INTERNET
The Journals for the Senate are available at

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

For searching purposes use
http://parlinfoweb.aph.gov.au

SITTING DAYS—2006

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>7, 8, 9, 27, 28</td>
</tr>
<tr>
<td>March</td>
<td>1, 2, 27, 28, 29, 30</td>
</tr>
<tr>
<td>May</td>
<td>9, 10, 11</td>
</tr>
<tr>
<td>June</td>
<td>13, 14, 15, 19, 20, 21, 22</td>
</tr>
<tr>
<td>August</td>
<td>8, 9, 10, 14, 15, 16, 17</td>
</tr>
<tr>
<td>September</td>
<td>4, 5, 6, 7, 11, 12, 13, 14</td>
</tr>
<tr>
<td>October</td>
<td>9, 10, 11, 12, 16, 17, 18, 19</td>
</tr>
<tr>
<td>November</td>
<td>6, 7, 8, 9, 27, 28, 29, 30</td>
</tr>
<tr>
<td>December</td>
<td>4, 5, 6, 7</td>
</tr>
</tbody>
</table>

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

- CANBERRA 103.9 FM
- SYDNEY 630 AM
- NEWCASTLE 1458 AM
- GOSFORD 98.1 FM
- BRISBANE 936 AM
- GOLD COAST 95.7 FM
- MELBOURNE 1026 AM
- ADELAIDE 972 AM
- PERTH 585 AM
- HOBART 747 AM
- NORTHERN TASMANIA 92.5 FM
- DARWIN 102.5 FM
FORTY-FIRST PARLIAMENT
FIRST SESSION—FIFTH 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. Nicholas Hugh Minchin
Deputy Leader of the Government in the Senate—Senator the Hon. Helen Lloyd Coonan
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. Nicholas Hugh Minchin
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Helen Lloyd Coonan
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 Nigel Gregory Scullion
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
<table>
<thead>
<tr>
<th>Senator</th>
<th>State or Territory</th>
<th>Term expires</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abetz, Hon. Eric</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Adams, Judith</td>
<td>WA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Allison, Lynette Fay</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>AD</td>
</tr>
<tr>
<td>Barnett, Guy</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Bartlett, Andrew John Julian</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>AD</td>
</tr>
<tr>
<td>Bishop, Thomas Mark</td>
<td>WA</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Boswell, Hon. Ronald Leslie</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>NATS</td>
</tr>
<tr>
<td>Brandis, George Henry</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Brown, Carol Louise</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Brown, Robert James</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>AG</td>
</tr>
<tr>
<td>Calvert, Hon. Paul Henry</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Campbell, George</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Campbell, Hon. Ian Gordon</td>
<td>WA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Carr, Kim John</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Chapman, Hedley Grant Pearson</td>
<td>SA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Colbeck, Hon. Richard Mansell</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Conroy, Stephen Michael</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Coonan, Hon. Helen Lloyd</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Crossin, Patricia Margaret</td>
<td>NT</td>
<td></td>
<td>ALP</td>
</tr>
<tr>
<td>Eggleston, Alan</td>
<td>WA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Ellison, Hon. Christopher Martin</td>
<td>WA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Evans, Christopher Vaughan</td>
<td>WA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Faulkner, Hon. John Philip</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Ferguson, Alan Baird</td>
<td>SA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Ferris, Jeannie Margaret</td>
<td>SA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Fielding, Steve</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>FF</td>
</tr>
<tr>
<td>Fierravanti-Wells, Concetta Anna</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Fifield, Mitchel Peter</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Forskaw, Michael George</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Heffernan, Hon. William Daniel</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Hogg, John Joseph</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Humphries, Gary Joseph</td>
<td>ACT</td>
<td></td>
<td>LP</td>
</tr>
<tr>
<td>Hurley, Annette</td>
<td>SA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Hutchins, Stephen Patrick</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Johnston, David Albert Lloyd</td>
<td>WA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Joyce, Barnaby</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>NATS</td>
</tr>
<tr>
<td>Kemp, Hon. Charles Roderick</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Kirk, Linda Jean</td>
<td>SA</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Lightfoot, Philip Ross</td>
<td>WA</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Ludwig, Joseph William</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Lundy, Kate Alexandra</td>
<td>ACT</td>
<td></td>
<td>ALP</td>
</tr>
<tr>
<td>Macdonald, Hon. Ian Douglas</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Macdonald, John Alexander Lindsay(Sandy)</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>NATS</td>
</tr>
<tr>
<td>McEwen, Anne</td>
<td>SA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>McGauran, Julian John James</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>McLucas, Jan Elizabeth</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Marshall, Gavin Mark</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Mason, Brett John</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Senator</td>
<td>State or Territory</td>
<td>Term expires</td>
<td>Party</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>--------------------</td>
<td>--------------</td>
<td>---------</td>
</tr>
<tr>
<td>Milne, Christine</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>AG</td>
</tr>
<tr>
<td>Minchin, Hon. Nicholas Hugh</td>
<td>SA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Moore, Claire Mary</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Murray, Andrew James Marshall</td>
<td>WA</td>
<td>30.6.2008</td>
<td>AD</td>
</tr>
<tr>
<td>Nash, Fiona</td>
<td>NSW</td>
<td>30.6.2011</td>
<td>NATS</td>
</tr>
<tr>
<td>Nettle, Kerry Michelle</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>AG</td>
</tr>
<tr>
<td>O’Brien, Kerry Williams Kelso</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Parry, Stephen</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Patterson, Hon. Kay Christine Lesley</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Payne, Marise Ann</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Polley, Helen</td>
<td>TAS</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Ray, Hon. Robert Francis</td>
<td>VIC</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Ronaldson, Hon. Michael</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Santoro, Hon. Santo (1)</td>
<td>QLD</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Scullion, Nigel Gregory (3)</td>
<td>NT</td>
<td></td>
<td>CLP</td>
</tr>
<tr>
<td>Sherry, Hon. Nicholas John</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Siewert, Rachel</td>
<td>WA</td>
<td>30.6.2011</td>
<td>AG</td>
</tr>
<tr>
<td>Stephens, Ursula Mary</td>
<td>NSW</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Sterle, Glenn</td>
<td>WA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
<tr>
<td>Stott Despoja, Natasha Jessica</td>
<td>SA</td>
<td>30.6.2008</td>
<td>AD</td>
</tr>
<tr>
<td>Troeth, Hon. Judith Mary</td>
<td>VIC</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Trood, Russell</td>
<td>QLD</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Vanstone, Hon. Amanda Eloise</td>
<td>SA</td>
<td>30.6.2011</td>
<td>LP</td>
</tr>
<tr>
<td>Watson, John Odin Wentworth</td>
<td>TAS</td>
<td>30.6.2008</td>
<td>LP</td>
</tr>
<tr>
<td>Webber, Ruth Stephanie</td>
<td>WA</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Wong, Penelope Ying Yen</td>
<td>SA</td>
<td>30.6.2008</td>
<td>ALP</td>
</tr>
<tr>
<td>Wortley, Dana</td>
<td>SA</td>
<td>30.6.2011</td>
<td>ALP</td>
</tr>
</tbody>
</table>

