporting Hockey Australia to implement successful hockey participation programs which provide increased opportunities for young Australians to participate in hockey.

Question agreed to.

WORLD AIDS DAY

Senator GEORGE CAMPBELL (New South Wales) (3.40 pm)—by leave—At the request of Senators Moore, Stott Despoja, Nettle and Payne, I move the motion as amended:

That the Senate—

(a) recognises that 1 December is World AIDS Day;

(b) notes that:

(i) globally there are currently 40 million people living with HIV,

(ii) AIDS has taken 25 million lives to date, and

(iii) women make up almost half of all cases and are socially, biologically, economically and culturally more susceptible to infection;

(c) acknowledges that the development of microbicides represents a highly significant and promising woman-centred and empowering prevention method;

(d) notes that research and development of four potential microbicides have just commenced the final stages of clinical trials; and

(e) commends the Government for committing increased resources towards fighting AIDS, especially in the developing world.

Question agreed to.

TIME ZONES

Senator MURRAY (Western Australia) (3.41 pm)—I move:

That the Senate—

(a) notes that:

(i) Senator Calvert, in his capacity as a senator for Tasmania, has written to the Prime Minister (Mr Howard) suggesting that the question of regularising daylight saving and examining time zones be listed for discussion at the next Council of Australian Governments (COAG) meeting, and

(ii) Australia’s time zones date from the 1880s and that individual approaches by states and territories to daylight saving have a significant and continuing economic impact on Australian commerce and communications; and

(b) supports the call for this matter to be discussed as an important step in examining this economic impact, and urges the Prime Minister to raise this issue with the Premiers and Chief Ministers of all the states and territories.

Question agreed to.
WHALING

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.41 pm)—I move:

That the Senate—

(a) notes that:

(i) the Sea Shepherd Conservation Society’s ship the *Farley Mowat* will leave Melbourne in early December 2005 on its way to Antarctica to stop Japanese whalers from slaughtering whales in Australian waters in the Antarctic Whale Sanctuary,

(ii) Japan plans to double its kill of minke whales and target, for the first time in 2 decades, the endangered humpback whale and fin whale,

(iii) the Government charged the *Farley Mowat* $800 when it docked in Melbourne, arguing that it was a commercial vessel, despite the absence of cargo, and

(iv) the Department of Immigration and Multicultural and Indigenous Affairs threatened to impose a $5,000 fine on one of the crew of the *Farley Mowat* for not having a visa, despite the fact that she had already been granted one;

(b) questions why the Government has been so antagonistic to the *Farley Mowat* and why it did not itself send vessels to intervene in this kill;

(c) urges the Government to return the $800 erroneous charge imposed on the *Farley Mowat*; and

(d) wishes the *Farley Mowat* a successful mission and thanks it for its efforts on behalf of whales.

Question negatived.

RESERVE BANK OF AUSTRALIA

Senator MURRAY (Western Australia) (3.42 pm)—I move:

That the Senate—

(a) notes with sincere regret the death of Mr John Patrick Ducker, AO, former member of the New South Wales Legislative Council, on 25 November 2005;

(b) acknowledges the contribution made by Mr Ducker to the Australian Labor Party, the Australian Council of Trade Unions, the New South Wales Labor Council and to the wellbeing of people of Australia through his leadership of the trade union movement;

(c) recognises his contribution to public life through his service to the New South Wales Public Service Board, many community organisations and public companies; and

(d) expresses sincere sympathy to the Ducker family in their loss.

Question agreed to.

COMMITTEES

Corporations and Financial Services Committee

Meeting

Senator EGGLESTON (Western Australia) (3.43 pm)—I move:

That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a private meeting otherwise than in the Reserve Bank of Australia (RBA) may be inadequate; and

(b) asks the Government, unless the matters are already on the public record, to ensure that any appointee to the Board of the RBA be required to declare whether the appointee has any personal, family, professional, business or entity involvement with tax havens, or material disputes with the Australian Taxation Office that are or could be the subject of administrative or judicial penalty.

Question negatived.
accordance with standing order 33(1) during the sitting of the Senate on Wednesday, 7 December 2005.

Question agreed to.

WOMEN WITH DISABILITIES AUSTRALIA

Senator SIEWERT (Western Australia) (3.43 pm)—I move:
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.

Question negatived.

MR NGUYEN TUONG VAN

Senator BOB BROWN (Tasmania) (3.44 pm)—I ask that general business notice of motion No. 343, abhorring the hanging of Van Nguyen in Singapore last Friday, be taken as a formal motion.

The DEPUTY PRESIDENT—Is there any objection to this motion being taken as formal?

Senator Ellison—Yes.

The DEPUTY PRESIDENT—There is an objection.

Senator BOB BROWN—I am sorry, I did not hear that objection.

The DEPUTY PRESIDENT—I did, Senator Brown.

Senator BOB BROWN—From where?

Senator Ellison—The government.

The DEPUTY PRESIDENT—The government.

Suspension of Standing Orders

Senator BOB BROWN (Tasmania) (3.44 pm)—Pursuant to contingent notice, I move:
That so much of the standing orders be suspended as would prevent me moving a motion relating to the conduct of the business of the Senate, namely a motion to give precedence to general business notice of motion no. 343.

I move this motion for the suspension of standing orders because the substantive motion is a straightforward motion which abhors the hanging of Van Nguyen in Singapore last Friday and reiterates the opposition of the Senate to the death penalty wherever in the world it may be invoked. I know the government has some difficulty with that wording, but I simply do not understand that. There can be no doubt from the debate that I have previously heard in this chamber that there is abhorrence on all sides at the hanging of Van Nguyen in Singapore in Changi
Prison at 6 am, their time, last Friday. It was a cruel and unnecessary judicial murder and abhorrence of it has been expressed by many people in government as well as in opposition and in the community.

I know that the Attorney-General described the prospective hanging, as it was last week, as barbaric. Barbaric it was; barbaric the mandatory death penalty is. And it is very important that we say so. We will not change this barbarism if we do not call a spade a spade and do not express to our neighbours—particularly those who believe that a debate of this sort ends at borders and call for sovereignty to be respected—that we feel this way. And if the High Commissioner for Singapore thinks we should respect Singaporean sovereignty in the matter then so the Singaporean government should respect our sovereignty. In our sovereignty we, unlike Singapore, have a robust freedom of speech in this country. We respect oppositional politics but we respect the right of everybody to say what they think about the behaviour of government. Singapore does not do that but Australia does.

The second component of this motion is that the Senate reiterates its opposition to the death penalty wherever in the world it is invoked. Last week, we passed a motion, which I had originally cast in terms of ‘abhorring’ the death penalty, but which the government successfully changed to ‘opposing’ the death penalty. I do not know whether the government’s opposition is because of the extra words ‘wherever in the world it is invoked’. Obviously that includes countries like China, Indonesia and the United States of America, but opposition to the death penalty cannot be selective. It is a matter of morality that does not end at borders. It is a universal feeling that the death penalty should not be countenanced. That is written into international law, and Australia was a very early signatory to that law.

Australia has done away with the death penalty for many decades. I know that people think that it is a prerogative of Western countries, certainly of rich countries, to have done so. That is not so. Costa Rica, for example, did away with the death penalty a long time before Australia did. Costa Rica is a proudly democratic country, surrounded in the past by some very cruel dictatorships, which has held on to its democratic principle and the abolition of the death penalty for almost a century now. The United States has recently killed the 1,000th person since the suspension of the death penalty two decades ago. We must abhor that. On the figures I have heard, up to one-tenth of those people might have been innocent. It is a dreadful, unnecessary and pointless punishment, which does not bring people back. I commend this motion and I do not understand the government’s quarrel with it.

Senator LUDWIG (Queensland) (3.49 pm)—We are now, as Senator Brown has rightly pointed out, entertaining another debate, which is unseemly, given the nature of this issue. I do not understand the government’s position of not granting leave and dealing with the motion, as it did last week. The motion is relatively unsurprising in its plain words. It is a matter that the opposition supports. This debate is not about that motion, though. This is a motion and debate about whether or not we should suspend standing orders. If people wish to speak in this debate, depending on whether the government decides to gag it or not, they will have five minutes apiece for the next 30 minutes. At that point, we will lose the debate, having gone through the issue. But that is not appropriate. The government, if it did not agree with the wording of the motion, could have voted it down—granted Senator Brown formality and proceeded with it—and not otherwise taken up time to deal with it. What we now see displayed is a very un-
seemly position that the government has put us in. The government put us in the same position last week, prior to the hanging of Mr Nguyen. It seems to me that the government is stuck about how to deal with this issue.

Let me reiterate Labor’s position: we are totally opposed to the death penalty. We said that last week and we will say that this week. There is nothing surprising about the wording in Senator Brown’s motion in that he wishes to move that the Senate abhors the hanging of the Australian citizen Mr Nguyen in Singapore last Friday and reiterates its opposition to the death penalty. That is not something that I can see a problem with in any way. It is a statement of fact.

Maybe, Senator Bob Brown, it is the words ‘wherever in the world it is invoked’ that the government objects to, but of course 50 countries have signed up to the UN convention and oppose the death penalty. As we know, some countries do not oppose it, but that is unsurprising in the international arena. Perhaps it is the government’s inability, from Mr Downer’s perspective, to gain an upper hand in the debate, unfortunately. Mr Rudd has led the debate; Mr Downer has followed the debate. Mr Rudd has iterated our position on these types of issues quite clearly and articulately in Australia and, I suspect, on the international stage. It is something that seems quite plain to us on this side of politics. It seems to be causing some grief on that side of politics. I am unsure why. It is certainly not a matter that we should be playing politics with. I find it very disappointing that we are now dealing with it in this way. I do not intend to take up the five minutes. It is not necessary; I have capsulated Labor’s position. I do not think that we should be entertaining this debate in this way.

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (3.53 pm)—The government outlined its position on this very clearly the other day. We see no reason to be debating this yet again. This motion is really quite redundant in view of the motion which was passed the other day. The government did put to Senator Bob Brown’s office an amendment that the word ‘abhors’ could be substituted with the word ‘regrets’, the execution now having passed, but I understand that Senator Bob Brown rejected that. The Australian government has made very clear its opposition to the death penalty. Also, in relation to its position where Australian citizens face the possibility of the death penalty, it has made it very clear that we do everything possible to avoid that being carried out, and we will continue to do that. But we do believe that, in this current environment, emotion and words such as ‘abhor’ and other words which have different connotations should not be used in the debate on this issue.

It is a very serious issue. We have declared our opposition as such, enunciating our position very clearly in a dispassionate manner. But Australia will continue to make its views known internationally. Whether it is the United States, Singapore or any other country, we make it very clear that we will not extradite someone to a country where they will face possible execution. Under our mutual assistance treaties, we will not give criminal mutual assistance where the death penalty could be carried out unless there is an undertaking not to. Our position is even-handed. It is across the board, no matter whom we deal with in relation to that.

We really see no merit in this issue being raised again. The Senate dealt with it last week. Certainly it is the government’s position that it regrets the fact that the execution in Singapore was carried out last Friday. We are continuing to work in relation to other Australians citizens who face the prospect of
the death penalty. We do believe that this motion, in view of the one that was passed last week, takes the matter no further. I move:

That the question be now put.

The Senate divided. [4.00 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes.......... 35
Noes.......... 33
Majority....... 2

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

NOES
Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Campbell, G.*
Carr, K.J. Conroy, S.M.
Crossin, P.M. Faulkner, J.P.
Fielding, S. Forshaw, M.G.
Hogg, J.J. Hurley, A.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McGauran, J.J.
Moore, C. O’Brien, K.W.K.
Nettle, K. Polley, H.
Siewert, R. Sherry, N.J.
Sterle, G. Stott Despoja, N.
Wong, P. Wortley, D.

PAIRS
Campbell, I.G. Hutchins, S.P.
Colbeck, R. Evans, C.V.
Ferris, J.M. Ray, R.F.
Payne, M.A. Milne, C.
* denotes teller

Question agreed to.

Original question put:

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

The Senate divided. [4.05 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes.......... 30
Noes.......... 32
Majority....... 2

AYES
Bartlett, A.J.J. Bishop, T.M.
Brown, B.J. Brown, C.L.
Campbell, G.* Carr, K.J.
Crossin, P.M. Faulkner, J.P.
Fielding, S. Forshaw, M.G.
Hogg, J.J. Hurley, A.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McNally, J.E.
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.
Wong, P. Wortley, D.

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

PAIRS
Conroy, S.M. Coonan, H.L.
Evans, C.V. Patterson, K.C.
Hutchins, S.P. Campbell, I.G.
Milne, C. Payne, M.A.
Ray, R.F. Ferris, J.M.
Webber, R. Hill, R.M.

* denotes teller

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

That the Senate—

(a) notes that:

(i) Australia’s trade balance has deteriorated from a surplus equal to 0.1 per cent of gross domestic product (GDP) in 2000-01 to a deficit equal to 3 per cent of GDP in 2004-05, despite a 22 per cent improvement in Australia’s terms of trade over the same period,

(ii) Australia’s exports of manufactured exports have fallen from 33 per cent of our total exports of goods in 1996 to 29 per cent of total exports of goods in 2004,

(iii) the contribution by manufacturing to Australia’s GDP has fallen from 13.5 per cent in 1990 to 10.9 per cent in 2004,

(iv) there have been only 13 financial years since 1959-60 that Australian trade has been in balance, or has recorded a surplus, and that Australia’s trade deficits currently make up approximately 40 per cent of Australia’s record current account deficit of 6.7 per cent of GDP,

(v) Australia’s exports of goods and services have fallen from a 1.18 per cent share of all world exports in 1996 to 0.98 per cent share in 2004 and that had Australia retained its 1996 trade share, imports and exports would roughly be in balance,

(vi) that Australia’s exports to Singapore have fallen by 15 per cent since the free trade agreement with that country was signed in 2003 and that Australia’s exports to the United States of America have fallen by 5 per cent since the free trade agreement with that country was signed in January 2005, and

(vii) that the 6th World Trade Organization Ministerial Conference will be held in Hong Kong from 13 December to 18 December 2005; and

(b) calls on the Government to:

(i) freeze all Australian import tariffs at their current level,

(ii) abandon all bilateral free trade agreement negotiations,

(iii) investigate ways of insulating strategic Australian industries, such as manufacturing industries, from gouging by free trade, and

(iv) abandon its current negotiating position in the Doha round, and instead adopt an approach which seeks to protect key industries from undue import competition.

Question negatived.

Senator Bob Brown—Mr Acting Deputy President, can I have it noted that the Australian Greens alone supported that motion?

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Yes, Senator Brown.

Senator BOB BROWN (Tasmania) (4.10 pm)—I move:

That the Senate—

(a) requests the Government to seek an end to the persecution of Falun Gong members in China; and

(b) calls on the Government to lift restrictions on the Australian Falon Gong practition-
ners’ peaceful appeal outside the Chinese Embassy in Canberra.

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

The Senate divided. [4.15 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes………….. 6
Noes……………. 52
Majority……….. 46

AYES
Bartlett, A.J.J. Brown, B.J.
Murray, A.J.M. Nettle, K.
Siewert, R. * Stott Despoja, N.

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

* denotes teller

Question negatived.

AUDITOR-GENERAL’S REPORTS
Report No. 20 of 2005-06

The PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following report of the Auditor-General: Report No. 20 of 2005-06—Performance Audit—Regulation of Private Health Insurance by the Private Health Insurance Administration Council.

COMMITTEES
Privileges Committee

Report

Senator FAULKNER (New South Wales) (4.20 pm)—I present the 124th report of the Committee of Privileges entitled Person referred to in the Senate: Professor David Peetz.

Ordered that the report be adopted.

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

Leave granted.

Senator FAULKNER—I move:

That the Senate take note of the report.

This report is the 45th in a series of reports recommending that a right of reply be accorded to persons who claim to have been adversely affected by being referred to either by name or in such a way as to be readily identified in the Senate. On 29 November 2005, the President received a submission from Professor David Peetz, Department of Industrial Relations, Griffith University, relating to remarks made by Senator Abetz during question time in the Senate on 8 November 2005. The President referred the submission to the committee under privilege resolution 5. The committee considered the submission on 1 December 2005 and recommends that Professor Peetz’s proposed response be incorporated in Hansard.

The committee reminds the Senate that, in matters of this nature, it does not judge the
truth or otherwise of statements made by honourable senators or the persons referred to; rather, it ensures that these persons’ submissions and, ultimately, the responses it recommends accord with the criteria set out in privilege resolution 5. I commend the report to the Senate.

The response read as follows—

RESPONSE BY PROFESSOR DAVID PEETZ PURSUANT TO RESOLUTION 5(7)(B) OF THE SENATE OF 25 FEBRUARY 1988

On 8 November 2005, in question time, Senator Abetz in his capacity as Minister representing the Minister for Employment and Workplace Relations made a number of claims regarding me. These included that I was engaged in ‘moral equivocation about terrorism’, that I am therefore one of the ‘extreme people’ in public debate and that I will have no compunction whatsoever about deliberately misrepresenting government policy. These allegations about my attitude to terrorism were made in response to a question from Senator Brandis about government proposals regarding unfair dismissals. In turn, this question and the subsequent reply were prompted by an interview with me on AM the preceding week concerning the Workplace Relations Amendment (Work Choices) Bill.

The Minister’s allegations were based on a selective and misleading quotation from a poem I wrote four years ago, while living in Quebec City, and which was published in the Sydney Morning Herald on 17 September 2001. The poem was called “The President and the Terrorist”, although the Herald amended the title to simply read “The Terrorist”. The message of the poem was simple and tragically prophetic: that responses to terrorism that kill innocent people will only lead to more violence and advance the terrorists’ cause. A reading of the poem demonstrates this:

The President and the Terrorist.

The President opened the door, and saw inside his room.

A ghostly apparition, with face of blood and doom.

‘Twas the Terrorist he looked upon, at first he could but stare.

Then flew at him with fists enraged...they merely sailed through air.

He picked himself up off the ground, and turned to face the ghoul.

“You murdered untold innocents! There’s none have been so cruel!

You’re working with the Devil! All evils, rolled in one!

Good will overcome evil, and justice must be done!”

The Terrorist replied “With some of that, I must agree.

Yes, evil will be overcome by good, but sir, you see.

I know you are the evil one, and good is on my side!

You are the force of Satan, and that is why I died”

The president spat out the words “You shattered countless lives!”

I’ll wipe out all of you so not a single one survives!”

“But just how will you do that?” the Terrorist then asked

“You don’t know where we are, you cannot see behind our masks!”

“We’ll send in troops, and bombers too” the President replied.

“Destroy all your headquarters, you can’t forever hide!”

“We’ve done it pretty well this far, so I can call your bluff.

You may get one or two of us, but that is not enough!”

“We’ll bomb all those who harbour you, destroy your evil friends

We will not stop our torment till your reign of terror ends!”

The Terrorist was pleased at this, the outcome he could guess,

“And untold innocents, they will be caught up in this, yes?”

The President’s blood pressure rose, his face went vivid red.
“We won’t be satisfied till every one of you is dead!
This is a war we’re in now, and your sort will rue this day!
It can’t be helped if some civilians die along the way.
We must put an end to terrorists! We’ll crush you in the ground!”

At this, the Terrorist leapt up and gave a gleeful sound.
“Yes!” he yelled, “You must ensure you blast us into sand!
You must attack with every ounce of force you have at hand!”
The President was yelling too, his voice was almost shrill
“We’ll squash the flames of hatred in you men who live to kill”
The Terrorist was joyful, “yes, blood it must be spilled!
You must fan the flames of hatred that keep us growing still”
The President, though, couldn’t hear, above his own loud voice
As both screamed out, in unison, “it’s war! There is no choice!”

At this the Terrorist saw no need to discuss things more
Pleased with his work, this ghoulish monster faded through a wall
His whole game plan was playing out now, right before his eyes
As he settled down and waited for the body count to rise

There is no ambiguity about terrorism in this poem – the terrorist is a ‘ghoulish monster’ who is ‘waiting for the body count to rise’. The message of the poem was obvious to those who read it. For example, an Iranian living in Quebec City wrote to me on 15 September 2001:

I got goose bumps as I was reading what u wrote. I think and feel the same way. Since the day it happened I’ve been watching news and hoping that I wouldn’t hear the attack is being linked to Iran because I grew up in Iran and I’m so afraid that something like this will bring more blood and misery to people who have been stroked by war and revolution and sanctions.

Arcadia Flynn, who ran a poetry web site, wrote on 18 September 2001
‘The President and the Terrorist’ is indeed a powerful poem (and how true!). With your agreement, I’d like to email it to some friends.
The poem has been unquestionably been misrepresented by the Minister. The use of phrases like ‘moral equivocation about terrorism’, ‘extreme’ and ‘no compunction whatsoever about deliberately misrepresenting’ are designed to discredit me and dissuade me from participating in public debate on industrial relations. Equally, the attack is aimed at dissuading the Australian Broadcasting Corporation from broadcasting any of my analyses on industrial relations, as the Minister also claimed that ‘The ABC does itself and the Australian people no service by presenting someone like David Peetz as a “respected academic”’.

It is necessary here to briefly outline my qualifications to speak on industrial relations matters. I am professor of industrial relations at Griffith University, have several years experience working in the Senior Executive Service of the then federal Department of Industrial Relations, have undertaken a number of projects for the International Labour Organisation, and am currently president of the Association of Industrial Relations Academics of Australia and New Zealand. None of this was acknowledged by the Minister. In referring to me as ‘Mr Peetz’ the Minister even sought to ignore my standing as a professor.

Instead, the Minister asserted that I did ‘research sponsored by the ACTU’. He failed to mention that this research was funded by the Commonwealth Government through the Australian Research Council, and was approved by the then Minister for Education, Dr Kemp. Nor did he mention that I have done research and consultancy work for such employers as Brisbane City Council, Redland City Council and Queensland Rail, and for the Department of Workplace Relations and Small Business under a Liberal Minister. He asserted that I was ‘reported as being a singer in a trade union choir’, failing to mention that I left the Brisbane Combined Unions Choir, after a short period, in 2000. He asserted that I
wrote ‘poetry for the Workers Online web site, which calls him its “resident bard”, failing to point out that my poems (uncensored by that publication) satirised both sides of politics, that I wrote as many articles for the Courier-Mail as I wrote poems for Workers Online in 2005, that I have also written pieces for the employers’ magazine HR Monthly, have been interviewed by or had my research quoted in such outlets as Business Review Weekly, Management Now, the Australian Financial Review, Business Queensland, and a large number of newspapers, or that I have also been published in major national and international journals such as Industrial Relations, International Journal of Human Resource Management, Journal of Industrial Relations, International Journal of Manpower, Relations Industrielles, Australian Journal of Labour Economics, International Journal of Employment Studies, Economic and Labour Relations Review, Labour and Industry, Australian Bulletin of Labour and Asia-Pacific Journal of Human Resources and by reputable publishers such as Allen and Unwin and Cambridge University Press.

While I am deeply concerned by these attempts to portray me as an extremist and terrorist sympathiser, I will not be dissuaded from speaking on industrial relations matters in public. However, my deeper concern is for the impact that such attempts at character assassination have on discouraging informed debate in Australia today.

David Peetz
Professor of Industrial Relations
Griffith University.

Question agreed to.

Finance and Public Administration References Committee

Report

Senator FORSHAW (New South Wales) (4.22 pm)—I present the report of the Finance and Public Administration References Committee on government advertising and accountability, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator FORSHAW—I move:

That the Senate take note of the report.

I seek leave to incorporate my tabling statement in Hansard.

Leave granted.

The speech read as follows—

In speaking to the Committee’s report, I want to concentrate on three key issues: the backdrop to the inquiry, the recent advertising campaign for the Government’s WorkChoices reforms and the Committee’s recommendations for reform of this contentious area of government expenditure.

Concern has been expressed at various times by members and Senators on all sides of politics about government advertising campaigns. This inquiry arose out of concern about the escalating costs of Commonwealth government advertising since 1996, and about the political nature of particular advertising campaigns.

Expenditure on Commonwealth government advertising has climbed steadily since 1991-92. Between 1991-92 and 1995-96, the average yearly advertising expenditure through the Central Advertising System was $85.6 million. Between 1996-97 and 2003-04, the average yearly expenditure on advertising rose to $126.75 million—an increase of 48%.

The median expenditure over the whole period from 1991-92 to 2003-04 was $97 million. Expenditure by the Howard government since 1996-97 averages $29.75 million more than the median. By contrast, expenditure by the Keating Labor government prior to 1996-97 averaged $11.4 million less than the median.

If the bi-partisan advertising campaigns for Defence Force Recruitment are excluded, the next nine most expensive advertising campaigns since 1991 have all been conducted by the Howard Government.

These cold hard facts demolish the claims of the minister, Senator Abetz, that the Howard government’s spending on advertising since 1996 is comparable to, if not restrained, by the standards
of state and previous federal governments. On the contrary, the expenditure figures clearly show that current Commonwealth government spending on advertising is excessive and that the costs to taxpayers of such expenditure are steadily increasing.

Nowhere are these disturbing trends more apparent than in relation to the government’s recent WorkChoices campaign. The first glaring problem with the WorkChoices campaign is that it was conducted before the legislation was even introduced into the parliament. Advertisements were published and broadcast in July 2005 and October 2005. The relevant legislation was not introduced into Parliament until 2 November 2005.

Not a shred of detail about the legislation was included in these advertisements. They said nothing to inform employers or employees about how the proposed reforms will operate or affect them. Rather than information, the advertisements amounted to little more than opinion, assertions and slogans.

There is a word for such a campaign and that word is: propaganda.

The WorkChoices campaign also highlights concerns about the profligacy of current government advertising. The total cost of the campaign is now estimated to be $55 million, well up from earlier estimates. The advertising costs alone are estimated to be between $38.3 million and $44.3 million.

Six million information booklets were printed for distribution but only 178,000 have been dispatched. 458,000 were pulped so the word ‘fairer’ could be inserted into the title at the expense of $152,944. This wastefulness is outrageous.

The recent High Court judgement on the WorkChoices campaign has also served to expose two further matters of concern.

First, the judgement makes plain that under the financial management framework erected since 1997, the Parliament has limited ability to determine how much money is available for particular purposes or the purposes for which money is to be spent. The Committee considers that this is a significant issue that should concern the whole Parliament. Accordingly, it recommends that the question of the impact of outcome budgeting for appropriations on the accountability of, and Parliamentary control over, government expenditure should be referred to a Senate Committee for inquiry and report.

The second implication of the High Court’s judgement is that because of the government’s freedom in relation to the expenditure of its appropriations, there is almost nothing in the appropriations process itself that will provide any restraint on government expenditure on politically contentious advertising activities.

In the Committee’s view, there are two major mechanisms required to deal with these concerns about government advertising. The Committee has made a number of recommendations in relation to both mechanisms.

In terms of transparency, the current disclosure arrangements make it virtually impossible to calculate the total expenditure on government advertising over any one financial year. There is no single reference that reports total annual expenditure on government advertising. The PM&C annual report provides only the cost of buying media time and space to place advertisements. Other costs are not easily found as they are scattered throughout the annual reports of other individual departments responsible for individual campaigns, and even then these costs are not reported consistently.

The timeliness of the provision of information is almost as important for accountability purposes as the availability of information. In this regard, I draw the Senate’s attention to the fact that the minister and departments had still not provided answers to questions on notice, despite a number of requests, at the time of finalising the report.

To address these shortcomings, the Committee recommends a series of measures to substantially increase the disclosure of information about government advertising activities and expenditure. The Committee considers that the Australian government should take as a model the new Canadian system of disclosure of information about government advertising. The Committee recommends that the Government Communications Unit within the Department of the Prime Minister and Cabinet publish a detailed annual report on government advertising from 2005-06 onwards.
Major improvements to the guidelines for government information activities are also recommended. The current guidelines are ten years old and were written in a very different context. Further, the guidelines as they currently stand, are not being met by the government. The guidelines were not designed to address the major question before this inquiry namely the potential for the misuse of government advertising for political advantage.

The Committee considers that the guidelines proposed in a recent report by the JCPAA, which combine both the essential elements of the 1995 guidelines as well as improvements suggested by the Auditor-General, provide a comprehensive set of principles and guidelines for government advertising. Accordingly, the Committee recommends that the Government update the current guidelines as a matter of urgency and adopt the guidelines proposed by the Joint Committee on Public Accounts and Audit, with two amendments as specified in the report.

The Committee considers that a measure is required to ensure independent scrutiny of advertising campaign content. This scrutiny needs to address the potential impact of government advertising campaigns in content as well as fiscal terms.

The Committee recommends that once the creative content of an advertising campaign valued at $250,000 or more has been finalised, the advertisements must be submitted to the Auditor-General for assessment. The Auditor-General would be required to report back to the department incurring the advertising expenditure and the relevant portfolio minister whether the campaign complies with the guidelines on government advertising, and the extent of any non-compliance.

The Committee has also recommended that every six months, the Auditor-General must table a report in the Parliament which details his or her assessment against the guidelines of the advertising campaigns that have been implemented during that six-month period.

The Committee also notes that this proposal does not require that government advertising campaigns are approved by the Auditor-General before they can be run, nor that the Auditor-General may direct the withdrawal of an advertising campaign. Rather, government advertising campaigns are simply certified as complying with the guidelines or not, and a report on the extent of any non-compliance made available to the Parliament and the public. This counters the objection that the proposal would politicise the office of the Auditor General.

In concluding, I should note the Committee’s concern at the personal attacks made during the inquiry by the Minister, Senator Abetz, on other witnesses, particularly the Clerk of the Senate. These attacks were unwarranted and involved factual errors and serious misrepresentations.

Finally, I particularly thank my Committee colleagues for all their hard effort and work on not only this inquiry but also the other major inquiries the Committee has conducted during the year. It has been a busy year and we have handed down a number of important reports. On the Committee’s behalf, I also thank the secretariat—Alistair Sands, Matt Keele, Alex Hodgson and especially Sarah Bachelard—for all their help and effort.

I commend the report to the Senate.

Senator FORSHAW—I would like to read the final paragraph. I particularly thank my committee colleagues for all their hard effort and work on not only this inquiry but also the other major inquiries the committee has conducted during the year. It has been a busy year and we have handed down a number of important reports. On the committee’s behalf, I also thank the secretariat—Alistair Sands, Matt Keele, Alex Hodgson and especially Sarah Bachelard, who worked intensively on this report—for all their help and effort during the year.

Senator MURRAY (Western Australia) (4.23 pm)—I seek leave to incorporate my speech on the report that is being considered.

Leave granted.

The speech read as follows—
I stand to speak to the tabling of the Finance and Public Administration References Committee Report into Government Advertising and Accountability with a sense of great regret.
This report lays bare the aggressive misuse of money by the Coalition Government.
It lays bare its defiance of proper accountability mechanisms.
It lays bare the failure and powerlessness of the Parliament in controlling or restraining government spending on politically contentious advertising activities.
It lays bare how the appropriations process has been perverted to permit almost ‘anything goes’ in spending this area.
The report must now form the foundation of a strong, consistent, political and public campaign to try to implement water-tight accountability mechanisms for government advertising.

The Report must become the catalyst for political accountability activism involving elected parliamentarians, the media, the community and all citizens.

This issue concerns all Australians because it affects all Australians. Because the tens of millions of dollars that are poured into partisan television and radio commercials, newspaper ads, flashy booklets and flyers are diverted from funding essentials services and infrastructure.

If we want more money for health, if we want more money for education, if we want more money for the environment and our roads then we have to demand that the Coalition Government reign in its spending on improper government advertising.

The committee found that “expenditure on Commonwealth government advertising has climbed steadily since 1991-92. Between 1991-92 and 1995-96, the average yearly expenditure through the Central Advertising System was $85.6 million. Between 1996-97 and 2003-04, the average yearly expenditure was $126.75 million.”

The committee also found that “excluding the bi-partisan advertising campaigns for Defence Force Recruitment, the next nine most expensive advertising campaigns since 1991 have been conducted by the Howard Government.”

It is critical to note that the Committee determined that “the expenditure figures clearly show that the current Commonwealth Government spending on advertising is excessive and that the cost to taxpayers of such expenditure is steadily increasing. The recent advertising campaign on the government’s proposed workplace reforms, the WorkChoices campaign, provides a clear example of this government’s wasteful expenditure and politically partisan advertising”.

I consider the WorkChoices campaign to be the most flagrant, and aggressive abuse of executive authority in advertising thus far by the Coalition Government. Consider the facts:
The campaign is estimated to have cost as much as the total government advertising expenditure for 1996-97. The cash register is still tallying purchases, but so far it looks like about $55 million.
The campaign involved published and broadcast advertisements in July 2005 and from 9 October to 30 October 2005 – months before the legislation was introduced into the parliament.
The campaign advertisements stated opinion as facts.
The campaign provided no evidence to support the Coalition Government assertions.
The campaign provided no information about when the legislation was to be introduced or what effects it would have on individuals.

Let’s refresh our memory about the WorkChoices ‘pulping’ incident. The ‘pulping’ incident sounds horrific because it is horrific.

The simple facts are these: “Six million information booklets were printed for distribution. At 3 November 2005, 157,500 of the six million booklets had been ordered and just over 178,000 had been dispatched. This meant that about 5.8 million booklets were left in the warehouse.

A further 458,000 booklets were pulped at a cost of $152,944. The pulping of the booklets occurred as a result of a government decision, so that the word ‘fairer’ could be inserted into the title, ‘A simpler, fairer, national Workplace Relations System for Australia’.”

I put to the Senate that there is nothing fair about such a blatant abuse of taxpayer money and that...
this demonstrated blatant disregard for the principles of accountability and stewardship in government spending must stop.

I am proud of the fact that the Australian Democrats have long championed the need for greater controls and accountability in government advertising.

I am proud of the role our party has played in working to ensure this abuse of power became a major political issue that needed to be examined.

In October 2003 the Democrats successfully moved a joint Senate notice of motion with Labor support enforcing an order for tougher controls on government advertising. However, the Coalition Government has simply refused to comply with the order. The repeated abuse of the order is an affront to the Senate, an affront to accountability and an affront to our democracy.

Today the Senate Finance and Public Administration References Committee challenges the Coalition Government to clean-up its act.

The Australian Democrats support its 13 recommendations in full.

I applaud the Committee for again reinforcing the significance of the Democrats joint notice of motion by recommending the “government comply with the Senate Order of 29 October 2003 relating to agency advertising and public information projects”.

And I again commend the Senate Order to the Coalition Government.

But it is just one measure. The additional 12 Committee recommendations must now be implemented by the Coalition Government.

Briefly, the Coalition Government should conduct or commission a qualitative evaluation of key facets of any campaign, such as value for money, response of target audience and campaign concept and report the evaluation results to the Ministerial Committee on Government Communication. This is just common sense. This is just good business practice.

It is critical that the government implement, as a matter of urgency, a mechanism to monitor and enforce compliance with the guidelines on government advertising activity. This is an essential accountability test.

It just makes sense that every six months the Auditor-General should table a report in the Parliament which details his or her assessment against the guidelines of the advertising campaigns. There must be checks and balances. There must be accountability. There must be protection from abuse.

On 1 July the Government gained control of the Senate. It saddens me greatly that the Senate has been transformed from a legitimate House of Review to a chamber that is manipulated to suit the Coalition Government’s political agenda. The guillotine and gag provisions are now routinely employed on significant bills. Committee references are shortened or truncated. Our democracy is diminished.

In November 2004, the Senate referred the issue of government advertising and accountability to the Finance and Public Administration References Committee for inquiry. Today the Committee reports to the Senate.

The Chair, Senator Forshaw and the Secretariat deserve our thanks for a thorough effort.

I have stood in this Chamber for more than 9 years periodically arguing this case, and I consider this report to be an important milestone.

It is a landmark attempt to try to improve government accountability.

It is a landmark attempt to quantify government abuse of taxpayer money.

It is a landmark attempt to send a message to the government that people are watching and they do not like what they see.

It warrants attention and action for many reasons of efficiency, probity, accountability and integrity.

It also warrants remembering because it is perhaps, the last report of its kind that will be tabled in the Senate for many years of Coalition dominance to come.

The Senate is not as it was. Our democracy is not as it was.

Senator FIFIELD (Victoria) (4.24 pm)—

I seek leave to incorporate my speech.

Leave granted.

The speech read as follows—
I wish to first congratulate the committee staff on their tireless assistance and advice, namely Alastair Sands and Sarah Bachelard, and committee deputy chair Senator Watson.

When referred by the Senate on 23 June 2004 the terms of reference of the inquiry were worded to examine all government spending since 1996. In the current parliament, the Opposition-dominated committee subsequently restricted the terms of reference to only Commonwealth advertising, presumably to protect the Labor states from scrutiny. As a result, the majority report tabled today is partisan. A skewed set of terms leading to a skewed report.

As an aside, Commonwealth advertising between 1996 and 2003 amounted to approximately $929 million. State Government advertising campaigns over the same period cost taxpayers more than $2.15 billion. I note that the Bracks Government has just embarked upon a re-election advertising spree.

This inquiry did not receive the flood of public interest the Opposition predicted. Indeed only 13 organisations and individuals made submissions, and three of those were the Department of Prime Minister and Cabinet, the Special Minister of State and the Clerk of the Senate.

The Clerk made five written submissions and contributed oral testimony, which I will touch on shortly.

Senator Watson and I address the four main issues arising from the inquiry in the minority report.

Firstly, the government is justified in its government advertising expenditure. Ad spend can not be fully addressed in terms of quantum of expenditure. Governments have an obligation to inform citizens of their rights and responsibilities, of their entitlement to benefits or of changes to government policy that will impact upon their lives.

Immunisation, healthy eating or cancer screening awareness campaigns do not promote one side of politics or the other. Similarly defence force recruitment campaigns do not reflect partisan policy.

Government advertising can result in net savings. The ‘Keeping the System Fair’ education campaign announced in the 2004/2005 Budget and which commenced recently is estimated to save taxpayers $214.9 million over four years by improving compliance among welfare recipients.

As Senator Watson and I have emphasised in the minority report, government advertising can not be measured by the quantum of expenditure.

Our second point is that suggestions for independent review of all government advertising have some merit, but arguments against these proposals outweigh the benefits.

Independent review assumes that the basis of criticism of a campaign lies with the nature of the advertising, rather than the policy content of the advertising. The two are inseparable.

The Opposition’s outrage at the WorkChoices advertising campaign is matched only by its anger over the changes we are making to free up the antiquated industrial relations system.

The High Court bench ruled in the Government’s favour – against the ACTU and the Opposition – that the WorkChoices campaign was legitimate.

Justice Dyson Heydon noted on 29 July that the ACTU case was:

really a political dispute. Courts tend to be reluctant to interfere in political disputes.

Another problem with independent review is that to date no one – no public servant, no MP, no witness to committee hearings – was able to devise a clear, objective statement of what constitutes political or non-political advertising. The lines are blurry and open to interpretation, and invariably coloured by the political or professional persuasion of the interpreter.

A lesser problem is the cost of independent scrutiny prior to every government advertising commencing. Funding would be required for an oversight body and departments would carry increased compliance costs and additional staff.

Opposition Senators on the committee have not provided any evidence to suggest that any of the campaigns run since 1996 would not have proceeded had they been subject to independent review.

This proposal is fine in theory, but is unworkable, impractical and I do not believe there is sufficient cause to adopt it as policy.

The third point raised in some submissions to the inquiry is that government advertising campaigns
are illegitimate without a legislative base. This was largely raised in response to the WorkChoices campaign, which commenced before the draft legislation was finalised.

Witnesses who advocated this change to advertising policy had not considered the majority of government campaigns – AIDS awareness, health promotion, anti-domestic violence, anti-smoking, Australian citizenship, Defence Force recruitment – none of which have a legislative basis.

The final and most disappointing aspect of the inquiry was the nature of evidence by the Clerk of the Senate.

The Clerk made several submissions to the inquiry, in the course of which he deviated from his role as an independent procedural adviser to the Senate, to present highly contentious policy advice. Odgers Australian Senate Practice, edited by the Clerk, nominates the functions of the Clerk:

The Clerk of the Senate is the principal adviser in relation to proceedings of the Senate to the President, the Deputy President and Chair of Committees, and senators generally... the departmental head of the Department of the Senate... [and] secretary and adviser to the Procedure Committee.

The Clerk is an administrator and technical adviser in relation to the procedures and prerogatives of the Senate. His role does not extend to advice on the relative merits of public policy.

The Clerk’s expertise and experience is vital to the stability and integrity of the legislative process. It is therefore a very serious matter when the Clerk raises allegations of government corruption which he can not substantiate. In particular, Government Senators were concerned about the following remarks made by the Clerk:

The other problem which has been perceived in government advertising is the cross-subsidising of party political advertising. It is suspected that advertising firms accept lower fees for advertisements paid for by the party in power with an assurance that more lucrative government advertising contracts will fall their way. In effect, the expenditure on the government advertising projects subsidises the party political advertising of the government party. This is tantamount to corruption.

In oral and written evidence to the Committee, the Clerk claimed that in referring to these perceptions and suspicions he was not himself supporting these allegations, but merely reflecting concerns that had been raised in the Senate chamber. The Clerk did not provide references in his written submissions to support the claim that he was merely repeating assertions made in the Senate. Nor was the material to hand:

Mr Evans - We could go through an exercise of assembling all the references in the literature to support that statement. I hope you do not ask me to do that, but I could.

Upon request the Clerk did submit Hansard references in support of his assertions. He referred the committee to 25 speeches made in the Senate. All were by Labor Senators: ten from Labor Senator Robert Ray, nine from Labor Senator John Faulkner, and the remaining six from other Labor Senators. Despite the partisan nature of the evidence, the Clerk denied this was an issue.

The Clerk who provided his own constitutional advice as to whether monies for the WorkChoices campaign were legally appropriated. The High Court has subsequently rejected, by a 5-2 majority, the Clerk’s interpretation.

Government Senators respect the role of the Clerk as a procedural adviser to the Senate and Senators. They do not believe there is a role for the Clerk as an adviser on either policy or public administration.

Government Senators consider that the intervention of the Clerk in relation to these matters was unwise, outside his remit and needlessly opened the Office of the Clerk to allegations of political partiality.

In tabling the minority report into this inquiry, I restate my disappointment with the outcome of the inquiry and once again thank the committee and secretariat staff for their co-operation and assistance.

Senator CARR (Victoria) (4.24 pm)—I seek leave to incorporate my remarks on the same report.

Leave granted.
The speech read as follows—

This is a timely and important report. Notwithstanding the best efforts of the Special Minister of State to intimidate and denigrate witnesses, on balance the evidence confirms that the Inquiry’s recommendations are valid and should be implemented without delay.

My colleague Senator Forshaw has outlined those recommendations, and so I will not canvas them again in detail.

Suffice it to say that the emphasis of these recommendations on providing a transparent and accountable method of monitoring and auditing government advertising is entirely warranted and overdue.

Despite the efforts of the Special Minister of State, obviously a minister in denial, to claim that such regulation and monitoring is not possible, it is now clear from international precedents that not only is such action on the part of government possible but it can also be highly effective.

Senator Forshaw, speaking for the majority of the Committee has already made a cogent case for the implementation of this Inquiry’s recommendations.

I would like to dwell, for a moment, on some of the impediments that the government sought to place in the way of this inquiry.

I will conclude by referring to evidence to the Committee that was delayed but is of singular importance nevertheless.

During the course of this inquiry Government denigration of witnesses reached new heights.

While the Special Minister of State’s gratuitous attacks on the Clerk of the Senate for daring to make a submission that did not echo the Government’s own position on advertising has attracted most publicity, his intervention did not stop there.

One of his additional submissions proved to be nothing more than a serial attack on every submission or possible witness who did not agree with his own particular view that this government should be free to spend as much public money as it likes on promoting itself.

This sort of serial harassment of witnesses by a minister is most unedifying, and has been deservedly condemned.

When he was not abusing witnesses, the Special Minister of State went to considerable pains to reassure all concerned that the two key Coalition media managers, the Government Communications Unit (GCU) and the Ministerial Committee on Government Communications (MCGC) were nothing more than coordinating bodies, there to assist Departments with the efficient delivery of advertising campaigns developed within the departments themselves.

Senator Abetz would have us believe that these are rubber stamps; that the responsibility for the content and timing of advertising campaigns rests with individual departments.

Of course, he has to adopt this position for to accept anything else is to acknowledge that these two bodies have a directly political role and their significance in dictating the content and timing of the political advertising campaigns run by the Coalition.

These two bodies are not politically neutral: are not simple administrative offices.

Instead, they are political operations, charged with the effective delivery of party propaganda: of Coalition propaganda.

So we had the ludicrous situation where Senator Abetz was trying to convince an incredulous public that the $55 million spent recently on the failed IR campaign showed that it was “just another campaign”!

Just like James Packer in recent court hearings, during the course of the Inquiry Senator Abetz and his principal advisors often seemed to have difficulty recalling particular meetings or decisions.

Many important questions were taken on notice.

Given this Government’s record of obstructionism, it is hardly surprising that many replies were not received until shortly before the Committee was due to report.

However, documents obtained on notice and under FOI now comprehensively demonstrate the true role of the GCU and the MCGC.

In terms of the recent IR campaign, a key MCGC meeting took place on the 5th July this year. This was one of those meetings that the witnesses from the prime ministers department could not recall.
That is really quite surprising, because documents now to hand show that that meeting considered detailed costings for the program and a much more coordinated campaign than has previously been admitted.

By the time of that meeting, not only had control of this campaign been taken out of the hands of the department of employment and Workplace relations, but that department was being told by the GCU what to do, who to speak to and what costs would be incurred.

The media politicians in the GCU were pulling the strings, not the Department.

So much for Senator Abetz’ claims that the GCU did not initiate advertising strategy or dictate the terms of advertising campaigns.

These documents also make it clear that the timing and duration of the IR campaign was a highly political decision.

Planning was being done for both a one week advertising blitz and a sustained campaign.

It is clear that the Government’s media advisors were planning a political strategy.

If a one week knock out worked, well and good.

If not, then contingency plans were ready for a protracted campaign to try and impose the Government’s perverse IR principles on the public.

As I have already argued, these documents shed more light on the operations of the government’s media hit squad, the GCU.

Senator Abetz has repeatedly argued that the GCU was there to assist departments in coordinating their advertising campaigns.

In other words, initiative lay with individual departments and not with the GCU.

Nothing could be further from the truth.

We now know that the GCU is first and foremost an instrument of government propaganda.

It doesn’t advise departments, it tells them what to do.

It doesn’t simply provide shortlists of potential consultants, it indicates who it wants to be chosen.

The GCU acts as a bridge between the government and its network of media and marketing mates (such as Ted Horton and Mark Pearson.)

How do we know this?

The documents now publicly available reveal that detailed information on media, PR and research costs and a preference for particular media placements for the IR campaign were requested by the GCU and not by DEWR.

In other words, it was GCU dictating placements to maximise the propaganda value for the government.

These documents demonstrate that the GCU was even dictating who from within shortlisted firms could pitch for the work.

So, on 15 July the GCU Director of Government Advertising was instructing DEWR, and I quote: “With Young and Rubicam, we have suggested you contact the CEO who is based in Sydney but you will need to explain that you want the Melbourne Branch of the agency to pitch for the work].”

Why?

Because Liberal Party mate Ted Horton’s home turf and only office location is in that firm’s Melbourne office.

GCU were leaving nothing to chance!

Finally, we now have evidence that the GCU uses the hint of political favours to ensure compliance and support for its propaganda campaigns.

On 15 July again, that same Director of government Advertising emailed a contact in HMA Blaze, a firm responsible for the media booking of “INDUSTRIAL RELATIONS campaign radio commercials.

In thanking him for their efforts, she continued: “This support is noted and appreciated in all the right quarters.”

Fifty three minutes later she sent the same email to what she so quaintly refers to as “the right quarters”.

Who did it go to?

To none other that Greg Williams, a senior staffer in the Prime Minister’s Department.

The Prime Minister’s Department is deeply involved in shaping these campaigns and sharing out the political favours.
Not only is Mr Williams deeply involved in his capacity as head of the Communications Unit but these emails also show that Mr Tony Nutt, the Prime Minister’s principal private secretary was also involved directly involved in the campaign, seeking, and receiving, detailed information on campaign costs and media placements.

We are watching the operations of a highly-centralised, powerful propaganda unit, established to maximise party

Senator CARR—I seek leave to continue my remarks.

Leave granted; debate adjourned.

Migration Committee Report

Senator KIRK (South Australia) (4.24 pm)—On behalf of the Joint Standing Committee on Migration, I present the report of the committee entitled Detention centre contracts: review of Audit report No. 1 2005-06: management of detention centre contracts—part B, together with the Hansard record of proceedings, minutes of proceedings and submissions received by the committee. I seek leave to move a motion in relation to the report.

Leave granted.

Senator KIRK—I move:

That the Senate take note of the report.

I rise today in my capacity as deputy chair of the Joint Standing Committee on Migration to speak on the committee’s report on detention centre contracts tabled just now. The Joint Standing Committee on Migration was given the task of reviewing an audit undertaken by the Australian National Audit Office. This audit assessed DIMIA's management of its contract with Global Solutions Ltd, known as GSL. Senators will not be surprised to learn that the Australian National Audit Office uncovered myriad problems in the way the contract had been drafted and managed by GSL.

It has not been a very good year for DIMIA or the minister. I expect that Senator Vanstone will look back at the end of this year and declare 2005 to be her annus horribilis. DIMIA has come in for extensive and warranted criticism. In August, I stood here in the Senate and spoken about the Palmer report, which reviewed, as we know, the circumstances of the detention of Australian citizen Cornelia Rau. Mr Palmer revealed systemic departmental and administrative failures within DIMIA. He said that DIMIA needed a complete cultural shake-up. He accused the department of developing policy, procedures and enabling structures ‘on the run’. If this were not bad enough, shortly afterwards we saw the release of the Comrie report into the deportation of Vivian Solon. Mr Comrie backed up many of Mr Palmer’s findings. He described DIMIA’s management of the Solon case as ‘catastrophic’, saying that her removal was:

...a consequence of systemic failures in DIMIA—among them inadequate training programs, database and operating system failures, poor case management, and a flawed organisational culture.

We all know that Cornelia Rau and Vivian Solon were not isolated cases. Today I intend to speak on the findings of the report that was tabled today. The contract between DIMIA and Global Solutions was signed in August 2003. It is a four-year contract with an option to extend for up to three years. The annual cost of the contract is approximately $90 million, excluding overheads and administrative costs. GSL is contracted to operate all of Australia’s immigration detention centres as well as what are called immigration reception and processing centres. The ANAO’s audit into DIMIA’s management of detention centres was conducted in three stages. The audit report that I am referring to today is part B.
I am aware of the fact that there is a guillotine which is going to cut in in just two minutes time. I have a great deal that I wish to say in relation to this matter. It was a most comprehensive report that the committee undertook. We spent a considerable amount of time looking over the contract that DIMIA entered into with GSL, identifying the problems that exist in the contract. But we are in the situation here today where the guillotine is going to cut in and we are simply not going to be able to examine what I think is a very important matter. One thing that has really been highlighted this year, if I may say so, is the total failure, the incompetence of DIMIA—

The PRESIDENT—Perhaps you could seek leave to continue your remarks so that it remains on the agenda.

Senator KIRK—I will indeed seek leave to continue my remarks when my time expires, Mr President. However, I do want to highlight the fact that it seems to me a most unfortunate circumstance that, at a time such as this, we are being cut short and that essentially we are being gagged. I am aware that two of my other colleagues from the committee—Senator Parry and another senator—did wish to speak on this matter, but I am aware of the fact that there is now half a minute remaining and those senators are not going to be able to speak on this matter. I think it is just another example of the time constraints that we as senators and the Senate have been placed under during this week as a consequence of the way this government has managed this Senate. I think this is most disappointing. I seek leave to incorporate the remainder of my speech.

Leave granted.

The speech read as follows—

The audit of the first stage, Audit Report No. 54, 2003-2004, Management of the Detention Centre Contracts Part A, was released on 18 June 2004. This report found many problems with DIMIA’s management of the contract and made six recommendations including the need for improvements to:

- risk management and planning
- information systems
- invoicing procedures
- asset management plans, and
- infrastructure standards

The second audit report, the one covered by the Joint Standing Committee on Migration review that I am talking about today, was released by the Australian National Audit Office on 7th July 2005.

The Australian National Audit Office expects to produce a third audit, covering the tender process, before the end of this year.

The audit report, and from now on I will refer to it as ANAO Audit Report No 1. Part B, found several problems, for example:

- The contract does not establish clear benchmarks
- There are no clear mechanisms to protect the Commonwealth’s interests, and
- There is not enough information about the quality of services and costs to allow a value-for-money calculation

In his report, Mr Palmer also slammed the contract. His findings were included in ANAO Audit Report No 1. Part B.

Quoting from the Palmer Report:

“The current detention services contract with GSL is flawed and does not allow for delivery of the immigration detention policy outcomes that are expected by the Government.

It is onerous in its application, lacks focus in its performance audit and monitoring arrangements, and transfers the risk to the service provider.

Service requirements and quality standards are poorly defined, performance measures are largely quantitative and of doubtful value. The contract leaves the Commonwealth exposed to the risks inherent in the operation of immigration detention facilities”

“The lack of any focused mechanism for external accountability and professional review of stan-
dards and arrangements for the delivery of health services is a significant omission.”

As well as problems including a lack of performance measures; and a reliance on the reporting of so-called ‘Incidents’ to determine when standards are not being met, the audit uncovered a very disturbing lack of control over subcontracting arrangements.

Food, maintenance, health and psychological services are delivered through subcontractors. These are essential services. They are central to detainees’ health and welfare. But under current arrangements, DIMIA has very little control over the subcontractors who provide these services.

To give an example, in 2004 DIMIA had to seek GSL’s agreement to engage the Australian Government Solicitor to review the subcontracts!

The ANAO audit stresses that DIMIA has responsibility for service delivery and if the subcontractor does something untoward, the department is still accountable.

DIMIA has been strongly criticised for poor provision of healthcare and mental healthcare to detainees. This needs urgent attention, and as I have already mentioned, when the Migration Inquiry is complete, I will have more to say on this topic.

The audit also found significant problems with duty of care. DIMIA has a duty of care towards all detainees, to ensure their safety and welfare. However, the contract does not clearly indicate GSL’s responsibilities and accountabilities in meeting detainees’ day to day needs, and it was concerned that duty of care its obligations were not being met.

This carefully worded finding is exposed by the Palmer Report which does not beat around the bush, and says that Cornelia Rau’s incarceration revealed, and I quote, a “manifest failure of DIMIA’s duty of care”.

ANAO Audit Report No 1. Part B uncovered four other areas that need attention:

The insurance, liability and indemnity aspects of the contract The planning, performance information and monitoring arrangements The financial reporting of the detention function, and Management of Commonwealth assets, specifically the development of an asset register (The Committee’s Review)

(The Palmer Implementation Plan (PIP))

At the Committee’s hearing DIMIA advised that the Palmer Implementation Plan – which some people are apparently referring to as the PIP!—is being progressed and includes action to address recommendations in ANAO Audit Report No. 1- Part B.

As part of the Implementation Plan, a three-month review is currently underway, by independent consultant, Mr Mike Roche, into the functions and operations of detention and compliance activities and the detention services contract. This review will consider the issues I have already mentioned, and many of the issues identified by the ANAO in its report.

I am also advised that DIMIA has engaged a consultant to review the detention services contract and work out how to fix the problems raised by Palmer and by ANAO Audit Report No. 1- Part B.

However, both I and the committee are concerned that the three-month period allocated for the review is too short. Mr Roche has a huge task. He needs more time.

We do however look forward to seeing how Mr Roche and the so-called PIP plan to clean up yet another mess created by Ruddock and Vanstone – Dimmer and DIMIA.

The Committee will continue to monitor developments in DIMIA’s management of its detention function, and has recommended that once the progress report on the Palmer Implementation Plan initiatives is released in September 2006, the Minister for Immigration and Multicultural and Indigenous Affairs refer the progress report to the Committee for examination.

I commend the report to the Senate.

**Senator KIRK**—I also seek leave to continue my remarks.

Leave granted; debate adjourned.
ANTI-TERRORISM BILL (No. 2) 2005
In Committee

Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The committee is considering the Anti-Terrorism Bill (No. 2) 2005 and Australian Democrat amendments R(1A), R(10D), R(18B) and R(18D) on sheet 4764 revised, moved by Senator Stott Despoja. The question is that the amendments be agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.31 pm)—Just for the record, the position of the government is that it opposes the Democrat amendments. It does so on the basis that the Council of Australian Governments agreed that the provisions agreed to in that forum would see a sunset after 10 years and, of course, the bill as introduced by the government delivers on that commitment. In addition, in relation to schedule 7, the Attorney-General has agreed to refer a review of the sedition provisions to the Australian Law Reform Commission, as recommended by the Senate committee. On that basis, it is inappropriate that the government agree to these amendments and the government therefore opposes the amendments.

The government is committed to reinforcing the role of the Commonwealth Ombudsman in providing comprehensive oversight of the Australian Federal Police and the government’s expectation is that this extends to the Australian Federal Police’s use of the proposed stop, question, detain, search and seizure powers. That was an issue which, I think, has been raised and I want to give that assurance to the Senate. Furthermore, notices to produce will seek relevant documents otherwise available under search warrant. The benefit of a notice to produce is that it allows businesses to provide documents rather than interrupting their place of business to permit law enforcement officers to seize relevant material. That was another issue that we agreed to canvass in this debate. Furthermore, the Prime Minister is seeking the agreement of his colleagues for the COAG review of the legislation to be informed by a Sheller-type review.

I might also add that we note improvements to the sedition offences, and further note that, in any event, the departmental review will put matters that remain of concern beyond doubt. I summarise those very briefly as a result of discussions and concerns which were expressed earlier, and that fulfils the government’s obligation.

Question negatived.

Senator LUDWIG (Queensland) (4.34 pm)—by leave—I move opposition amendments (2), (16), (23) and (25) on sheet 4773:

(2) Page 4 (after line 14), after clause 4, add:
6 Sunset provision
(1) The amendments made by the Schedules to this Act cease to have effect on the fifth anniversary of the day on which this Act receives the Royal Assent.
(16) Schedule 4, item 24, page 40 (lines 2 to 6), omit “10”, (twice occurring), substitute “5”.
(23) Schedule 4, item 24, page 90 (lines 6 to 11), omit “10” (twice occurring), substitute “5”.
(25) Schedule 5, item 10, page 101 (lines 11 to 19), omit “10” (three times occurring), substitute “5”.

These amendments follow the committee’s recommendations for ensuring that there are sunset provisions. The bill, as it currently stands, provides for a sunset clause of 10 years. No-one, other than the government, could think that that is sensible. It is, as I think I have said, a lifetime in politics. I have not even been in this Senate that long, and I do know that during that time the security environment has changed, this place has...
changed and the issues that confront us have changed.

The committee made five separate recommendations—(18), (26), (38), (43) and (48)—calling for five-year sunset clauses for different schedules of the bill. However, none of these recommendations have been taken up by the amendments tabled, but as yet unmoved, by the government. Again, it really does, I think, represent another back-down by the Liberal backbench. I called it a backslide earlier; it still is. They moved the recommendations; it is a majority committee report. In days gone past it would have taken a cogent argument from the government to convince us as to why we should not continue with that recommendation and, by and large, it would have been moved and generally supported in this place. But now the government has got the numbers in this place it treats these things less seriously than it used to.

The position, of course, is that they could not stare down Mr Ruddock. Mr Ruddock stared them down and said, ‘I am going to stick to my original position.’ Mind you, in fairness to Mr Ruddock, given the number of amendments that he has agreed to, and given the position of where the Stanhope amendment has moved to, it is perhaps his last fig leaf too—to stand his ground on some of these issues such as the sunset provision and perhaps sedition as well. But there is no justification for it. Clearly there is not. There is no justification for this type of review. There is the ability under Labor’s proposed amendment to ensure that there is accountability and proper scrutiny and that these sorts of provisions should not extend beyond five years.

These amendments provide for a proper sunset clause of five years. This length of time is appropriate to ensure that there is enough time for the legislation to work its way through and to see whether it has any unintended consequences. Above all else, there is the issue, which I think Senator Bob Brown went to, of ensuring that the government does not use these powers in a way which has the potential for abuse, especially where it could cut across a UN convention. Whether or not the government uses the powers appropriately and proportionately is the issue that may arise. If it does arise, why wait 10 years to deal with it? Five years is a more sensible time to ensure that these things can be dealt with.

I also note that reviews of a similar nature, such as the Parliamentary Joint Committee on ASIO, ASIS and DSD inquiry into ASIO’s questioning and detention powers, have also called for similar sunset clauses. So the Liberal backbenchers on that committee also think a sunset clause in the questioning and detention powers is appropriate, and I would not be surprised if, in the Liberal Party back room, that they also think that this is appropriate but are not game to stand up and say so out here. That inquiry also recommended a five-year sunset clause for parts of the ASIO Act. Page 108 of the inquiry’s report recommended that the section under review be maintained but amended to allow for a five-year sunset clause.

It would seem that also provides a justification for where the Senate Legal and Constitutional Legislation Committee also ended up. There were two independent committees. One was a joint committee between the House and the Senate and the other was a Senate committee looking into the legislation. They independently came to the same position, that a sunset provision of five years would much better serve the parliament and, I think, better serve the government. The government has not supported that recommendation, but I ask the minor parties to support it.
Senator STOTT DESPOJA (South Australia) (4.39 pm)—The Australian Democrats will support the opposition amendments. You heard my arguments earlier on behalf of the Democrats. We prefer a shorter time frame for the sunset clause of a three-year period—that is, the life of a parliament. This is exemplified in the Senate Legal and Constitutional Legislation Committee inquiry report. We acknowledge that this is a reasonable compromise. It is not our preferred time frame but is a reasonable compromise. As a back-up amendment, we will support it. I hope that the government will at least follow the direction of the Senate committee’s recommendations in this regard, and I indicate our support.

Senator NETTLE (New South Wales) (4.40 pm)—I have a question for the minister that relates to this amendment and the following one. It is about whether the Australian government has requested derogation from the ICCPR. This was a question that I and a number of other senators asked in the committee. I recall that we received a variety of different answers, so I am using this opportunity to get some clarification on that.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.41 pm)—No, the government have not sought derogation in relation to the covenant mentioned by Senator Nettle. We have not done so because we believe that our legislation accords with that International Covenant on Civil and Political Rights. I think that also answers a question that Senator Bob Brown posed earlier.

While I am on my feet, I will answer Senator Brown’s question, which he put on notice earlier, in relation to testimony by Mr Geoff McDonald. The quote from Senator Brown was a selective one in relation to the testimony given by Mr Geoff McDonald, Assistant Secretary, Security Law Branch, at the Senate Legal and Constitutional Legislation Committee inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005 on 18 November this year. The particular amendment that was referred to was raised by the DPP with the department on 30 March 2005. However, Mr McDonald, in his answers to the committee, discussed why this amendment was not progressed at that time. That was, firstly, because there was concern not to pre-empt the statutory review required by section 4 of the Security Legislation Amendment (Terrorism) Act, the Sheller review and, secondly, because the DPP were more focused on giving priority to proposed video-link legislation.

Setting legislative priorities is a balancing act, which can be rapidly modified by changing events. The London bombing on 7 July this year was such an event. After the bombing, there was an opportunity to bring amendments forward as part of the antiterrorism bill and, later, it was given even greater priority in a separate bill because of emerging operational concerns. I will not go into those, because we have seen activity since. Mr McDonald’s full answer is found at pages 10, 12 and 13 of the Senate Legal and Constitutional Legislation Committee inquiry Hansard of 18 November 2005 in answer to questions asked by Senators Brown, Crossin and Ludwig.

Senator NETTLE (New South Wales) (4.42 pm)—I thank the minister for that answer. I want to follow on from the comment that the minister made to determine if there is a 10-year sunset clause because the government thinks that this state of emergency or increased rationale for increased security powers will exist for 10 years. People deal differently with the ICCPR question. There is either the issue that you do not believe you have derogated so you have never asked for an exception or you think that an extraordinary emergency or imminent threat is the
reason why you need to have legislation and put in place the sunset clause. It has been done differently in different bills. That was the argument around the ASIO legislation, which had a three-year sunset clause. I wonder if there is a government rationale such as: ‘There is an emergency situation we believe will last for 10 years. That is why there is a 10-year sunset clause.’ I would like to hear from the government on that.

Senator Ellison (Western Australia—Minister for Justice and Customs) (4.44 pm)—When this matter was discussed by COAG, I think it is fair to say that the leaders of Australian state, territory and Commonwealth governments were of a view that, unfortunately, the situation we find ourselves in in relation to the war on terrorism is not one which is going to go away overnight; it is going to be around for some time to come. I think that was a major reason for the 10-year sunset clause. It was a matter which was discussed and agreed to by COAG, and I think underpinning that was a view that this involves Australia’s national security and the war on terrorism, which will be around for a long time. It was not envisaged that these provisions would be used every day or frequently. Nonetheless, they are powers and measures which are needed in the armoury in the fight against terrorism. That is a brief summation of the discussion which took place between the Prime Minister and the premiers and chief ministers.

Senator Nettle (New South Wales) (4.45 pm)—In indicating the Australian Greens’ position in relation to these amendments, I will read out a brief section of the submission by the Gilbert and Tobin Centre of Public Law at the University of New South Wales to the Senate committee inquiry into this bill. The submission reads:

Expiry clauses of ten years’ duration do not qualify as genuine sunset clauses. The nature and extent of the terrorist threat cannot possibly be predicted over the forthcoming ten year period, and the government has not presented evidence to suggest that the threat to Australia will be remain constant or will increase over that period. The uncertainty and speculation involved in such predictions point to the need for sunset clauses of reasonably short periods.

The Australian Greens will be supporting these amendments.

Question put:

That the amendments (Senator Ludwig’s) be agreed to.

The committee divided. [4.50 pm]

(The Chairman—Senator JJ Hogg)

Ayes……………32
Noes……………34
Majority………2

AYES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Campbell, G.
Carr, K.J. Courtney, S.M.
Crossin, P.M. Faulkner, J.P.
Fielding, S. Forshaw, M.G.
Hogg, J.J. Hurley, A.
Kirk, L. * Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.
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.

NOES

Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Calvert, P.H.
Chapman, H.G.P. Colbeck, R.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Fieravanti-Wells, C.
Fifield, M.P. Heffernan, W.
Humphries, G. Johnston, D.
Joyce, B. Kemp, C.R.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
**Note:** The text of the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is set out in Australian Treaty Series.

This Greens’ amendment says, in good faith with the Prime Minister’s assurances that this legislation is not in contradiction with those crucial international covenants and conventions that Australia has signed, that we empower the court when making a consideration to make sure that is so and that, if there is any inconsistency with this antiterror legislation and our international obligations, the court may find so, make a declaration and ignore this legislation insofar as that inconsistency is concerned. This is, in rough terms, how the ACT’s bill of rights works and it is how legislation overseas works. Most famously, of course, freedom of speech in the United States is always tested before the courts when new legislation is brought down and, as we know, if there is a contradiction with the constitutional rights in America, the courts will find so and will not concede that legislation will be able to override the constitution.

Our Constitution is not clear, not explicit, on these matters. We do not have a bill of rights, but we are signed up to these international conventions and, what is more, the Prime Minister and the government—and I am sure the minister will assure us of this—are certain that this legislation does not interfere with those international commitments to rights that Australians enjoy, in particular civil and political rights, the rights of children and the rights of Australians not to be subject to torture or other cruel, inhuman or degrading treatment or punishment. It is very clear that the government should be support-

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Question negatived.

Senator BOB BROWN (Tasmania) (4.53 pm)—I, and on behalf of Senator Nettle, move Australian Greens amendment (1) on sheet 4771:

1. **Page 4 (after line 14), after clause 4, add:**

   **5 Application of the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

   (1) This Act must be read and given effect to in a way which is consistent with the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

   (2) If in any proceedings regarding any matter in relation to this Act a court is satisfied that a provision of the Act is inconsistent with a right arising under the International Covenant on Civil and Political Rights or the Convention on the Rights of the Child or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the court may make a declaration of that inconsistency and the provision of the Act shall be of no effect to the extent of that inconsistency.
ching this amendment, and so should all of us. I point to the thoughts of the elder statesman of the Liberal Party, Malcolm Fraser, former Prime Minister, on this legislation. I refer to a report in the *Australian* on 30 November, in which it is reported:

In a scathing attack on his former party, Mr Fraser accused the Liberals of trampling upon democracy in their haste to introduce sweeping new anti-terror laws.

He said Australia had entered a “darker age” in which the once-fundamental human rights of liberty and freedom were being seriously eroded by trumped-up fears of terrorism.

“The departures from the principles underpinning the (Menzies) Liberal Party are substantial and serious,” Mr Fraser said in a speech on human rights at the University of Melbourne.

“The party has become a party of fear and reaction. It is conservative, not liberal. It has not led in positive directions, it has allowed and, some would say, promoted race and religion to be part of today’s agenda. I find it unrecognisable as liberal.”

Mr Fraser went on to say, on the issue of terrorism:

... “fear and deception have become the order of the day”. He also accused the Government of failing to provide adequate reason for its tough anti-terror laws.

“The Government is really saying on these issues, ‘trust us’, but no part of the history of the coalition’s invasion or occupation of Iraq or of the incident involving children overboard gives any member of that coalition the right to say on these issues, ‘trust us’...”

He went on to say:

“After the Tampa, after the children overboard, the experience and treatment of asylum seekers, the abandonment of ... Hicks, all suggest that any right to trust has long been destroyed.

“The Government knows that in relation to terrorism that the public is concerned, even fearful and can be made more fearful.”

Mr Fraser said the Howard Government had “long abandoned the middle ground” and had set aside the rule of law and “due process” in its haste to combat terrorism.

“The Government and the Labor Party have both assumed that we cannot fight terrorism and adhere to the basic principles of justice and democracy and the rule of law,” ...

Mr Fraser said the best way to defend a free society was through “adherence to our own principles”.

This Greens amendment is about adherence to our own principles and the bottom line as laid down in international law. Australia has prided itself on being way ahead of international law in protecting political and civil rights. We were fundamentally involved in the establishment of the United Nations, in the Universal Declaration of Human Rights and in the measures that are central to this amendment. We say to the government: let the amendment stand or you are indicating directly that you fear and you know that this legislation breaches international conventions to which Australia is a signatory.

**Senator STOTT DESPOJA** (South Australia) (5.00 pm)—The Australian Democrats support this amendment. That comes as no surprise, given that we moved and circulated a comparable amendment last week and given that our supplementary comments to the Senate Legal and Constitutional Legislation Committee call for the attachment of the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child to the legislation. We have made a recommendation in our report that those conventions be incorporated into the bill to allow for them to be regarded in relation to the bill’s operation.

Given those of us who were involved in the committee process, some criticisms of this type of amendment have been that it will
not necessarily have an impact. We recognise that attachment or incorporation of these conventions into the legislation will not necessarily change the dynamic of the bill or prevent this legislation from potentially breaching human rights obligations contained in those conventions. But what it does do is provide a salient reminder to the legislators of the day, to the government, of what our human rights responsibilities are.

As we all know, and have heard again during these debates, we do not have a bill of rights in this country—and, recognising that this is a separate but I think increasingly related argument, we need one. If this legislation does not put the case for a bill of rights and legislation—obviously talking through a statutory reform process—or a charter of freedoms and rights or a human rights act, then nothing else will. As we have already pointed out, this legislation potentially breaches a number of human rights standards and obligations that we have as a signatory to those conventions to which I referred.

During the committee process, as honourable colleagues would know, I put a series of questions about these issues to a number of witnesses—beginning with the Public Interest Advocacy Centre, PIAC. I asked them about the relationship of the bill to human rights law. In response to questions on that, Ms Jane Stratton, representing PIAC, stated that the bill in its current form has the potential to allow for human rights breaches. In order to ‘get a very clear perspective on the issue of enshrining or making reference to the international laws and conventions in the bill’, I posed the following questions:

You have given us a list in your submission of rights and freedoms that are potentially affected or could be breached as a consequence of this legislation. What are you seeking to do? How do we ensure proportionality in this bill?

Ms Stratton responded by stating that explicit acknowledgment of international instruments in the bill would be necessary for this purpose. Ms Stratton also raised what the Democrats believe is quite a salient point. She said:

If the government is confident that upon its advice there are no human rights problems then why not give the undertaking and give people the assurance that people in every other comparable jurisdiction have by virtue of an independent constitutionally entrenched charter of rights? If we are not to have that, then why not give the assurance in the bill?

Similarly, the Human Rights and Equal Opportunity Commission, HREOC, ‘endorses the incorporation of international human rights norms into domestic law’.

The Democrats believe that the absence of a bill of rights, a charter of rights or a human rights act in this country places a very clear obligation on the government to incorporate within this bill a consideration for the protection of fundamental rights and freedoms. The Democrats feel very strongly about this particular amendment because we believe in the principles and the responsibility enshrined in those covenants—the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. We feel very strongly about this amendment and we will be supporting divisions on this amendment and, if need be, a following amendment that will be moved in my name on behalf of the Australian Democrats.

I think Senator Brown is right to quote former Prime Minister Malcolm Fraser. Certainly his comments on this issue have been quite pertinent. When he says that he is ‘ashamed of the path that this government is leading his party and the nation down’ and when he says ‘this is the sort of law that you would find in tyrannical countries, implemented by what has become a party of fear and reaction’, I think we should take note. As
it is out of the mouth of a former conservative Prime Minister, I think we should be paying some heed to his particular concerns in addition to our own.

We will support this amendment and we have one of our own. This reflects our recommendation and indeed our questions and concerns as raised through the Senate committee process. To make clear where people stand, we will support a division on this amendment and, if necessary, a subsequent amendment to be moved on behalf of the Australian Democrats.

Senator Ludwig (Queensland) (5.06 pm)—The Labor Party will not be supporting Greens amendment (1) to the Anti-Terrorism Bill (No. 2) 2005 which has been moved by Senator Brown. One of the things that we have stated in this debate is that, in terms of supporting amendments, the government has moved or will move many amendments that derive from the Senate Legal and Constitutional Legislation Committee. The opposition will seek to move the remainder of amendments that the government has not sought to pick up. Hopefully we will get an opportunity to move those. That will depend on the time available. We have also looked at this amendment in that light. It is not one of the amendments that the Senate Legal and Constitutional Legislation Committee sought to adopt.

The committee dealt with it in a slightly different way, which is also consistent with the bill and with the amendments proposed by Labor and the Human Rights and Equal Opportunity Commission. There are, of course, many ways this type of mechanism or convention could be incorporated into domestic law. This is but one mechanism. The difficulty with the mechanism that is proposed in this amendment is that, firstly, it is not one that the Senate Legal and Constitutional Legislation Committee recommended. The committee did not see its way clear to adopt the particular amendment that Senator Brown has moved. Secondly, it has not been tested in the sense of how it would operate. With respect to the way the amendment is intended to work, section 5(2) says: … may make a declaration of that inconsistency and the provision of the Act shall be of no effect to the extent of that inconsistency.

It is similar to a states versus federal argument—or section 109 of the Constitution. But that it is a mechanism that is not particularly familiar to domestic judges as to how it would operate, nor is it supported by any reasonable discussion. Before we start to move down a track of adopting that style of incorporation, there should be a greater debate as to whether that is the best mechanism or whether there are other ways to bring about the same effect.

During the committee process, HREOC looked at that as an issue, but they came up with two things. First, they congratulated the government—or at least recognised, if they did not congratulate them—on ensuring that there was a proportionality test within the use of preventative detention orders and how those powers would operate. HREOC sought to strengthen that, which was recommendation 1 in their submission. That was adopted by the committee, which recommended that the bill include additional subclauses in section 105.4 (4) and (6) to require the issuing authority to be satisfied that the purpose for which the order is made cannot be made by less restrictive means. HREOC’s recommendation 17, at page 24 of their submission, states:

The issuing Court should be specifically required to consider whether there are less restrictive means of achieving the relevant purpose (protecting the public from a terrorist act).

It is a proportionality test that HREOC sought to include. HREOC did not make a recommendation on the incorporation
mechanism that Senator Brown has put forward. That is one other mechanism. HREOC seems to say that this test, the test of proportionality, strengthening the existing test within the legislation, is a better way to go. That is not to say that we should not have the debate about the type of incorporation that Senator Brown proposes today, but it is not something that I think we should simply adopt without a proper and full debate about what other types of mechanisms are available and what other ways we could achieve that purpose—especially when we already have a clear guiding principle from HREOC. That principle says that HREOC do not support the type of mechanism that Senator Brown has proposed and that the test of proportionality could be achieved by recommendations 1 and 17 of their submission—which were picked up by the Senate Legal and Constitutional Legislation Committee.

However, as disappointing as that is, it was not a matter that the government picked up, so the opposition have sought to move that to ensure that there is a proper test. The test is at the point of the operation of the law itself, which concerns the Labor Party, as to how the government will use these powers and whether they will be proportionate, appropriate and adapted to the purpose. They clearly do fall within laws that this government can make. There was significant discussion during the Senate committee hearings and, I suspect, outside it and within it, about these laws. Ultimately, though, when you look at HREOC’s submission to the committee—which I think is a reasonable position from a reasonable commission which is charged with looking after these matters—you could come to the conclusion that this was the appropriate mechanism to use to strengthen the existing bill.

On those grounds alone, the test that Senator Bob Brown is proposing, which has not had that scrutiny, cannot be supported. But as I have said, I think it is something that, as the law develops over time, should not be discarded either. We should continue to revisit that type of mechanism and examine other mechanisms to ensure that our laws are consistent with UN conventions—to ensure that we do follow the principles and do not abandon them, that we do not step over the line but use responsibly those conventions and principles that we have signed up to.

The other thing that might create difficulties is that our judges are not, in that sense, used to using these types of mechanisms of incorporation. It is not a matter that they, as I understand it, have turned their minds to. It is not a test that currently exists or is used in Australian law. So that would be another step that we would have to take to ensure that, if it was to be used, it was used well and appropriately. Therefore, for those reasons, Labor are not of a mind to support the Greens amendment, but we do understand the principle upon which Senator Brown proposes it. We understand that the overarching reason Senator Brown is pursuing it is to ensure that these laws are appropriate, they are proportional and they are adapted to the purpose.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.15 pm)—The government’s view is that the legislation, including the measures relating to preventative detention, control orders and sediton, is consistent with Australia’s obligations under international law, including international human rights law. The government further believes, as do other jurisdictions within Australia, I might point out, that the practice is rather to ensure that the legislation is consistent with those obligations without the need for an express qualification. That is, the inclusion of references to various international instruments is not the chosen method of the Australian government for implementing international obligations.
has done that consistently over a period of time and I believe that other jurisdictions in Australia do the same thing. The government is satisfied that not only are the measures consistent with those obligations but also the legislation contains sufficient safeguards to ensure that its implementation in individual cases will also be consistent.

In keeping with the government’s view that enhancing national security is consistent with protecting human rights, the bill has been developed so that it is consistent with Australia’s international human rights obligations as well as with the Racial Discrimination Act 1975. The government acknowledges that it is important to protect the community from acts of terrorism and it is also important to protect the rights of the individual, and it has taken great care to achieve a balance in this legislation. For those reasons, the government is opposed to the amendment moved by the Greens. The government believes that the legislation is consistent with our international obligations.

While I am on my feet, I just want to correct a matter which was raised by Senator Faulkner in relation to the Australian Federal Police Commissioner, Mr Keelty. Senator Faulkner referred to an interview on 8 November, saying Mr Keelty had said that he thought the current powers were sufficient. That was in the context of questioning by Kerry O’Brien about the shoot-to-kill powers, and I think it is important that people realise this: the prior questioning had been about the shoot-to-kill powers. That was the context of the commissioner’s comment. It was not in an all-encompassing way that he said the current powers were sufficient. The Australian Federal Police have made it very clear that they believe that the provisions in this bill are essential and are much needed.

Dennis Richardson, former director of ASIO, also commented on powers, which I think Senator Faulkner mentioned. There are two comments I would make here. Firstly, Mr Richardson made those comments before the London bombing and, secondly, with this bill we are aiming to direct further capacity to the Australian Federal Police and not ASIO. What we are talking about here are measures which can be employed by the Australian Federal Police, not ASIO, and therefore I do not believe Mr Richardson’s comments are relevant.

Finally, I notice that others in the chamber cited comments by Malcolm Fraser with approval. I note for the record that Senator Ludwig was not one of them. But they might also cite with approval Mr Fraser’s use of the armed forces in the 1970s when he was Prime Minister, after the Hilton bombing. I think Mr Fraser as the then Prime Minister was rather zealous in his application to looking out for matters of national security in that case and in calling out the Australian defence forces. Those who cite him with approval might also cite his actions with approval or perhaps try to distinguish them.

Senator BOB BROWN (Tasmania) (5.20 pm)—During that dual contribution from Labor and the coalition to ensure that this amendment from the Greens—and the Democrats, in effect—to have the international covenants on Australians’ rights written into this legislation is not agreed to, the lights flickered. I am told they went out in the House of Representatives, but they struggled to retain light here in the Senate and that is because the crossbench is here! The auguries are very clear: we are in a pretty dim situation. The government has changed enormously how Australians think and indeed how governments think on matters like human rights. We only have to look at Mr Viner—

Senator McGauran interjecting—
Senator BOB BROWN—The senator opposite, who I think referred to a former ambassador today as ‘a twerp’, is now rolling his eyes at the mention of Mr Viner, a former minister for employment and member of the government. In introducing the Human Rights Commission Bill in February 1980, Mr Viner said:

It will also be a step towards protecting the rights of individuals, a matter of utmost concern to the Government.

Mr Viner made it very clear that Australia was keen to stay at the forefront. He went on to say:

Countries in our region have for the most part not yet ratified the Covenant—

that is, the covenant on civil and political rights, which we are dealing with here—

and we believe—

that is, Australia believes—

they should be encouraged to do so. However, unless we ratify the Covenant ourselves—

and Australia went on to do that later that year—

and agree to be bound by it, we are hardly in a position to exercise influence on them.