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

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

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

Prime Minister
The Hon. John Winston Howard MP

Minister for Trade and Deputy Prime Minister
The Hon. Mark Anthony James Vaile MP

Treasurer
The Hon. Peter Howard Costello MP

Minister for Transport and Regional Services
The Hon. Warren Errol Truss MP

Minister for Defence
The Hon. Dr Brendan John Nelson MP

Minister for Foreign Affairs
The Hon. Alexander John Gosse Downer MP

Minister for Health and Ageing and Leader of the House
The Hon. Anthony John Abbott MP

Attorney-General
Senator the Hon. Nicholas Hugh Minchin

Minister for Finance and Administration,
Leader of the Government in the Senate and Vice-President of the Executive Council
The Hon. Philip Maxwell Ruddock MP

Minister for Agriculture, Fisheries and Forestry
The Hon. Peter John McGauran MP

and Deputy Leader of the House

Minister for Immigration and Multicultural Affairs
Senator the Hon. Amanda Eloise Vanstone

Minister for Education, Science and Training and
Minister Assisting the Prime Minister for
Women’s Issues
The Hon. Julie Isabel Bishop MP

Minister for Families, Community Services and
Indigenous Affairs
The Hon. Malcolm Thomas Brough MP

Minister Assisting the Prime Minister for
Indigenous Affairs

Minister for Industry, Tourism and Resources
The Hon. Ian Elgin Macfarlane MP

Minister for Employment and Workplace
The Hon. Kevin James Andrews MP

Relations and Minister Assisting the Prime
Minister for the Public Service

Minister for Communications, Information
Technology and the Arts and Deputy Leader of the
Government in the Senate
Senator the Hon. Helen Lloyd Coonan