Isn’t that so telling? Australia is eroding its position to talk about and defend human rights, including freedom of speech, in the rest of the world. Not only that, the opposition is doing it. I am astonished that Labor is voting against the International Covenant on Civil and Political Rights being upheld in this chamber. I am astonished that Labor is voting against the rights of the child, as in international law being upheld and reiterated in this chamber. I am astonished that Labor is saying, ‘We won’t uphold writing an international covenant into the legislation ensuring that citizens are not subjected to torture or cruel and inhuman punishment.’ ‘We’ll take the word of the government,’ says Senator Ludwig, who is now talking to the Leader of the Opposition in the Senate, in ignorance of this debate. This is a very serious matter. Where is this nation, when the government, with forked tongue, says that on the one hand this legislation does not cut across these fundamental rights of human beings in our country but on the other hand says that it will not allow that to be tested by the insertion, mention and reference to these covenants in a meaningful way in this legislation?

That is astounding enough. Mr Fraser summed it up by saying that Australia is entering a ‘darker’ period. Notwithstanding the cynical contribution from Minister Ellison a moment ago, let me say there is a thing called the wisdom of the elders, and it ought to be taken note of. After a long life, all of us can reflect on the human condition with a wisdom that we did not have when we may have been exercising the power. It is notable that admirals of the fleet, whether from the US, Russia or elsewhere in Europe, who retire will then say, ‘We’ve got to do something about the threat of nuclear weapons.’ That is a very clear example of a later reflection.

Senator McGauran—That’s because they’re not getting a pay packet anymore.

Senator BOB BROWN—Again we have the man who cries ‘twerp’ from the government benches interjecting in that frivolous way. I am referring to Senator Julian McGauran, who interjects from opposite. Does the government really think these matters are for frivolous intervention when we are under guillotine and wanting to concentrate our minds on matters that are hugely important to Australia? If that is the measure of the government’s contribution today, we certainly are in a darker period. We certainly are in a period of concern. And when the Labor Party says, ‘We’re not going to support this,’ we have to be doubly concerned. There is no alternative amongst the old parties on this matter.
What is more, the Labor Party is going to support the whole of this legislation when the guillotine falls in about one hour from now. This is a tawdry exercise in taking democracy out of this place. There is a duplicity abroad here from the Howard government, which is manifest in this opposition to this amendment. Of course, if it were dinkum, honest, if its word could be valued and had meaning and if it had integrity, the government would accept this amendment so that the rights of Australians, as written into international law and backed up by ratification of those laws by this nation, shall not be infringed upon by legislation brought through like this. The Prime Minister says they will not be. Then let that be tested in the courts. But, come the test now, that same Prime Minister says, ‘No, I won’t have a court test my word on this.’ Do you know why? It is because the Prime Minister’s word would be found not to be trusted in this matter. It would be found wanting. And he knows that, if this amendment were to go forward to test his word, for the first time we would have an independent arbiter. We would have the courts of this country determine who is right—whether it would be the Prime Minister’s word or our assertion, and the assertions of the legal community in this country, that this law abrogates, erodes, cuts into, the rights as written in international law.

‘Let us have it tested by the court,’ we say. ‘No,’ says the Prime Minister, ‘I cannot withstand that test. I am not prepared to have an independent arbiter. I do not accept that the courts of Australia should judge me in this fashion because they will find me guilty of not upholding international law here.’

The Prime Minister refuses to accept the challenge because the Prime Minister knows he is guilty of shredding important international conventions with this legislation. What is more, we have found that in the last 10 minutes Mr Beazley, the Leader of the Opposition, says the same. He does not want this legislation to have this amendment either, and that is truly astonishing. That is the abrogation of opposition if ever I saw it. That is the failure of opposition and the defence of the rights of the people of Australia.

Senator NETTLE (New South Wales) (5.29 pm)—I want to pick up on some comments Senator Ludwig just made in the chamber in relation to this amendment. He made some comments to suggest that the opposition would not be supporting this Greens amendment to ensure that this law is consistent with our rights under the International Covenant on Civil and Political Rights. The sentiment of what I understood he was saying was that we had not looked at other ways in which it could be done. I want to let Senator Ludwig know that this Australian Greens amendment is based on the way in which the United Kingdom Human Rights Act operates.

The way in which the Labour Party in the United Kingdom seek to ensure that they comply with international law as it relates to human rights is that they use the same procedure to say, ‘This should be read as being consistent with our international obligations under human rights law.’ Where it is not, the court can make a declaration to say that the law is inconsistent with international treaties and human rights laws. So that is the system that the Labour Party in the United Kingdom choose to operate under.

As others have said, it is disappointing—the mildest way to put it—that the opposition in here has chosen not to take that position. This comment was made today by the president of the Law Council, Mr John North:

Unlike the Labor Party, we’ve put up a decent fight.

Those words ring true for me when I think of the effort put in by the lawyers of this coun-
try through their representative body, the Law Council of Australia, to speak up for human rights and to speak out against the detention without trial proposals that are in this legislation. Unlike the Labor Party, the lawyers of this country have at the very least put up a fight, and that is obviously something that the Greens will continue to do.

The other comment I want to make in relation to this particular amendment is that during the committee process we heard from the only person in Australia whose job it is to determine whether or not legislation complies with a human rights act or a bill of rights—that is, Dr Helen Watchirs, who is employed as, I think it is called, the ACT human rights commissioner. Her view—let me just remind you: she is the only person employed to make such a determination in this country—was that this bill does not comply with the International Covenant on Civil and Political Rights in two main respects: the right to a fair trial and the right to liberty.

We have heard from the government that they have a different view. We also know that they have not been prepared to provide any legal advice as to whether or not it complies with the International Covenant on Civil and Political Rights. We have had 209 submissions to the Senate inquiry, many of which mention the variety of different ways in which those lawyers—it was predominantly lawyers making submissions—believe that this law did not comply with Australia’s obligations under international human rights law. So the Greens have put forward this amendment which gives the government the opportunity, if they truly believe it complies with international law, to support an amendment which says so. Our amendment says: read this law as though it is consistent with international human rights law. If it is not, the court can say it is not, just as the Human Rights Act operates in the United Kingdom.

The Greens amendment says: do we want to ensure that we are consistent with our international human rights obligations? The Greens say that is something we should do. This is the opportunity for the Senate to determine whether or not senators want to ensure that our laws comply with international rights standards, and I ask the Senate to do so.

Senator LUDWIG (Queensland) (5.34 pm)—It is interesting to hear that from Senator Nettle. Let me say this on behalf of Labor: if you go back and look at the original Stanhope draft, Labor came out swinging. We came out swinging federally to improve upon that bill. We came out with the states to ensure that the Stanhope draft was not going to be the legislation that we now are faced with. That is clear. We put the proportionality back into this legislation—not the Greens, not the Democrats: Labor. Labor came out with this very early and very hard and, as a consequence, we are not faced with the same bill that would have been foisted on us which the Greens would not have been able to protect or stop. It would have been the Stanhope draft if it were not for Labor, and we continue to fight.

If you look at the amendments that have been moved by the government, the government did not decide to roll over and play ‘tickle my tummy’ because it thought it needed to. It was pushed, shoved and cajoled to ensure that there was fairness and proportionality in the bill before us. If you look at the legislation committee report, you can see that Labor fought for much better outcomes and sought recommendations. Labor have not only been able to encourage the government to pick up the recommendations made by the committee to make sure the bill is fairer, proportional, appropriate and adapted to the purpose for which it is to be used but also those recommendations that the gov-
ernment did not pick up Labor has put on the table for the government to pick up.

We are not going to stop there. The Greens might walk away from this argument saying, ‘We moved our amendment. We didn’t get it to succeed and we have walked away.’ Labor has said that there are some fundamental principles that we are going to continue to bat on with. We are not going to stop here. We know the reality. We know the reasons for this law, and that is why we support it. We know that it can be better but we are not going to stop at this point. We are going to continue even after this law is made to argue how it can be improved. We have said that time and again.

There should be better scrutiny. There should be better parliamentary oversight. There should be three-monthly reviews. The committee only recommended six months. That is the recommendation on which we will move an amendment here today. We will not move the three months. But that is not to say that we will abandon that. We will continue to push that. We will continue to say that there should be a sunset provision. We will continue to say that there should be a review. We said that when we saw the Stanhope draft and we have continued to say that. We will continue to argue for it. I have no doubt at all that our shadow Attorney-General will continue to progress these arguments to ensure that this government understands that it should have picked up all our amendments. It should have made this bill better. It certainly has moved a fair way from the Stanhope draft and there is still further to go. We are not going to abandon those issues.

Senator STOTT DESPOJA (South Australia) (5.37 pm)—The Australian Democrats do not see the proportionality in this bill. It is not there. Learned lawyers, human rights organisations, Muslim representative groups and community groups have made it very clear that they do not see proportionality evident in this legislation. It ain’t there. It does not matter how many criticisms or barbs are thrown at the crossbenches in this debate, by either of the major parties, to be quite frank. In fact, I am not going to pretend that this is comfortable for Labor. I have seen the squirming. I would be squirming too. To suggest, ‘Hey, we’ve put the P into proportionality,’ is a joke. No-one who has looked at this legislation is going to believe it.

Because of the truncated time for debate, a number of serious amendments that highlight the lack of proportionality in this bill, and indeed amendments that attempt to inject proportionality and/or provide safeguards or at least ameliorate some of the worst aspects of this legislation, are not going to be debated. Some of them include the treatment of children. The Democrats are on the record as having explained and outlined our concerns when it comes to the treatment of children aged 16 to 18.

This relates to potential breaches of our international obligations, particularly and specifically in relation to the Convention on the Rights of the Child. During the committee and since, we have heard evidence from a range of organisations that suggest that the Convention on the Rights of the Child would be breached by the proposals under this bill. The Democrats have made it clear from day one that we oppose the application of this bill for children—that is, minors 16 to 18 years of age. We believe that, as it stands, there are potential breaches. There is the possibility of breaches of the Convention on the Rights of the Child under this legislation, most notably, of course, article 37, which provides:

States Parties shall ensure that:

...
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

They are the key areas. I want to know from the minister what makes the government think that they have not breached, or there is not the potential to breach, the Convention on the Rights of the Child. And if they are so convinced that they are not breaching these international human rights, these standards, these obligations, these responsibilities, then let us be honest: this is not a tough amendment. As much as I think some in this place—including myself—would like this amendment to ensure that there is conformity, it does not ensure conformity with the law, nor does the Democrat amendment on this same issue. It attaches, it makes clear, it exposes, it allows people to assess how this legislation deals with our international obligations in light of those particular conventions and those rights. So, if the government is so sure, that should not be a threatening amendment. It should not be a threatening amendment for the opposition either.

Amnesty International has said that the control order provisions in this bill potentially breach article 40 of the Convention on the Rights of the Child. Article 40, as we know, provides that a child is presumed innocent until proven guilty; yet the operation of control orders imposes a penalty without charge or the opportunity to answer a charge. So there is a potential breach there. Protection against threats to these rights can be guarded against, or at least could be exposed, by enshrining, as this amendment attempts to do, this convention and others in the legislation. I might add, because, again, I do not think we will get the chance when these amendments are subject to specific debate, that the Democrats have put on record in our committee report the comments of the Northern Beaches Civil Rights Forum in relation to the issue of child advocates:

Child advocates should be provided for children subject to preventative detention orders and control orders; and for those affected by proximity to other individuals subject to such orders.

I was going to move an amendment on this but I can tell that in the interests of time it is not going to be debated and it is probably not going to be voted on in terms of a division, so there is probably little point in pursuing that matter. But I just want to make this very clear: we and other people believe that this bill allows for the transgression of specific rights as they are afforded to children. We believe that children are affected in a deleterious, retrograde way by this bill. I want to know why the government are so convinced that their legislation is in conformity with our international obligations. If they are, what is the threat of this amendment? It should not really be a threatening amendment. But I particularly want to know how children are going to be protected under this bill and I want it on the record.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.44
Can I make it very clear that we do not believe that the provisions offend any international obligation that Australia has—as I have said previously. A preventative detention order will only be able to be made against a person aged between 16 and 18 where the issuing authority is satisfied that the order will substantially assist in preventing an imminent terrorist attack occurring or to preserve evidence of a recent terrorist attack. Article 37(b) of the Convention on the Rights of the Child states:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The ... detention ... of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

The test to ensure the detention is not arbitrary is whether it is reasonable, necessary, proportionate, appropriate and justifiable in all the circumstances. The government is satisfied that the preventative detention regime in the legislation meets Australia's obligations under the Convention on the Rights of the Child in that the detention will not be arbitrary, will only be available in relation to an imminent or recent terrorist attack and will be for the shortest appropriate time. Clause 105.39 provides that a detainee over 16 but under 18 can also have contact of two hours at a time with his or her parents or guardians, unless one of those people is subject to a prohibited contact order.

We believe that for those reasons those provisions do not offend the rights of the child, and we are confident that this legislation is constitutional and abides by our international obligations.

Senator NETTLE (New South Wales) (5.46 pm)—I just want to make the record clear, following Senator Ludwig's comments that the Labor Party fixed the bill after we saw Jon Stanhope's draft. The Leader of the Opposition, Mr Kim Beazley, said on 31 October that the Labor Party would be supporting this bill, before he saw the legislation. I just wanted to make sure that that was clear on the record.

Question put:

That the amendment (Senator Bob Brown's) be agreed to.

The Senate divided. [5.51 pm]

(The Chairman—Senator JJ Hogg)

Ayes………….. 8
Noes………….. 45
Majority…….. 37

AYES

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

NOES

Adams, J. Barnett, G.
Bishop, T.M. Campbell, G.
Calvert, P.H. Colbeck, R.
Carr, K.J. Crossin, P.M.
Conroy, S.M. Ellison, C.M.
Eggleston, A. Faulkner, J.P.
Evans, C.V. Fierravanti-Wells, C.
Ferguson, A.B. Humphries, G.
Hogg, J.J. Johnston, D.
Hurley, A. Kemp, C.R.
Joyce, B. Lightfoot, P.R.
Kirk, L. Lundy, K.A.
Ludwig, J.W. Mason, B.J.
Macdonald, J.A.L. McGauran, J.J.J. *
McEwen, A. Moore, C.
McLucas, J.E. O'Brien, K.W.K.
Nash, F. Payne, M.A.
Parry, S. Polley, H.
Polley, H. Ronaldson, M.
Santoro, S. Sherry, N.J.
Stephens, U. Troeth, J.M.
Tweed, R. Watson, J.O.W.
Wortley, D.

* denotes teller

Question negatived.

Senator LUDWIG (Queensland) (5.55 pm)—I move opposition amendment (1) on sheet 4773:
(1) Page 4 (after line 14), after clause 4, add:

5 Public and independent review of operation of Security Acts relating to terrorism

(1) The Attorney-General must cause a review of the operation, effectiveness and implications of amendments made by Division 105 of Schedule 4 of this Act.

(2) The review must be undertaken as soon as practicable after the fifth anniversary of the commencement of the amendments.

(3) The review is to be undertaken by a committee consisting of:

(a) up to two persons appointed by the Attorney-General, one of whom must be a retired judicial officer who shall be the Chair of the Committee; and

(b) the Inspector-General of Intelligence and Security; and

(c) the Privacy Commissioner; and

(d) the Human Rights Commissioner; and

(e) the Commonwealth Ombudsman; and

(f) two persons (who must hold a legal practising certificate in an Australian jurisdiction) appointed by the Attorney-General on the nomination of the Law Council of Australia.

(4) The Attorney-General may reject a nomination made under subsection (3)(f). If the Attorney-General rejects a nomination, the Law Council of Australia may nominate another person.

(5) The committee must provide for public submissions and public hearings as part of the review.

(6) The committee must, within six months of commencing the review, give the Attorney-General and the Parliamentary Joint Committee on Intelligence Security a written report of the review which includes an assessment of matters in subsection (1), and alternative approaches or mechanisms as appropriate.

(7) The Attorney-General must cause a copy of the report to be tabled in each House of the Parliament within 5 sitting days of that House after its receipt by the Attorney-General.

(8) Before the copy of the report is tabled in Parliament, the Attorney-General may remove information from the copy of the report if the Attorney-General is satisfied on advice from the Director-General of Security or the Commissioner of the Australian Federal Police that its inclusion may:

(a) endanger a person’s safety; or

(b) prejudice an investigation or prosecution; or

(c) compromise the operational activities or methodologies of the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Defence Signals Directorate or the Australian Federal Police.

(9) The Parliamentary Joint Committee on ASIO, ASIS and DSD must take account of the report of the review given to the Committee, when the Committee conducts its review under paragraph 29(1)(ba) of the Intelligence Services Act 2001.

This amendment relates to the review mechanism. This was an issue that was highlighted by the Senate report. Recommendations 17, 25, 28, 30, 39, 44 and 49 of the committee report all sought to ensure that there were review mechanisms. As part of its recommendations, the committee indicated that it wanted wide-ranging reviews of the effect and impact of the bill, particularly in relation to the more contentious provisions—in particular, sedition, preventative detention orders and control orders. The government has indicated that it will hold a review of the
seditious provisions of the bill after the passage of the legislation through here.

I would like to put aside the question of why the government are not simply holding the review first. It would seem logical to do it first. It does make more sense, but we do not seem to expect that from the government anymore, since they now have the numbers. Before introducing the seditious provisions, the government must also commit to a review of the provisions of schedule 4 of the bill, which relates to control orders and preventative detention. The Labor Party has moved amendments to ensure that a full public inquiry is held into the operation of that division after five years. It is a matter that the government have started to move towards. If you look at the Sheller report, the government are starting to understand that, with any legislation that they have passed since the original terrorist legislation back in 2001-02, there is a need to continue to be vigilant and to review the legislation to make sure that it is still relevant and appropriate and that there are not any unintended consequences. We also then learn from any operational issues that may arise as well. There are two sides to that coin. One might be the unintended consequences, and the second might be improvements that are necessary or that come to light as the legislation operates.

Given the controversial nature of these provisions, the review is necessary both to allay fears and to ensure that, after a period of time, there is a proper examination of the effectiveness and appropriateness of this schedule. There is much more that I could say about this provision but I do understand there are a couple of other matters that we want to deal with in the remaining half an hour or so that we have. It is a recognition that we are not going to get through all of the amendments of Labor, the Liberals, the Democrats or the Greens. That is a great pity. But, having said that, I will finish my contribution at this point and see if I can gain support if not from the government then at least from their backbenchers or the minor parties.

**Senator STOTT DESPOJA** (South Australia) (5.58 pm)—Senator Ludwig’s wish has been granted! The Australian Democrats will be supporting the amendment that he has just moved on behalf of the Labor Party. We think that the notion of a public and independent review as outlined in this amendment is positive. There are aspects that we would maybe change slightly, but on the whole I think it is a good amendment and the Democrats will be supporting it.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (5.58 pm)—The government will be opposing this amendment. COAG has agreed to a five-year review and we believe that should be sufficient. The Prime Minister will be discussing the details of that review with COAG in due course. For those reasons, the government oppose this amendment.

Question negatived.

**Senator STOTT DESPOJA** (South Australia) (5.59 pm)—I move Democrat amendment (1) on sheet 4787:

1. Page 4 (after line 14), at the end of clause 4, add:
   
   (3) The amendments made by Schedule 7 are to be reviewed by the Australian Law Reform Commission.

2. A copy of the report of the review required by subsection (3) is to be given to the Attorney-General one year after this Act receives the Royal Assent and the Attorney-General must cause a copy of the report to be laid before each House of the Parliament within 5 sitting days after the Attorney-General receives the copy of the report.

3. If a copy of the report required by subsection (3) is not laid before each House of the Parliament in accordance with subsection (4), Schedule 7 ceases...
to have effect the day after the day on which a copy of the report is required by subsection (4).

This amendment relates to the review of the seditious provision. The proposal is for a review after one year. As you would know, Mr Temporary Chair, and as honourable senators would be aware, the Australian Democrats are on record as vehemently opposing schedule 7—that is, the seditious provisions—as they are currently in this legislation. I want to make that very clear, because I am moving this review in that context. We understand, given the numbers in this place, that it does not look like those offending provisions in schedule 7 will be removed. Nonetheless, as you will see on your running sheet, the Labor Party, the Australian Democrats and others, including, I think, the Greens, have identical amendments to get rid of that provision. But we recognise that we may not be successful.

In light of that, and in light of an announced review by the government, we have moved to amend schedule 7. This amendment involves the expiration of schedule 7 after one year, in the event that a report of a review by the Australian Law Reform Commission has not been completed and laid before each house of parliament by the Attorney-General. So the amendment provides that the commission will give a copy of the review to the Attorney-General, who must cause a copy of the report to be laid before each house of parliament. If the report is not tabled, the schedule will cease to have effect the day after the day on which a copy of the report was required to be tabled.

I think the intent of this provision is clear. If members—particularly members of the Liberal Party who have expressed quite publicly, and otherwise, their concerns with seditious matters—are relying on the fact that a review is proposed and will take place and if those members of the Senate committee who put forward recommendations relating to reviews of those provisions are feeling safe because of the Attorney-General’s comments and the minor, tinkering changes to the legislation, this just gives added certainty.

This should not be a scary proposal or a scary review. It just makes sure that the government gets back to this chamber within a year. I know how long reviews by governments can take; I know how long governments can take to respond to reviews. Obviously, it is our preference, and it is the preference of many others, that the Australian Law Reform Commission looks into this issue, examines this issue and reports. Certainly do not want to see another repeat of an example I have, I know, often cited in this place. But the Australian Law Reform Commission’s report—essentially yours—that inquiry into genetic privacy, which reported in March 2003, has yet to get a response from government. I know it is under way, and I do not mean to deflect from this debate, but I just want to make it very clear: we propose a one-year review. I know this amendment has support in the chamber. I know it has support from members of the government. I hope they vote for it.

**Senator Ludwig** (Queensland) (6.03 pm)—I will not take up too much time on this amendment. It is one of these difficulties where the principle is clear: Labor has said that this schedule 7 should go to the Australian Law Reform Commission. The Attorney-General should make that reference. He should provide a term of reference which is broad enough to include what those issues are, and it should be dealt with there. That is not the case—and I think this is one of the difficulties we get into where the mechanism is not in accordance with what the committee recommended. Therefore it will not gain our support.

In principle it is something that Labor has said should happen. But it is a matter that Mr
Ruddock has backed away from. He has indicated that it will be reviewed. It should be reviewed before it is passed here. I doubt, Senator Stott Despoja, that you will get any backbench support. They have found their fig leaf, in the alternative to the committee recommendations dealing with sedition, and they are going to hide behind it. That is all it is. We know it, they know it and I suspect the public know it as well.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.04 pm)—Senator Stott Despoja’s amendment requires that there be a review by the Australian Law Reform Commission. It is no secret that the Attorney-General has said that he will be referring the sedition provisions to the Australian Law Reform Commission, and the supplementary explanatory memorandum reflects this. On the basis of that, the government believe that this is adequately catered for. There is therefore no reason to support the Democrat amendment and we will, of course, be opposing it.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.05 pm)—I move government amendment (3) on sheet QR323:

(3) Schedule 1, item 9, page 6 (line 11), at the end of paragraph 102.1(1A)(c), add “in circumstances where there is a risk that such praise might have the effect of leading a person (regardless of his or her age or any mental impairment (within the meaning of section 7.3) that the person might suffer) to engage in a terrorist act”.

This item amends schedule 1 of the bill in relation to the definition of a terrorist organisation. Item 3 ensures that an organisation can only be listed as a terrorist organisation in circumstances where the organisation praises a terrorist act and there is a risk that such praise might have the effect of leading a person to engage in a terrorist act. That, I think, is a clear provision, and I commend the amendment to the committee.

Senator LUDWIG (Queensland) (6.06 pm)—This amendment is consistent with what the Senate Legal and Constitutional Legislation Committee found and it gains our support. It is a significant improvement, as are some of the others. It is one that Labor think will help those people in interpreting the law when it passes here, and therefore it will help overall.

On the subject of advocacy, though, we know that the government might send the sedition provisions off to the Australian Law Reform Commission, but it should also send these provisions as well, as the Senate Legal and Constitutional Legislation Committee recommended and Labor supported.

Senator STOTT DESPOJA (South Australia) (6.07 pm)—The Australian Democrats will support the amendment. We think it is an improvement—I am not sure it is significant, but it is certainly a start—and we supported that recommendation contained in the committee’s report.

Question agreed to.

Senator NETTLE (New South Wales) (6.07 pm)—The Australian Greens oppose schedule 1 in the following terms:

(1) Schedule 1, item 9, page 6 (lines 2 to 11),

TO BE OPPOSED.

This amendment has to do with the definition of advocating a terrorist act. The Australian Greens amendment is to oppose the section. It is a section which we had a significant amount of debate about in the Senate inquiry. It is worth noting that, as in previous inquiries held by the Senate Legal and Constitutional Legislation Committee, we were provided with assistance from the Attorney-General’s Department. It indicated that protests like, for example, those outside the front of Woomera Detention Centre at Easter
some years ago may well fall under the definition of a terrorist act.

One of the reasons the Australian Greens have a particular objection to this part of the bill is that the definition of a terrorist act is so broad. As I said, we had members of the Attorney-General’s Department indicate to us that they believed it would also include the actions of protesters out the front of somewhere like Woomera Detention Centre. We need to be very aware of and careful about sections like this one, which allow an organisation to be found to be unlawful because it is involved in directly praising the doing of a terrorist act. If a terrorist act is defined that broadly then organisations like the Refugee Action Collective or other groups that advocate activity that the government chooses to define as a terrorist act could be caught in that.

We are well aware from the track record of the government that they are quite willing to use intelligence information to suit their own political agenda. When we look at the way in which definitions around national security were used to support the deportation of the nonviolent peace activist Scott Parkin, it becomes very evident why the Australian Greens, in particular, have concerns about this type of legislation. Every piece of legislation like this, not just in Australia but around the world, has been used against peaceful people who were protesting, whether they were trade unionists, student activists, or feminists who were locked up in Malaysia under the internal security act. The argument put forward for that legislation at the time was that it was about armed communist guerrillas in the mountains. The legislation was then used against a far wider group of people.

We recognise that this legislation will first be used against members of the Muslim community in Australia. It is also clear from the way in which this government is already using its national security powers that it will also be used against peaceful protesters, people like Scott Parkin and others. So we have particular concerns about this part of the legislation. It was something that we were not able to get clear statements on in relation to the government’s intention in this matter.

I now ask the minister about this part of the legislation, which seeks to label an organisation that is seen as praising, urging or counselling the doing of a terrorist act as a terrorist organisation. Could he outline for the chamber at what point the government defines an organisation as having that particular view. Is a statement by the leader of the organisation seen as an indication that the organisation supports, urges or praises the doing of a terrorist act? There was some comment during the committee inquiry that perhaps minutes of a meeting would be needed indicating that the organisation had that view. Other senators rightly pointed out that not every terrorist organisation in the world has meetings for which they keep minutes which could then be used as justification for the view of that particular organisation.

Could the minister indicate to the chamber what the government would require in order to make the determination that a particular organisation held a view about urging, praising or counselling the doing of a terrorist act? That would help the committee to understand the government’s intention behind this legislation, and behind this particular part of the legislation which the Greens now move to oppose.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.12 pm)—At the outset I say that the government opposes the Australian Greens amendment (1) on sheet 4755. This amendment seeks to delete the definition of ‘advocates’ as defined
in subsection 102.1(1). This deletion would create more uncertainty. The government took great care when drafting the definition of advocates to ensure that it was clear in its meaning, and deleting it would result in further uncertainty.

Senator Nettle has asked how you can evidence what an organisation says and does. Of course, that relies on organisational principles—that is, how it is structured and how the opinion is expressed. It would be determined on the facts of the case. The definition of advocates in the bill states:

In this Division, an organisation advocates the doing of a terrorist act if:
(a) the organisation directly or indirectly counsels or urges the doing of a terrorist act; or
(b) the organisation directly or indirectly provides instruction on the doing of a terrorist act; or
(c) the organisation directly praises the doing of a terrorist act.

That is fairly clear as to what amounts to advocating. It is spelt out there.

The question that Senator Nettle asked goes more to the question of the organisation itself: how do you attach the counselling or the expression to an organisation? I think that is where the Greens miss the point with their amendment. They seek to delete ‘counsels’ or ‘advocates’. With an organisation, a normal interpretation would apply. We understand what an organisation means in common parlance. It is usually a group of individuals who organise themselves, normally in a voluntary fashion, for a common purpose. That is something which I think would apply here.

I just want to correct something that Senator Nettle said—that is, that the evidence of the Attorney-General’s Department during the course of the committee inquiry was that a protest could be seen as a terrorist act. I am advised that Mr McDonald, who appeared for the Attorney-General’s Department, made it very clear that a normal political protest would not constitute a terrorist act. I just want to make that very clear as to the evidence that was given before the Senate committee.

Senator NETTLE (New South Wales) (6.15 pm)—Just so the minister understands, I was not speaking about the comments of Mr McDonald at the latest Senate inquiry; it was a previous inquiry of the Senate Legal and Constitutional Legislation Committee in 2002 into the ASIO legislation at which Senator Scullion asked another representative of the Attorney-General whether the circumstances of Woomera would be considered a terrorist act. That was the instance to which I was referring, not the comments of Mr McDonald.

Senator LUDWIG (Queensland) (6.16 pm)—We are running out of time. I would have liked to have said a lot more about this particular amendment. The Labor Party will not be supporting this amendment. It is not consistent with the Senate Legal and Constitutional Legislation Committee’s findings or our subsequent amendments arising from those findings. The other problem with it goes back to the type of proscription regime that we have in place. We now have a process where those organisations which are proscribed do come back here to the parliament for a check, which I am sure Senator Brown has often recognised as the appropriate place for these things to be scrutinised. That is the system that we operate under. Sedition provisions should be reviewed. The government should also send this off to the Australian Law Reform Commission, but it is not going to do that.

Senator BOB BROWN (Tasmania) (6.17 pm)—It goes without saying that what is happening here is that the opposition are saying, ‘We are bound within the limits of what the Senate committee recommended.’ Take
that a step further and you see that the committee was represented on the government side by Senator Payne, Senator Mason and Senator Brandis. They made some very strong points, but the government rejected the whole pile of them. However, they did not go to the point of rejecting this legislation as they ought to have or to making the massive changes which would have made it somewhat consistent with international standards or to ensuring that domestic political rights and freedom of speech were assured. You only have to look at the comments from media organisations to see how far short of the mark those recommendations from the committee were in making this legislation safe in terms of protecting free speech and political standards.

What Senator Ludwig is saying is, ‘Our standard here is the same as Senator Brandis’s.’ Senator Brandis came over and congratulated Senator Conroy after his speech last night which, in effect, eulogised what the government is doing here. A senior front-bencher from Labor eulogised this legislation to the point where Senator Brandis and Senator Mason came over and shook hands with him and lauded that speech. It is remarkable politics and a remarkable capitulation by Labor to the government on this legislation. It is a remarkable failure by the Labor Party to stand up not just for international law but also for standards which media organisations, legal organisations and human rights organisations in this country have said are the limits in proportionality.

This is a disproportionate bill. It trespasses against protecting civil rights—that is, the right to free speech, the right not to be held for days, months, weeks and years without charge and the right to have the confidence of your lawyers. These things are broken by this Labor Party and by this government in this legislation. We are going to see the guillotine applied in 10 minutes and Labor collapse into the arms of the government on this sell-out of Australian and international standards in human rights and the right to freedom of speech. That is what we are now confronted with. Labor has aligned itself with Senator Brandis as the arbiter of where the line can be drawn on protecting the rights of Australians against the wishes of the government. Of course, Senator Brandis did not stand by the committee findings at all. Labor is saying it has. It is standing by Senator Brandis’s, Senator Mason’s and Senator Payne’s recommendations of a week ago, even though it will not go quite so far as to the point of their retreat this week at the hands of the executive of the government.

This is an appalling outcome. Both the process and the outcome are wrong. The Australian public expect an opposition with the gumption to stand up against this theft of rights, not least the right of freedom of speech, from the Australian people by the Howard government on this day in the Senate. Instead of that, Labor has capitulated.

Mr Beazley said, ‘We should have included locking down of suburbs when the time comes for a terrorist alert.’ That is in this legislation. Senator Ludwig said, ‘The Chief Minister of the ACT stood up for Labor.’ But we know that he has made it clear that this legislation does not stand by the ACT’s assurance that the International Covenant on Civil and Political Rights should be upheld. We have just had Labor vote against that, against Mr Stanhope’s line in the sand. Labor has sold out today, as the government erodes the rights of Australians. It is unforgivable. I think Labor sold out on its own history of defending those rights, on its own proud record, today in here. That does not excuse in any way the lead role taken by the coalition. This is the government and opposition versus the people of Australia, as I see it. The defence is on the crossbench, with the Greens and the Democ-
rats. I think the Labor Party will come to rue the day it took the decision to fail to defend even international norms, now long established, in the Senate this evening.

The Scott Parkin affair that Senator Nettle referred to is a classic example of the misuse of laws against a person who was no threat to this country. He never was and never will be, but he was deported without any satisfactory trial because the government did not like his presence in this country. I remember very well Premier Gray bringing laws in to make it an arrestable offence to trespass. After hundreds of years of common law said that could not happen, that was brought in because people were going to protest in their own forests by the Franklin River. You know what? Within three years they were arresting unionists on the Burnie wharf under exactly the same legislation.

Let us make it clear to the opposition that this is done with eyes open, and when these laws are abused and used against people who are not planning, plotting or threatening terrorism in this country, it will be not only because the government brought them in today but because the opposition supported them. There should be a ferocious defence of the rights of people to free speech in this country and to vigorous political opposition, but those rights are being threatened by this legislation here today. It is appalling that the Labor Party under Kim Beazley has capitulated to the government because it is frightened to stand up against the use of fear in politics. This moment will pass and we will have more legislation in here and more erosion. While Mr Beazley leads this party, the opposition will continue to capitulate to the government.

This is an extraordinarily low point in the history of politics and the history of oppositional politics in Australia. It is proposed that an opposition, particularly a Labor opposition—a party of social justice—will stand up for justice and ensure that government does not intrude on the rights of individuals, and the Liberal philosophy says the rights of the individual will be protected, and the best the government, echoed by the opposition, can do in here is say: ‘Security first. The primary right is to safety.’ There has been no explanation in this debate justifying these laws. There has been no logic delivered which says, ‘This would have prevented, for example, the London terrorist attacks,’—we know it would not have—or, ‘This will in some way or other add meaningfully to the laws that we already have to surveil, track down, interrogate and arrest terrorists in our midst.’

Senator LUDWIG (Queensland) (6.27 pm)—We have just heard criticisms on a range of issues. Let me be quite clear about Labor’s position: we are tough on fighting terrorism but we also demand strong safeguards. In this debate we have used our time effectively to hold the government to account, to expose their weakness, to expose their backbench and to see through their rhetoric in the press. What they said in the press seems to be in part, although we had a personal explanation from Senator Brandis, different from what they then said in parliament. Mr Turnbull said one thing in the parliament and he went outside and said another.

The Senate is where you have the opportunity to say what you mean. In this place Labor have said that we oppose the sedition measures. We should divide on that issue. We should ensure that the government and its backbench are put to the test. Mr Turnbull in the other place will have an opportunity when these amendments go over there to also oppose that. I doubt he will. I doubt he will stare down Mr Ruddock, or the Prime Minister, for that matter.
Labor have through this process recognised that the environment in which we live is different, but we have also recognised that we need laws and our law enforcement agencies need the ability to utilise those laws, to ensure that we are free and continue to have the right to be free of terrorism. That is the purpose of this legislation—to ensure that those rights are also championed. Labor have been strong on UN conventions and principles. Bob Brown, you know that as well as anyone else in this chamber.

Senator Bob Brown interjecting—

Senator LUDWIG—Labor have championed those principles over and over again. Labor are the only party that can hold this government to account and we have done so many times before today. Senator Brown, you know that and you continue to barb us, when in fact the coalition is the enemy in this. The coalition needs to listen to the debate here.

Senator Stott Despoja interjecting—

The CHAIRMAN—Sorry, Senator Stott Despoja, the time allotted for the consideration of the remaining stages of the bill has expired.

Senator Stott Despoja—Can I seek leave?

The CHAIRMAN—No, the guillotine cuts in now.

Senator Stott Despoja—There are 34 amendments. It is my third chance. That is not your decision. I just want to record my disgust.

The CHAIRMAN—Senator Stott Despoja, as I said, the time for the consideration of the remaining stages of the bill has now expired.

Senator Bob Brown—Mr Chairman, I rise on a point of order. I think Senator Stott Despoja has every right to seek leave. It is up to the government, if they want to, to deny that leave.

The CHAIRMAN—Senator Brown, leave does not apply with the operation of the guillotine. The guillotine cuts in automatically. For the benefit of the committee I have had circulated a sheet which will outline the way the remaining stages of the bill and the outstanding amendments will be dealt with. Unless anyone has any objection, I intend to proceed down this path. The question is that item 9 of schedule 1, as amended, be agreed to.

Question agreed to.

The CHAIRMAN—The question is that Australian Democrat amendments (17) and (18) on sheet 4764 revised be agreed to.

(17) Schedule 4, item 24, page 72 (line 24), omit “but solely”, substitute “including”.

(18) Schedule 4, item 24, page 74 (lines 8 to 27), omit subsections 105.38(1) to (4).

Question put.

The committee divided. [6.36 pm]

(The Chairman—Senator JJ Hogg)

Ayes………… 31

Noes………… 33

Majority……… 2

AYES

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

The CHAIRMAN—The question is that Australian Democrat amendments (9), (10), R(10A), (12), R(12A), (13), R(13A), R(14A), R(16A) and R(16B) on sheet 4764 revised be agreed to.

(9) Schedule 4, item 24, page 38 (lines 9 to 11), omit “16” (twice occurring), substitute “18”.

R(10A) Schedule 4, item 24, page 38 (lines 12 to 19), omit subsections 104.28(2) and (3).

R(10A) Schedule 4, item 24, page 38 (after line 19), at the end of section 104.28, add:

(4) An independent child welfare and advocacy officer must oversee the health and welfare of a person of a class specified in subsection (1) from the time any control order is issued, for the duration of the order.

(12) Schedule 4, item 24, page 42 (lines 30 to 33), omit “16” (twice occurring), substitute “18”.

R(12A) Schedule 4, item 24, page 42 (lines 34 and 35), omit the note.

(13) Schedule 4, item 24, page 43 (lines 1 to 21), omit subsections 105.5(2) and (3).

R(13A) Schedule 4, item 24, page 43 (after line 21), after section 105.5, insert:

105.5A Treatment of persons aged 16 to 18
An independent child welfare and advocacy officer must oversee the health and welfare of all persons aged 16 to 18 from the time they are detained and for the duration of their detention.

R(14A) Schedule 4, item 24, page 64 (after line 33), at the end of section 105.27, add:

(4) If the subject is a person under 18 years of age, any person exercising authority in accordance with this section must ensure that the subject is segregated from adult detainees at all times.

R(16A) Schedule 4, item 24, page 70 (after line 32), at the end of section 105.33, add:

(2) If a person has been taken into custody, or has been detained under a preventative detention order, and the person is under 18 years of age, the treatment of the person must be consistent with the person’s status as a minor.

R(16B) Schedule 4, item 24, page 70 (after line 32), after section 105.33, insert:

105.33A Treatment of minors
A person who is under 18 years of age being taken into custody, or being detained, under a preventative detention order, in addition to the requirements of section 105.33 must be treated in accordance with the Convention on the Rights of the Child.

Note: The text of the Convention on the Rights of the Child is set out in the Australian Treaty Series.
105.33B Obligation to notify Ombudsman for child protection and welfare arrangements where minor detained

If a person who is under 18 years of age is the subject of an application for an interim or continued preventative detention order or taken into custody, or being detained, under a preventative detention order:

(a) the police officer who is making the application or detaining the person under the order must immediately notify the Commonwealth Ombudsman of the application or detention;

(b) on being notified in accordance with paragraph (a) the Commonwealth Ombudsman must refer a child welfare and advocacy officer for the person from the office of the Ombudsman;

(c) the child welfare and advocacy officer referred in accordance with paragraph (b), must:

(i) immediately visit the person;
(ii) explain to the person the basis of their detention;
(iii) advocate for and protect the interests of the child in accordance with sections 105.33 and 105.33A.

Question put.

The committee divided. [6.42 pm]

(The Chairman—Senator JJ Hogg)

Ayes............ 8
Noes.......... 54
Majority....... 46

AYES

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

NOES

Abetz, E.  Adams, J.
Barnett, G.  Bishop, T.M.
Boswell, R.L.D.  Brandis, G.H.
Brown, C.L.  Calvert, P.H.
Campbell, G.  Chapman, H.G.P.
Colbeck, R.  Conroy, S.M.
Crossin, P.M.  Eggleston, A.
Ellison, C.M.  Evans, C.V.
Ferguson, A.B.  Fierravanti-Wells, C.
Fifield, M.P.  Heffernan, W.
Hogg, J.J.  Humphries, G.
Hurley, A.  Johnston, D.
Joyce, B.  Kemp, C.R.
Kirk, L.  Lightfoot, P.R.
Ludwig, J.W.  Lundy, K.A.
Macdonald, I.  Mason, B.J.
McEwen, A.  McGauran, J.J.J. *
McLucas, J.E.  Minchin, N.H.
Moore, C.  Nash, F.
O’Brien, K.W.K.  Parry, S.
Payne, M.A.  Polley, H.
Ronaldson, M.  Santoro, S.
Scullion, N.G.  Sherry, N.J.
Stephens, U.  Troeth, J.M.
Trood, R.  Vanstone, A.E.
Watson, J.O.W.  Webber, R.
Wong, P.  Wortley, D.

* denotes teller

Question negatived.

The CHAIRMAN—The question is that Australian Democrat amendments (1) and (4) on sheet 4764 revised be agreed to.

(1) Schedule 1, page 7 (after line 27), after item 17, insert:

17A After section 102.1 of the Criminal Code

102.1AA Proscription

(1) The Minister must, when considering whether an organisation should be listed as a terrorist organisation in accordance with this Act, consider the effect of any such proscription upon the following rights of individuals who are, have been, or may become, ordinary or other members of the organisation:

(a) freedom of opinion, conscience, belief and/or religion;
(b) freedom to manifest or practice their opinion, conscience, belief and/or religion;
(c) freedom of expression;
(d) freedom to associate with others.

(2) The Minister must include with any regulation that proscribes an organisation as a terrorist organisation, a Human Rights Impact Statement that includes:

(a) the extent to which the human rights listed in subsection (1) are likely to be limited and the classes of individuals or groups likely to be affected by the proscription; and
(b) the purpose or purposes of any proposed limitation on the human rights listed in subsection (1); and
(c) a statement of why any proposed limitation on the human rights listed in subsection (1) is, in the Minister’s opinion, necessary—the statement should include what alternative measures were considered and why such measures were rejected by the Minister; and
(d) a summary of any information, evidence and other material upon which the Minister relied in forming the opinion that the proposed limitation is necessary; and
(e) a summary of the Minister’s reasoning as to why the form of the proposed limitation is appropriate, the least intrusive and best adapted to achieve the purpose of the proposed limitation.

(3) No regulation made by the Governor-General in relation to proscription under this section can take effect until the Parliament has considered and approved, by a process to be established by the Parliament, the Human Rights Impact Statement attached to the regulation that would proscribe an organisation as a terrorist organisation.

(4) Schedule 4, item 24, page 20 (after line 28), after subsection 104.4(2), insert:

(2A) When determining what is reasonably necessary, and reasonably appropriate and adapted, any person, police officer, issuing court or issuing authority exercising powers under this section must, when making, reviewing, confirming, implementing or otherwise acting consistent with powers in this section, have regard to the human rights standards contained in the scheduled international instruments. In particular, the person, police officer, issuing court or issuing authority must consider, and may require evidence to be provided as to:

(a) the extent to which the human rights contained in the scheduled international instruments are likely to be limited and what classes of individuals or groups, if any, are likely to be affected; and
(b) the purpose or purposes for which any limitation is proposed to be made; and
(c) whether such a limitation of the human rights contained in the scheduled international instruments is necessary to achieve the purpose or purposes, including what alternative measures were considered and whether they were properly rejected; and
(d) whether the form of the limitation of human rights proposed to be made has the least severe impact on the human rights contained in the scheduled international instruments of affected classes of individuals or groups.

(2B) For the purposes of this section, scheduled international instrument means the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.
Note:  The text of the treaties listed in subsection (2B) are set out in the Australian Treaty Series.

Question negatived.

The CHAIRMAN—The question is that the remaining opposition amendments on sheet 4773 be agreed to.

(3) Amendment to government amendment (4), paragraph 104.2(3)(f), after “summary”, insert “of the primary facts and”.

(4) Amendment to government amendment (6), paragraph 104.5(1)(h), after “summary”, insert “of the primary facts and”.

(5) Amendment to government amendment (28), paragraph 105.7(2)(g), after “summary”, insert “of the primary facts and”.

(6) Amendment to government amendment (30), paragraph 105.8(6)(e), after “summary”, insert “of the primary facts and”.

(7) Amendment to government amendment (34), paragraph 105.11(2)(g), after “summary”, insert “of the primary facts and”.

(8) Amendment to government amendment (37), paragraph 105.12(6)(d), after “summary”, insert “of the primary facts and”.

(9) Amendment to government amendment (28), after paragraph (e), add:

; (f) the right of the person to reasonable assistance to choose a lawyer and contact the lawyer in relation to the order.

(10) Schedule 4, item 24, page 18 (line 18), at the end of subsection 104.2(2), add:

; or (c) is satisfied that applying for an interim control order and the terms in which it is sought is the least restrictive means of achieving the purpose of the order.

(12) Schedule 4, item 24, page 20 (line 22), at the end of subsection 104.4(1), add:

; and (e) the court is satisfied that making a control order and the terms in which it is sought is the least restrictive means of achieving the purpose of the order.

(13) Schedule 4, item 24, page 29 (line 16), at the end of subsection 104.14(3), add:

; and (c) whether the making of a control order and the terms in which it is sought is the least restrictive means of achieving the purpose of the order.

(14) Schedule 4, item 24, page 27 (after line 13), at the end of paragraph 104.12(1)(a), add:

(iii) the person shall be provided with a copy of the order and the reasons for the decision, including the materials on which the order is based; and

(15) Schedule 4, item 24, page 27 (line 23), after “(ii)”, insert “or (iii)”.

(17) Schedule 4, item 24, page 69 (line 1), at the end of subsection 105.32(1), add:

; and (e) a copy of the order and the reasons for the decision, including the materials on which the order is based.

(18) Schedule 1, item 24, page 72 (line 24), omit “but solely”, substitute “including”.

(19) Schedule 1, item 24, page 72 (after line 30), after paragraph 105.37(1)(a), insert:

(aa) obtaining at any time during the period of detention advice in relation to their detention; or

(20) Schedule 1, item 24, page 74 (after line 7), before subsection 105.38(1), insert:

(1A) The provisions of this section apply only after the police officer exercising authority under the preventative detention order has first lodged with the issuing authority a written statement setting out the basis of the reasonable
grounds on which it is believed that the consultation will interfere with the purpose of the order.

(21) Schedule 4, item 24, page 82 (after line 9), at the end of section 105.42, add:

(4) Any questioning which occurs under this section must be videotaped and a copy of the videotape must be given to the detained person, or the detained person’s lawyer.

(5) Any questioning which occurs under this section may only occur, subject to there being no prejudice to national security, in the presence of the detained person’s lawyer.

(22) Schedule 5, item 24, page 85 (line 26) to page 86 (line 17), omit section 105.47, substitute:

**105.47 Biannual report**

(1) The Attorney-General must, as soon as practicable after each 30 June and each 31 December, cause to be prepared a report about the operation of this Division during the preceding 6 months.

(2) Without limiting subsection (1), a report relating to a 6-month period must include the following matters:

(a) the number of initial preventative detention orders made under section 105.8 during the year;

(b) the number of continued preventative detention orders made under section 105.12 during the year;

(c) whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;

(d) particulars of any complaints in relation to the detention of a person under a preventative detention order made or referred during the year to:

(i) the Commonwealth Ombudsman;

or

(ii) the Internal Investigation Division of the Australian Federal Police;

(e) the number of prohibited contact orders made under sections 105.15 and 105.16 during the preceding 6 months; or

(f) the number of interim control orders, urgent interim control orders, urgent control orders and control orders made under Division 104 during the preceding 6 months.

(3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 5 sitting days of that House after the report is completed.

(24) Schedule 5, item 10, page 96 (after line 16), after subsection 3UD(2), insert:

(2A) Any search of a person conducted under this section must be conducted:

(a) in an area that provides adequate personal privacy to the person being searched; and

(b) by a person of the same sex as the person being searched.

(27) Schedule 7, item 12, page 112 (after line 29), after section 80.2, insert:

**80.2A Exemption or good faith defence**

Sections 80.1 and 80.2 do not apply to anything said or done reasonably:

(a) in the creation, performance, exhibition or distribution of an artistic work; or

(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or

(c) in making or publishing:

(i) a fair and accurate report of any event or matter of public interest; or

(ii) a fair comment on any event or matter of public interest if the comment is an expression of a
genuine belief held by the person making the comment.

(28) Schedule 10, page 134 (after line 22), after item 12, insert:

12A After subsection 25(10)

Insert:

(10A) A warrant may only be extended for more than 28 days in the case of any investigation relating to a suspected terrorist activity or a terrorism offence.

(29) Schedule 10, page 135 (after line 10), after item 16, insert:

16A After subsection 27(4)

Insert:

(4A) A warrant may only be extended for more than 28 days in the case of any investigation relating to a suspected terrorist activity or a terrorism offence.

(30) Schedule 10, page 135 (after line 12), after item 17, insert:

17A After subsection 27AA(9)

Insert:

(9A) A warrant may only be extended for more than 28 days in the case of any investigation relating to a suspected terrorist activity or a terrorism offence.

(31) Schedule 10, page 135 (after line 19), after item 20, insert:

20A After subsection 27A(3)

Insert:

(3A) A warrant may only be extended for more than 28 days in the case of any investigation relating to a suspected terrorist activity or a terrorism offence.

Question put.
The committee divided. [6.48 pm]

(The Chairman—Senator JJ Hogg)

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Question negatived.

The CHAIRMAN—The question is that the remaining Australian Democrat amendments on sheet 4764 revised 1 be agreed to.
(2) Schedule 4, item 10, page 14 (line 28) to page 15 (line 4), omit the item, substitute:

10 Subsection 100.1(1) of the Criminal Code

Insert:

issuing authority means a judge of a State or Territory Supreme Court or a judge of the Federal Court.

(3) Schedule 4, item 11, page 15 (line 10), omit paragraph (c).

R(3A) Schedule 4, item 24, page 17 (after line 23), after section 104.1, insert:

104.1A No interim control orders until statement of procedures made and tabled

The Attorney-General must not consent to an interim control order request unless a statement of procedures required by section 104.1B has been made and tabled in each House of the Parliament.

104.1B Statement of procedures to be followed for the exercise of authority under an interim control order or a control order

(1) Before an interim control order an urgent interim control order may be issued in accordance with this Act, a statement of procedures must be made in accordance with subsections (2) to (4).

(2) The Attorney-General must cause a statement of procedures for the requesting and making of interim control orders or urgent interim control orders.

(3) A statement of procedures made in accordance with subsection (2) must be made in consultation with the Australian Federal Police Commissioner, following consultation with:

(a) the Inspector General of Intelligence and Security; and
(b) the Human Rights and Equal Opportunity Commissioner; and
(c) the Commonwealth Ombudsman.

(4) The Attorney-General must cause the statement of procedures to be tabled in each House of the Parliament.

(5) Schedule 4, item 24, page 28 (lines 19 and 20), omit paragraph 104.13(1)(b), substitute:

(b) a copy of all information and evidence that forms the basis of the application for the order.

(6) Schedule 4, item 24, page 28 (lines 21 to 25), omit subsection 104.13(2).

(7) Schedule 4, item 24, page 34 (lines 1 to 4), omit paragraph 104.21(1)(b), substitute:

(b) a copy of all information and evidence that forms the basis of the additional obligations, prohibitions and restrictions to be imposed on the person.

R(10B) Schedule 4, item 24, page 40 (after line 16), after section 105.1, insert:

105.1A No preventative detention orders until statement of procedures made and tabled

The Attorney-General must not consent to a preventative detention order unless a statement of procedures required by section 105.1B has been made and tabled in each House of the Parliament.

R(10C) Schedule 4, item 24, page 40 (after line 16), after section 105.1, insert:

105.1B Statement of procedures to be followed for the exercise of authority under a preventative detention order

(1) Before a preventative detention order may be issued in accordance with this Act, a statement of procedures must be made in accordance with subsections (2) to (4).

(2) The Attorney-General must cause a statement of procedures for the exercise of authority under a preventative detention order to be made.

(3) A statement of procedures made in accordance with subsection (2) must be made in consultation with the Australian Federal Police Commissioner, following consultation with:
(a) the Inspector General of Intelligence and Security; and
(b) the Human Rights and Equal Opportunity Commissioner; and
(c) the Commonwealth Ombudsman.

(4) The statement of procedures must include minimum conditions for the detention and standards of treatment applicable to any person who is the subject of a preventative detention order.

(5) The Attorney-General must cause the statement of procedures to be tabled in both Houses of Parliament.

(11) Schedule 4, item 24, page 40 (line 23) to page 41 (line 4), omit paragraphs 105.2(1)(c), (d) and (e) and subsection (2).

(14) Schedule 4, item 24, page 51 (lines 12 to 15), omit the note, substitute:

Note: Issuing authority means a judge of a State or Territory Supreme Court or a judge of the Federal Court.

R(18A) Schedule 4, item 24, page 69 (line 1), omit “summary”, substitute “the copy of all the information and evidence that forms the basis on which the order is made”.

(15) Schedule 4, item 24, page 69 (lines 2 to 6), omit subsection 105.32(2).

(16) Schedule 4, item 24, page 69 (line 1), at the end of subsection 104.2(3) (before the notes), add:

; and (f) a summary of the grounds on which the order should be made.

(4) Schedule 4, item 24, page 71 (line 18), at the end of subsection 104.2(3) (before the notes), add:

; and (h) set out a summary of the grounds on which the order is made.

(3) The power of the Administrative Appeals Tribunal to review a decision referred to in subsection (2) may be exercised by the Tribunal only in the Security Appeals Division of the Tribunal.

(4) The Administrative Appeals Tribunal may determine that the Commonwealth should compensate the person in relation to the person’s detention under the order if the Tribunal declares the order to be void.

(5) If the Administrative Appeals Tribunal makes a determination under subsection (4), the Commonwealth is liable to pay the compensation determined by the Tribunal.

R(18F) Schedule 8, item 5, page 117 (line 14), after “may”, insert “, subject to the Privacy Act 1988.”

Question negatived.

The CHAIRMAN—The question is that the remaining government amendments on sheet QR323 be agreed to.
(1A) The day specified for the purposes of paragraph (1)(e) must be as soon as practicable, but at least 72 hours, after the order is made.

(8) Schedule 4, item 24, page 21 (after line 27), after subsection 104.5(2), insert:

(2A) To avoid doubt, paragraph (1)(h) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004).

(9) Schedule 4, item 24, page 27 (lines 10 to 13), omit paragraph 104.12(1)(a), substitute:

(a) must serve the order personally on the person; and

(10) Schedule 4, item 24, page 27 (line 17), after “sections”, insert “104.12A.”.

(11) Schedule 4, item 24, page 27 (lines 23 to 27), omit subsection 104.12(2).

(12) Schedule 4, item 24, page 28 (lines 1 to 13), omit subsection 104.12(5), substitute:

Queensland public interest monitor to be given copy of interim control order

(5) If:

(a) the person in relation to whom the interim control order is made is a resident of Queensland; or

(b) the issuing court that made the interim control order did so in Queensland;

an AFP member must give to the Queensland public interest monitor a copy of the order.

(13) Schedule 4, item 24, page 28 (after line 13), after section 104.12, insert:

104.12A Election to confirm control order

(1) At least 48 hours before the day specified in an interim control order as mentioned in paragraph 104.5(1)(e), the senior AFP member who requested the order must:

(a) elect whether to confirm the order on the specified day; and

(b) give a written notification to the issuing court that made the order of the member’s election.

(2) If the senior AFP member elects to confirm the order, an AFP member must:

(a) serve personally on the person in relation to whom the order is made:

(i) a copy of the notification; and

(ii) a copy of the documents mentioned in paragraphs 104.2(3)(b) and (c); and

(iii) any other details required to enable the person to understand and respond to the substance of the facts, matters and circumstances which will form the basis of the confirmation of the order; and

(b) if the person is a resident of Queensland, or the court made the order in Queensland—give the Queensland public interest monitor a copy of the documents mentioned in paragraph (a).

(3) To avoid doubt, subsection (2) does not require any information to be served or given if disclosure of that information is likely:

(a) to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004); or

(b) to be protected by public interest immunity; or

(c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or

(d) to put at risk the safety of the community, law enforcement officers or intelligence officers.

The fact that information of a kind mentioned in this subsection is not required to be disclosed does not imply that such information is required to be
disclosed in other provisions of this Part that relate to the disclosure of information.

(4) If the senior AFP member elects not to confirm the order, and the order has already been served on the person, then:
   (a) the order immediately ceases to be in force; and
   (b) an AFP member must:
      (i) annotate the order to indicate that it has ceased to be in force; and
      (ii) cause the annotated order and a copy of the notification to be served personally on the person; and
      (iii) if the person is a resident of Queensland, or the court made the order in Queensland—give the Queensland public interest monitor a copy of the annotated order and the notification.

(14) Schedule 4, item 24, page 28 (lines 14 to 25), omit section 104.13, substitute:

104.13 Lawyer may request a copy of an interim control order

(1) A lawyer of the person in relation to whom an interim control order is made may attend the place specified in the order as mentioned in paragraph 104.5(1)(g) in order to obtain a copy of the order.

(2) This section does not:
   (a) require more than one person to give the lawyer a copy of the order; or
   (b) entitle the lawyer to request, be given a copy of, or see, a document other than the order.

(15) Schedule 4, item 24, page 28 (line 28), omit “On”, substitute “If an election has been made to confirm an interim control order, then, on”.

(16) Schedule 4, item 24, page 28 (lines 31 and 32), omit “of an interim control order”, substitute “of the order”.

(17) Schedule 4, item 24, page 29 (line 17), at the end of the heading to subsection 104.14(4), add “etc.”.

(18) Schedule 4, item 24, page 29 (lines 19 to 21), omit paragraph 104.14(4)(a), substitute:
   (a) none of the following persons attend the court on the specified day:
      (i) the person in relation to whom the order is made;
      (ii) a representative of the person;
      (iii) if the person is a resident of Queensland, or the court made the order in Queensland—the Queensland public interest monitor; and

(19) Schedule 4, item 24, page 29 (line 23), at the end of paragraph 104.14(4)(b), add “in relation to whom the order is made”.

(20) Schedule 4, item 24, page 29 (lines 24 to 27), omit subsection 104.14(5), substitute:

Attendance of person or representative etc.

(5) The court may take the action mentioned in subsection (6) or (7) if any of the following persons attend the court on the specified day:
   (a) the person in relation to whom the order is made;
   (b) a representative of the person;
   (c) if the person is a resident of Queensland, or the court made the order in Queensland—the Queensland public interest monitor.

(21) Schedule 4, item 24, page 33 (line 29) to page 34 (line 9), omit section 104.21, substitute:

104.21 Lawyer may request a copy of a control order

(1) If a control order is confirmed or varied under section 104.14, 104.20 or 104.24, a lawyer of the person in relation to whom the control order is made may attend the place specified in the order as mentioned in paragraph 104.16(1)(e) or 104.25(d) in order to obtain a copy of the order.
(2) This section does not:
   (a) require more than one person to give
       the lawyer a copy of the order; or
   (b) entitle the lawyer to request, be
       given a copy of, or see, a document
       other than the order.
(22) Schedule 4, item 24, page 35 (lines 23 to
    31), omit subsection 104.23(3), substitute:
(3) The Commissioner must cause:
   (a) written notice of the application and
       the grounds on which the variation
       is sought; and
   (b) a copy of the documents mentioned
       in paragraph (2)(b); and
   (c) any other details required to enable
       the person in relation to whom the
       order is made to understand and re-
       spond to the substance of the facts,
       matters and circumstances which
       will form the basis of the variation
       of the order;
   (d) the person in relation to whom the
       order is made;
   (e) if the person is a resident of Queen-
       sland, or the court will hear the ap-
       plication in Queensland—the
       Queensland public interest monitor.
(3A) To avoid doubt, subsection (3) does not
   require any information to be given if
   disclosure of that information is likely:
   (a) to prejudice national security
       (within the meaning of the National
       Security Information (Criminal and
       Civil Proceedings) Act 2004); or
   (b) to be protected by public interest
       immunity; or
   (c) to put at risk ongoing operations by
       law enforcement agencies or intelli-
       gence agencies; or
   (d) to put at risk the safety of the com-
       munity, law enforcement officers or
       intelligence officers.
   The fact that information of a kind
   mentioned in this subsection is not
   required to be disclosed does not im-
   ply that such information is required
   to be disclosed in other provisions of
   this Part that relate to the disclosure
   of information.
(23) Schedule 4, item 24, page 37 (lines 9 to
    13), omit paragraph 104.26(1)(a), substitute:
   (a) must serve the varied order person-
       ally on the person; and
(24) Schedule 4, item 24, page 37 (lines 26 to
    30), omit subsection 104.26(2).
(25) Schedule 4, item 24, page 38 (after line 19),
    after section 104.28, insert:
   104.28A Interlocutory proceedings
   (1) Proceedings in relation to a request
       under section 104.3, 104.6 or 104.8 to
       make an interim control order are taken
       to be interlocutory proceedings for all
       purposes (including for the purpose of
       section 75 of the Evidence Act 1995).
   (2) The following proceedings are taken
       not to be interlocutory proceedings for
       any purpose (including for the purpose
       of section 75 of the Evidence Act
       1995):
       (a) proceedings in relation to the con-
           firmation under section 104.14 of an
           interim control order;
       (b) proceedings in relation to an appli-
           cation under section 104.18, 104.19
           or 104.23 to revoke or vary a con-
           firmed control order.
(26) Schedule 4, item 24, page 38 (after line 29),
    after paragraph 104.29(2)(a), insert:
    (aa) the number of interim control orders
        in respect of which an election was
        made under section 104.12A not to
        confirm the order;
(27) Schedule 4, item 24, page 43 (after line 21),
    after section 105.5, insert:
   105.5A Special assistance for person with
   inadequate knowledge of English lan-
   guage or disability
   If the police officer who is detaining a
   person under a preventative detention
   order has reasonable grounds to believe
   that the person is unable, because of in-
adequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language:

(a) the police officer has an obligation under subsection 105.31(3) to arrange for the assistance of an interpreter in informing the person about:
   (i) the effect of the order or any extension, or further extension, of the order; and
   (ii) the person’s rights in relation to the order; and
(b) the police officer has an obligation under subsection 105.37(3A) to give the person reasonable assistance to:
   (i) choose a lawyer to act for the person in relation to the order; and
   (ii) contact the lawyer.

(28) Schedule 4, item 24, page 46 (line 13), at the end of subsection 105.7(2) (before the note), add:

; and (g) set out a summary of the grounds on which the AFP member considers that the order should be made.

(29) Schedule 4, item 24, page 46 (after line 15), after subsection 105.7(2), insert:

(2A) To avoid doubt, paragraph (2)(g) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004.

(30) Schedule 4, item 24, page 48 (line 2), at the end of subsection 105.8(6) (before the note), add:

; and (e) a summary of the grounds on which the order is made.

(31) Schedule 4, item 24, page 48 (after line 3), after subsection 105.8(6), insert:

(6A) To avoid doubt, paragraph (6)(e) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004.

(32) Schedule 4, item 24, page 48 (after line 10), at the end of section 105.8, add:

(8) The senior AFP member nominated under subsection 105.19(5) in relation to the initial preventative detention order must:

(a) notify the Commonwealth Ombudsman in writing of the making of the order; and
(b) give the Commonwealth Ombudsman a copy of the order; and
(c) if the person in relation to whom the order is made is taken into custody under the order—notify the Commonwealth Ombudsman in writing that the person has been taken into custody under the order.

(33) Schedule 4, item 24, page 49 (after line 30), after section 105.10, insert:

105.10A Notice of application for continued preventative detention order

An AFP member who proposes to apply for a continued preventative detention order in relation to a person under section 105.11 must, before applying for the order:

(a) notify the person of the proposed application; and
(b) inform the person that, when the proposed application is made, any material that the person gives the AFP member in relation to the proposed application will be put before the issuing authority for continued preventative detention orders to whom the application is made.

Note: The AFP member who applies for the order must put the material before the issuing authority—see subsection 105.11(5).
(34) Schedule 4, item 24, page 50 (line 33), at the end of subsection 105.11(2) (before the note), add:

; and (g) set out a summary of the grounds on which the AFP member considers that the order should be made.

(35) Schedule 4, item 24, page 50 (after line 39), after subsection 105.11(3), insert:

(3A) To avoid doubt, paragraph (2)(g) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004).

(36) Schedule 4, item 24, page 51 (after line 2), at the end of section 105.11, add:

(5) The AFP member applying for the continued preventative detention order in relation to the person must put before the issuing authority to whom the application is made any material in relation to the application that the person has given the AFP member.

(37) Schedule 4, item 24, page 52 (line 3), at the end of subsection 105.12(6), add:

; and (d) a summary of the grounds on which the order is made.

(38) Schedule 4, item 24, page 52 (after line 3), after subsection 105.12(6), insert:

(6A) To avoid doubt, paragraph (6)(d) does not require any information to be included in the summary if disclosure of that information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004).

(39) Schedule 4, item 24, page 52 (after line 10), at the end of section 105.12, add:

(8) The senior AFP member nominated under subsection 105.19(5) in relation to the continued preventative detention order must:

(a) notify the Commonwealth Ombudsman in writing of the making of the order; and

(b) give the Commonwealth Ombudsman a copy of the order.

(40) Schedule 4, item 24, page 53 (after line 29), after section 105.14, insert:

105.14A Basis for applying for, and making, prohibited contact order

(1) An AFP member may apply for a prohibited contact order in relation to a person only if the AFP member meets the requirements of subsection (4).

(2) An issuing authority for initial preventative detention orders, or continued preventative detention orders, may make a prohibited contact order in relation to a person’s detention under a preventative detention order only if the issuing authority meets the requirements of subsection (4).

(3) The person in relation to whose detention the prohibited contact order is applied for, or made, is the subject for the purposes of this section.

(4) A person meets the requirements of this subsection if the person is satisfied that making the prohibited contact order is reasonably necessary:

(a) to avoid a risk to action being taken to prevent a terrorist act occurring; or

(b) to prevent serious harm to a person; or

(c) to preserve evidence of, or relating to, a terrorist act; or

(d) to prevent interference with the gathering of information about:

(i) a terrorist act; or

(ii) the preparation for, or the planning of, a terrorist act; or

(e) to avoid a risk to:

(i) the arrest of a person who is suspected of having committed an offence against this Part; or
(ii) the taking into custody of a person in relation to whom a preventative detention order is in force, or in relation to whom a preventative detention order is likely to be made; or

(iii) the service on a person of a control order.

(5) An issuing authority may refuse to make a prohibited contact order unless the AFP member applying for the order gives the issuing authority any further information that the issuing authority requests concerning the grounds on which the order is sought.

(41) Schedule 4, item 24, page 54 (lines 8 to 18), omit subsection 105.15(4), substitute:

(4) If the issuing authority makes the preventative detention order, the issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact the person specified in the prohibited contact order.

Note: Section 105.14A sets out the basis on which the order may be made.

(42) Schedule 4, item 24, page 54 (after line 19), at the end of section 105.15, add:

(6) The senior AFP member nominated under subsection 105.19(5) in relation to the preventative detention order must:

(a) notify the Commonwealth Ombudsman in writing of the making of the prohibited contact order; and

(b) give the Commonwealth Ombudsman a copy of the prohibited contact order.

(43) Schedule 4, item 24, page 55 (lines 1 to 8), omit subsection 105.16(4), substitute:

(4) The issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact the person specified in the prohibited contact order.

Note: Section 105.14A sets out the basis on which the order may be made.

(44) Schedule 4, item 24, page 55 (after line 9), at the end of section 105.16, add:

(6) The senior AFP member nominated under subsection 105.19(5) in relation to the preventative detention order must:

(a) notify the Commonwealth Ombudsman in writing of the making of the prohibited contact order; and

(b) give the Commonwealth Ombudsman a copy of the prohibited contact order.

(45) Schedule 4, item 24, page 57 (after line 5), at the end of section 105.17, add:

Detainee’s right to make representations about revocation of preventative detention order

(7) A person being detained under a preventative detention order may make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked.

(46) Schedule 4, item 24, page 65 (after line 23), after paragraph 105.28(2)(d), insert:

(da) the person’s entitlement under subsection 105.17(7) to make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked; and

(47) Schedule 4, item 24, page 66 (after line 12), after subsection 105.28(2), insert:

(2A) Without limiting paragraph (2)(c), the police officer detaining the person under the order must inform the person under that paragraph about the persons that he or she may contact under section 105.35 or 105.39.
(48) Schedule 4, item 24, page 66 (after line 36), after paragraph 105.29(2)(c), insert:

(ca) the person’s entitlement under subsection 105.17(7) to make representations to the senior AFP member nominated under subsection 105.19(5) in relation to the order with a view to having the order revoked; and

(49) Schedule 4, item 24, page 67 (after line 24), after subsection 105.29(2), insert:

(2A) Without limiting paragraph (2)(c), the police officer detaining the person under the order must inform the person under that paragraph about the persons that he or she may contact under section 105.35 or 105.39.

(50) Schedule 4, item 24, page 68 (line 22), omit “physical”.

(51) Schedule 4, item 24, page 68 (lines 30 and 31), omit “and summary of grounds”.

(52) Schedule 4, item 24, page 68 (line 32) to page 69 (line 1), omit subsection 105.32(1), substitute:

(1) As soon as practicable after a person is first taken into custody under an initial preventative detention order, the police officer who is detaining the person under the order must give the person a copy of the order.

(53) Schedule 4, item 24, page 69 (lines 2 to 6), omit subsection 105.32(2).

(54) Schedule 4, item 24, page 69 (line 26), omit paragraph 105.32(6)(b).

(55) Schedule 4, item 24, page 70 (line 2), omit “the summary”.

(56) Schedule 4, item 24, page 70 (lines 4 and 5), omit “the summary”.

(57) Schedule 4, item 24, page 70 (lines 7 and 8), omit “the summary”.

(58) Schedule 4, item 24, page 70 (after line 32), after section 105.33, insert:

105.33A Detention of persons under 18

(1) Subject to subsection (2), the police officer detaining a person who is under 18 years of age under a preventative detention order must ensure that the person is not detained together with persons who are 18 years of age or older.

Note: A contravention of this subsection may be an offence under section 105.45.

(2) Subsection (1) does not apply if a senior AFP member approves the person being detained together with persons who are 18 years of age or older.

(3) The senior AFP member may give an approval under subsection (2) only if there are exceptional circumstances justifying the giving of the approval.

(4) An approval under subsection (2) must:

(a) be given in writing; and

(b) set out the exceptional circumstances that justify the giving of the approval.

(59) Schedule 4, item 24, page 73 (after line 34), after subsection 105.37(3), insert:

(3A) If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that:

(a) the person is unable, because of inadequate knowledge of the English language, or a disability, to communicate with reasonable facility in that language; and

(b) the person may have difficulties in choosing or contacting a lawyer because of that inability;

the police officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1).

(60) Schedule 4, item 24, page 73 (line 36), after “(3)”, insert “or (3A)”.

(61) Schedule 4, item 24, page 79 (lines 1 to 3), omit paragraph 105.41(3)(c), substitute:
(c) the other person is not a person the detainee is entitled to have contact with under section 105.39; and

(62) Schedule 4, item 24, page 79 (after line 28), after subsection 105.41(4), insert:

(4A) A person (the parent/guardian) commits an offence if:

(a) the parent/guardian is a parent or guardian of a person who is being detained under a preventative detention order (the detainee); and

(b) the detainee has contact with the parent/guardian under section 105.39; and

(c) while the detainee is being detained under the order, the parent/guardian discloses information of the kind referred to in paragraph (3)(b) to another parent or guardian of the detainee (the other parent/guardian); and

(d) when the disclosure is made, the detainee has not had contact with the other parent/guardian under section 105.39 while being detained under the order; and

(e) the parent/guardian does not, before making the disclosure, inform the senior AFP member nominated under subsection 105.19(5) in relation to the order that the parent/guardian is proposing to disclose information of that kind to the other parent/guardian.

Penalty: Imprisonment for 5 years.

(4B) If:

(a) a person (the parent/guardian) is a parent or guardian of a person being detained under a preventative detention order (the detainee); and

(b) the parent/guardian informs the senior AFP member nominated under subsection 105.19(5) in relation to the order that the parent/guardian proposes to disclose information of the kind referred to in paragraph

(3)(b) to another parent or guardian of the detainee (the other parent/guardian);

that senior AFP member may inform the parent/guardian that the detainee is not entitled to contact the other parent/guardian under section 105.39.

Note: The parent/guardian may commit an offence against subsection (2) if the other parent/guardian is a person the detainee is not entitled to have contact with under section 105.39 and the parent/guardian does disclose information of that kind to the other parent/guardian. This is because of the operation of paragraph (3)(c).

(63) Schedule 4, item 24, page 82 (after line 9), at the end of section 105.42, add:

(4) If a police officer questions a person while the person is being detained under a preventative detention order, the police officer who is detaining the person must ensure that:

(a) a video recording is made of the questioning if it is practicable to do so; or

(b) an audio recording is made of the questioning if it is not practicable for a video recording to be made of the questioning.

Note: A contravention of this subsection may be an offence under section 105.45.

(5) Subsection (4) does not apply if:

(a) the questioning occurs to:

(i) ensure the safety and well being of the person being detained; or

(ii) determine whether the person is the person specified in the order; and

(b) complying with subsection (4) is not practicable because of the seriousness and urgency of the circum-
stances in which the questioning occurs.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3)).

(6) A recording made under subsection (4) must be kept for the period of 12 months after the recording is made.

(64) Schedule 4, item 24, page 85 (after line 8), after subparagraph 105.45(b)(iv), insert:

(iva) subsection 105.33A(1); or

(65) Schedule 4, item 24, page 85 (line 9), omit “or (3)”, substitute “; (3) or (4)”.

(66) Schedule 4, item 24, page 86 (line 14), at the end of subsection 105.47(2), add:

; (f) the number of preventative detention orders, and the number of prohibited contact orders, that a court has found not to have been validly made or that the Administrative Appeals Tribunal has declared to be void.

(67) Schedule 6, item 1, page 105 (lines 4 to 12), omit subsection 3ZQO(2), substitute:

(2) If the Magistrate is satisfied on the balance of probabilities, by information on oath or by affirmation, that:

(a) the person has documents (including in electronic form) that are relevant to, and will assist, the investigation of a serious offence; and

(b) giving the person a notice under this section is reasonably necessary, and reasonably appropriate and adapted, for the purpose of investigating the offence;

the Magistrate may give the person a written notice requiring the person to produce documents that:

(c) relate to one or more of the matters set out in section 3ZQP, as specified in the notice; and

(d) are in the possession or under the control of the person.

(68) Schedule 7, item 4, page 109 (line 14), after “an intention”, insert “to use force or violence”.

(69) Schedule 7, item 12, page 111 (line 11), omit subsection 80.2(2), substitute:

(2) Recklessness applies to the element of the offence under subsection (1) that it is:

(a) the Constitution; or

(b) the Government of the Commonwealth, a State or a Territory; or

(c) the lawful authority of the Government of the Commonwealth;

that the first-mentioned person urges the other person to overthrow.

(70) Schedule 7, item 12, page 112 (lines 6 and 7), omit “, by any means whatever,”.

(71) Schedule 7, item 12, page 112 (lines 18 and 19), omit “, by any means whatever,”.

(72) Schedule 7, item 12, page 113 (line 29), at the end of subsection 80.3(1) (before the note), add:

; or (f) publishes in good faith a report or commentary about a matter of public interest.

(73) Schedule 10, item 4, page 133 (lines 25 to 31), omit the item, substitute:

4 After subsection 25(4B)

Insert:

Time period for retaining records and other things

(4C) A record or other thing retained as mentioned in paragraph (4)(d) or (4A)(c) may be retained:

(a) if returning the record or thing would be prejudicial to security—only until returning the record or thing would no longer be prejudicial to security; and

(b) otherwise—for only such time as is reasonable.

(74) Schedule 10, item 24, page 136 (lines 1 to 6), omit the item, substitute:
At the end of section 34N
Add:

(3) A record or other thing, or an item, retained as mentioned in paragraph (1)(a) or (c) may be retained:

(a) if returning the record, thing or item would be prejudicial to security—only until returning the record, thing or item would no longer be prejudicial to security; and

(b) otherwise—for only such time as is reasonable.

Question agreed to.

The CHAIRMAN—The question is that part 2 of schedule 4 stand as printed.

Question agreed to.

The CHAIRMAN—The question is that schedule 4, as amended, be agreed to.

Question put.

The committee divided. [6.52 pm]

(Ayes…......... 55
Noes......... 7
Majority……… 48

AYES


NOES

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

* denotes teller

Question agreed to.

The CHAIRMAN—The question is that schedule 7, as amended, be agreed to.

Question put.

The committee divided. [6.57 pm]

(Ayes.............. 33
Noes............ 30
Majority......... 3

AYES


NOES

Allison, L.F. Bishop, T.M. Brown, B.J. Campbell, G. * 

CHAMBER
The CHAIRMAN—The question is that schedule 3, item 3, and schedule 5 stand as printed and that schedules 6 and 10, as amended, be agreed to.

Question agreed to.

Bill, as amended, agreed to.

The CHAIRMAN—Pursuant to the allotment of time motion agreed to on 1 December 2005, I now report the bill as amended.

Bill reported with amendments; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.01 pm)—I move:

That this bill be now read a third time.

Question put.

The Senate divided. [7.02 pm]

(The President—Senator the Hon. Paul Calvert)
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

In Committee

EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION AMENDMENT (WELFARE TO WORK AND OTHER MEASURES) BILL 2005
Bill—by leave—taken as a whole.

Senator WONG (South Australia) (7.31 pm)—Firstly, I will start with a number of questions for the minister, although I note that he does not appear to have any advisers here. I am not sure if he wants me to talk more generally for a period of time. I suppose the first issue would be the evidence that was presented to the Senate Community Affairs Legislation Committee inquiring into this legislation. A great many submitters discussed their concerns about the bill and, in particular, made the point that the government had not presented any evidence that shifting people onto a lower payment would in fact help them get a job or have any effect on increasing the participation rate.

The committee asked this question of the department on, I think, the Monday and the department took it on notice. On the Wednesday the department provided references to a few international studies—some of which looked at the effect of increasing income support payments and the effect that would have on labour force participation, which obviously in this situation is entirely irrelevant. The committee was also presented with evidence by the department of a study—which I understand the government does not rely on—on the possibility of theoretically abolishing the social security system and whether that would help people get work. Can the minister confirm that the government has undertaken no modelling, economic research or any research whatsoever that it is putting forward with this legislation to the Senate that demonstrates that a reduction in income support payments will actually lead to a rise in labour force participation?

Senator ABETZ (Tasmania—Special Minister of State) (7.33 pm)—We have been through this during question time from time to time over the past few days and weeks. The answer will not surprise Senator Wong. It remains the same—that we as a government are committed to making the shift from welfare to work for many people in Australia who, unfortunately, are not engaged in the work force. Many people have spoken about it and everybody wrings their hands about it, but as yet nobody has come up with a policy to address it, other than the government.

The government’s approach is clear. One is an adjusted welfare payment and the other is to invest heavily in those individuals through the $3.6 billion fund that I have referred to previously, which will invest in those individuals’ futures and job readiness. Talking of job readiness does allow me to correct that which I think I have said a few times at question time—that is, that there is in fact a job shortage as opposed to a workers shortage. In this current environment where there is a jobs surplus and people are not being found to fill job vacancies, we are living in an ideal climate to assist people to make that important switch from welfare to work. As one former Labor leader once said, it is more important to talk about the people’s social interaction and engagement with the community at large, dealing with the issues of self-esteem and self-worth, than to talk about what material support is provided.
In relation to whether or not we have done modelling, I do not think any specific modelling has been done—but that of itself does not mean that the policy is necessarily wrong or flawed. As I indicated earlier, there has been no genuine model put forward by others in this place or in the community at large as to how we ought to be overcoming this huge dependence on welfare, where people are, on average, staying on welfare for, I think, 12 years or more. It seems to us as a government that that shift has to be made. We are seeking to address the situation. Will it be perfect? No, it will not be—but it is the only policy that is actually on the table to be discussed and considered. I would invite honourable senators to look at the policy and accept that it is the policy that is currently on the table. If others have better policies to offer, possibly now is the time to put those forward—rather than simply oppose, as we have so often seen with previous reform proposals that have come before this chamber.

Senator WONG (South Australia) (7.37 pm)—As senators know, these are probably the most drastic changes to welfare since 1947. Given the guillotine the government has applied to these bills and the truncated committee debate we therefore have to have, we have only until 11 o’clock tonight to discuss the bills, the government’s amendments—which were provided late yesterday—and a range of other amendments that senators have tried to prepare in the time frame. Because of that limited time frame, I am not going to engage in a lengthy debate on this, except to make this point: the minister’s answer simply confirmed what we already know. The core of the government’s policy is to dump a substantial number of vulnerable families onto a lower payment. What the minister has just confirmed yet again is that the government has not undertaken any economic research or modelling, and it has not provided any evidence to this chamber that the centrepiece of this package—the heart of the changes in this package—will actually help people get work or have any effect on the participation rate.