Minister for the Environment and Heritage
Senator the Hon. Ian Gordon Campbell

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

Minister for Justice and Customs and Manager of Government Business in the Senate  Senator the Hon. Christopher Martin Ellison
Minister for Fisheries, Forestry and Conservation  Senator the Hon. Eric Abetz
Minister for the Arts and Sport  Senator the Hon. Charles Roderick Kemp
Minister for Human Services  The Hon. Joseph Benedict Hockey MP
Minister for Community Affairs  The Hon. John Kenneth Cobb MP
Minister for Revenue and Assistant Treasurer  The Hon. Peter Craig Dutton MP
Special Minister of State  The Hon. Gary Roy Nairn MP
Minister for Vocational and Technical Education and Minister Assisting the Prime Minister  The Hon. Gary Douglas Hardgrave MP
Minister for Ageing  Senator the Hon. Santo Santoro
Minister for Small Business and Tourism  The Hon. Frances Esther Bailey MP
Minister for Local Government, Territories and Roads  The Hon. James Eric Lloyd MP
Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence  The Hon. Bruce Frederick Billson MP
Minister for Workforce Participation  The Hon. Dr Sharman Nancy Stone MP
Parliamentary Secretary to the Minister for Finance and Administration  Senator the Hon. Richard Mansell Colbeck
Parliamentary Secretary to the Minister for Industry, Tourism and Resources  The Hon. Robert Charles Baldwin MP
Parliamentary Secretary to the Minister for Health and Ageing  The Hon. Christopher Maurice Pyne MP
Parliamentary Secretary to the Minister for Defence  Senator the Hon. John Alexander Lindsay (Sandy) Macdonald
Parliamentary Secretary (Trade)  The Hon. De-Anne Margaret Kelly MP
Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs  The Hon. Andrew John Robb MP
Parliamentary Secretary to the Prime Minister  The Hon. Malcolm Bligh Turnbull MP
Parliamentary Secretary to the Treasurer  The Hon. Christopher John Pearce MP
Parliamentary Secretary to the Minister for the Environment and Heritage  The Hon. Gregory Andrew Hunt MP
Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry  The Hon. Sussan Penelope Ley MP
Parliamentary Secretary to the Minister for Education, Science and Training  The Hon. Patrick Francis Farmer MP
Parliamentary Secretary (Foreign Affairs)  The Hon. Teresa Gambaro MP
SHADOW MINISTRY

Leader of the Opposition
The Hon. Kim Christian Beazley MP

Deputy Leader of the Opposition and Shadow Minister for Education, Training, Science and Research
Jennifer Louise Macklin MP

Leader of the Opposition in the Senate, Shadow Minister for Indigenous Affairs and Shadow Minister for Family and Community Services
Senator Christopher Vaughan Evans

Deputy Leader of the Opposition in the Senate and Shadow Minister for Communications and Information Technology
Senator Stephen Michael Conroy

Shadow Minister for Health and Manager of Opposition Business in the House
Julia Eileen Gillard MP

Shadow Treasurer
Wayne Maxwell Swan MP

Shadow Attorney-General
Nicola Louise Roxon MP

Shadow Minister for Industry, Infrastructure and Industrial Relations
Stephen Francis Smith MP

Shadow Minister for Foreign Affairs and Trade and Shadow Minister for International Security
Kevin Michael Rudd MP

Shadow Minister for Defence
Robert Bruce McClelland MP

Shadow Minister for Regional Development
The Hon. Simon Findlay Crean MP

Shadow Minister for Primary Industries, Resources, Forestry and Tourism
Martin John Ferguson MP

Shadow Minister for Environment and Heritage, Shadow Minister for Water and Deputy Manager of Opposition Business in the House
Anthony Norman Albanese MP

Shadow Minister for Housing, Shadow Minister for Urban Development and Shadow Minister for Local Government and Territories
Senator Kim John Carr

Shadow Minister for Public Accountability and Shadow Minister for Human Services
Kelvin John Thomson MP

Shadow Minister for Finance
Lindsay James Tanner MP

Shadow Minister for Superannuation and Intergenerational Finance and Shadow Minister for Banking and Financial Services
Senator the Hon. Nicholas John Sherry

Shadow Minister for Child Care, Shadow Minister for Youth and Shadow Minister for Women
Tanya Joan Plibersek MP