The minister returns, yet again, to his rhetorical answer: ‘We think people should move from welfare to work.’ It is simply not good enough to continue to repeat the welfare to work mantra. Talking about welfare to work does not make this policy one that will achieve it. Talking about welfare to work over and over again will not actually provide the evidence. The fact is that the core of the government’s changes is simply a reduction in the incomes of vulnerable families. The core of the government’s package is to dump vulnerable families onto the dole. If the minister seriously thinks that simply coming into this chamber and saying ‘We believe in welfare to work’ is sufficient when he is proposing to put hundreds of thousands of Australians onto lower payments, without offering any economic justification for doing so, frankly, we on this side find it extraordinary. We would have thought that the least the Australian people could expect would be some economic competence from the other side. If you are putting forward a set of changes, you should be able to demonstrate that they are economically sound. Yet this government does not provide any evidence; in fact, it has admitted today in the chamber that no modelling or research was done.

I am happy to move on, because it is quite clear that all the minister will do is continue to reiterate the same rhetorical answer that he has given ad nauseam. I note again that no one from the government—not this minister, not Minister Andrews and not any of the backbenchers—has ever put forward a justification for reducing people’s incomes. No one from the government has ever put forward an explanation as to how shifting people onto the dole—from one Centrelink da-
tabase to another—will help them to get work.

I want to turn now to the issue of taper rates. Minister, with respect to the changes to the taper rates to the Newstart allowance which are in the bill, is it not the case that the effective marginal tax rate on the Newstart allowance, even with the amendments proposed in the bill, is substantially higher than that which people would face on the disability support pension and parenting payment? In other words, a person who is currently on the DSP and earning money keeps far more of every dollar they earn than a person with a disability who is put onto Newstart. Can the minister explain how it is competent and appropriate that the government is putting people onto a payment where they lose more of every dollar earned than under current arrangements? How does increasing the tax rate—increasing the amount that the government will claw back from every dollar earned—encourage people to get work? Isn’t the government simply making welfare more attractive than work? Isn’t the government simply making work less attractive than welfare by refusing to alter the fact that substantial amounts of tax will be clawed back under this policy?

Senator ABETZ (Tasmania—Special Minister of State) (7.41 pm)—A number of issues have been raised. First of all, we heard lamentations about the guillotine. Could I just remind honourable senators that the Labor Party guillotined 61 bills through this place in one hour—less than one minute per bill. With a record like that, I doubt that the Labor Party are clothed with any moral authority to make a comment in relation to that. I know that the mantra in relation to the Work Choices bill was that we were guillotined through. How many hours do you think the Senate spent on it? It is interesting that people say, ‘One or two hours, possibly three hours, possibly a day.’ When you tell them it was 32 hours, they say, ‘My goodness, that is a long time.’ Similarly with these bills, a considerable period of time is being spent on them.

In relation to how this legislation will help people get into work, I remind the honourable senator of the $3.6 billion that will be invested for exactly that purpose. Senator Wong is asking the Australian people to believe that the $3.6 billion will simply disappear into thin air and will not help one single person into work. We happen to believe that it will assist people into work. We are concerned—as a compassionate, caring government—about just throwing welfare dollars at people. We want to invest in them as individuals, concentrating on their capacity to engage in work which, according to all the social data, is such an important consideration in relation to the wellbeing of the individual person and the children that happen to be growing up in the family unit. The fact that 700,000 children in Australia today are growing up in a home where there is not a parent in work is not good enough—not only for those people but especially for the 700,000 children. Those Australian children deserve a better future.

At the moment, we also have a job surplus in this country—in other words, a worker shortage. How is it that we can have a worker shortage when we still have 500,000 unemployed people, according to the statistics? Just at random, I have picked out the figures for northern Adelaide. It is interesting that the unemployment rate there is 6.8 per cent according to the labour force region ABS figures. In the employment service area
of northern Adelaide, we are told that there are 11,640 vacancies. Of those vacancies, 5,605 were filled within 28 days, while 51.8 per cent of the vacancies were not filled after 28 days. Interestingly enough, out of those figures, in the occupation category of ‘labourers and related workers’—in other words, basically unskilled people—there were 6,188 vacancies in that northern Adelaide LFR. Only 3,029 of those jobs were filled within 28 days. That is, 51.1 per cent of those labourer and related workers vacancies were not filled within 28 days. Over half of those jobs went begging for more than four weeks, yet there is an unemployment rate of 6.8 per cent in that area. Anybody looking at those figures would say there is something drastically wrong if there are unskilled jobs going begging yet we have a substantial cohort of the population within that area on welfare.

So we as a government are saying—and I think the Australian people are saying—that, when people fall on tough times, of course society should look after them, but when there are opportunities for work then there is an obligation on people to take up that employment. As I have been able to indicate, just at random, the northern Adelaide situation indicates the sort of difficulty that this country is in at the moment.

Can I indicate to the honourable senator that I do not accept the language that people are being ‘dumped’. What we are doing is moving people into a welfare regime which will encourage them to engage in the labour market, not only for their own good but also for the good of their children and the overall good of the community.

Senator WONG (South Australia) (7.47 pm)—I think Senator Fielding wanted to jump in, so I will be brief. The minister has not addressed the taper rates. I go back to the taper rates issue that I asked about: why is the government putting people onto a payment where they will in fact lose more of every dollar earned than under the current arrangements? How is that going to help them get a job or encourage them to get work? The second question, Minister, is this: why is the government proceeding with an income reduction when it could have simply imposed appropriate activity requirements on these welfare recipients, encouraging them to get into the work force, without reducing their income? Why did the government rule that out?

Senator ABETZ (Tasmania—Special Minister of State) (7.48 pm)—Currently, only 10 per cent of people on the DSP work and use the more generous taper rates. Less than 50 per cent of sole parents work and take advantage of the more generous taper rates. So what we have is one taper rate clearly being used substantially more, and where people are in a position to gain employment then it is important that we seek to encourage them.

To emphasise again that this is not a ‘dumping’ policy, I indicate that we are making significant investment in Job Network, disability open employment services, rehabilitation services and personal support programs. The latter, I think, indicates that we are looking after individuals. It is not just a huge mass of people that we are going to classify together; we want to individually manage each Australian who is currently on welfare, to encourage them into employment. People changing from DSP to Newstart are in a different classification because they are now job seekers. That is the government’s policy and, I might say, also the community expectation. The taper rates for all Newstart people have been improved. The government are focusing on supporting people into work through large new investments in the programs that I have outlined.
Senator FIELDING (Victoria—Leader of the Family First Party) (7.50 pm)—Family First do not believe in the welfare state. Family First do believe that those who can work should work—that is, that those on welfare who can work should work—and that parents who are caring for their children should be ‘parents first and workers second’. This bill is all about trying to balance an individual’s responsibility with the community obligation that they may have at the same time.

There is an issue that I have tried to understand in this bill and that I am still trying to work through. I have spoken to quite a few people on the street within Victoria—in the regional areas and in the city areas—and asked them if they can help me understand. I have said to them that, if a sole parent of one child is moved from parenting payment single to Newstart single with children and is genuinely looking for a job under Newstart and genuinely cannot find a job, they find they have to survive on $29 less per week than what they were getting on the parenting payment single. That person is genuinely looking for work and genuinely cannot find work. I ask people on the street: does that make sense to you? I cannot find one who says it does. Family First believes that those people on some sort of income support who can work should work. The person in this hypothetical cannot find work, to then try and provide some income support. I am not asking about the dilemma of whether there is that responsibility. Family First has made that quite clear. The question specifically is about a sole parent who is genuinely looking for work, cannot find work and who will immediately find themselves in a situation where they will receive $29 a week less than the payment they were receiving on parenting payment single. So it is quite clear: that is the issue. I have asked many Australians in regional, rural and city areas if they can explain that to me, and they scratch their heads. I fully understand that a single parent with kids who can work should work and they should be looking for work. I fully understand that and fully accept it. The issue goes to if they cannot find work. If they are genuinely looking—they have the compliance obligation to look for work, they fill in the forms to say they are looking for work and Centrelink can make sure that they are actually doing that—but they genuinely cannot find work, why would they have to end up getting $29 a week less?

Senator ABETZ (Tasmania—Special Minister of State) (7.53 pm)—There are two issues that the honourable senator has raised. The first one relates to Family First’s general philosophical approach to this, which is if you are a parent you should put your parenting responsibility first. I would basically agree with that. I do not think many people would disagree with that assertion. But if you were to ask those people in towns around Victoria, ‘Do you think it is appropriate that that person should be able to live off other Australians when the one child in this scenario is at school full time?’ most of them would say no.

Senator Fielding—Madam Temporary Chairman, I rise on a point of order. The question did not go to whether parents who are on welfare should try to get off welfare if they can work. I quite agree with that principle. Family First fully acknowledges that those people who are on welfare who can work should work, and that is the individual’s responsibility. Obviously the community obligation is, if someone cannot find work, to then try and provide some income support. I am not asking about the dilemma of whether there is that responsibility. Family First has made that quite clear. The question specifically is about a sole parent who is genuinely looking for work, cannot find work and who will immediately find themselves in a situation where they will receive $29 a week less than the payment they were receiving on parenting payment single. So it is quite clear: that is the issue. I have asked many Australians in regional, rural and city areas if they can explain that to me, and they scratch their heads. I fully understand that a single parent with kids who can work should work and they should be looking for work. I fully understand that and fully accept it. The issue goes to if they cannot find work. If they are genuinely looking—they have the compliance obligation to look for work, they fill in the forms to say they are looking for work and Centrelink can make sure that they are actually doing that—but they genuinely cannot find work, why would they have to end up getting $29 a week less?
fication, Senator, and the minister was mid-answer. Please continue, Minister.

Senator ABETZ (Tasmania—Special Minister of State) (7.56 pm)—I understood the question at the end but I thought the prefacing comments were phrased somewhat differently. But I am willing to accept that and it has truncated the need for me to respond any further to the introductory comments of Senator Fielding, which does assist.

In relation to the specific example he has put before the chamber, I will make a few general comments. Despite the strong economic growth that we have been experiencing and the much lower rates of unemployment since the Howard government was first elected in 1996, the growth in the numbers of single parents and people with a disability on welfare has not decreased. So we clearly have a difficulty in that particular area. This situation highlights the problems of our current welfare system. The original income support system was designed for a very different world to that which we are in today—most jobs were full time, most unemployment was short term and mothers and women generally did not work. The policies were appropriate then but are not necessarily suited to today’s Australia.

Currently, most working-age recipients of income support are not required to seek work. Only 15 per cent of the 2.6 million working-age Australians currently on income support are required to actively search for a job at a particular point in time. I suggest this reflects an outdated presumption in the welfare system that only those who can work full time must seek work. This is simply not sustainable, particularly given the ageing population and that the nature of the job market has changed so dramatically. The Howard government’s commitment to addressing this issue is there for all to see in the Welfare to Work package, which was the centrepiece of the recent federal budget.

People with partial capacity to work will now be considered as job seekers. They will be going onto Newstart as job seekers. People who are currently on DSP, of course, were grandfathered, as I am sure the Senate is aware. When confronted with this lack of movement from welfare payments for single parents and people on disabilities, clearly there was a need to engage these people, because they tend to be on welfare for a very long time. That is not good for them and not good for the 700,000 children.

I went through the statistics at question time today. All the social statistics—be it mental health, teenage pregnancy, having involvement with the juvenile criminal system et cetera—unfortunately, are heavily weighted to those family units that are totally welfare dependent. We want to break that cycle of welfare dependency, which has now unfortunately become intergenerational. To achieve that, some rigorous activity has to be undertaken by the government, and that is what we are doing.

Once again, the lady you refer to who has a child turning eight will have had two years of intensive assistance to get her job-ready to be able to move into the work force. We would hope as a government that after those two years there would be a genuine prospect of employment. I picked out the figures at random for North Adelaide showing the labour shortage in labourer and unskilled work—thousands of jobs going begging.

Senator Wong—Madam Temporary Chairman, I rise on a point of order. The minister is already truncating debate. Senator Fielding has asked a very specific question. If the minister is going to answer with lengthy rhetorical contributions that do not engage at all with the questions that senators are putting, I suggest this will be an incredibly wasteful process in the very short space of time that we have for the committee. I
would respectfully request that the minister answer the question put by Senator Fielding. We are now half an hour into this; we only have three more hours and a lot of amendments to come. If every question is going to be responded to in this way, we will not get through all the matters the chamber needs to deal with.

The TEMPORARY CHAIRMAN—Minister, you have four and a bit minutes.

Senator ABETZ—It is a bit like saying, ‘What is the meaning of life?’ I can ask that question in 30 seconds or less and therefore I expect an answer in 30 seconds or less to the question of the meaning of life. It is interesting that Senator Fielding did not seek to raise a point of order on it. He asked about the general philosophy: how you explain to people what the government’s intentions are and why the government has acted in a particular way. I think it is appropriate to indicate through a relatively expansive answer exactly what is in the government’s thinking. If we as government do not, we will be accused of treating this process with a degree of flippancy, not giving detailed and full answers.

I also remind the senator that the government has significantly increased support to families through family payments. For those who have children there is, according to the Labor Party, the ‘unreal’ $600 payment and other payments. The government supports family and work through its different policies, and so in fairness you have got to see the government’s approach, I think, in the totality of the government’s payments to the mums and dads of this country. I think we have got a well-rounded policy which does, however, have the aspect to it that encourages people to get into work to ensure their own ongoing future financial viability and development.

Senator FIELDING (Victoria—Leader of the Family First Party) (8.03 pm)—I suppose we could tap dance around the issue for quite some time—I do not want to go through it again. The thrust of the bill in moving people from welfare to work makes sense. Very few people I meet say that moving people from welfare to work does not make sense. With 700,000 kids growing up in jobless homes, we need to be doing more. I agree that there are significant pieces in the bill that go towards making that happen. But it is tainted because people who are genuinely wanting to do the right thing find themselves all of a sudden with less per week to live on. It is a shame, because I support the thrust of the bill completely. It is tainted by that issue and I am unable to get, I think, a satisfactory answer. That is all I will say. It is a shame that we cannot have a reasonable answer as to why, say, a sole parent earning a parenting payment single moving to Newstart—and I hope they get a job—has to cope with $29 less a week. There are significant pieces in the bill that make sense, and Family First definitely support the idea of moving people from welfare to work. Those who can work should work.

Senator SIEWERT (Western Australia) (8.05 pm)—Minister, you were referring earlier to employment assistance training and individualised training. In the committee process, it became evident that there appears to be a difference between the number of places that are available, particularly for individualised support, which we know many people need. We know that 60 per cent of people involved have year 10 education or less, so there is going to be a high number of people moving onto Newstart who will require training. I understand there is a mismatch between the number of places available and the large number of people being moved onto the program and that people will not have access to the intensive employment assistance at the level that is required. Is that the case? If it is the case, what is the gov-
ernment going to do about providing the sort of intensive training that many of these job seekers are going to need?

Senator ABETZ (Tasmania—Special Minister of State) (8.06 pm)—I will quickly respond to Senator Fielding’s comments first of all. Everyone agrees with welfare to work, so it seems. Even the minority report of the Senate committee has acknowledged that. Talk in this area is very easy. We are all in heated agreement. The issue is: are people prepared to walk the walk and take some of the tougher actions required to address the situation? As yet, nobody has come up with an alternative comprehensive policy in that area.

Coming to Senator Siewert’s question in relation to the number of places, as I understand it people with a partial capacity will have access to uncapped programs. But, in respect of the actual number of places for people, as I understand it people will not be necessarily getting—I will have this confirmed by the advisers—full-time assistance over that two-year period. Therefore, the number of people available will be able to deal with a whole host of recipients.

The TEMPORARY CHAIRMAN (Senator Moore)—I think the minister is taking some advice.

Senator Fielding—Could I just make a comment—

Senator ABETZ—The answer, if I may just briefly, Senator Fielding, is that it is uncapped. So, if a person needs ongoing intensive support, that will continue to be provided. Undoubtedly, figures have been provided on that which are a guessimate at the moment, but if it appears that there is a greater demand then clearly we will make extra services available. It is demand driven. Having said that, I indicate that I would expect a number of people to be able to access the job market without intensive training or assistance and that many will be able to find part-time or casual employment without the need for any extra assistance through the particular programs that we have.

Senator SIEWERT (Western Australia) (8.09 pm)—So what you are saying is that, although we were told in the committee that there were a certain number of places available, if there is an unmet need those places will be increased.

Senator ABETZ (Tasmania—Special Minister of State) (8.09 pm)—I think I should qualify my answer: that is, for those with high need, that would be the circumstance. I think that they were the people that you were referring to. I think we would also be agreed that, just as much as there are people with high need, there will be a substantial number of people who will not necessarily need any particular assistance to re-engage with the work force.

Senator SIEWERT (Western Australia) (8.10 pm)—Thank you for that answer. What happens to the people who may find a part-time job with their current level of skills but who want to move on to another job and will need skills assistance? What help will there be for those people?

Senator ABETZ (Tasmania—Special Minister of State) (8.10 pm)—An assessment will be made of the individual and then assistance will be provided to assist that person to get to the top level of that which is deemed to be within their capacity. For example, if somebody is currently working 15 hours a week and wants to work 30 hours a week or whatever, they can be provided with extra assistance. I think the point that Senator Siewert makes is a very important one, and that is that this category of people—and I fully accept what Senator Siewert says, and it is often overlooked—is just as aspirational as the rest of us in Australia. Those who might start with a bare minimum of 15 hours

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work may well want to progress and keep
working longer and harder and get off wel-
fare dependency. We do have a program to
assist in that regard.

Senator WONG (South Australia) (8.11
pm)—I ask the minister to respond to a
number of matters. Firstly, I thank him for
his somewhat belated concession that the
taper rates faced by sole parents and people
with a disability who are put onto the dole
will be worse than the taper rates they are
currently on—in other words, people will
lose more of every dollar earned than under
current arrangements. I thank him for that
concession. I do not think that that has been
confirmed in a number of question time an-
swers but I do note that the department con-
firmed that in the hearings on this bill.

Does the minister also agree with the de-
partment’s evidence to the committee
whereby they indicated that they did not fun-
damentally disagree with or dispute the
NATSEM research, which includes a finding
that a sole parent with one child who does
the right thing—and this really goes to Sena-
tor Fielding’s issue as well—and works 15
hours a week will be $91 a week worse off
under the new system than under the current
system? I think a person with a disability in a
similar situation will be $122 a week worse
off. Does the government think that getting
people to work for an effective return of
$2.27 and $3.88 an hour is a good way to
encourage people into work?

The next point I would ask the minister to
respond to is this: the bill before the Senate
undoubtedly increases the number of differ-
ent payment streams in the sense that a num-
ber of groups are moving onto Newstart with
different arrangements applicable to them.
There are people on the DSP who have one
set of arrangements, there is the group which
is known as the transitional group—that is,
people who applied for the DSP from the
night after the budget until the commence-
ment of this bill—and then there is the group
after that. Given that there is greatly in-
creased complexity in the system because of
the different groups and the different enti-
tlements and different obligations associated
with each group, has the government costing
any additional administrative cost to be in-
curred?

Senator ABETZ (Tasmania—Special
Minister of State) (8.14 pm)—Going to the
last matter first, I understand that the de-
partments do take these matters into account
when doing the costings, and I understand
that that will be a matter, in fact, for Centre-
link, ultimately, because they will be admin-
istering the three different payments.

Senator WONG (South Australia) (8.14
pm)—In the interests of expediting this,
Minister, thank you for that answer. Since
the costings on this were presented to esti-
mates through the budget process, a number
of further exemptions and alterations have
been announced by the government. I think
there were five separate announcements. Is
there any additional cost associated with the
administrative complexity of the subsequent
announcements over and above the cost in
the budget? Are you able to indicate how
much was identified as administrative cost
associated with the original package?

Senator ABETZ (Tasmania—Special
Minister of State) (8.15 pm)—It stands to
reason that, when you have a different scale
or different systems in place, there will be
extra costs. My advice is that they would be
marginal. Once again, the detail of that will
be with Centrelink. Hopefully, we can
streamline those administrative costs more
and more as the government make use of IT
and other measures to assist in that regard. In
relation to NATSEM and also some of the
other comments that have been made about
the mum being considered as a job seeker
because she has a child aged eight, I simply point out that the differences between parent-
ing payment and Newstart allowance are well known. A single parent at the moment would switch onto Newstart when their youngest child turns 16. That is the current situation. The government are saying that that switch should now be made at an earlier age—namely, when the youngest child turns eight.

I also indicate that the NATSEM research demonstrates that, whether recipients are on parenting payment or Newstart, they are better off working than not working. We have heard discussion, especially from the other side, suggesting that people are going to be working for $3.88 an hour et cetera. At the end of the day, you need to look at what they actually receive. For example, if somebody were to work 30 hours a week, they would in fact be receiving an income equivalent to an hourly rate of $28.63 per hour. I think that is an important consideration. You cannot just discount all government support and then say, ‘If you divide all this out, the few extra hours would only translate to something like $3.’ It depends on how you do your calculation and whether you want to simply take the Australian taxpayer for granted. We believe that we should not be taking that line. We believe in providing support where needed and appropriate, but there is a very real obligation on people, where they can work, to engage in work—not only for their own wellbeing and that of their kids but also for the taxpayers, who have funded them up to that point in time.

Senator WONG (South Australia) (8.18 pm)—I think it has been made clear by all parties that no-one disagrees with the principle that those who can work should work and that the principle of moving people from welfare to work is a good one. I think where we disagree is that we say your bill in essence is about switching people from one payment to another payment. Thank you for acknowledging—I think, again, for the first time—that this package does involve a switch to Newstart. In relation to the issue of how much people actually will earn and what their effective return will be, I do not think I suggested at all that we do not acknowledge the amount that people get from the taxpayer. The point is that you do not increase the incentive to work by taking more tax dollars from every dollar someone earns. It is a pretty basic principle that I think most Australians would agree with. Why should the government take 75c out of every dollar a person with a disability on the dole will earn? That is not going to encourage people to work. It is not sensible to give an incentive that has that kind of punitive tax rate.

I want to turn to a different issue—that is, participation in training. One of the things that this bill does is alter the sections in relation to what activity requirements can be imposed on welfare recipients—in this case, people with a disability and sole parents. It is certainly not clear anywhere in the legislation or in the explanatory memorandum that people trying to improve their job skills through training would meet the work search obligations set out in the bill. The explanatory memorandum talks about Job Search and participation in paid work. From our side, the obvious question that arises is: are you saying therefore that a person with a disability who wants to improve their skills cannot meet their obligations through doing training or that a person who is a sole parent who wants to go back to nursing part time cannot meet that obligation on the Newstart payment by training?

Surely one of the ways we can encourage people back into the work force is by ena-
blin them to get the skills they need to get a job and to get a job that has long-term finan-
cial security for their family. I think the department said in evidence to the committee
inquiry that there was a possibility of short-term training. I ask you to clarify that, Minister. What training would satisfy the activity test which will be applied to people with a disability and to sole parents? Will that be limited to anything less than a year? Where in the bill or in the explanatory memorandum is that facilitated or indicated? I have read it and it seems quite clear to me that it relates to looking for work. Where in the legislation before the Senate is that permitted? Finally, what was the policy logic behind removing the support for study, which was the pensioner education supplement, from people who had been put on the dole?

**Senator ABETZ** (Tasmania—Special Minister of State) (8.23 pm)—To commence with Senator Wong’s initial comments, it is not for me to acknowledge anything in relation to people being changed from one payment to another. It was clear in the government policy announcement that people would be changed from parenting payments to Newstart by changing the age of the youngest child when the transition would be made from 16 to eight years. I think that was specifically pointed out. It may originally have been six years and then eight. I am not 100 per cent sure on that. But that was clearly in the government’s mind when the announcements were made.

In relation to training and education, I understand that Austudy is for further education. If the employment service provider identifies with a person in that agreement then short-term training is okay and there is support for people to finish their course through PES, which is the pensioner education supplement, when they move to Newstart allowance. Principal carer parents on income support will be able to combine job search requirements with part-time study, which can also count towards their annual part-time mutual obligation requirement. For those wishing to do full-time study, the following options are provided. I do not think you are interested in existing parent payment recipients, Senator Wong—is that correct? Your request was in relation to new claimants. From 1 July 2006, existing parenting payment claimants who move onto Newstart allowance will be allowed to complete any full-time study that they commenced while on parenting payment. They will not be required to look for work while their course of full-time study is completed. New claimants on Newstart wishing to commence studying full time can transfer to Austudy, which has a ‘single with children’ rate.

**Senator WONG** (South Australia) (8.25 pm)—Thank you for that answer, Minister, but there are a number of issues that you did not address. One was in relation to the combination of part-time job, study and job search. Is it the case that that can only occur for up to a year, or can that occur for more than a year? Where in the legislation are the guidelines or principles against which that is assessed? What proportion can a person do? For example, what if a sole parent wants to study nursing part time for a period of time while she is on parenting payment? We have a skills shortage in this country. We have a shortage of nurses. Wouldn’t it both be a good thing for her and contribute to meeting Australia’s skills shortage if she were permitted to engage in part-time nursing studies? Isn’t it the case that she will not be able to do that on Newstart with the current activity test?

**Senator Abetz**—Sorry, what won’t she be able to do?

**Senator WONG**—Study part time and work part time for a nursing degree. If I am wrong, please tell me, but that was the understanding that we had from the committee. This is for a new recipient.

The second point—and I notice you chose your words carefully—is that a principal
carer, that is a parent, can combine study and job search. Does that mean that a person with a disability who is put onto the dole—switched to the dole, to use your phrase—will not be entitled to try to improve their skills and have that contribute to their job search? How can a person with a disability, who may only have part-time capacity in any event, both study part time and job search? Will the government be permitting people with a disability who are subject to the activity requirements to improve their job skills?

Senator ABETZ (Tasmania—Special Minister of State) (8.27 pm)—The advice is that this is a very detailed area, but section 613—in particular, section 613(2)—might assist the honourable senator.

Senator Wong—Of the existing act?

Senator ABETZ—Yes. In relation to the student, because this is a Job Search payment, if the job seeker is working 15 hours per week then he or she can also study part time.

Senator WONG (South Australia) (8.28 pm)—That is my point, Minister. If they are already job searching 15 hours a week, is the government saying that, if you want to study part time, you have to do it on top of that, when your capacity as a person with a disability has already been assessed at 15 hours or you are a sole parent, who is supposedly only required to work 15 hours a week? Is the government saying, ‘We don’t mind if you study part time if you do it on your own time, over and above job search’? I am looking at section 613(2). It seems to indicate that you can be paid Newstart allowance where you are granted permission to enrol in a course. What I am asking is: what guidelines will apply to that? Will it be short-term—that is, less than a year only—which seemed to be the evidence given to the committee by the department? If that is the case, how in a time of skills shortage can the government justify imposing such restrictions on people improving their job skills and making it such a disincentive for people to go back and do some training so that they can get the skills they need to build a real career for themselves?

The TEMPORARY CHAIRMAN (Senator Moore)—While the minister is getting some advice on that matter, I have a procedural motion. A number of requests for amendments have been circulated by the government. These have been accompanied by statements of reasons. Is it the wish of the committee that the statements of reasons accompanying the requests be incorporated in Hansard immediately after the requests to which they relate? There being no objection, it is so ordered.

Senator ABETZ (Tasmania—Special Minister of State) (8.30 pm)—One of the recommendations of the Senate committee into this bill was to have a look at education and its interaction with the proposals that we have put forward. The government has agreed to that recommendation and that will be looked at. In relation to whether somebody is in the situation, there are a whole lot of questions asked, and I will try and do justice to them. I am sure Senator Wong will not hesitate to interject if I have got it wrong—

Senator Wong—Don’t worry; I won’t interject.

Senator ABETZ—Well, it will be a first if she does not interject, but on this occasion I would welcome it. As I understand it, the proposition is that a person on disability who is deemed to be able to work for 15 hours per week—

Senator Wong—A person with a disability on Newstart.

Senator ABETZ—Yes, the example is of a person with a disability on Newstart, so they would be seen as having a capacity to work for 15 hours or more. That person
wants to study part time; let’s say that might take five hours a week, but—and I understand this to be the case—they can only do 15 hours of activity a week. As I understand it, if an opportunity for 15 hours of work arose, they would have to take that, because, as a government, we are pursuing a work first agenda. That is what we have tried to highlight—that it is a work first agenda, and if these people are on Job Search then that is their first requirement. Anything that they can do above that, be it extra work or extra study, we would of course welcome.

Senator WONG (South Australia) (8.33 pm)—The question was: in the absence of a job offer for that person, how long could they train for? To reiterate, I think the evidence to the committee was that they could train for up to a year only. I want to clarify if that is the case. Could the minister also indicate where these issues will be clarified? None of this is in the bill. The bill is quite general about what can be imposed. Is the government intending to put the issues, for example, as the minister has outlined, into guidelines? If so, when will they be available?

Senator ABETZ (Tasmania—Special Minister of State) (8.34 pm)—As I understand it, there are two issues here. In relation to study, they can, in the absence of a job offer, study for more than 12 months. They can study for one year in the event that they are undertaking study in lieu of Job Search. I understand the guidelines are being drafted and considered, and that the various people concerned—Centrelink, et cetera—will be advised of those. It has been indicated to me that that will happen about February of next year.

Senator WONG (South Australia) (8.35 pm)—I wish to finalise this issue. In the scenario that the minister outlined, if someone is studying and they have a job offer then would they have to ditch their study, no matter what the job? I asked if he could confirm that. Let’s switch to considering sole parents—I assume the situation is the same for them. Take the hypothetical case of a woman studying nursing part time. She is offered a job at Coles stacking shelves for 15 hours a week. Would she have to discontinue her studies? And is it the case that, in any event, she could only study on this payment for up to a year?

Secondly, I asked whether the government will give a commitment that the guidelines would be disallowable instruments. I should be fair to you, Minister, and give you a bit of background: this was an issue of some controversy before the Senate committee. A number of submitters made it quite clear that they were concerned about the amount of policy decision making which was going to occur through the guidelines with no parliamentary oversight. To what extent will the guidelines be disallowable?

Senator ABETZ (Tasmania—Special Minister of State) (8.36 pm)—The guidelines will not be disallowable.
onto Austudy. If they were on Job Search then they would have to undertake the work first agenda. However, if a person had nearly finished their degree, for example, some degree of flexibility could be exercised to allow that person to finish their degree. So it will not be a sudden death situation. There will be flexibility.

Senator WONG (South Australia) (8.37 pm)—To be clear, I am not talking about the transitional group. I understand the answer you gave before, which was that for people who are currently studying on these payments, who switch to Newstart, there are certain transitional arrangements. I am asking about a person who is not studying, is switched to the new payment and wants to go back to study part time. As I understand your previous answer—and I want to have it confirmed—no matter what the job offer, a job offer of 15 hours would have to be taken, even if they were currently studying part time. This is the non-transitional group.

Senator ABETZ (Tasmania—Special Minister of State) (8.38 pm)—As I understand it, that is basically right. The question, of course, would be: is it a reasonable job offer in the circumstances? A dispensation may also be provided in the event that a person studying part time over a period of eight years, for example, is in a situation of virtually finishing a degree. In those circumstances, I understand, a special dispensation is allowable even for new recipients of Newstart, not those who are in the transitional situation.

Senator SIEWERT (Western Australia) (8.39 pm)—To follow up on the full-time study, if someone is studying full time and they go on to Austudy, that is a significantly lower payment and they will not get PES or RA. In other words, there will be no other concessions. How will that make it easier for them to complete their studies and allow them to get more skills and get a better job?

Senator ABETZ (Tasmania—Special Minister of State) (8.39 pm)—As I understand it, that is the current situation with Austudy. In that regard, whilst it is in a different portfolio, nothing will actually change.

Senator SIEWERT (Western Australia) (8.40 pm)—I understand that people who are going to study will no longer have access to PES. If you are on PPS, you have access to PES. It is the same if you are on a disability pension; you have access to PES and RA.

Senator ABETZ (Tasmania—Special Minister of State) (8.40 pm)—It is about the categorisation of the individual. If they are in the category of job seeker then the circumstances that have previously been referred to will apply.

Senator WONG (South Australia) (8.40 pm)—I have, I think, one final question to the minister before we move to amendments. It is on the status of volunteering activity. Currently, for example, parents are able to satisfy some aspects of their mutual obligation requirements by voluntary or community activity. Will the government’s approach mean that doing things like volunteering at schools, serving in the tuckshop et cetera will not count towards the 15-hour requirement? Has the government done any modelling or research into how this will affect volunteering from this group?

Senator ABETZ (Tasmania—Special Minister of State) (8.41 pm)—The honourable senator is basically right. No modelling has been done. In relation to Senator Siewert’s issue with Austudy and Newstart, I understand that the payment for a recipient with one child would be $427.80 per fortnight on Austudy, whereas on Newstart it would be $437.60. So it is pretty similar. In rough terms, it is about a $10 difference.
Senator WONG (South Australia) (8.42 pm)—But there is no capacity to study part-time on Austudy.

Senator ABETZ (Tasmania—Special Minister of State) (8.42 pm)—That is right.

Senator WONG (South Australia) (8.42 pm)—The point being made was about part-time study, I think.

Senator SIEWERT (Western Australia) (8.42 pm)—There is part-time and full-time study. The point is that if you are on Newstart and studying part-time, the idea is that you are earning money but if you are studying full-time, you are not.

Senator ABETZ (Tasmania—Special Minister of State) (8.42 pm)—That is right. As I understand it, Austudy is focused on full-time students.

Senator SIEWERT (Western Australia) (8.43 pm)—The point is that you are putting people onto Newstart and they are supposed to get part-time work and earn more money. If you are studying full-time on Austudy, you are on a lower base rate but you cannot work, because you are studying full-time, and you do not get the top-ups.

Senator ABETZ (Tasmania—Special Minister of State) (8.43 pm)—I know a few students who, while studying full time, have also worked part time. I am not sure that that necessarily stands to reason: that just because you are a full-time student you cannot work part-time.

Senator SIEWERT (Western Australia) (8.43 pm)—If you are looking after one, two or three children, I think doing part-time work as well as studying full time would be extremely difficult.

Senator WONG (South Australia) (8.43 pm)—This will be my last contribution on this issue, I hope. I would like to move to the amendments. I want to make the point, Minister, that it does seem bizarre to me, and I am sure to other opposition senators, that at a time when we have a skills shortage, and given that we know the best way to ensure someone gets a job is to ensure they have the skills an employer needs, the government would build into a so-called Welfare to Work package such restrictions and, frankly, disincentives and difficulties for welfare recipients to study and train. Surely, one of the things we want to do, if we want to move people from welfare to work—and not just move them into short-term casual jobs but into jobs where they can build a secure future for themselves and their families—is to encourage and support training and education, rather than discourage it and make it more difficult.

Senator ABETZ (Tasmania—Special Minister of State) (8.44 pm)—Does the country have a skills shortage? Yes, it does. Are we encouraging people to increase their skills? Yes, we are. But there is also a shortage of labourers and related workers within our community. As I have pointed out previously, just in the northern Adelaide area for the category ‘labourers and related workers’ there were 6,188 vacancies and fewer than half of them were filled within 28 days, meaning more than half of them were not filled for a period of four weeks or more. With an unemployment rate in that area of 6.8 per cent or some considerable number of unemployed people in that area, you have to ask why those jobs are not being taken up at the moment. That is where we believe there needs to be a greater incentive to encourage people to take up these job opportunities.

All the statistics indicate that only 40 per cent of people on the minimum wage stay on that for 12 months or more because the vast majority, having got their foot onto the employment ladder, are then in a position to prove their worth, expand their hours and take better jobs as time goes by. The important part is to get people started in the em-
ployment culture and in the work force. Once that has been attained and established for the individual, they and the children in their family unit are a lot better off. If we have finished general questions, I table a supplementary explanatory memorandum relating to the government amendments and requests for amendments to be moved to this bill. The memorandum was circulated in the chamber on 6 December 2005.

Senator SIEWERT (Western Australia) (8.47 pm)—I move Greens amendment (1) on sheet 4792:

(1) Page 5, after line 5, after clause 3, add:

4 Public and independent review of income support provisions for people with disabilities and for sole parents

(1) The Minister must cause a review of the operation and effectiveness of the amendments made to Schedules 2 and 4 of this Act.

(2) The review must be undertaken as soon as possible after the second anniversary of the commencement of the amendments.

(3) The review is to be undertaken by a committee consisting of:

(a) a person nominated by the Australian Council of Social Services;
(b) a person with experience in disability support;
(c) a person with experience in crisis support;
(d) a person with experience in single parent advocacy;
(e) a person with experience in employment assistance.

(4) The review must provide for public submissions and public hearings as part of the review.

(5) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 5 sitting days of that House after its receipt by the Minister.

I do not know if we want to discuss the Democrat amendment, which is similar to this one, at the same time.

Senator Bartlett—Yes.

Senator SIEWERT—This amendment is about amending the provision for review to ensure a public and independent review of this legislation. No matter whether you are on the government side, on the crossbench or in the opposition, we have all been debating this legislation. The Australian Greens believe that this legislation will have a significant impact on our community, and I presume that the government is assuming the same thing. We probably differ in our opinions on what that impact will be. I am extremely concerned it will have a negative impact. One way or another, we need to review the impacts of this legislation on the Australian community.

We believe that that review needs to be independent and public. We are moving an amendment that seeks to ensure that the review is public and that it involves eminent independent people from various community organisations and people with expertise in this area so that we can be confident that we are getting an independent review. I do not wish to take up too much of the Senate’s time talking about this. I think the requirements for this are fairly obvious. Because I know there are a lot of other amendments that we want to get through tonight, I will leave my comments at that.

Senator BARTLETT (Queensland) (8.49 pm)—The Greens amendment is fairly similar to the Democrats amendment (1). I will not proceed with ours. I think we will get a sense from the chamber as to the opinion on this based on the vote on the Greens amendment. The need for a structured requirement within the legislation for a review is important. These sorts of amendments are ones that were not always but fairly regularly put in
place through amendments that were accepted by the Senate and by the government in a wide range of areas across the many portfolios. History has shown that they are very valuable. It is important to have a requirement that reviews occur and that they are reasonably independent and the results are made public, because that does not always happen with government reviews. I note that Minister Andrews released a statement on Monday in which he said that he would be following up on recommendation No. 1 from the Senate committee report—one of the very small number of fairly minor recommended changes that were put forward by the government senators on that committee. Even that response will not guarantee that something adequate will happen. Either of these Greens or Democrat amendments would do that, and I think it would be highly desirable to ensure that that occurs.

Senator ABETZ (Tasmania—Special Minister of State) (8.50 pm)—Very briefly, the government opposes both of those amendments, if we are having a cognate debate or considering them together for the sake of convenience. In its inquiry into the Welfare to Work bill, the Senate Community Affairs Legislation Committee recommended that the Department of Employment and Workplace Relations table in parliament on an annual basis key data on the implementation of the Welfare to Work package. The government’s response was that it will provide separate reports on key data on the implementation of the Welfare to Work package. The government also has in place the Welfare to Work consultative forum which will assist the government in implementing these reforms. In particular, the forum will advise ministers at a broad strategic level on the design of services to ensure the government’s policy objectives are achieved; the translation of the government’s broad policy directions into operational policies and practices; communication and consultation with stakeholder groups to promote awareness and understanding of and input into the reform measures; and approaches to maximise employer engagement with reforms and specific issues associated with implementation and/or other Welfare to Work related policy issues referred to it by ministers. For the interest of honourable senators, the membership of the committee is made up of representatives from ACOSS, Salvation Army, Catholic Welfare Australia, NATSEM, the Smith Family and Mission Australia.

Senator WONG (South Australia) (8.52 pm)—I just want to make the point that Labor is supportive of this amendment. My recollection is that—and I think it was before I was here—with the Australians Working Together legislation the government did agree to a review of the operation of that package of changes. It is unfortunate it does not want to do so here, but I understand that is the government’s position.

Question negatived.

Senator SIEWERT (Western Australia) (8.53 pm)—I move Greens amendment (1) on sheet 4797:

(1) Schedule 1, item 4, page 9 (after line 26), after section 5B, insert:

5BA Registered and active family carers
(1) A person is a registered and active family carer if the Secretary is satisfied that:
(a) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person must meet in order to be permitted, under the law of that State or Territory, to provide family care in that State or Territory; and

(b) the person meets the requirements (if any) of the law of the State or Territory in which the person resides that the person must meet in order to be permitted, under the law of that State or Territory, to be in receipt of child care support payment as a family carer in that State or Territory; and

(c) the person is taken, in accordance with guidelines made under subsection (2), to be actively involved in providing family care in that State or Territory.

(2) The Secretary may, by legislative instrument, make guidelines setting out the circumstances in which persons are taken, for the purposes of the social security law, to be actively involved in providing family care in that State or Territory.

This amendment addresses what I believe is a loophole in the legislation. I should put on record—I did not want to take up time earlier—that the Greens, as I think most people will be aware, oppose these changes. However, we are taking the same approach that we took with Work Choices. If we can help make this legislation just that little bit better, we will try, and this is certainly one of those amendments. The government have put in exemptions and listed registered and active foster carers as exempt from activity statements et cetera. They have not dealt with family carers. When we brought this up in the committee, it was recognised as an issue that had not been dealt with. At least, that is how I understood the conversation.

Many children are living in out-of-home care with grandparents—and admittedly a lot of grandparents will not be on Newstart, but some might be—aunties, uncles or other relatives. They are not picked up, as I understand it, through this legislation. In New South Wales alone, for example, the estimate is that approximately 4,500 children are living with relative carers or in, as we call it, family care. Many of these children have suffered abuse and they need intense support care—they need to be taken to counselling during school time and they need many forms of additional support, the same as children in foster care. As I understand this legislation, the people that are providing this family care, or out-of-home care, are not catered for in the exemptions that are provided in the bill in the same way that foster carers are.

We are proposing an amendment that provides for family carers, provides a description of family carers and puts in place a register of active family carers that are subject to registration according to the requirements of states and territories—in the same way as foster carers. We believe this is particularly important because the people that are providing this care need the sort of support that the government has acknowledged that foster carers need. We believe that the same situation should be there for family carers and those providing out-of-home care. If I have misinterpreted the legislation, I would like to know from the minister which provision in the legislation provides support and exemptions for family carers that match the support and exemptions for foster carers.

Senator ABETZ (Tasmania—Special Minister of State) (8.56 pm)—Section 500D on page 33 of the bill refers to the PP child, which is a parenting payment child. It says:

(1) A child is a PP child of a person if:

... ... ...

(d) the person is the principal carer of the child.
As a result, the government is of the view that the amendment introduces a new definition of a registered and active family carer. Broadly, this is where a person is registered and in receipt of payment for child-care support as a family carer. An adult in receipt of parenting payment or on Newstart allowance as a principal carer will be treated as any other principal carer on these payments. They will not be treated as foster carers because they are not foster carers; they are considered to be a parent involved in the normal task of parenting.

Senator SIEWERT (Western Australia) (8.58 pm)—The point I am making is that family carers have additional family care requirements because in many cases—in fact, I would hazard a guess, in most cases—the children are coming to them from traumatic circumstances, for example, their parents may have been killed, or they are coming from abusive situations, and they require additional support and care. So I am asking that they be given the same recognition as foster carers because they have the same requirements. The government has acknowledged the additional burdens on foster parents given that they are required to give additional support. We are saying family carers require that same level of support.

Senator ABETZ (Tasmania—Special Minister of State) (8.59 pm)—I understand that in general terms there will not be exemptions or a variant in the payment made as suggested by Senator Siewert, other than in exceptional circumstances, for example, a traumatic situation. Then they will get an exemption from the activity test for a reasonable period as determined for that particular circumstance. But it would not be an ongoing situation.

Senator McLUCAS (Queensland) (8.59 pm)—I ask the minister whether he recognises that, whilst the number of people this would affect is, in a relative sense, quite small, the children who go into these circumstances have been through extraordinarily traumatic events and the people who are caring for these children may have had to change their circumstances quite dramatically. If the person is leaving work in order to care for a family member’s child, and if they are a low-income person, they will get caught up in this package of measures in order to provide the inordinate care that that child needs at that time. It would be extraordinarily unfortunate if even one family got caught up in that circumstance.

Minister, the answer that you have given to Senator Siewert does not comfort me that there will be one child—if only there were only one—whose caring person is going to be caught up in this event; I think there will be far more than that. These children are children of families who are on the edge and going through traumatic events. The amendment that Senator Siewert has moved extends the exemption for children—not of foster caring families, who are doing exactly the same job, really—of families who, through their own means, support their children within their family through a traumatic event. The amendment delivers to those families the same sorts of exemptions and support that foster parent families are being provided with, which we support. Minister, in the answer that you gave to Senator Siewert, I do not see absolute clarity that those families would be treated exactly the same as the families who are treated under the provisions for foster parents.

Senator ABETZ (Tasmania—Special Minister of State) (9.02 pm)—Hopefully—and I think we would all be in agreement on this—the number of children involved in this situation would be small. Having said that, the fact that it is only a small number of people should not mean that they are dismissed
from our consideration, and I fully accept Senator McLucas’s comments on that.

As I understand the situation, each individual case will be reviewed and, if there are traumatic circumstances—such as outlined by Senator McLucas—there will be an exemption from the requirements for 16 weeks. After that 16-week period, if the trauma or circumstances are such that the carer of that child has to continue to spend extra time, that 16 weeks can be progressively rolled over for a further 16 weeks and so on, on the basis of what I assume would be an independent assessment to determine the actual need in a particular circumstance. In relation to getting extra payment, as I indicated earlier, they will be seen as a parent for the purposes of the legislation and therefore will not be qualifying for the extra payment that is being suggested by Senator McLucas.

Senator MOORE (Queensland) (9.04 pm)—Minister, I have a question on that point. The answer that you just gave was reflective of due process. My understanding is that that kind of detail would be involved in regulations that would be developed. Is that correct?

Senator Abetz—In guidelines.

Senator MOORE—The guidelines prepared by and for the department officers?

Senator Abetz—Yes.

Senator MOORE—And will be enforceable?

Senator Abetz—Yes.

Senator MOORE—And non-disallowable?

Senator Abetz—Yes.

Senator McLucas (Queensland) (9.04 pm)—For the record, I think we should note that the minister has said yes to each of those questions.

Senator ABETZ (Tasmania—Special Minister of State) (9.04 pm)—I am sure that Hansard would have caught that, but I am happy to put on the record that the circumstances outlined by Senator Moore are correct.

Senator SIEWERT (Western Australia) (9.05 pm)—While I am pleased that we are making some progress on this, I am concerned that it is just 16 weeks. We are talking about the long-term impact on children. Particularly in circumstances where children are suffering from abuse, it is not something that is fixed in 16 weeks; it is something that takes years to fix. I think there is a lack of recognition of the work that these family carers do and the trauma that these children are going through. You have traumatic events but there are ongoing impacts, ongoing counselling, ongoing work and additional burdens that family carers bear by taking on these responsibilities. I would prefer to have a broader recognition of the work that these people do, because I think there is a level of discrimination going on here.

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

The committee divided. [9.10 pm]
(The Chairman—Senator JJ Hogg)

Ayes............ 31
Noes............ 33
Majority....... 2

AYES

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Carr, K.J.
Conroy, S.M.  Crossin, P.M.
Evans, C.V.  Fielding, S.
Forshaw, M.G.  Hogg, J.J.
Hurley, A.  Kirk, L.
Ludwig, J.W.  Lundy, K.A.
McEwen, A.  McLucas, J.E.
Moore, C.  Murray, A.J.M.
Senator BARTLETT (Queensland) (9.14 pm)—by leave—I move Democrat amendments (1) to (6) on sheet 4782:

(1) Schedule 17, item 4, page 202 (lines 4 to 5), omit the item, substitute:

4 Section 556(1)

Repeal the section, substitute:

(1) Subject to this section, the rate of a person’s youth allowance is to be worked out in accordance with the Youth Allowance Rate Calculator in section 1067G

(1A) If a person is in receipt of a youth allowance and the person is a principal carer and the person is not a member of a couple, the person’s youth allowance is to be worked out using the rate calculator at the end of section 1068A.

(1B) If a person is in receipt of a youth allowance and the person is a principal carer and the person is a member of a couple, the person’s youth allowance is to be worked out using the rate calculator at the end of section 1068B.

(1C) If a person is in receipt of a youth allowance and the person is a person with a partial capacity to work and the person has not turned 21, the person’s youth allowance is to be worked out using the rate calculator at the end of section 1066A.

(1D) If a person is in receipt of a youth allowance and the person is a person with a partial capacity to work and the person has turned 21, the person’s youth allowance is to be worked out using the rate calculator at the end of section 1064.

Note: For partial capacity to work see section 16B.

For principal carer see subsections 5(15) to (24).

For member of a couple see section 4.

(2) Schedule 17, item 5, page 202 (lines 6 to 33), omit the item, substitute:

5 Section 1067G(1)

Repeal the section, substitute:

(1A) The rate of youth allowance of a person referred to in subsection 556(1) is to be calculated in accordance with the Rate Calculator in this section.

(1B) To avoid any doubt, this rate calculator does not apply to people to whom subsection 556(1A), (1B), (1C) or (1D) applies.

(3) Schedule 10, items 54, page 165 (lines 4 to 13), omit the item, substitute:

54 Subsection 746(1)

Repeal the section, substitute:
(1) Subject to this section, the rate of a person’s special benefit is the fortnightly rate determined by the Secretary in his or her discretion.

55 At the end of section 746

Add:

(3) If a person is in receipt of a special benefit and the person is a principal carer and the person is not a member of a couple, the person’s special benefit is to be worked out using the rate calculator at the end of section 1068A.

(4) If a person is in receipt of a special benefit and the person is a principal carer and the person is a member of a couple, the person’s special benefit is to be worked out using the rate calculator at the end of section 1068B.

(5) If a person is in receipt of a special benefit and the person is a person with a partial capacity to work the person’s special benefit is to be worked out using the rate calculator at the end of section 1064.

Note: For partial capacity to work see section 16B.
For principal carer see subsections 5(15) to (24).
For member of a couple see section 4.

(4) Schedule 18, page 213 (after line 22), at the end of the Schedule, add:

Part 3—Rate of austudy payment

22 Subsection 581(1)

Repeal the subsection, substitute:

(1) Subject to this section, the rate of a person’s austudy payment is to be worked out in accordance with the austudy payment rate calculator in section 1067L.

(1A) If a person is in receipt of a austudy payment and the person is a principal carer and the person is not a member of a couple, the person’s austudy payment is to be worked out using the rate calculator at the end of section 1068A.

(1B) If a person is in receipt of a austudy payment and the person is a principal carer and the person is a member of a couple, the person’s austudy payment is to be worked out using the rate calculator at the end of section 1068B.

(1C) If a person is in receipt of a austudy payment and the person is a person with a partial capacity to work, the person’s austudy payment is to be worked out using the rate calculator at the end of section 1064.

Note: For partial capacity to work see section 16B.
For principal carer see subsections 5(15) to (24).
For member of a couple see section 4.

(5) Schedule 19, page 215 (after line 4), before item 6, insert:

5A Subsection 1068(1)

Repeal the subsection, substitute:

(1) Subject to this section the rate of:

(a) newstart allowance; or
(b) sickness allowance; or
(c) partner allowance; or
(ca) mature age allowance under Part 2.12B; or
(d) widow allowance;

is to be calculated in accordance with the Rate Calculator at the end of this section.

Note: Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the calculation of the component amounts used in the overall rate calculation.

(1A) If a person is in receipt of a widow allowance, newstart allowance (18 or over), sickness allowance (18 or over), partner allowance, or mature age allowance and the person is a principal carer and the person is not a member of a couple, the person’s allowance is to be worked out using the rate calculator at the end of section 1068A.
(1B) If a person is in receipt of a widow allowance, newstart allowance (18 or over), sickness allowance (18 or over), partner allowance, or mature age allowance and the person is a principal carer and the person is a member of a couple, the person’s allowance is to be worked out using the rate calculator at the end of section 1068B.

(1C) If a person is in receipt of a widow allowance, newstart allowance (18 or over), sickness allowance (18 or over), partner allowance, or mature age allowance and the person is a person with a partial capacity to work, the person’s allowance is to be worked out using the rate calculator at the end of section 1064.

Note: For partial capacity to work see section 16B.
For principal carer see subsections 5(15) to (24).
For member of a couple see section 4.

(6) Page 226 (after line 22), after Schedule 20,
insert:

Schedule 20A—Consequential amendments to calculators
Social Security Act 1991

1 At the end of section 1064
Add:
(8) The calculator at the end of this section applies to a person who is in receipt of a widow allowance, newstart allowance (18 or over), sickness allowance (18 or over), partner allowance, youth allowance (21 and over), special benefit, Austudy payment or mature age allowance, and who is a person with a partial capacity to work.

Note: For partial capacity to work see section 16B.

2 At the end of section 1066A
Add:
(6) The calculator at the end of this section applies to a person who is in receipt of a youth allowance and has not turned 21 and who is a person with a partial capacity to work.

Note: For partial capacity to work see section 16B.

3 After subsection 1068A
Insert:

(1A) The calculator at the end of this section applies to a person who is in receipt of a widow allowance, newstart allowance (18 or over), sickness allowance (18 or over), partner allowance, youth allowance (21 and over), special benefit, Austudy payment or mature age allowance, and who is a principal carer and the person is not a member of a couple.

Note: For principal carer see subsections 5(15) to (24).
For member of a couple see section 4.

4 After subsection 1068B(1)
Insert:

(1A) The calculator at the end of this section applies to a person who is in receipt of a widow allowance, newstart allowance (18 or over), sickness allowance (18 or over), partner allowance, youth allowance (21 and over), special benefit, Austudy payment or mature age allowance, and who is a principal carer and the person is a member of a couple.

Note: For principal carer see subsections 5(15) to (24).
For member of a couple see section 4.

I have circulated many amendments dealing with a wide range of matters on behalf of the Democrats. Because of the guillotine, we will not get the opportunity to examine them or put forward in detail our position on them and get on the record any possible justification the government might have for not accepting them. But I do want to emphasise this set of amendments specifically, because they go to the key issue from the Democrats’ point of view.

These Democrat amendments provide any single coalition senator who acknowledges
that cutting the income of sole parents or people with a disability does not help them into work with the opportunity to support an amendment that would prevent that income being cut. That is what this group of amendments does. Those people would still be subject to the activity test the government is putting forward, so the government does not have the excuse that they would not have all the other obligations that would encourage them into work.

The sole impact of these amendments would be that people would not have their income cut. If a person is the principal carer of one or more children and not a member of a couple—that is, a sole parent—they would be paid at the parenting payment single rate. If a person has a partial capacity to work, they would be paid disability support pension rates, including the pharmaceutical allowance, and they would retain the pension income test. It would mean that people would not have their income cut; they would retain the same, fairer income test that does not take away so quickly or so copiously any income they earn from part-time work; and they would retain the pharmaceutical allowance. The amendments also ensure that the supplements and concessions for full-time students are retained, and the pensioner education supplement and pensioner concession cards are also retained.

The wording is complicated because it is a complicated act, but that is the key aspect of these amendments to the bill. They will ensure that, although people will go into a new category and will be required to meet the mutual obligations the government puts on them, they will not lose any income. I want to make it clear that these amendments are purely to provide a crystal-clear opportunity to remove what I see as the core flaw and core problem in the legislation. That flaw is of course that a large number of people, many thousands of people—differing figures come forward from the government department, but certainly well over 150,000 people—will have their income cut, some of them quite enormously, particularly those who want to undertake study.

So any individual government senator that takes the same view as the government member for Pearce in the House of Representatives, Mrs Judi Moylan, would vote for these amendments. As Mrs Moylan herself said in an interview I read on Margo Kingston’s web site, she accepted that the bill had positive aspects, so she did not want to oppose the whole bill, but she believed that there were significant problems within it, and the key problem was and is that people would have their income cut. She did not want to support it, but there was no point crossing the floor because it would not have affected the outcome.

Any individual government senator crossing the floor here, on these amendments, will affect the outcome if they are not willing to support the bill unless these amendments are passed. All we need is another Judi Moylan in the Senate, just one, to make clear the point that the bill should not pass unless this amendment passes and the problem at the heart of the bill would be removed. It is not the only problem and I certainly do not want to suggest that this is the only concern the Democrats have; but, accepting that many people believe that the compliance program that is being put in place is necessary to provide that extra encouragement to people to seek work, these amendments simply prevent people’s income being cut.

There are other options and amendments that have been circulated that seek to do similar things. There is the option, as I understand it, of simply opposing a couple of relevant schedules, which is an amendment that Labor and, I think, the Greens have circulated. That is an approach that certainly
accords with the Democrat policy. The intent of these amendments is to make it as easy as possible for any individual government senator to prevent people’s income being cut and, frankly, to ensure that they have no excuse, that they will not be able to say afterwards, ‘Well, I would have liked to have had that part removed, but it would have meant that other parts of the bill were damaged.’ They will have no excuse.

These amendments simply prevent people’s income being cut. As I noted, I think, earlier on today or in another debate in this chamber, that core aspect of the bill is the part that the government, particularly the Special Minister of State, have avoided repeatedly, in question after question, for months. A whole range of different questions and supplementary questions have been put to him asking, ‘How does cutting people’s income help them to get a job?’ According to the count I have done, in his answers to questions and supplementary questions he has avoided that question 32 times, along the way also throwing a false smear back at those of us on this side by saying, ‘You just want people to be stuck on welfare; you support welfare dependency; you support “welfare to nowhere”,’ and all of those completely false statements. So we have had 32 dodges of this central reality of the legislation, just from that one minister. I think we would have had some from other ministers and many other government senators as well. Mrs Moylan, the member for Pearce, did not dodge the issue; she acknowledged it up front and had the courage to do so, and I call on any individual government senator to likewise show that courage.

The Minister for Employment and Workplace Relations, Mr Andrews, made a statement, reported on ABC radio, that the government, in putting forward the very small number of fairly minor amendments that they have, have met the concerns that have been raised. I know ministers, particularly from the House of Representatives, do not understand the Senate very well and certainly do not pay very much attention to the Senate—they never have, and they pay even less attention now. They certainly do not pay much attention to what happens in Senate committees. But any minister who can seriously suggest that the concerns that have been raised have been met by the government is simply delusional. That is the politest word I can think of.

The government has not met the concerns that have been raised, because the core concern that has been raised is that over 150,000 of the poorest, most vulnerable, most disadvantaged and struggling Australians and their children will have their income significantly cut by this legislation unless these amendments are passed. I call on each individual government senator to consider these amendments, because it will be on their heads as individuals if this legislation passes with that income cut contained in it, because any one of them could stop it. So I do hope that with this amendment, if none of the others, there is at least one government senator who will acknowledge the very serious injustice that is about to be inflicted on a lot of Australians who do not deserve it.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (9.23 pm)—I want to make a short contribution to the debate and pick up some of the issues that Senator Bartlett has quite rightly put, but I want to come at it from a different angle. In a bit of a rare entree for me, I want to come at it from the right-wing perspective. My concern about the package is not just that it is unfair on those on welfare and that it seeks to punish some of the most disadvantaged in our community; my other concern is that in fact it does not meet the government’s own objectives, that it fails in its economic objectives. On that basis, I
think the bills ought to be rejected. We have focused a lot on those who are disadvantaged by these changes. The government has said: ‘That’s not fair. You’ve got to look at the totality of the package.’ If Senator Abetz has said it once, he has said it a hundred times.

Senator Abetz—It’s finally got through.

Senator CHRIS EVANS—That is right. In my speech in the second reading debate, I tried to focus on the totality of the package.

Senator Abetz interjecting—

Senator CHRIS EVANS—Well, you ought to read it. As Senator Bartlett quite rightly pointed out, the key issue and the thing that has got most people concerned is the change in welfare payments. After 1 July 2006, single parents or those who gain a disability are to be treated in a different way.

The government said all through this debate up until the bills were finally introduced to the parliament, ‘We don’t want two classes of people.’ The mantra was: we do not want two classes. Mr Dutton was still running that line in March.

Of course, what did we get in May? We got a system that set up two classes of people—those on the DSP before the changes and those on it after and those on parenting payment before and those on it after. Clearly there are two different classes of people. What is missing from this government package that was there in 2002? I will tell you what is missing: the government proposed in 2002 that the work test measures et cetera would be applied to all recipients of DSP, but this package does not do that. The Treasurer lambasted Labor for three years over its failure to support the 2002 measures. He attacked us again and again because he said that reform of the DSP was central to welfare reform, that it was the reason the government was doing this. He said we have 708,000 on the DSP and they are a chain around the neck of the economy, that while some of them are genuine, there are real problems with this group. That was the rationale for welfare reform. He said at one stage:

There are now one in eight men over 55 in Australia on the disability support pension. Now there are men with bad backs who cannot work. I accept that and they should be on the disability support pension. But do you think that one in eight men over 55 in Australia is disabled?

That came in April this year just before the budget. He continued to attack Labor for its failure to support the 2002 reforms, he continued to complain that there were too many people on the DSP and he continued to say that the main reason for this whole reform was to deal with that problem. It is funny, isn’t it? That reform is not in this package. The main rationale for welfare reform is not here. I looked at what this did for the 708,000 people on the DSP and I could not find it. There is nothing here. Why? That is a good question.

It seems to me that at that fateful dinner on 2 May 2005, which we learnt about at estimates, when the Treasurer and Mr Howard sat down to dinner, they nutted out the welfare reform package, because what was presented by the department to that meeting was severely altered, as shown by the evidence given. Basically the Treasurer, with his history of being rolled, was rolled again. The Prime Minister said to him: ‘No, mate. There isn’t going to be any harm to us out of this. We are not going to bite the hard politics. We’re going to make it soft. All the victims will be after July 2006. I’m not having 708,000 disability support pensioners mobilised against us. There won’t be any ready victims. The victims will all be prospective victims. They’ll be people who get disabled after July 2006. They’ll be people who become single parents after July 2006.’ I am sure the Treasurer argued that what he had been saying for the last three or four years would be a nonsense. But Mr Howard in-
sisted: ‘No. It’s a victory for politics over policy. We can’t have victims. We can’t have the churches and others mobilising these people.’

So what did we get? We got two categories each of DSP and parenting payment people. The attack was on the future recipients. Those that are currently on welfare would be grandfathered—1.3 million people currently on welfare are not contained in the major change in this package. Why? Because the government lacked the guts. It had said that that group was the economic problem, but it lacked the political courage. So what did it do? It grandfathered them. I am not arguing that they should have had their benefits reduced; quite the contrary. But, if the government’s claims for reform are to be sustained, it has to prove what it is doing about the problem, as it says it exists, in welfare in this country. And it has ducked it. What it is doing is attacking the problem that it says will emerge after July 2006. The economic credentials of the government in relation to welfare reform are in tatters because it went for the easy politics over the policy. The DSP recipients currently in the system will have no activity test, no change in their benefits and no extra assistance to move them off welfare and into work. That is 708,000 people on the scrap heap. Forget them—too hard. There will be no help, no assistance. The people who the Treasurer said were the cause of all the problems, the reason we had to have these bills, are pushed to one side. So they get no assistance, but they are left alone.

The interesting thing we learnt in recent times is that not only are there 708,000 people on the DSP but even under the government’s grand welfare reforms there will be an extra 53,000 people each and every year going onto the DSP. So not only has the DSP list not been tackled; it will continue to grow. That is welfare reform under the Howard government. This is great reform! The DSP rate of increase may slow slightly, but there will be 50,000 extra each year. Gee, they have really tackled the hard issues, haven’t they?

What do the government go for instead? They take the easy kicks. They will kick those who can least afford to protect themselves and will only kick those who come onto the system in the future because otherwise those pesky churches and those pesky social service organisations will organise them. There will be a public outcry. They will have victims. They will have mothers who cannot feed their kids. They will have example after example—people with a disability, people with kids who are being adversely affected. They will be able to point to each of them. The government say, ‘We can’t win that campaign. It’ll be like the IR campaign. Even if we spent $100 million, we couldn’t win that argument. They would have all these real live people with real live social problems struggling to live with a disability, struggling to bring up their kids, who could be shown to be clearly worse off and disadvantaged by the changes. So we’ll play the smart politics, the cunning politics. We’ll show them. We’ll grandfather the 1.3 million on welfare. We’ll put them to one side and we’ll attack those ones that come onto welfare from July.’

If you want further proof of why that is true, ask yourself this question: if being on Newstart is so beneficial, so helpful for getting a job and so central to the government’s objectives of moving people from welfare onto work, why didn’t they apply it to the 1.3 million already on welfare? If it is the magic bullet, if it is the solution, if reducing their benefits, putting them on the Newstart arrangements, putting them on the Newstart taper, is such a brilliant idea and is so essential for the movement from welfare to work, why wouldn’t you do it for the 1.3 million
already stuck on welfare? Many of them are looking for an opportunity to get off, for some assistance, for some training and for some support. But the government say, ‘No, we don’t think it will solve their problems. It will only solve the problems of those who come after July 2006.’

I do not know about you but I am a bit puzzled by the logic. It seems to me that if this is the magic bullet and the solution to get people off welfare onto work, why wouldn’t you apply it to the 1.3 million currently on welfare? Why wouldn’t you cut their benefits? Because the government cannot win the politics. They would have to deal with victims. They would be seen as mean, cruel, arrogant and out of touch. They could not win the political argument, so they ducked the issue. They have got a magic solution—lower income for these people—but they have to quarantine the whole 1.3 million who are currently on the system because the politics are too hard.

If the government genuinely believed that putting people on lower welfare payments was a solution, they would do it for everybody. But they do not genuinely believe it. They have not got the political or policy courage to do it but, more importantly, the reason they do not do it is that they know it is not the solution. They have taken the soft option. Peter Costello was rolled by John Howard. The welfare reform package is a sham. There are some measures in it that will be useful for helping people on welfare into work, but the 1.3 million currently on welfare are exempted or grandfathered because the government did not have the political courage and they know their answer is not the answer. It is about punishing those on welfare. It is more about demonising those on welfare and it is about making their conditions worse.

Why? Despite all the talk about the $3.6 billion investment, work it out. I am no mathematician but, if you are paying people $30 to $80 a fortnight less, surely someone is saving a quid there somewhere. We learnt the other day that the government is saving about $1 billion over the out years, but you work it out: if you are paying beneficiaries less, there is a saving. I accept there is expenditure in the equation, but there are also savings. The government has been very coy about the savings. There is also a bit of a fiddle about the previous 2002 expenditure being counted as a saving, but I will leave that for another day.

The clear message I want to deliver is that not only is this opposed by the usual suspects because it is unfair, inequitable and it attacks those who are least able to defend themselves but it is cowardly, it is bad social policy and it is politics of the worst order. The government has chosen to attack those who come onto welfare after July next year because they are easy targets. If it genuinely believed in the solution it is offering, it would do the same for the 1.3 million currently on welfare. So, clearly, this is not about getting people jobs; it is as much about punishing them.

Quite frankly, the claims that Mr Costello makes in terms of his economic and his social credentials have been shown to be a complete failure. He got rolled. He has ducked the issue that he said must be the core of this package. The government has ducked it, and now he wants to take money off what he considers irresponsible parents. I do not know—maybe I am losing my marbles—but was this the same Treasurer who threw $600 per child at every family in Australia last year twice? Was this the same Treasurer who sent cheques of $3,000 to Aboriginal women in communities with five kids twice that led to an increase in alcohol abuse and domestic violence in those com-
munities? Is that the same Treasurer? But now he does not want to—

Senator Abetz—What cheques?

Senator CHRIS EVANS—Senator, you might recall that the family payment bonuses that were sent out last year led to a great deal of trouble in some Aboriginal and other communities because people suddenly got the biggest cheques of their lives. But now we want to decide who are good parents and who are bad parents. I do not mind—just have some consistency. If the Treasurer wants to have a foray into social policy, he ought to work out where he is coming from and where he is going. The key point in this debate is this: this is bad economics. The government has ducked the hard issues. This is not serious welfare reform; it is fiddling around the edges. Labor supports serious welfare reform, but the government has ducked the hard issues and gone for the soft option, which is punishing those who can least afford it and those people who come onto welfare after July 2006.

If the government believed in their package, they would have applied it to everybody, but they have not. This is about future victims, ensuring that there are not victims now because the government know they would not have won the debate. The only thing that allows the government to get this package through the parliament now is that there will be no victims until next year. If there had been victims, the government would never have carried their own backbench. Senator Bartlett did right to raise that issue. Judi Moylan did make a good point. I am sorry she did not oppose the bill but she did make a good point. What the government has done is cunning politics but bad social policy. We ought to reject the bill and we ought to hold the government up to account not only for its attack on the poor but for its failure to progress serious welfare reform.

Senator ABETZ (Tasmania—Special Minister of State) (9.37 pm)—What a funny speech that was. Here we are as a government being accused of adopting an extreme ideological agenda. That has been the mantra of the last few weeks. Tonight all that has been thrown aside and it is all about cunning politics. Those who operate on the other side really do have to come to a conclusion on this. Either it is an extreme, ideologically driven, take-no-prisoners sort of approach, which we have been told we are taking, or it is simply cunning politics.

Senator Chris Evans—It can be both.

Senator ABETZ—Oh, it can be both. I see. So an extreme ideological stance that bears no resemblance to the aspirations of the Australian people is cunning politics. I think that that has been Labor’s problem for the last few years. They think that that is cunning politics but I do not think it is cunning politics and the Australian people will not wear it.

I must express my disappointment at the contributions of both the Deputy Leader of the Democrats and the Leader of the Opposition in this place. Until their contributions, we were engaging in what the committee stage is usually about. But we have now witnessed basically a diatribe of opposition for opposition’s sake without them presenting any real alternatives. Senator Bartlett bemoans the fact that we have time-managed this debate. Well, those on the other side combined with the Democrats to put through—what was it, Senator Bartlett?—61 bills in one hour. Do not come to me, hand on heart, asserting to the Australian people and others that the Democrats or those on the other side would never countenance such behaviour. It seems that if Labor and the Democrats conspired to put 61 bills through in one hour that is okay because the Democrats say it is okay, but if we as a government
say, ‘How about limiting this to a sensible number of hours?’ That is an outrage to democracy. The people on the other side continually play these double standards. That is why those on the other side are losing support from the Australian people.

I will correct Senator Bartlett. Current recipients will not be paid less. Other than that, I will basically ignore the provocations of Senator Bartlett’s speech so that we can return to the issues at hand. With regard to his great request to those on this side to cross the floor, methinks that there might be some people on the Labor side and indeed in the Democrats to whom I could make a similar request and suggestion. I could say: ‘Forget what the deputy leader of your party is saying. You know it’s nonsense. You know it doesn’t stack up. Come across and support the government side.’ That sort of argument is, quite frankly, fatuous and gets us nowhere. We know that if anyone from the Australian Labor Party crosses the floor they are in for automatic expulsion.

I will turn to Senator Evans’s contribution. He tried to approach this, he told us, from the right-wing perspective. Clearly he is a failure from the left-wing perspective. He has now confirmed he is also a failure from the right-wing perspective and, as a result, his contribution to public policy, I suppose, is as we have known it to be for his total career in this place—that is, not much. We heard the mantra of ‘victims’ and ‘punishing people’ and all that sort of terminology. Can I just ask for a degree of consistency? If we were out to victimise people—I think the phrase was ‘demonising those on welfare’—and if that was our motivation, why would we stop and grandfather people? Why not demonise the whole lot, if that is our motivation? Those on the other side cannot have it both ways. That is the devastatingly embarrassing position for those on the other side because they operate in a policy vacuum. They grasp at one argument to condemn us because the only policy is to oppose. They then grab at another argument to throw at us, not realising that the arguments are inconsistent. What the Australian people are wanting from the Australian Labor Party is not only opposition but alternatives.

If you are only going to concentrate on opposition for opposition’s sake, can I make a plea? At least make your opposition consistent so it at least stacks up, so you can at least argue it with a straight face to the Australian people. You cannot argue one day that this is just extreme ideology and then argue the next that this is just cunning politics with an eye to opinion polls, or that this is wrong from a right-wing perspective but then it is also wrong from a left-wing perspective. Get your arguments together, get them coherent and then get some traction within the community. But that is the problem when you operate in a policy vacuum, as the Australian Labor Party have done. Unfortunately, Senator Evans’s contribution confirms the lament of Mr Latham—and others in the Labor Party—who some five years into the Howard government—about halfway through, on Friday, 26 October—commented: Is this the low point in our five wasted years? A Crean-Swan press release today announcing that our election policy on poverty is to convene a summit. How can a Labor Party not know what to do about poverty? This is the issue that should make us radically different from the other parties. In the 15-minute spray that we got from the Leader of the Opposition in the Senate was there any hint of an alternative? No. It was opposition for opposition’s sake. ‘We will oppose,’ say the Labor Party. ‘We will not come up with alternate policies.’ At this Crean-Swan press conference that Mr Latham tells us about, he says that they were going to convene a summit and states: They announced it at the ACOSS congress, so it’s not hard to guess what sort of summit it will be—
he laments—
Left conservatism, ACOSS whingeing about all the things they don’t like in the world. But not offering any answers ...
What a great summary of the speech of the Leader of the Opposition in the Senate that we have just heard: whingeing about all the things in the world that he does not like but being unable to offer any answers other than ‘increase the payments’.
They just do not get it—
Mr Latham laments. He goes on:
The first task in ending poverty does not relate to material goods; it is a social task, connecting people with others, rebuilding their self-esteem and confidence, creating a new common purpose in their lives.
Then he says:
Major welfare reform is needed in Australia.
Labor says, ‘We agree, but, of course, if you come up with any proposal, we oppose it and we have none of our own to offer.’ I suggest that they make a start with some suggestions from Mr Latham, who says:
There can be only two purposes to the public provision of welfare: the first, to move people back into work, and, second, to develop their skills and self-esteem, offering an incentive for an active life while also demanding individual responsibility in return.
That really is a very neat summary of the proposal that we are debating tonight. He then goes on to make the obvious comments:
Welfare dependency can kill a society—
Senator Wong—Mr Temporary Chair, I rise on a point of order. Minister, we have one hour and 10 minutes, due to your guillotine, on committee amendments. We are not even off the first page and you are reading a book into Hansard. I know you have an obsession with Mr Latham’s book, and I am sorry to interrupt your personal obsession that is being played out in public. But surely there are more important issues for this Senate to discuss given the legislation that is before us and all the amendments, including government amendments, rather than you reading the same slabs that you seem to have read out ad nauseam for the last number of weeks at question time rather than answering the questions. Let us get on with the debate. You do not want to have the policy debate, because you cannot justify the core of your policy.

The TEMPORARY CHAIRMAN (Senator Chapman)—Order! Senator Wong, address your point of order through the chair and not directly to the minister. There is no point of order, as I heard it. Senator Abetz was developing arguments in relation to welfare dependency, which are very important to the Welfare to Work legislation.

Senator ABETZ—Thank you, Mr Temporary Chair. Isn’t it amazing that Senator Evans can give a spray, canvassing about how Mr Howard and Mr Costello had a dinner, how Mr Costello got rolled, how Mr Costello’s economic policy is wrong—

Senator Wong—Wasting time; that is what you are doing.

Senator ABETZ—That is all okay for Senator Wong, in her duplicity in this place. It is okay for her leader to swallow up 15 minutes, but how dare the government get up and promote its policy for 15 minutes!

Senator Wong—that is your great contribution: reading a book into Hansard!

The TEMPORARY CHAIRMAN—Order, Senator Wong!

Senator ABETZ—Senator Wong ought to have a cuppa and a Bex whilst I continue. I suggest to Senator Wong that she has five minutes to contain herself because I will be taking the time up. As Senator Wong knows, in the committee stages, if we get a 15-minute homily from those opposite, they will get a 15-minute homily in response. If they
ask questions, they get short, sharp answers. That has been my approach in these situations.

Senator Bartlett—Mr Temporary Chair, on a point of order: by his own words the minister has said he is giving a homily. There is an amendment before the chair which the minister has not addressed once. He has lied about the position of the Democrats. He has lied about the position of the Labor Party. He has misrepresented the history about guillotines—

Senator ABETZ—Withdraw that.

The TEMPORARY CHAIRMAN—Senator Bartlett, I invite you to withdraw your comment about the minister.

Senator ABETZ—Just behave yourself.

Senator Bartlett—You can misbehave and everybody else has to behave themselves! Double standards—that is fairly typical. Mr Temporary Chair, I accept your invitation and I withdraw. I would not want to sink to the standards of the minister. The fact is that there is an amendment before the chair that the minister has ignored. Not only has he ignored it; he has openly stated he is actually just giving a 15-minute homily. It is out of order to not address the amendment before the chair. We are not at the start of the committee stage. We are dealing with an amendment. I know the minister has dodged the core fact of this amendment 32 times in question time. The fact is he is dodging it again now.

The TEMPORARY CHAIRMAN—Thank you, Senator Bartlett. There is no point of order. This committee stage debate has been very wide ranging, I have noted, and that has been on both sides of the chamber. I am sure that Senator Abetz will be addressing the amendment, but he is certainly entitled to put the government’s argument in relation to welfare dependency and Welfare to Work.

Senator ABETZ—Mr Temporary Chair, I am discussing the amendment in just as great a detail as Senator Chris Evans did. It is interesting that there is one rule for those on the other side which they will not allow for this side. The simple fact is that welfare dependency can kill a society and suffocate self-esteem and the stability of a normal life. The perpetual dilemma of Centre Left parties is supporting the active role of government but not knowing when to stop. And that is the great dilemma for those opposite. The assertion was made, and it was a wrong assertion, that current disability support recipients do not get any assistance. That is just wrong.

Senator Bartlett—Mr Temporary Chair, I rise on a point of order.

The TEMPORARY CHAIRMAN—Senator Bartlett, I hope this is not a frivolous point of order.

Senator Bartlett—No, it is a frivolous statement by the minister, who has repeatedly misled this chamber for months by saying that we are saying that people currently on support will get their income cut. Nobody has said that and he should withdraw that deliberate deceit.

The TEMPORARY CHAIRMAN—That is a debating point; it is not a point of order.

Senator ABETZ—He said it was a ‘deliberate deceit’ and that should be withdrawn. Make him withdraw it. I am not going to put up with this.

The TEMPORARY CHAIRMAN—Yes, I did hear the statement that was directed at the minister, Senator Bartlett. I invite you to withdraw your statement regarding the minister’s ‘deliberate deceit’.

Senator Bartlett—It has been made over 32 times, so it is a bit hard to believe it is accidental now.
Senator ABETZ—Just withdraw!

The TEMPORARY CHAIRMAN—Withdraw it without qualification, Senator Bartlett.

Senator Bartlett—You provide such a good example for us, Senator Abetz, in terms of such petulance and such immaturity, with falsehoods spraying across, smearing people time after time, so you cannot be surprised if people occasionally have to sink down to your level.

The TEMPORARY CHAIRMAN—Senator Bartlett, you are testing my patience and compounding the felony. I invite you to withdraw both of those statements.

Senator Bartlett—Felony? I don’t think the terrorism legislation has been enacted yet! I withdraw whichever comments have apparently transgressed.

Senator Chris Evans—On a point of order, Mr Temporary Chairman: can I make the point to you that I do not think it is appropriate for you to pass commentary on a senator before they have made their point of order. I would encourage you not to make comments about the senator’s point of order—such as ‘I hope this isn’t a frivolous point of order’—before you have heard it. I would also encourage you not to comment on Senator Abetz’s contributions, other than to say that the point is in order or not in order and rule, rather than run a commentary. It might otherwise create the wrong impression of the role of the chair.

Senator ABETZ—This is the man who divulges the proceedings of the Privileges Committee before it has even been reported to the Senate, by way of interjection. I hardly think Senator Chris Evans is a strong position. Senator Chris Evans did say that current disability support pension recipients will not get any assistance. That was the statement that I was repeating. That is wrong. Currently, there are 23,000 vocational rehabilitation places for people on the disability support pension and there are 39,000 disability specialist service places, and therefore to assert that there is no current support for those recipients is simply wrong.

Senator Chris Evans—I rise on a point of order, Mr Temporary Chairman. The senator is deliberately misleading the Senate. I never said that. What I said was that there was no extra assistance in the welfare reform package. On a number of occasions the senator has sought to mislead the Senate. I ask you to call him to order rather than continue to mislead.

The TEMPORARY CHAIRMAN—There is no point of order; that is a debating point.

Senator ABETZ—It is interesting, isn’t it? They are supposedly so concerned to debate the detail of this legislation. The deputy leader of the Democrats and the Leader of the Opposition in the Senate engage in about a 15-minute spray each and then, when I respond to defend the government, all we get are frivolous points of order and disorderly interjections. I think Senator Bartlett has now had to withdraw on at least three occasions in about 15 minutes. I know the night is getting on for Senator Bartlett and he is never too good at this time of night, but can I suggest to Senator Bartlett that he restrain himself—

Honourable senators interjecting—

The TEMPORARY CHAIRMAN—Order! Senator Abetz, might I suggest that that comment be withdrawn.

Senator Chris Evans—Senator Abetz, you have reached a new low tonight. That ought to be withdrawn.

The TEMPORARY CHAIRMAN—I have already raised it with the minister.

Senator ABETZ—I will withdraw. I would have thought that would be normally
allowable but, if it does offend standing orders, I will withdraw it.

Senator Chris Evans—It offends everybody in the room!

Senator ABETZ—Only those on that side. Can I continue. Grandfathered parents—

Senator Wong interjecting—

Senator ABETZ—I have listened to Senator Wong in comparative silence all night. Senator Wong has continually interjected.