Shadow Minister for Employment and Workforce Participation and Shadow Minister for Corporate Governance and Responsibility
Senator Penelope Ying Yen Wong

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

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

Shadow Minister for Agriculture and Fisheries
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
CONTENTS

THURSDAY, 30 MARCH

Chamber
Telecommunications (Interception) Amendment Bill 2006—
In Committee............................................................................................................... 1
Third Reading............................................................................................................. 59
Questions Without Notice—
Workplace Relations......................................................................................... 61
Workplace Relations: Unfair Dismissal.............................................................. 63
Cyclone Larry......................................................................................................... 64
Workplace Relations........................................................................................... 65
Goods and Services Tax..................................................................................... 66
Distinguished Visitors......................................................................................... 67
Questions Without Notice—
Christmas Island Mining .................................................................................. 67
Skilled Migration................................................................................................. 68
Australian Broadcasting Corporation: Funding.................................................. 70
Tasmanian Forests.............................................................................................. 71
Regional Services: Program Funding............................................................... 72
Fishing Industry................................................................................................. 74
Questions Without Notice: Take Note of Answers—
Workplace Relations........................................................................................... 76
Christmas Island Mining .................................................................................. 82
Personal Explanations......................................................................................... 83
Business—
Rearrangement................................................................................................. 84
Committees—
Mental Health Committee—Report............................................................... 84
Petitions—
Health................................................................................................................ 94
Australian National Flag................................................................................... 94
Pregnancy Counselling Services ....................................................................... 94
Education: Austudy............................................................................................ 94
Education: Student Fees.................................................................................... 95
Notices—
Presentation...................................................................................................... 95
Committees—
Selection of Bills Committee—Report............................................................ 96
Notices—
Postponement................................................................................................. 102
Business—
Withdrawal....................................................................................................... 102
Children: Sexual Assault................................................................................ 102
Genetic Use Restriction Technologies............................................................. 102
Climate Change............................................................................................... 103
Great Barrier Reef Marine Park......................................................................... 103
Parliamentary Zone—
Proposal for Works......................................................................................... 104
CONTENTS—continued

Protecting Children from Junk Food Advertising Bill 2006—
   First Reading ................................................................. 104
   Second Reading ............................................................ 105
Committees—
   Publications Committee—Report ........................................ 107
Budget—
   Consideration by Legislation Committees—Additional Information .................................. 107
   Consideration by Legislation Committees—Additional Information .................................. 107
Committees—
   Treaties Committee—Erratum ................................................. 107
   Regulations and Ordinances Committee—Delegated Legislation Monitor .......................... 107
Budget—
   Consideration by Legislation Committees—Reports ..................................................... 107
Committees—
   Economics Legislation Committee—Report ............................................................ 107
   Foreign Affairs, Defence and Trade References Committee—Report ............................ 108
   Community Affairs References Committee—Report .................................................. 111
   Reports: Government Responses ................................................................................ 111
Maritime Legislation Amendment Bill 2005 [2006], and
Jurisdiction of Courts (Family Law) Bill 2005 [2006]—
   Returned from the House of Representatives ................................................................. 121
Family Assistance, Social Security and Veterans’ Affairs Legislation Amendment
(2005 Budget and Other Measures) Bill 2006—
   Second Reading ................................................................. 121
   In Committee ........................................................................ 121
   Third Reading ....................................................................... 148
Cancer Australia Bill 2006—
   First Reading ........................................................................ 148
   Second Reading ..................................................................... 149
   In Committee ........................................................................ 165
   Third Reading ....................................................................... 167
Family Law Amendment (Shared Parental Responsibility) Bill 2006—
   Second Reading ..................................................................... 167
   In Committee ........................................................................ 167
   Third Reading ....................................................................... 224
Appropriation Bill (No. 3) 2005-2006, and
Appropriation Bill (No. 4) 2005-2006—
   Second Reading ..................................................................... 224
   Third Reading ....................................................................... 224
Advance to the Finance Minister—
   In Committee ........................................................................ 230
Committees—
   Membership .......................................................................... 230
Adjournment—
   Westpoint Collapse ..................................................................... 231
   Tasmania: Election ..................................................................... 233
   Trade: Live Animal Exports ...................................................... 235
   Mr Mick Farrelley ..................................................................... 237
Documents—
   Tabling .................................................................................. 237
Indexed Lists of Files ............................................................................................................... 238