Senator McLucas interjecting—

Senator ABETZ—And now we have Senator McLucas joining in. There are certain standards that one would have thought prevailed. I will not say these people are not performing well tonight in case there is another cacophony from those opposite in mock outrage. I simply say that grandfathering current recipients is not an unusual activity. Indeed, when parliamentarians’ superannuation was considered by those opposite, guess what they did? They said that those on the current benefit should remain on it. Only new MPs should get the lower superannuation rate. That is a classic example of grandfathering and a Labor policy. But now of course they say that you should no longer be grandfathering.

We have been told about the Australian government allegedly abandoning people on the disability support pension. They will continue to be encouraged and assisted to engage with employment services. We have a $555 million package over four years to assist them. We have a Welfare to Work policy that will work, that will deal with the concerns expressed by many people on both sides of politics. But those in this chamber cannot make the tough decisions in relation to these matters to ensure the wellbeing of the individuals concerned and also the children who are within those family units. The government will be opposing these amendments.

Senator McLucas (Queensland) (9.58 pm)—I have two points I want to raise this evening. The first is the point I alluded to last night in my speech in the second reading debate, and that is the issue that refers to people with degenerative diseases who have, in my view and in theirs, been caught up in this package of measures. The package of measures is ostensibly addressing people with disabilities but, as a part of that, large numbers of people with degenerative diseases—people who have MS, people who have motor neurone disease, people with Crohn’s disease, people with chronic rheumatoid arthritis and people with HIV-AIDS—have now been caught up in this package of measures and they do not fit. I made the point last night that this package of measures is poorly targeted and has not been well consulted on. This group of people in particular cannot be accommodated in this package of measures.

Will the government contemplate the request, from the MS Society in particular, that people with chronic illness—neurological disease—be exempted from this measure because they do not fit? If that is not possible, then why is it that you cannot give a commitment to this group of people that they will be able to have an assessment in a shorter period than two years? These people have a disease that means their condition degenerates over time. It means that they are not going to get better. They are not going to get to a position where they are going to be able to work longer hours; they know they have got an ailment that will inevitably lead them to work fewer and fewer hours. Why do they have to wait for two years to have another assessment of their ability to work?
Why is it that there is no consideration of the time it takes for this group of people to get to employment? You should know, Minister, that this group of people has extraordinary difficulties to overcome to get to work. But you should also know that people with MS in particular have a higher rate of employment than the Australian average for part-time work. So there is the proof, if you needed it, that if any group of people wants to maintain their place in the work force, it is the group of people with MS. But this system will make their life less tenable. We have had that evidence in the inquiry.

Minister, why won’t people with degenerative illness be excluded from this package? They do not fit. They cannot increase their capacity to work. The nature of their disease means that their capacity will diminish over time—that is a fact; it will not change. And if you will not exempt this group of people, why won’t you guarantee the capacity for people under review to obtain medical, neurological, rehabilitation, urological or psychiatric assessment in the CWCA?

Senator ABETZ (Tasmania—Special Minister of State) (10.02 pm)—I thank Senator McLucas for her contribution and her questions, and I note that she made similar comments in the second reading debate last night. I respond by saying that the government remains committed to providing a sustainable and adequate safety net for people with disabilities who cannot work substantial part-time hours in the open labour market.

There is no requirement to wait two years before seeking a new assessment. I understand that Senator McLucas—I believe mistakenly—believed that to be the case, and said that in her speech, but I understand from the advice given to me that that is not the case. An assessment can be sought by the claimant or by their—

Senator McLucas—Can be sought.

Senator ABETZ—Yes, that is right—it can be sought by the claimant or by their employment service provider. Information about a person’s medical condition or conditions provided by the claimant, their treating doctor and any treating specialist is taken into account when assessing the impact of conditions on ability to work. A person can reapply—make a new claim for payment—at any time. This includes where there is new medical information that a condition has deteriorated. They can also seek reconsideration of the original decision if they consider that the decision to reject the claim was wrong. So there is a lot of flexibility in the system as we are proposing it.

We do take into account the circumstances that Senator McLucas has indicated. People with a degenerative disease will unfortunately, it stands to reason, have their work capacity reduced over time. Undoubtedly, there will be an unfortunate time when being able to work 15 hours per week will no longer be possible and then, of course, they will be entitled to the full disability support pension. But we will continue to concentrate on people’s abilities, rather than saying, ‘Just because you have a degenerative disease, you will no longer be required to work.’ That is because some of these degenerative diseases, as I think we know, can linger for many, many years. I think the example that the honourable senators refer to, in the specifics—those with multiple sclerosis—is an example where many people with the disease can continue to hold down jobs on a part-time basis and do so very well. In those circumstances, it seems to the government, there is no need to exclude them from the general regime, keeping in mind that there is a substantial flexibility in the system as we are proposing it.
Senator McLUCAS (Queensland) (10.05 pm)—It is very unfortunate that the government is not prepared to accommodate the special needs of this group of people who have been caught up in this proposal, who are desperately hanging on to their employment, who desperately want to work—like most people, in fact. They desperately want to be part of the work force but, because of the variant nature of their disease, they need support. You are going to push these people into a tenuous position—a position where they are not sure whether they are going to have to be looking for work when they are quite ill, because of the variant nature of their disease. But I have made my case. It is very unfortunate.

I want to move now to the case of, let’s say, a person who has cerebral palsy. He turns 21 and applies for Newstart allowance. He is referred for a comprehensive work capacity assessment. This is an issue that was raised during the inquiry, and the answer that I received was not conclusive and not clear. The example was of a person who has cerebral palsy and is turning 21. At that point, they have their comprehensive work capacity assessment. If that assessment says that that person is capable of working 15 hours a week or more but needs support to achieve that, then what will happen, Minister, is that that person then becomes a Newstart recipient.

We are talking about a person with cerebral palsy living in a country town who is taken off the proper disability support payment—he is not taken off it; he does not get on to it—and put on Newstart. That person will stay on Newstart for two years. That is the first point. Why is it that this individual, who cannot obtain the support that they need to become employable for 15 hours, stays on Newstart? I want you to address that, but the substantive question is: after two years—and the department could not be absolutely clear with me on this—does that person have to re-apply and go through another assessment process, given that they have not been able to obtain the support they were told they had to? Do they then go back onto Newstart and does the whole cycle start again? In a rural area, the support that is deemed to be required may not be available. So what happens in the case of that individual who lives in rural Australia?

Senator ABETZ (Tasmania—Special Minister of State) (10.09 pm)—As I understand the situation, if somebody is assessed as having 15 hours work capacity, even if that is with assistance and support, there is an uncapped support system available.

Senator McLUCAS—Not in Wagga.

Senator ABETZ—I understand the department is going through a procurement process now in relation to regional centres. Clearly, that is something that will have to continue to be monitored if what the honourable senator asserts is the case, and there is not that support service there. It remains to be seen as to what the procurement processes can provide. If the person is assessed as being able to work 15 hours per week then they will be in the Newstart or job seeker category.

In relation to people with degenerative diseases, I note that Senator McLucas tried to round off the commentary on that and then moved on to the question I have just answered. In respect of people who have fluctuating health issues, whilst I accept that that can apply to people with degenerative diseases such as multiple sclerosis, there is a category of people whose health may also fluctuate, and who would feel these circumstances very keenly, and that category is people with mental health issues. As I understand it, there is flexibility built into the system to take into account those sorts of indi-
Senator McLUCAS (Queensland) (10.11 pm)—I do not want to use up all of the time available myself but, to go back to the requirement for a person to go to support and training in a rural area, I think I may have misled you, Minister. I said, ‘Wagga’. This person apparently lives 100 kilometres from Moree. My geography of New South Wales is not perfect, but I would be very surprised if they were able to receive that sort of assistance in that place. But the legislation makes it very plain that that person will go onto Newstart, potentially have another assessment and be recycled through one assessment process after another. The department could not advise me where in the legislation that circumstance would be avoided.

In terms of your comment about fluctuating illnesses, how many times do you have people come into your electorate office, Minister, to talk about the difficulties they have with Centrelink? That is no reflection on Centrelink personnel; it is the complexity of the system. I have extraordinarily good staff, but they are often befuddled. We have in front of us an extraordinarily complex system—one that is incredibly increased in its complexity. I do not know how my staff will cope; I do not know how Centrelink will cope. And I do not know how a young man who lives 100 kilometres west of Moree will understand what on earth is happening to him. I do not know a young woman with MS, even if she lives in Canberra, will know how she is going to navigate this system.

It is so complex now. People do not know what will happen to them. The essence is that it will all be sorted out in regulations. Sorry, it will be in guidelines. I wish it was in the regulations; we might be able to disallow them. The guidelines are something we will never see. This is an incredibly complex piece of legislation. We have had less than 2½ hours for the committee stage. I needed to put that on the record on behalf of people with degenerative diseases and on behalf of people who live in rural Australia who, whatever the tendering arrangements are, will not get the support that this legislation requires them to get. Think of those people.

Senator ABETZ (Tasmania—Special Minister of State) (10.14 pm)—I will give a very brief answer. I understand that, with the procurement of these services in regional areas, part of the package will include outreach services. That will be of particular benefit and assistance.

Senator McLUCAS—I’m lucky; I live in the bush and understand.

Senator ABETZ—Instead of saying how big it is, some of us can say how small the township we live in and grew up in is and all that sort of thing, but I do not think that—

Senator McLUCAS—How far.

Senator ABETZ—Just because it is a long distance up to Townsville, Cairns or wherever it is—

Senator McLUCAS—It doesn’t really matter; it is all a long way away.

Senator ABETZ—It is a long way away, and I accept that in Tasmania it would be only about a third of the distance, possibly even less than that—I do not know. But I am not sure how that is relevant, other than to allow me to say that we are looking for outreach services as well to assist exactly those people that Senator McLucas has referred to.

Question negatived.

Senator WONG (South Australia) (10.15 pm)—While Senator Fielding is taking his place, I will briefly indicate Labor’s view on his amendment and a number of other amendments which relate to trying to oppose the income support cuts. As I have previously made clear, Labor is of the view that
those who can work should work. We are of
the view that government policy should be
directed to trying to move people from wel-
fare to work. The fact is that the centrepiece
of this government’s so-called welfare re-
form is a reduction in the income support
payments of vulnerable Australians. We
know from St Vincent de Paul that 70 per
cent of their home visits are already to sole
parents and people with a disability. These
are the groups that this government wants to
punish through this package. It is not suffi-
cient to trumpet rhetoric about welfare to
work and hope that it actually works. It is not
sufficient for the minister to say, ‘We want to
concentrate on people’s ability.’ That is an
extraordinary way to characterise reducing
their income—’concentrating on their abil-
ity’.

We in the Labor Party oppose this bill. We
made that clear in the second reading stage.
We are prepared to look at supporting
amendments moved by the crossbenchers
which are consistent with our position—that
is, opposition to the income support payment
cuts. We do not believe that reducing the
payments to vulnerable families is a sensible
way to move people from welfare to work.
We do not believe it is justified. We do not
see why it is a sensible and competent Wel-
fare to Work package for the government to
take more of every dollar earned than under
current arrangements. Probably the most bi-
zarre thing about the changes that are set out
in this legislation that the government trum-
pets as a Welfare to Work package is that
people are actually punished for working:
you actually lose more money for working
than you do under current arrangements. It is
not only bad social policy; it is bad economic
policy. It is completely irrational to say, ‘We
will take more of every dollar earned and tell
people that it is about welfare to work.’ Over
and over again we see the government sim-
ply trumpeting the welfare to work mantra
and not engaging with the real issue, which
is how you move people from welfare to
work.

Senator Abetz says, ‘We’ve got these
other arrangements in place and increased
support et cetera.’ We make a number of
points about that. You could have done all of
that without reducing people’s payments.
You could have imposed reasonable activity
requirements without cutting people’s pay-
ments, but you did not choose to do that; you
chose to simply grandfather one lot because
you knew it was politically unsaleable and
cut the payments of the future recipients.
That is the core of your policy. If you really
believed reducing people’s incomes was a
good way to get them from welfare to work,
you would do it to the current recipients, but
you will not do that because you know that
that is not what this is about. This is funda-
mentally about reducing incomes. It is about
making people who are already vulnerable
more vulnerable. It is about making families
who are already overrepresented in the pov-
erty statistics poorer and it is about increas-
ing the disincentives to work—that is, mak-
ing work less attractive than welfare.

Senator Fielding, I want to flag that, in re-
lation to your amendments, the opposition is,
consistent with our position, prepared to
support it, because we are opposed to reduc-
ing the incomes. We do have some concerns
with the amendment. It does not go to the
issue of people with a disability, and we
think, in terms of policy consistency, if we
oppose, as we do, the reduction in income to
sole parents, we should also—and we will
also—oppose the reduction in income sup-
port payments to people with a disability. On
that basis, I flag our support for the amend-
ment.

Senator FIELDING (Victoria—Leader
of the Family First Party) (10.19 pm)—I
move Family First amendment (1) on sheet 4789:

(1) Schedule 19, page 215 (after line 4), before item 6, insert:

**5A After section 643**

Insert:

**643A Level of newstart payment—single person with children**

Despite all other provisions of this Act relating to the level of payment of newstart allowance single with children and of parenting payment single allowance, all references to the level of fortnightly payment for a person on newstart allowance single with children are to be read as the same level of fortnightly payment as a person on parenting payment single.

Family First produced a minority report to the inquiry. One of the things that Family First flagged was the issue of single people with children and the concern that we have, but there are others, as the opposition spokesperson notes. I think that it is fairly important that we at least get one of the groups on the table. I call on all senators to really think about the level of Newstart payments for singles with children. Again, Family First’s position is that those on welfare who can work should work and parents with children should be ‘parents first and workers second’.

I do not want to chew up a lot of time. I know there are a number of other amendments here. It is quite simple. This amendment lifts the amount of fortnightly Newstart single with children payments to the same level of payment of parenting payment single. It is not a complex issue; it is very straightforward and very simple. The basis of it is that under the legislation as it stands, if a single parent who is on parenting payment single when the youngest child turns eight is genuinely looking for work and genuinely cannot find work, they will find that they have to live on $29 less per week. This amendment is quite straightforward, and I call on all senators to really think about this amendment. I seek their support.

**Senator SIEWERT** (Western Australia) (10.21 pm)—The Greens’ position is probably pretty similar to the ALP’s position—that is, we support the intent of this amendment but we do not believe it goes far enough. As you can see from the amendments that we have put, we believe that we should also be addressing the issue of people living with disabilities. We believe that, if this legislation were genuinely about getting people to work, it would be focusing on positive incentives and would not be focusing on moving people onto lower support. That it is not an incentive. What it is going to do is put people in already struggling situations into even worse dire straits. I have been a supporting partner and a supporting parent on a very low salary, and, believe me, it is extremely difficult. When your money runs out, you do not know how you are going to survive. Taking even $29 away from a supporting parent is going to have dire consequences.

When you do not know when you are going to be able to pay your bills and you have to go to crisis support centres, it does something to you. We are now going to be driving more people to go to crisis support centres. We heard from St Vincent de Paul and a number of other organisations that presented to the committee two weeks ago that they are expecting the number of people going to these services to increase. We also heard that people with disabilities and single parents make up 70 per cent of their clients. They are expecting, as a result of this legislation which will reduce incomes, an increase in clients. The point they made and the point that came out during that committee was that the money to support people needing income support has to come from somewhere. Either it comes from government or it comes from...
the community. This legislation is transferring people from government support to expecting non-government organisations to support them.

This legislation is going to have a devastating impact. It will reduce people’s incomes, and every dollar counts when you are trying to survive and you are trying to support a family or you are living with disabilities. As I said yesterday, it is no picnic, and this is going to make it worse. We support the intent of this amendment but we do not believe it goes far enough. We have broader-ranging amendments which we will hopefully get on to discussing very shortly.

Senator ABETZ (Tasmania—Special Minister of State) (10.24 pm)—I will quickly respond to the contributions. Once again I repudiate the assertions that we are about punishing people. We are about concentrating on people’s abilities, and that is why we are investing $3.6 billion in them. Some comments were made by Senator Wong about irrational policies et cetera. I do not think I will bother to engage on that other than to say that we have at least developed a comprehensive policy and, to my knowledge, it is still the only one on the table for our fellow Australians to see. The other option on the table is just to oppose what we have put forward, and that is not a policy.

Last time around Senator Fielding took me up on a point of order and I was willing to cede the ground. This time he said again—and I took a careful note this time—that his view is that people ought to be able to be parents first and workers second. That is a catchy line. Family First has been using it for a while, and good luck to them. But I would ask the honourable senator and Family First: do you say that people on welfare can be parents first at the expense of their fellow Australians after their children reach a particular age threshold? Most people would say you can no longer argue that you should be a parent first after your youngest child has turned 16. You could still argue that children going to grade 11 and 12 and university need parental care, but the issue is where you draw the line. We are suggesting that the line should be drawn now at age eight, when most kids are well and truly ensconced in about grade 3, I think, at primary school. At that stage the single parent would be able to engage in at least some employment.

I respectfully suggest to Family First that a vital component of parental responsibility is to show your children that there is an obligation to work if you can, that work is an important part of engaging in mainstream society and that depending on and living on welfare is not the best way to go. I would say that things like reward for effort and not relying on welfare solely if you are able to work are values that parents should try to instil in their children. Whilst in general terms I can accept that single parents should devote themselves to the care of their children as their No. 1 priority, when their youngest child reaches the age of eight, I think it is appropriate to say to them: ‘Sure, you’ve got parental responsibilities but, hey, how about it? At least 15 hours work a week, three hours a day, whilst the kiddies are at school or some other time might be appropriate.’ The children would see the increased income flow into the household and the other benefits that I have pointed out.

Without going into great detail as to why we oppose the amendment, it is interesting to note that a single parent who works 15 hours per week at the federal minimum wage will receive $487.80 per week mixing paid work with Newstart allowance, compared with only $433.13 for a jobless single parent under the current circumstances. That would be, in very rough terms, an extra $54 a week. Fifty dollars a week by 50 weeks makes an extra $2,500 per year for the household. I
think a child would see not only the very real benefits of that in the household but that there is such a thing as reward for effort.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.29 pm)—I am pretty certain that I have always used the phrases ‘those on welfare who can work should work’ and—I repeat ‘and’—‘parents should be “parents first and workers second”’. It is the combination of those two. If you go down the track and just have ‘those on welfare who can work should work’ without the ‘and parents should be parents first and workers second’, all of a sudden they are taking jobs potentially when they cannot still be parents. Obviously, if they are working from 2 am until 9 am in the morning, it is very difficult. So it is very important that those two phrases go together to make sure that we have that individual responsibility and the community obligation.

I do not want to go back and forth, but that was the point of clarification. There are a lot of good things in this bill. There is no doubt that having 700,000 children growing up in jobless homes is not good news—and we need to be doing more. The question here goes to the situation where someone is genuinely looking for work and cannot find work and all of a sudden they have to live on less.

Senator BARTLETT (Queensland) (10.30 pm)—I want to put on the record that the Democrats support this amendment. It simply ensures that some parents with children do not have their income cut. It was a nice little philosophical debate between Senator Abetz and Senator Fielding about the role of parenting, but the simple fact is that, if this amendment is not passed, a lot of parents will have their income cut—and, again, nobody has explained how that will help them get a job.

Question put:

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

The committee divided. [10.35 pm]

(The Chairman—Senator JJ Hogg)

Ayes……………. 31

Noes……………. 33

Majority………. 2

AYES

Allison, L.F. Bartlett, A.J.J.

Bishop, T.M. Brown, B.J.

Brown, C.L. Carr, K.J.

Crossin, P.M. Evans, C.V.

Faulkner, J.P. Fielding, S.

Forshaw, M.G. Hogg, J.J.

Hurley, A. Kirk, L.

Ludwig, J.W. Landy, K.A.

McEwen, A. McLucas, J.E.

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. * Wong, P.

Wortley, D.

NOES

Abetz, E. Adams, J.

Barnett, G. Boswell, R.L.D.

Brandis, G.H. Calvert, P.H.

Chapman, H.G.P. Colbeck, R.

Coonan, H.L. Eggleston, A. * Ferguson, A.B.

Ellison, C.M. Fifield, M.P.

Fierravanti-Wells, Johnston, D.

Heffernan, W. Lightfoot, P.R.

Joyce, B. Macdonald, I.

Mason, B.J. Macdonald, J.A.L.

Minchin, N.H. McGauran, J.J.J.

Parry, S. Nash, F.

Payne, M.A. Patterson, K.C.

Santoro, S. Ronaldson, M.

Troeth, J.M. Scullion, N.G.

Watson, J.O.W. Trood, R.

PAIRS

Campbell, G. Kemp, C.R.

Conroy, S.M. Humphries, G.

Hutchins, S.P. Vanstone, A.E.

Marshall, G. Hill, R.M.
Milne, C. Ferris, J.M.
Ray, R.F. Campbell, I.G.
* denotes teller

Question negatived.

An incident having occurred in the gallery—

The CHAIRMAN—Order! Sir, this is not a public forum.

Senator WONG (South Australia) (10.39 pm)—by leave—The opposition opposes schedule 2 and schedule 4 in the following terms:

1. Schedule 2, page 19, line 2 to page 29, line 8, TO BE OPPOSED.

2. Schedule 4, page 32, line 2 to page 62, line 8, TO BE OPPOSED.

I will try to not take up my allotted time, because there are other senators who want to speak. The opposition is moving to oppose these two schedules because these are the schedules which impose the harsh and extreme income cuts on vulnerable Australians—people this government obviously cares little about. We see the same attitude in this legislation as we saw in the industrial relations legislation. The Howard government say, ‘We don’t mind creating a class of working poor in Australia. We don’t mind junking the principle of a fair go. We don’t mind junking the principle of fairness’—something Australians have always strived for and have always supported.

In the industrial relations legislation we saw the government voting time and time again to remove fairness and to oppose amendments that put fairness into the industrial relations system. What we see in this legislation is precisely the same attitude. It is an attitude that is coloured by a view that Australia is better off having an American social model. That is what this legislation does—particularly when it is combined with the industrial relations legislation. It is recasting Australia with an American die. It is the Howard government redrawing Australia into the American social model. It is the Howard government junking some core Australian values of fairness, of ensuring that those who cannot look after themselves and those who are disadvantaged are cared for and properly supported and that they have a modicum of dignity in our society.

The reason Australia has always supported these values is that we understand that we as individuals have a relationship to others in our community and, if others fail, if others struggle, if others are vulnerable, if others do not have enough to eat, the whole community suffers. There are social costs and there are moral costs. It is a question of values, and what we see in this government is an extreme agenda that is about imposing an American social model on Australia. We know that the American social security system offers virtually no financial security for the jobless, and America has an army of working poor. That is precisely the way this government is approaching its so-called welfare reform.

One of the most insidious things in this legislation—which we will not be able to discuss in detail due to the guillotine that has been applied—is the way in which this government will force jobless people to work for dirt or get nothing. The government have removed the protection of awards from the test of suitable employment. That will mean that a job seeker, a person with a disability or a sole parent will have to take a job provided it complies with the four minimum conditions, which are simply inadequate, and the minimum hourly rate and no other award conditions, or risk having their payments cut. That is what it means. People will have no choice. You either work for peanuts or you get nothing.

There is the removal of the award protections and, combined with that, the govern-
ment is saying that if you lose your job—supposedly for misconduct or through some voluntary act—you also get an eight-week breach. What happens then? This is another area where the industrial relations extreme agenda collides with these welfare changes, because the removal of unfair dismissal will mean that people cannot dispute a false allegation of misconduct. They can be in the position of having an eight-week breach and not being able to dispute it through the industrial relations system, because this government is removing unfair dismissal from 98 per cent of Australian workplaces and workers.

The reality is that this legislation is not about welfare reform. This legislation is, at its core, about reducing the income payments to vulnerable Australians. These are families and individuals who are already overrepresented in the poverty statistics. These are vulnerable Australians. We have heard again tonight that St Vincent de Paul told the committee inquiring into this bill that 70 per cent of the visits they already make to homes are to people with a disability and to sole parents. This government should be doing something to encourage and support these people out of welfare and into work. But no; what do they do instead? They say, ‘We will cut their payments; we will put them onto the dole in the future.’ The dole was never meant as an income support payment for people with a disability. It was never meant as an income support payment for parents. That was never the basis on which the dole was introduced and it is not a payment that is structured or at the right level for those groups—people living with the costs of disability and people living with the costs of parenting.

I have already spoken about the irrational and economically unsound approach the government have taken in relation to tax when it comes to Welfare to Work. They have actually come up with a set of changes which make work less financially attractive. It is pretty extraordinary to have the gall to call something a Welfare to Work package when you take more money off people for doing the right thing and when people earn less and keep less in their pockets for every dollar earned under the new system than under the current system—when you are increasing the disincentives.

At the core of the changes, as I have said, is a reduction in the family budgets of vulnerable Australians, and we on this side do not believe that is welfare reform. As I said before, if the government thought this was a good idea, if they thought this really would help people into work, they would have applied it to existing recipients. But they are not doing that, because it is politically un-saleable because it is unjust and it is unfair and they want to quarantine the political pain. What they are doing is attacking those who are to come; they are doing it in respect of people to come. I will not even go through the issues of transitional provisions—where, frankly, they are not protecting existing recipients in the way they said they would on budget night—because we do not have the time. The primary political objective is: ‘We’ll attack the incomes of those to come because we can do so politically because we have the numbers in the Senate now.’

This is unfair legislation. This is absolutely unfair legislation and, combined with the industrial relations legislation, it is not about increasing opportunity, it is not about increasing skills, it is not about ensuring people have the opportunity to move from welfare to work. What it is about is reducing the amount of money that already vulnerable families have to put food on the table. That is what it is about. So the amendments moved by the opposition relate to those schedules of the bill which impose the reduction in in-
come, because we do not believe that is welfare reform.

Senator BARTLETT (Queensland) (10.47 pm)—I did of course have many other Democrat amendments which—contrary to the Special Minister of State’s continual statement that there are no proposals, no policies and nothing constructive from this side, that we just oppose for opposition’s sake—would actually have fixed some of the many small but nonetheless significant flaws in the legislation. Indeed, I point to the evidence from the Welfare Rights Centre to the Senate committee inquiry. They are probably the group in Australia that know more about the Social Security Act than just about anybody—certainly more than the minister does—because they deal with its consequences every day of the week. In the disgracefully short time frame for the committee inquiry—frankly, a time frame that could not be painted as anything other than a dereliction of duty—even the Welfare Rights Centre were unable to go through the legislation adequately because, even without these changes, it is already an incredibly complex act, and this legislation will make it far more complex. But the amendments the Democrats put forward would have addressed a number of the administrative flaws that the Welfare Rights Centre identified.

It is particularly frustrating because I know, from my own experience as a past spokesperson for social security and indeed as a former adviser, before I was in this chamber, to other Democrat senators who had the social security portfolio, that it has taken many years of amendments and debates and inquiries in this chamber to put in place some of the administrative protections that minimise the number of people who inadvertently fall through the cracks. So many of those protections are now just being ripped away again by the government, because it is so much easier for them to leave it all open and put in place guidelines as they go along, down the track.

The opposition amendments before us address the schedules whose core aspect is to reduce people’s income. The minister is always happy to misrepresent and smear anyone on this side of the chamber who simply expresses opposition to the notion of reducing the income of sole parents and people with a disability, so I will quote Judi Moylan; perhaps he will not smear her, given that she is a Liberal member of the House of Representatives. Her comment was that she did not agree with increasing the ‘spiral of poverty’ among the most disadvantaged people in the community, that we should be able to get people off welfare without driving them into a spiral of poverty. I agree wholeheartedly. We do have alternatives; certainly, the Democrats have alternatives. We have put some of those alternatives and improvements through amendments. We do have an alternative vision of our own, but the purpose of this debate is to debate the government’s proposals, not to put forward our own range of alternatives.

The simple fact is that this legislation will drive people into a spiral of poverty. It will mean reduced income for thousands and thousands of Australians and their children. You have to wonder sometimes if people in the government, particularly those in cabinet, who draw up these things do not really know what it is like when $5 or $2 can make a difference to you, but that is what it is like now for many people out there. This legislation is going to take $30 a week from many people. It is going to take $80 a week from many people, people with a disability who have extra expenses over and above those many of us have. That is a consequence of the legislation and in particular the schedules that are the subject of the amendments before the chamber. Even if people support the rest of the legislation, removing these schedules
would address the problem, as Judi Moylan said, of driving people into a spiral of poverty. I moved amendments before to deal with this; the minister ignored them, as he has ignored the many questions asking how driving people into poverty helps them to get into work. I presume he will do the same now and again ignore that core question, but the simple fact is that that is what is going on here.

I find it immensely distressing that, somehow or other, there is not a single coalition senator who agrees that this is completely unacceptable. I find it obscene that, when we apparently have a surplus approximating $14 billion and there is talk of more tax cuts for the top income earners in the next budget—four budgets in a row—at the same time we are going to reduce the incomes of the poorest people in the community. That is obscene. It is completely unjustified. I am extremely disappointed that there is not a single coalition senator, apparently—we will see once the vote on these amendments is taken—who also recognises that obscenity and is willing to stand up to make sure it does not happen.

Senator SIEWERT (Western Australia) (10.52 pm)—The Greens actually proposed exactly the same amendment as the ALP for dealing with the disability support pension and a similar amendment for parenting payments. To my mind, this is about providing a cheap labour source for industry. I do not believe that driving down people’s income will encourage people to go to work. It certainly will not enable them to get into jobs that they find meaningful. It will drive them into shorter term, dead-end jobs. It will not enable people to undertake study, because of the onerous requirements on them and the fact that study will have to be done on top of their work requirements. If you are studying, you do not get top-up. You are still on Newstart, so you are losing out whichever way you look at it. It is going to drive people into poverty. When you combine this with Work Choices, we are going to end up with a class of working poor in this country. As I have said before, a job is a job is a job is not the point. We are trying to encourage people into fulfilling, meaningful jobs and to upskill. We keep talking about the skills crisis in this country, but we are not adequately addressing that through this legislation.

This legislation is draconian. It is mean, it is not fair and it is unjust. I do not believe that is the sort of country we live in. I do not believe that is the sort of society we live in. I believe that we should be living in a just and caring society, and this legislation is neither just nor caring. It is neither just nor caring to take money away from people living in poverty. It is taking money away from supporting parents and their children. It is not, as the government keeps claiming, taking people out of poverty; it will drive people into poverty. We all know the impacts of poverty in terms of social structure and health and we know about its relationship with crime and those sorts of things. This legislation is not just; it is not caring. If we are truly looking at how we can support people into work—which, of course, the Australian Greens support as well—we should be looking at incentives, not just taking money away from them. It is not going to work. It is going to increase the load on our crisis care organisations in this country.

Single parents will be required to make a choice between their family and their job. If they want to study, as I said, it is going to be virtually impossible. You cannot survive on Austudy if you are supporting a family. You cannot survive on Newstart and try to work and study. It is going to be impossible because, if you are on Newstart, it just does not provide the incentives for training. I believe that, in this day and age, this is an abomination. We have a boom economy at the mo-
ment. We can afford to properly look after those less fortunate in our community. We can afford to provide adequate training and adequate incentives. There is no justification, in this day and age, in the 21st century, to be lowering income support payments for people, and I do not believe that the Australian community wants that. I do not believe the Australian community feels this is just or caring.

Senator ABETZ (Tasmania—Special Minister of State) (10.56 pm)—In the short time remaining it is difficult to respond to all the empty rhetoric that we have heard from the last few speakers—although I do note that the deputy leader of the Democrats was not motivated to get up on a point of order to indicate that people were not specifically addressing their comments to the amendments that were before the chair.

Senator Bartlett interjecting—

Senator ABETZ—There he goes. He cannot help himself.

Senator Wong—Mr Chairman, I rise on a point of order. The minister should withdraw that. That is inaccurate. If the minister knew the amendments that were before the chair, the contributions were directly on point, unlike the minister’s reading of different books into the Hansard.

The CHAIRMAN—There is no point of order.

Senator ABETZ—We traversed the industrial relations legislation, we did all sorts of things in the other contributions, and those opposite know it. Indeed, we were even subjected to another spray of anti-American sentiment. I can see Mr Beazley pulling out the American flag very shortly and doing a press conference in front of it to try to show what a strong supporter he is. I emphasise that these are Australian solutions for Australian problems to assist Australian individuals. Unfortunately the mantra coming from the other side encourages a job snob mentality. The opposition talks about money but not about those important things, pride and self-esteem. The effect of our amendments is: to shift the focus of the welfare system onto people’s capacity to participate in the labour market, not their incapacity; to provide participation requirements with safeguards for people with a capacity to work independently for 15 hours or more; to provide more than $500 million worth of employment services, more vocational rehabilitation services and other initiatives, such as Wage Assist and an expanded work modification scheme; and to provide more money for mobility allowance to people with disabilities, which will be increased from $69 to $100 a fortnight.

The Labor Party is opposing support and opportunity. Not once has the Labor Party admitted the mistakes in shifting hundreds of thousands of Australians who had the capacity to work onto a pension. In May 1991 the Labor government introduced a social security amendment bill which was a clayton’s attempt at reform: the reform you have when you are not really committed to reform. This included the unemployed having to wait 12 months for any job search intervention. There was no date for when an activity agreement had to be signed. Job seekers over the age of 55 did not have to report their job search activities. They were consigned to the unemployment scrap heap. And that is the fair and just Australia that Senator Wong and those opposite seek to justify. It was a social experiment that has failed. We are working to ensure a just and fair Australia for the benefit of all the individuals on welfare—to assist them to re-enter the work force and the mainstream—for their children and for the community at large.

The CHAIRMAN—Order! The time allotted for the remaining stages of these bills has expired.
A document has been circulated in the chamber to assist the committee to know what is being put and the way in which people may well vote on issues. I understand that there are some people who may want to digress from the sheet as circulated. If I could have those indications early, that would help the progress of the bill.

Senator WONG (South Australia) (11.00 pm)—I indicate in relation to the second question on the paper that has been circulated—

The CHAIRMAN—That is 4758 revised.

Senator WONG—if you look, Mr Chairman, at the bottom of page 3 of the running sheet—that is, the last set of amendments there in relation to pensioner education supplement—

The CHAIRMAN—(46), (67), (68), (70) and (71) on sheet 4758 revised.

Senator WONG—We ask if that could be put separately, with the concurrence of the chamber. In relation to the next question, the Australian Greens amendments—I am just clarifying this. On page 2 of the running sheet, the third amendment on the running sheet—that is, sheet 4792 Australian Greens amendments (9) to (11) and (13)—we would ask that that set of amendments be put separately, with the concurrence of the chamber.

Senator Abetz interjecting—

Senator WONG—We may have a different position and I am trying to expedite the votes.

The CHAIRMAN—That is in respect of the second question, 4792 (9) to (11) and (13). So that means that I would put (1) and (12) separately.

I will now put the question that was before the chair: that is, that schedules 2 and 4 stand as printed.

The committee divided. [11.07 pm]

(The Chairman—Senator JJ Hogg)

| Ayes | 34 |
| Noes | 30 |
| Majority | 4 |

AYES


NOES


PAIRS


* denotes teller

Question agreed to.
The CHAIRMAN—There will be a number of divisions. I draw that to the attention of senators. The next question as circulated will be split into two parts. The first question is that the Australian Democrat amendments (R1), (2), (6) to (24), (30) to (33), (35) to (38), (42) to (44), (47) to (50), (R50A), (51) to (60) and (62) to (65) on sheet 4758 Revised, amendments (1) and (2) on sheet 4786 Revised and amendment (1) on sheet 4794 be agreed to:

(R1) Page 5 (after line 5), after clause 3, insert:

4 Public and independent review of amendments made by the Schedules to this Act

(1) The Minister must cause a review of the operation and effectiveness of the amendments made by the Schedules of this Act.

(2) The review must be undertaken as soon as possible after the first anniversary of the commencement of the amendments.

(3) The review is to be undertaken by a committee consisting of:

(a) a person nominated by the Administrative Appeals Tribunal (AAT);

(b) a person nominated by the Commonwealth Ombudsman;

(c) a person nominated by the Human Rights Commissioner and Disability Discrimination Commissioner from the Human Rights and Equal Opportunity Commission;

(d) a person nominated by the President of the National Welfare Rights Network;

(e) a person nominated by the Director of the Australian Council of Social Services.

(4) The review must provide for public submissions and public hearings as part of the review.

(5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 5 sitting days of that House after its receipt by the Minister.

(2) Schedule 1, item 6, page 11 (line 23), after “activities”, insert “available in the person’s locally accessible area”.

(6) Schedule 2, item 10, page 24 (line 5), after “activities”, insert “available in the person’s locally accessible area”.

(7) Schedule 4, item 7, page 38 (line 21), after “Agreement”, insert “written”.

(8) Schedule 4, item 7, page 40 (after line 7), at the end of section 501A, add:

(10) For the purposes of a Parenting Payment Activity Agreement, a suitable activity for the purposes of subsection (1) includes one or more of the following:

(a) job search;

(b) a vocational or pre-vocational training course;

(c) training that would help in searching for work;

(d) paid work;

(e) measures designed to eliminate or reduce any disadvantage the person has in relation to obtaining work;

(f) participation in a labour market program;

(g) a course of education;

(h) another activity that the Secretary regards as suitable for the person, including voluntary work, and that is agreed to between the person and the Secretary.

(9) Schedule 4, item 7, page 40 (lines 8 to 18), omit “appropriate” (four times occurring), substitute “maximum”.

(10) Schedule 4, item 7, page 40 (line 17), omit “other”, substitute “lesser”.

(11) Schedule 4, item 7, page 40 (lines 27 to 32), omit “appropriate” (twice occurring), substitute “maximum”.

(12) Schedule 4, item 7, page 40 (line 31), omit “other”, substitute “lesser”.

(13) Schedule 4, item 7, page 44 (line 39), at the end of subsection 502(5), add:
; and (d) for the purposes of this subsection, care is appropriate care where it is considered appropriate by the principal carer.

Note: For principal carer see subsections 5(15) to (24).

(14) Schedule 4, item 7, page 47 (lines 11 to 22), omit subsection 502C(2), substitute:

(2) The Secretary must make a determination under this section in relation to the person if the Secretary is notified that:

(a) the person was subjected to domestic violence; or

(b) there are special circumstances relating to the person’s family that make it appropriate to make the determination.

(15) Schedule 4, item 7, page 48 (line 14), omit “may”, substitute “must”.

(16) Schedule 4, item 7, page 48 (line 15), omit “satisfied”, substitute “notified”.

(17) Schedule 4, item 7, page 48 (line 24), omit “satisfied”, substitute “notified”.

(18) Schedule 4, item 7, page 49 (line 9), at the end of subsection 502D(5), add “and must specify and make a determination of a class, of persons with four or more children”.

(19) Schedule 4, item 7, page 49 (lines 10 to 13), omit subsection (6), substitute:

(6) The period that the Secretary determines under this section must be a period that the Secretary considers to be appropriate considering all the circumstances of the case including whether the circumstances giving rise to the determination are likely to materially alter during the period and the period can be no less than 12 months.

(20) Schedule 4, item 7, page 50 (after line 5), at the end of section 502F, add:

(2) Special circumstances for the purposes of this section include acute family crises such as homelessness and the death of the partner, parent or child of the person.

(21) Schedule 4, item 7, page 50 (lines 22 to 31), omit “6” (twice occurring), substitute “13”.

(22) Schedule 5, item 25, page 72 (lines 8 to 21), omit subsection 542F(2), substitute:

(2) The Secretary must make a determination under this section in relation to the person where the Secretary is notified that:

(a) the person is the principal carer of one or more children and was subjected to domestic violence; or

(b) there are special circumstances relating to the person’s family that make it appropriate to make the determination.

(23) Schedule 5, item 25, page 73 (line 33), at the end of subsection 542FA(3), add:

; or (d) the family is experiencing an acute family crisis such as homelessness or the death of the partner, parent or child of the principal carer.

(24) Schedule 5, item 25, page 74 (lines 15 to 18), omit subsection 542FA(6), substitute:

(6) The period that the Secretary determines under this section must be a period that the Secretary considers to be appropriate considering all the circumstances of the case including whether the circumstances giving rise to the determination are likely to materially alter during the period and the period cannot be less than 12 months.

(30) Schedule 7, item 41, page 112 (lines 5 to 19), omit subsection (2), substitute:

(2) The Secretary must make a determination under this section in relation to the person if the Secretary is notified that:

(a) the person was subjected to domestic violence; or

(b) the person is the principal carer of one or more of the children, and there are special circumstances relating to the person’s family that make it appropriate to make the determination.

(31) Schedule 7, item 41, page 113 (after line 35), after subsection (4), insert:
(4A) Special circumstances for the purposes of this section include acute family crises such as homelessness or the death of the partner or parent or child of the person.

(32) Schedule 7, item 41, page 114 (line 3), at the end of subsection 602C(5), add “and must specify and make a determination of a class, of persons with four or more children”.

(33) Schedule 7, item 41, page 114 (lines 4 to 7), omit subsection 602C(6), substitute:

(6) The period that the Secretary determines under this section must be a period that the Secretary considers to be appropriate considering all the circumstances of the case including whether the circumstances giving rise to the determination are likely to materially alter during the period and the period cannot be less than 12 months.

(35) Schedule 7, item 68, page 120 (lines 1 to 13), omit “appropriate” (three times occurring), substitute “maximum”.

(36) Schedule 7, item 68, page 120 (line 12), omit “other”, substitute “lesser”.

(37) Schedule 7, item 68, page 120 (lines 14 to 27), omit “appropriate” (three times occurring), substitute “maximum”.

(38) Schedule 7, item 68, page 120 (line 26), omit “other”, substitute “lesser”.

(42) Schedule 10, item 17, page 146 (lines 13 to 26), omit subsection 731DA(2), substitute:

(2) The Secretary must make a determination under this section in relation to the person where the Secretary is notified that:

(a) the person is the principal carer of one or more children and was subjected to domestic violence; or

(b) there are special circumstances relating to the person’s family that make it appropriate to make the determination.

(43) Schedule 10, item 17, page 147 (line 35), at the end of subsection 731DB(3), add:

; or (d) the family is experiencing an acute family crisis such as homelessness or the death of the partner, parent or child of the principal carer.

(44) Schedule 10, item 17, page 148 (lines 14 to 17), omit subsection 731DB(6), substitute:

(6) The period that the Secretary determines under this section must be a period that the Secretary considers to be appropriate considering all the circumstances of the case including whether the circumstances giving rise to the determination are likely to materially alter during the period and the period cannot be less than 12 months.

(47) Schedule 14, item 2, page 178 (line 14), at the end of subparagraph 1061Q(3C)(a)(ii), add:

or (aa) the person is undertaking full time study or is a new apprentice;

(48) Schedule 15, item 1, page 184 (lines 10 and 11), omit paragraph 1061ZA(2A)(b).

(49) Schedule 15, item 1, page 184 (lines 16 and 17), omit notes 1 and 2.

(50) Schedule 15, item 1, page 184 (line 22), after “newstart”, insert “or Austudy”.

(R50A) Schedule 15, item 1, page 184 (after line 30), at the end of subparagraph 1061ZA(2B), insert:

(2C) Subject to subsection (3), a person is qualified for a pensioner concession card on a day if, on that day:

(a) the person is receiving an austudy payment; and

(b) the person:

(i) has a partial capacity to work; or

(ii) is the principal carer of at least one child and is not a member of a couple.

Note 1: For partial capacity to work see section 16B.

Note 2: For principal carer see subsections 5(15) to (24).

(51) Schedule 15, item 2, page 184 (line 33), omit “and (2B)” substitute “, (2B) and (2C)”.
(52) Schedule 15, item 3, page 185 (line 3), omit “(2B)”, substitute “, (2B) and (2C)”.

(53) Schedule 15, item 6, page 185 (line 18), after paragraph 1061ZD(5A)(b), insert:

or (c) an austudy payment while subsection 1061ZA(2C) applies to the person;

(54) Schedule 15, item 9, page 185 (line 29), omit “and (2B)”, substitute “, (2B) and (2C)”.

(55) Schedule 15, item 10, page 186 (line 1), omit “and (2B)”, substitute “, (2B) and (2C)”.

(56) Schedule 15, item 11, page 186 (lines 11 to 13), omit “while the person was not undertaking full-time study and was not a new apprentice”.

(57) Schedule 15, item 11, page 186 (after line 14), at the end of paragraph 1061ZEB(2)(a), add:

or (iii) the person has been receiving an austudy payment;

(58) Schedule 15, item 11, page 186 (lines 23 and 24), omit notes 1 and 2.

(59) Schedule 15, item 11, page 186 (line 34), after paragraph 1061ZEB(4)(c), insert:

or (d) an austudy payment while subsection 1061ZA(2C) applies to the person;

(60) Schedule 15, item 13, page 187 (line 11), after “allowance” (second occurring), insert “or an austudy payment”.

(61) Schedule 21, item 2, page 227 (lines 28 and 29), omit subparagraph 1228B(1)(c)(i).

(62) Schedule 21, item 2, page 228 (lines 6 and 7), omit “refused or failed to provide the information or”, substitute “knowingly or recklessly”.

(63) Schedule 21, item 3, page 228 (after line 13), after subsection 1228B(4), insert:

(4A) This section does not apply unless the Secretary is satisfied as indicated by a written statement of reasons that a person knowingly or recklessly provided false or misleading information about the person’s earnings.

(4B) If the Secretary is satisfied in accordance with subsection (4A), the penalty only applies to the portion of the debt directly related to the false or misleading information provided by the person.

(65) Schedule 21, item 3, page 228 (lines 23 and 24), omit subparagraph (b)(i).

(1) Schedule 4, item 4, page 33 (line 6), omit “6”, substitute “13”.

(2) Schedule 4, item 4, page 33 (line 11), omit “8”, substitute “13”.

(1) Schedule 23, page 250 (after line 8), at the end of the Schedule, add:

8 Subsection 634(3)

Repeal the subsection, substitute:

(3) For the purposes of subsection (1), a person has a sufficient reason for moving to a new place of residence if and only if the person:

(a) moves to live with a family member who has already established his or her residence in that place of residence; or

(b) moves to live near a family member who has already established residence in the same area; or

(c) is a principal carer who has, within the previous 12 months, become a single person, or become a member of an illness separated couple or a person whose partner is in gaol; or

(d) has become a person with partial capacity within the previous 12 months; or

(e) satisfies the Secretary that the move is necessary for the purposes of treating or alleviating a physical disease or illness suffered by the person or by a family member; or

(f) satisfies the Secretary that the person has moved from his or her original place of residence because of an extreme circumstance which made it reasonable for the person to move to the new place of residence (for example, the person had been
subjected to domestic or family violence in the original place of residence).

Question negatived.

The CHAIRMAN—The next question is that Australian Democrat amendments (46), (67), (68), (70) and (71) on sheet 4758 Revised be agreed to.

(46) Schedule 13, item 1, page 175 (line 8), after “allowance” (second occurring), insert “or an austudy payment”.

(67) Schedule 13, item 2, page 175 (lines 11 and 12), omit paragraphs 1061PJ(2)(da) and (db), substitute:

(da) subject to subsection (2A), a youth allowance, newstart allowance or an austudy payment;

(68) Schedule 13, item 3, page 175 (line 15) to page 176 (line 21), omit subsection 1061PJ(2A), substitute:

(2A) Paragraph (2)(da) only applies if the person receiving the payment has a partial capacity to work or is a principal carer of at least one child and is not a member of a couple.

Note: For partial capacity to work see section 16B.

Note: For principal carer see subsections 5(15) to (24).

(70) Schedule 13, item 4, page 177 (line 26), after “allowance” (second occurring), insert “or an austudy payment”.

(71) Schedule 13, item 5, page 177 (line 31), after “allowance” (second occurring), insert “or an austudy payment”.

The committee divided. [11.13 pm]

(The Chairman—Senator JJ Hogg)

Ayes……………….. 31
Noes………………. 33
Majority………….. 2

AYES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, B.J.
Brown, C.L. Carr, K.J.

Crossin, P.M. Evans, C.V.
Faulkner, J.P. Fielding, S.
Forshaw, M.G. Hogg, J.J.
Hurley, A. Kirk, L.
Ludwig, J.W. Lundy, K.A.
McEwen, A. McLucas, J.E.
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.

NOES

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

PAIRS

Campbell, G. Kemp, C.R.
Conroy, S.M. Hill, R.M.
Hutchins, S.P. Vanstone, A.E.
Marshall, G. Humphries, G.
Milne, C. Ferris, J.M.
Ray, R.F. Campbell, I.G.

* denotes teller

Question negatived.

The CHAIRMAN—Senator Wong, could I get an indication of the next amendment on which you will be dividing? Will you be dividing on Green amendments (9) to (11) and (13) or (1) and (12)?

Senator Wong—I can clarify that it will be amendments (9) to (11) and (13).
The CHAIRMAN—Therefore, the next question is that Australian Green amendments on sheet 4792 be agreed to—that is, amendments (9) to (11) and (13):

(9) Schedule 4, item 7, page 47 (lines 11 to 22), omit subsection 502C(2), substitute:

(2) The Secretary must make a determination under this section in relation to the person if the Secretary is notified that:

(a) the person was subjected to domestic violence; or
(b) the person was a principal carer of a child subjected to domestic violence or serious illness; or
(c) there are special circumstances relating to the person’s family that make it appropriate to make the determination.

(10) Schedule 5, item 25, page 72 (lines 8 to 21), omit subsection 542F(2), substitute:

(2) The Secretary must make a determination under this section in relation to the person if the Secretary is notified that:

(a) the person was subjected to domestic violence; or
(b) the person was a principal carer of a child subjected to domestic violence or serious illness; or
(c) there are special circumstances relating to the person’s family that make it appropriate to make the determination.

(11) Schedule 7, item 41, page 112 (lines 5 to 18), omit subsection 602B(2), substitute:

(2) The Secretary must make a determination under this section in relation to the person if the Secretary is notified that:

(a) the person was subjected to domestic violence; or
(b) the person is the principal carer of a child subjected to domestic violence or serious illness; or
(c) the person is the principal carer of one or more of the children, and there are special circumstances relating to the person’s family that make it appropriate to make the determination.

(13) Schedule 10, item 17, page 146 (lines 13 to 26), omit subsection 731DA(2), substitute:

(2) The Secretary must make a determination under this section in relation to the person where the Secretary is notified that:

(a) the person is the principal carer of one or more children and was subjected to domestic violence; or
(b) the person is the principal carer of a child subjected to domestic violence or serious illness; or
(c) there are special circumstances relating to the person’s family that make it appropriate to make the determination.

The Senate divided. [11.19 pm]

(The Chairman—Senator JJ Hogg)

Ayes………… 30
Noes………… 34
Majority……… 4

AYES
Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Carr, K.J.
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.  McEwen, A.
McLucas, J.E.  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. *
Wong, P.  Wortley, D.

NOES
Abetz, E.  Adams, J.
Barnett, G.  Boswell, R.L.D.
Brandis, G.H.  Calvert, P.H.
Chapman, H.G.P.  Colbeck, R.
Cooman, H.L.  Eggleston, A. *
The CHAIRMAN—The question now is that Australian Green amendment (12) on sheet 4792 be agreed to:

(12) Schedule 7, item 41, page 113 (after line 35), after subsection 602C(4), insert:

(4A) Special circumstances for the purposes of this section include acute family crises such as homelessness or the death of the partner or parent or child of the person.

Question negatived.

The CHAIRMAN—The question is that the remaining government amendments and requests on sheet PA325 be agreed to:

(1) Schedule 4, item 7, page 39 (line 7), omit “may”, substitute “must”.

(2) Schedule 4, item 7, page 39 (after line 8), after subsection 501A(4), insert:

(4A) To avoid doubt, a determination under subsection (4) does not limit the Secretary’s discretion to exclude other kinds of requirements from a particular agreement under subsection (1).

(3) Schedule 4, item 7, page 44 (after line 27), after subsection 502(4), insert:

(4A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (4)(j), particular paid work is unsuitable for a person.

(4B) To avoid doubt, a determination under subsection (4A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (4)(j), particular paid work is unsuitable for a person.

(4) Schedule 4, item 7, page 47 (after line 22), after subsection 502C(2), insert:

(2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person’s family that make it appropriate to make a determination under this section.

(2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

(6) Schedule 4, item 9, page 57 (after line 20), after subsection 500ZA(2), insert:

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a parenting payment participation failure.

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the parenting payment participation failure referred to in subsection (1).

(7) Schedule 4, item 9, page 58 (after line 29), after subsection 500ZB(2), insert:

(2A) The Secretary must, by legislative instrument, determine matters that the
Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

(8) Schedule 4, item 9, page 60 (after line 11), after subsection 500ZE(1), insert:

(1A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment.

(1B) To avoid doubt, a determination under subsection (1A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment referred to in that paragraph.

(9) Schedule 5, item 16, page 70 (after line 8), after subsection 541D(1AB), insert:

(1AC) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

(1AD) To avoid doubt, a determination under subsection (1AC) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

(10) Schedule 5, item 25, page 72 (after line 22), after subsection 542F(2), insert:

(2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person's family that make it appropriate to make a determination under this section.

(2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

(12) Schedule 5, item 35, page 77 (line 20), omit "may", substitute "must".

(13) Schedule 5, item 35, page 77 (after line 21), after subsection 544B(1B), insert:

(1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary's discretion to exclude other kinds of requirements from a particular agreement under subsection (1).

(14) Schedule 5, item 46, page 82 (after line 33), after subsection 550(2), insert:

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a youth allowance participation failure.

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the youth allowance participation failure referred to in subsection (1).

(15) Schedule 5, item 46, page 85 (after line 21), after subsection 550B(2), insert:

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matter.
ters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

(16) Schedule 5, item 46, page 87 (after line 15), after subsection 551(1), insert:

(1A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment.

(1B) To avoid doubt, a determination under subsection (1A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment referred to in that paragraph.

(17) Schedule 6, item 2, page 94 (after line 5), after subsection 576(2), insert:

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing an ausstudy participation failure.

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

(19) Schedule 7, page 111 (after line 2), after item 30, insert:

30A After subsection 601(2AB)
Insert:

(2AC) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2A)(j), particular paid work is unsuitable for a person.

(2AD) To avoid doubt, a determination under subsection (2AC) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2A)(j), particular paid work is unsuitable for a person.

(20) Schedule 7, item 41, page 112 (after line 19), after subsection 602B(2), insert:

(2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person’s family that make it appropriate to make a determination under this section.

(2B) To avoid doubt, an instrument made under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

(22) Schedule 7, item 63, page 119 (line 11), omit “may”, substitute “must”.

(23) Schedule 7, item 63, page 119 (after line 12), after subsection 606(1B), insert:

(1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary’s discretion to exclude other kinds of requirements from a particular agreement under subsection (1).
(24) Schedule 7, item 73, page 124 (after line 15), after subsection 624(2), insert:

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a newstart participation failure.

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing a newstart participation failure referred to in subsection (1).

(25) Schedule 7, item 73, page 126 (after line 8), after subsection 626(2), insert:

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

(26) Schedule 7, item 73, page 127 (after line 32), after subsection 629(1), insert:

(1A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment.

(1B) To avoid doubt, a determination under subsection (1A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment referred to in that paragraph.

(27) Schedule 10, item 12, page 145 (after line 22), after subsection 731B(1B), insert:

(1C) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

(1D) To avoid doubt, a determination under subsection (1C) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(i), particular paid work is unsuitable for a person.

(28) Schedule 10, item 17, page 146 (after line 27), after subsection 731DA(2), insert:

(2A) The Secretary must, by legislative instrument, specify matters that the Secretary must take into account in deciding whether there are special circumstances relating to a person’s family that make it appropriate to make a determination under this section.

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in making a determination under subsection (2).

(30) Schedule 10, item 32, page 152 (line 1), omit “may”, substitute “must”.

(31) Schedule 10, item 32, page 152 (after line 2), after subsection 731M(1B), insert:

(1C) To avoid doubt, a determination under subsection (1B) does not limit the Secretary’s discretion to exclude other kinds of requirements from a particular agreement under subsection (1).

(32) Schedule 10, item 43, page 156 (after line 18), after subsection 740(2), insert:

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of subsection (2), a person had a reason-
able excuse for committing a special benefit participation failure.

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of subsection (2), a person had a reasonable excuse for committing the special benefit participation failure referred to in subsection (1).

(33) Schedule 10, item 43, page 158 (after line 8), after subsection 742(2), insert:

(2A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for a failure of a kind referred to in paragraph (1)(c).

(2B) To avoid doubt, a determination under subsection (2A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (2)(a), a person had a reasonable excuse for the failure referred to in paragraph (1)(c).

(34) Schedule 10, item 43, page 159 (after line 32), after subsection 745(1), insert:

(1A) The Secretary must, by legislative instrument, determine matters that the Secretary must take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment.

(1B) To avoid doubt, a determination under subsection (1A) does not limit the matters that the Secretary may take into account in deciding whether, for the purposes of paragraph (1)(d), a person had a reasonable excuse for refusing or failing to accept a suitable offer of employment referred to in that paragraph.

Requests:

(5) Schedule 4, item 7, page 48 (after line 34), after subsection 502D(3), insert:

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of 4 or more children.

Note: For principal carer see subsections 5(15) to (24).

(11) Schedule 5, item 25, page 74 (after line 4), after subsection 542FA(3), insert:

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of 4 or more children.

Note: For principal carer see subsections 5(15) to (24).

(21) Schedule 7, item 41, page 113 (after line 29), after subsection 602C(3), insert:

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of 4 or more children.

Note: For principal carer see subsections 5(15) to (24).

(29) Schedule 10, item 17, page 148 (after line 4), after subsection 731DB(3), insert:

(3A) The Secretary must make a determination under this section in relation to the person if the Secretary is satisfied that the person is the principal carer of 4 or more children.

Note: For principal carer see subsections 5(15) to (24).

(35) Schedule 17, item 5, page 202 (line 14), after “542FA(3)”, insert “or (3A)”.

(36) Schedule 19, item 7, page 215 (line 18), after “602C(3)”, insert “or (3A)”.

Question agreed to.

The CHAIRMAN—The question is that those items and parts of the bill opposed by the Australian Democrats and the Australian Greens be agreed to. The question is that schedule 4, part 2; schedule 5, item 35 and part 3; schedule 6, part 1; schedule 7, item 63
and part 3; and schedule 10, part 2, as amended, be agreed to; and schedule 2, items 3, 6 and 7; schedule 5, item 26; Schedule 7, items 5, 11 and 35; schedule 10, items 1, 5, 6, 40 and 41; schedule 13, items 3 and 5; and schedule 17, item 7 stand as printed.

Question agreed to.

The CHAIRMAN—The question is now that schedule 21 stand as printed.

Question agreed to.

Bill, as amended, agreed to, subject to requests.

The CHAIRMAN—Pursuant to the allotment of time agreed to on 5 December 2005, I now report the bills.

Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005 reported with amendments and requests; Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005 reported without amendment; report adopted.

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

Third Reading

The PRESIDENT—The question now is that the bill be read a third time.

Question put.

The Senate divided. [11.25 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes……….. 34

Noes……….. 30

Majority…….. 4

AYES

Abetz, E.  Adams, J.
Barnett, G.  Boswell, R.L.D.
Brandis, G.H.  Calvert, P.H.
Chapman, H.G.P.  Colbeck, R.

Coonan, H.L.  Eggleston, A. *
Ellison, C.M.  Ferguson, A.B.
Fielding, S.  Fierravanti-Wells, C.
Fifield, M.P.  Heffernan, W.
Johnston, D.  Joyce, B.
Lightfoot, P.R.  Macdonald, I.
Macdonald, J.A.L.  Mason, B.J.
McGauran, J.J.J.  Minchin, N.H.
Nash, F.  Parry, S.
Patterson, K.C.  Payne, M.A.
Ronaldson, M.  Santoro, S.
Scullion, N.G.  Troeth, J.M.
Trood, R.  Watson, J.O.W.

NOES

Allison, L.F.  Bartlett, A.J.J.
Bishop, T.M.  Brown, B.J.
Brown, C.L.  Carr, K.J.
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.  McEwen, A.
McLucas, J.E.  Moore, C.
Murray, A.J.M.  Nettle, K.
O’Brien, K.W.K.  Pelley, H.
Sherry, N.J.  Siewert, R.
Stephens, U.  Sterle, G.
Stott Despoja, N.  Webber, R. *
Wong, P.  Wortley, D.

PAIRS

Campbell, I.G.  Ray, R.F.
Ferris, J.M.  Milne, C.
Hill, R.M.  Conroy, S.M.
Humphries, G.  Marshall, G.
Kenop, C.R.  Campbell, G.
Vanstone, A.E.  Hutchins, S.P.

* denotes teller

Question agreed to.

Bill read a third time.

ADJOURNMENT

The PRESIDENT—Order! It being 11.28 pm, I propose the question:

That the Senate do now adjourn.

Abortion

Senator JOYCE (Queensland) (11.28 pm)—I rise tonight to speak about an action—not about a person and not about any
flaws of a character but an action that will be dealt with if we come to pass the bill relating to RU486. The fundamental question that must be posed over the abortion pill RU486 is whether it deals with one person or two. If you believe that a human life which is killed by this medication is not a human life then what is it? It is not horse life, bird life or the formative stage of a tree; it is indisputably human life. If you do not have any rights over your life at the stage of nine weeks, the apparent limit of this process, at what juncture do you get the right to your own life? What is the occurrence when and why does killing a person goes from being the right of a third party to being a crime? There is never a cognisant argument as to where, and why, this point is. It cannot be an honourable house and at the same time sanction, sanitise and excuse the killing of innocent human life.

I have heard Senator Stott Despoja speaking on state-sanctioned killing and being lost for words at 4.13 pm on Tuesday, 29 November. Well, this is abhorrent state-sanctioned killing. We are definitely dealing with human life. The killing is definitely sanctioned by the state. The people being killed are definitely innocent of any crime, yet we justify our right to kill them. For those who are killed, the form in which they are killed is abhorrent and barbaric.

Senator Nettle said at 4.27 pm on 29 November that we have to have a ‘consistent principle’ when it comes to the death penalty. ‘The death penalty is final’, she said; it ‘is the end of their life.’ And, she said, ‘we support justice.’ What justice do those who have committed no crime get when we terminate their life?

Apparent rights are not diminished by age through our life except when we cannot see the person because they are in utero. That is philosophically and scientifically illogical. Rights should not be diminished by the person’s cognisance of those rights. Your rights are not diminished because you are asleep, though you are not aware of them. If you are inebriated, your right to life should remain unaffected. The day after you are born you are not aware of your rights, but the state says your killing by a third party is murder. Why is it that the person unborn can be destroyed and it is not only sanctioned by the state but also paid for by the state?

We allow the sanctioning of killing of those persons not born but certainly alive because we believe our rights are superior to theirs. Why is this so? Why do we hold this conceit that we have the right of life or death over innocent third parties? What did they do wrong to deserve this? What crime did they commit? When do they have their day in court?

If rights are determined by nurture then what is the principle that justifies that, and why does it not apply to the baby in the bassinette? We are responsible for a baby’s nurture long after it is born and that responsibility is widely accepted as unambiguous. If a baby is in a person’s body, it is no more that person’s property than if it is in that person’s house or in that person’s bassinette. I have a responsibility for the person’s welfare but I do not have a right over their life.

Putting aside all these arguments by saying this is a women’s health issue or this is an issue for the Therapeutic Goods Administration is a very convenient avoidance of the key issue—that we are dealing with a separate person’s life. We are not dealing with a drug that assists with an ailment such as tuberculosis or tetanus; we are dealing with one that terminates a human life.

Even though I feel it is an affront, let us deal with the health issue for the other party this drug affects—the mother. This drug, mifepristone—RU486—and misoprostol

CHAMBER
make up a two-course treatment. The first, mifepristone, is an artificial steroid that blocks progesterone, a hormone needed to continue the pregnancy. The effect if it is taken is to starve the unborn child of nutrients. As a result, the foetus—a Latin term meaning offspring—or the foetus’s precursor dies. The mother is then living with a dead human life inside of her and, as such, the foetus starts to mummify. However, if there is any chance of infection you will get putrefaction, which leads to a clostridial infection that can quickly cause death. The side effects of this drug enhance the likelihood of this occurrence.

The second stage of the abortion process utilises misoprostol, a prostaglandin analogue which induces contractions, expelling the embryo and the uterine lining. This is associated with heavy bleeding and, if the foetus is not expelled, can lead to very serious consequences.

The issue in remote areas of our country is, of course, an instance where the mother takes the first course of the treatment but not the second. The first person in one of our remote communities who dies from this process is definitely our responsibility and undoubtedly the responsibility of this house. Because RU486 works by blocking the effects of progesterone, the anti-progesterone effects also cause a change in the cervix which may allow Clostridium sordellii, a common vaginal bacterium, to enter the cervical canal. The bacteria derive nutrition from the decaying foetal tissue. Alongside this, other hormonal effects of RU486 include antiglucocorticoid actions which are taking place throughout the body. This disruption impairs the body’s ability to fight off Clostridium sordellii and so may spread the bacteria’s toxic by-products, a combination that can lead to septic shock.

In July this year, US Senator DeMint called on congress to pass the RU-486 Suspension and Review Act. This call followed further deaths of American women after taking the abortion pill. There have been at least 600 additional women who have experienced adverse events from RU486, including 200 adverse events that were either life-threatening or extremely serious. From Americans’ experience with this drug, it is clear we must consider the health of the mother.

Ultimately this is an argument about how we justify our belief that our rights surpass another’s over the essence of their existence—their life. We conjure up a plethora of euphemisms to avoid calling a human life a constant experience from conception through birth and our ultimate demise at death. We hope to live under the protection of law, yet this house is about to—or could be about to—further enunciate that the law of the protection of life, the most precious of our rights, is seriously flawed, and subjective, varying according to age and development.

I would like to leave you with one experience—that of Rachel. It has come from a US report.

[Rachel] still remembers most vividly the last moment of the whole ordeal; when she woke up for the millionth time and went to the bathroom the morning after taking the second part of the dangerous abortion drug, feeling crampy and achy. She looked down and saw the unborn baby. She looked at the baby for a long time because the baby was bigger than she expected. She stared for what seemed like an hour—frozen, tired.

It seemed rude to flush it, she thought to herself. ‘I should be having a burial or something.’ But then she heard her daughter awaken and thought: ‘Well, you have to get on with your day.’

Senator BARTLETT (Queensland) (11.37 pm)—I would like to speak about an issue that has got a fair bit of coverage in the
last couple of days in the mainstream media, the matter of Mr al-Tekriti. I will start, as I did in mentioning this briefly in the debate on the motion to take note of answers this afternoon, by making a fairly rare statement. That is that I support Minister Vanstone’s approach on this, certainly on the basis of the facts that I am aware of and those in the public arena. It is not very common for the Democrats and me to support Minister Vanstone in a controversy around refugee visas but, from all that I have seen, I think this, frankly, is an example of where the rule of law has been shown to operate. It shows the importance of having an independent tribunal able to assess claims.

I appreciate that there is a lot of difficulty for people who want to speak out on this matter, because they are worried that, if evidence comes out, it can easily be said, for example, ‘Bartlett defends war criminals,’ and those sorts of things. Certainly, if evidence does come to light down the track—because I do not think any of us are in a position to make judgments about this person’s life back in Iraq—about potential war crimes, we can reconsider it. But we can all rest assured that the evidence has been considered by a body that is set up specifically to consider these things, and that is the Administrative Appeals Tribunal. It considered the evidence and found that the evidence did not have weight.

In those circumstances, frankly, I think the big issue here is why it is that we are denying other people from Iraq the opportunity to have independent assessments made of negative security assessments of them. I talk about the two men who are left on Nauru. They are the only two people there. They have been there for over four years. They are both from Iraq. They were rejected by ASIO on security grounds, on grounds that they do not know the details of and that they have had no chance to defend themselves against. If any of us could imagine ourselves being put in a position where we were imprisoned and, in effect, exiled on the basis of allegations that we were not able to be made aware of and had no opportunity to appeal against, I think we could all understand how unbelievably frustrating and infuriating that would be. I call on the minister to look at those two people, recognise they have not had an independent assessment, an independent re-examination of the assessment that has been made, and at least give them that right.

The PRESIDENT—Order! The time for the debate has expired.

Senate adjourned at 11.40 pm

DOCUMENTS

Tabling

The following government documents were tabled:

Australian Customs Service—Report for 2004-05.

Migration Act 1958—Section 486O—Assessment of appropriateness of detention arrangements—

Covering statement by the Commonwealth Ombudsman.

Reports by the Commonwealth Ombudsman—


Native Title Act 1993—Native title representative bodies—Reports for 2004-05—
Aboriginal Legal Rights Movement Inc.
Carpentaria Land Council Aboriginal Corporation.
Central Land Council.
North Queensland Land Council Aboriginal Corporation.
Northern Land Council.
Torres Strait Regional Authority—Report for 2004-05.

Tabling

The following documents were tabled by the Clerk:

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


Aviation Transport Security Act—Select Legislative Instrument 2005 No. 289—Aviation Transport Security Amendment Regulations 2005 (No. 4) [F2005L03743]*.

Broadcasting Services Act—Children’s Television Standards 2005 [F2005L03713]*.

Civil Aviation Act—
Civil Aviation Regulations—Airworthiness Directives—Part—

105—

AD/BELL 206/158 Amdt 1—Fuel Distribution System [F2005L03870]*.

AD/HU 369/113 Amdt 1—Main Rotor Blade Torque Events and Life Limit [F2005L03888]*.

AD/S-PUMA/54 Amdt 1—Plug Doors [F2005L03871]*.

107—AD/PMC/48—Propeller Hub Socket Retention Threads [F2005L03889]*.

Civil Aviation Safety Regulations—Instruments Nos—

CASA EX53/05—Exemption—refuelling with passengers on board [F2005L03843]*.

CASA EX56/05—Exemption—participation in land and hold short operations [F2005L03855]*.

CASA EX 57/05—Exemption—participation in land and hold short operations [F2005L03856]*.

Class Ruling 2005/105.

Corporations Act—ASIC Class Order [CO 05/1195] [F2005L03854]*.

Currency Act—

Currency (Perth Mint) Determination 2005 (No. 3) [F2005L03858]*.

Currency (Perth Mint) Determination 2005 (No. 4) Amendment Determination 2005 (No. 2) [F2005L03862]*.

Customs Act—

Tariff Concession Orders—

0510943 [F2005L03770]*.

0511525 [F2005L03772]*.

0511526 [F2005L03773]*.

0511816 [F2005L03778]*.

0511820 [F2005L03769]*.

0511962 [F2005L03834]*.

0511964 [F2005L03855]*.

0512082 [F2005L03837]*.

0512084 [F2005L03759]*.

0512092 [F2005L03761]*.

0512186 [F2005L03782]*.

0512188 [F2005L03783]*.

0512196 [F2005L03787]*.
0512263 [F2005L03790]*.
Select Legislative Instruments 2005 Nos—
278—Customs (Prohibited Exports) Amendment Regulations 2005 (No. 4) [F2005L03718]*.
279—Customs (Prohibited Imports) Amendment Regulations 2005 (No. 6) [F2005L03721]*.
Customs Administration Act—Select Legislative Instrument 2005 No. 277—Customs Administration Amendment Regulations 2005 (No. 1) [F2005L03701]*.
Defence Act—Determination under section 58B—Defence Determinations—
2005/52—Members with dependants—amendment.
2005/53—Overseas conditions of service—member with dependants.
Environment Protection and Biodiversity Conservation Act—Amendments of lists of exempt native specimens, dated—
26 November 2005 [F2005L03830]*.
28 November 2005 [F2005L03824]*.
29 November 2005 [F2005L03844]*.
Federal Court of Australia Act—Select Legislative Instrument 2005 No. 291—Federal Court Amendment Rules 2005 (No. 2) [F2005L03791]*.
Financial Management and Accountability Act—Financial Management and Accountability Determinations—
2005/04—Legal Practice Special Account Abolition 2005 [F2005L03794]*.
2005/05—Other Trust Moneys Account Abolition 2005—Aboriginal and Torres Strait Islander Commission [F2005L03799]*.
2005/06—Services for Other Government and Non-Agency Bodies Account Abolition 2005—Aboriginal and Torres Strait Islander Commission [F2005L03801]*.
2005/17—National Film and Sound Archive Account Abolition 2005 [F2005L03803]*.
2005/18—Nationally Funded Medical Specialty Centres Account Abolition 2005 [F2005L03804]*.
Fisheries Management Act—Heard Island and McDonald Islands Fishery Management Plan 2002—
Direction No HIMIFD 9—Prohibition on the use of fishing methods other than trawling or longlining [F2005L03867]*.
Temporary Order, dated 25 November 2005 [F2005L03817]*.
Health Insurance Act—Select Legislative Instruments 2005 Nos—
271—Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2005 (No. 4) [F2005L03676]*.
272—Health Insurance (General Medical Services Table) Amendment Regulations 2005 (No. 4) [F2005L03679]*.
273—Health Insurance (Pathology Services Table) Amendment Regulations 2005 (No. 2) [F2005L03678]*.
Indexed Lists of Files

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2005—Statement of compliance—Immigration and Multicultural and Indigenous Affairs portfolio agencies.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Minister for Finance and Administration: Overseas Travel
(Question No. 686)

Senator Chris Evans asked the Minister for Finance and Administration, upon notice, on 4 May 2005:

(1) In relation to all overseas travel where expenses were met by the Minister’s portfolios, for each of the financial years 2000-01 to 2004-05 to date what was the total cost of travel and related expenses in relation to: (a) the Minister; (b) the Minister’s family; and (c) the Minister’s staff.

(2) In relation to all air charters engaged and paid for by the Minister and/or the Minister’s office and/or the department and its agencies, for each of the financial years 2000-01 to 2004-05 to date: (a) on how many occasions did the Minister or his/her office or department and/or agency charter aircraft, and in each case, what was the name of the charter company that provided the service and the related respective costs; and (b) what was the total cost.

Senator Minchin—The answer to the honourable senator’s question is as follows:

(1) and (2) The question has been interpreted as relating to overseas charter travel. Preparation of a response would require a significant diversion of resources which Finance is not prepared to authorise. However, if the Senator wishes to know the details of any particular trip, I will examine the matter to see if that information can be obtained from Finance without the diversion of substantial resources.

Special Minister of State: Overseas Travel
(Question No. 701)

Senator Chris Evans asked the Special Minister of State, upon notice, on 4 May 2005:

(1) In relation to all overseas travel where expenses were met by the Minister’s portfolios, for each of the financial years 2000-01 to 2004-05 to date what was the total cost of travel and related expenses in relation to: (a) the Minister; (b) the Minister’s family; and (c) the Minister’s staff.

(2) In relation to all air charters engaged and paid for by the Minister and/or the Minister’s office and/or the department and its agencies, for each of the financial years 2000-01 to 2004-05 to date: (a) on how many occasions did the Minister or his/her office or department and/or agency charter aircraft, and in each case, what was the name of the charter company that provided the service and the related respective costs; and (b) what was the total cost.

Senator Abetz—The answer to the honourable senator’s question is as follows:

(1) and (2) The question has been interpreted as relating to overseas charter travel. Preparation of a response would require a significant diversion of resources which Finance is not prepared to authorise. However, if the Senator wishes to know the details of any particular trip, I will examine the matter to see if that information can be obtained from Finance without the diversion of substantial resources.

Minister for Finance and Administration: Overseas Travel
(Question No. 709)

Senator Chris Evans asked the Minister for Finance and Administration, upon notice, on 4 May 2005:
(1) With reference to each individual minister, and in relation to all overseas travel where expenses were met by the Department of Finance and Administration, for each of the financial years 2000-01 to 2004-05 to date, what was the total cost of travel and related expenses in relation to: (a) the minister; (b) the minister’s family; and (c) the minister’s staff.

(2) In relation to all air charters engaged by the minister and/or the minister’s office and/or the department and its agencies and met by the Department of Finance and Administration, for each of the financial years 2000-01 to 2004-05 to date: (a) on how many occasions did the minister or his/her office or department and/or agency charter aircraft, and in each case, what was the name of the charter company that provided the service and the related respective costs; and (b) what was the total cost.

Senator Minchin—The answer to the honourable senator’s question is as follows:

(1) (a), (b) and (c) The costs of overseas travel for Ministers (including accompanying spouses and Ministerial Staff) met by the Ministerial and Parliamentary Services Group of the Department of Finance and Administration (Finance) for the financial years 2000-01 to 2003-04 and for the period 1 July 2004 to 31 December 2004 are available as part of the six monthly tabling of Parliamentarians’ Travel paid by the Department of Finance and Administration. Information for the period 1 January 2005 to 30 June 2005 will be included in a future tabling.

(2) (a) and (b) The costs of charter travel for Ministers met by the Ministerial and Parliamentary Services Group of the Department of Finance and Administration (Finance) for the financial years 2000-01 to 2003-04 and for the period 1 July 2004 to 31 December 2004 are available as part of the six monthly tabling of Parliamentarians’ Travel paid by the Department of Finance and Administration. Information for the period 1 January 2005 to 30 June 2005 will be included in a future tabling.

The information on Charter travel included in the six monthly tabling of Parliamentarians’ Travel paid by the Department of Finance and Administration does not include the name of the charter company used. Such information for all Ministers is not readily available in consolidated form and it would be a major diversion of resources to collect and assemble it. The practice of successive governments has been not to authorise the expenditure of time and money involved in assembling such information on a general basis. I intend to follow the established practice.

Finance and Administration: Grants
(Question No. 990)

Senator O’Brien asked the Minister for Finance and Administration, upon notice, on 24 June 2005:

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

Senator Minchin—The answer to the honourable senator’s question is as follows:

No grants or payments of this nature have been paid to business organisations and/or associations for the period 2001 to 2005.
Finance and Administration: Grants
(Question No. 1005)
Senator O’Brien asked the Special Minister of State, upon notice, on 24 June 2005:
For each of the financial years 2001-02, 2002-03, 2003-04 and 2004-05, has the Minister, the department or any agency or statutory authority for which the Minister is responsible, made grants or other payments to business organisations and/or associations, including but not necessarily limited to peak employer groups; if so, can information be provided for each grant or other payment including: (a) the name and address of the recipient organisation; (b) the quantum and purpose of the payment; (c) the name of the program under which the grant or other payment was funded; (d) who approved the grant or other payment; and (e) whether the grant or payment was successfully acquitted; if so, when; if not, can details be provided, including action taken to recover the grant or other payment.

Senator Abetz—The answer to the honourable senator’s question is as follows:
No grants or payments of this nature have been paid to business organisations and/or associations for the period 2001 to 2005.

Environment: Port Phillip Bay
(Question No. 1345)
Senator Bob Brown asked the Minister for the Environment and Heritage, upon notice, on 3 November 2005:
(1) Is the Government committed to:
(a) protecting Ramsar Convention on Wetlands sites such as the mud islands in Port Phillip Bay; and
(b) protecting listed and threatened species under the Environment Protection and Biodiversity Conservation Act 1999, such as the syngnathids in Port Phillip Bay.
(2) Given the acknowledged threats that the project to deepen the channel poses to the mud islands in Port Phillip Bay, why does the Government support the project.

Senator Ian Campbell—The answer to the honourable senator’s question is as follows:
(1) (a) Yes.
(b) Yes.
(2) The Government, through an accredited process being managed by Victoria, is in the process of assessing the potential environmental impacts of the project under the Environment Protection and Biodiversity Conservation Act 1999. A decision to approve, or not approve, the project will be made on completion of this assessment.

Army: Incapacity Pay
(Question No. 1348)
Senator Mark Bishop asked the Minister for Finance and Administration, upon notice, on 4 November 2005:
For each of the financial years 2002-03 to 2005-06 to date: (a) what was the medical condition of personnel discharged from the Army who were in receipt of incapacity pay from Comsuper, by general type including mental health disorders; and (b) how many were classified A, B and C for the purposes of incapacity pay.

Senator Minchin—The answer to the honourable senator’s question is as follows:
(a) The information sought in the Senator’s question is not readily available. To provide a complete response would take considerable time and resources and, in the interest of efficient utilisation of departmental resources, I am not prepared to authorise the expenditure of resources and effort to provide the information requested. I have been advised Defence and ComSuper are developing systems that will enable the automatic retrieval of the type of information requested.

(b)

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<tr>
<th>Year</th>
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<th>Class B</th>
<th>Class C</th>
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**Fuel Excise**

(Question No. 1356)

**Senator Milne** asked the Minister representing the Treasurer, upon notice, on 9 November 2005:

(1) (a) What advice has the Government given to Axiom Energy on the rates of fuel excise on this type of diesel; and b) how does this rate compare with the excise imposed on other types of diesel.

(2) Are there any rebates or concessions on this fuel excise in recognition of the environmental benefits of using a recycled material; if not, how does the imposition of fuel excise on this product accord with the Government’s desire to promote alternative fuels.

**Senator Minchin**—The Treasurer has provided the following answer to the honourable senator’s question:

(1) (a) The Australian Taxation Office (ATO) has published a general ruling 49421 which is the edited public version of an administratively binding advice issued to an ATO client on this type of diesel. Should the ATO have directly advised Axiom, this advice is subject to the secrecy provisions of the relevant legislation. On 22 August 2005 Treasury wrote to a number of companies, including Axiom, noting that under the current excise tariff diesel from waste plastic is not excisable and that this situation arises from a failure of the excise tariff to keep pace with certain advances in industry technology rather than being a reflection of active Government policy. Treasury also indicated that under the Government’s fuel tax policy, all fuels used in internal combustion engines are intended to be subject to excise. Axiom, and the other companies, were invited to make a submission or discuss the matter in the Treasury letter.

(b) The details of the Government’s decisions in relation to excise on diesel are set out in the Prime Minister’s Press Release of 16 December 2003.

(2) No.