Questions on Notice

Advertising Campaigns—(Question Nos 748 and 758) ................................................... 239
Aviation—(Question No. 1030) ........................................................................................ 240
Princess Royal Harbour—(Question No. 1333) ............................................................... 243
Australian Defence Force Personnel—(Question No. 1353) ........................................... 245
Defence Security Project JP2054—(Question No. 1369) ................................................. 246
Commonwealth State Territory Disability Agreement—(Question No. 1459) ............... 247
Foreign Affairs and Trade: Grants—(Question Nos 1488 and 1491) ............................ 248
Industry, Tourism and Resources: Grants—(Question No. 1499) ............................... 249
Industry, Tourism and Resources: Grants—(Question No. 1511) ............................... 252
Defence: Grants—(Question No. 1520) ........................................................................... 252
Transport and Regional Services: Grants—(Question No. 1522) ............................... 252
Families, Community Services and Indigenous Affairs: Grants—(Question No. 1528) .. 253
Industry, Tourism and Resources: Grants—(Question No. 1529) ............................... 253
Industry, Tourism and Resources: Grants—(Question No. 1541) ............................... 254
Transport and Regional Services: Grants—(Question No. 1542) ............................... 254
Transport and Regional Services: Credit Cards—(Question No. 1553) ....................... 254
Australian Defence Force: Summernats—(Question No. 1575) .................................... 263
Guantanamo Bay—(Question No. 1607) ......................................................................... 264
Tasmania: Foxes—(Question No. 1608) .......................................................................... 266
Tasmania: Giant Freshwater Crayfish—(Question No. 1610) ........................................... 266
Thursday, 30 March 2006

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

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 2006

In Committee

Consideration resumed from 29 March.

The CHAIRMAN—The committee is considering the Telecommunications (Interception) Amendment Bill 2006, as amended, and government amendments (9), (10) and (11) on sheet PA337 moved by Senator Ellison.

Senator LUDWIG (Queensland) (9.31 am)—It might be worth a short recap of where we have got to in relation to the Telecommunications (Interception) Amendment Bill 2006. This process has stretched over a couple of days because the program, unfortunately, has unravelled through the week. We are progressing through the amendments to the Telecommunications (Interception) Amendment Bill 2006 and are now dealing with a range of government amendments to what is ordinarily referred to as the TI bill.

One of the problems with the government amendments is that the Attorney-General in truth has been lazy in looking at the committee recommendations. The committee provided its report on Monday and that committee report put forward a range of recommendations. The Attorney-General came back with a number of amendments, a few of them addressing the committee’s recommendations. Some of the government’s amendments do not even address the committee’s recommendations but are other amendments and additions. The work of the committee in providing those recommendations did not in truth get substantive attention from the Attorney-General and, as a consequence, the privacy protections that could have been afforded during this debate and agreed to by the government have not been picked up. That is a disappointment for the opposition, but it is a greater disappointment to people in the community who expect this government to ensure that the legislation does have adequate safeguards attached and, given the type of bill this is, that those safeguards do strike the right balance between the privacy concerns of persons while enabling law enforcement agencies to get on and do their work.

As for the amendments that are being addressed, Labor have indicated that we will support them. They deal in part with the Spam Act, and that is probably a good example which came to light during the committee work. It does underscore the committee work. A submitter came along from another government agency and said, ‘By the way, if you proceed with this legislation, it may impact upon our ability to stop spam.’ It becomes a bit by pythonesque—and some old enough to recall know what I mean. You could then be in the difficult position where the Spam Act might be prevented from stopping spam, which is a completely unacceptable position.

So Labor has indicated that it will support these amendments. It is another demonstration of how sloppy the work of government has been in providing this bill to the parliament. It is not because of the Parliamentary Counsel—they obviously do their work. The real work has to be done by the Attorney-General’s Department in consultation with their agencies and their own departments, listening to submitters and then reviewing the submitters’ work, and finalising all that and bringing forward a bill after consideration by the Attorney-General. This would then take up a lot of the concerns. It is fortunate that in this instance at least the Attor-
ney-General has picked up a submitter’s point that there would be a problem if this was not addressed in the legislation.

It does beg the question whether this legislation might have other unintended consequences, but time will tell. The answer that the Attorney-General has provided in respect of that is that they will continue to review it. That is not really good enough. We are here now debating a bill that will pass today. I suspect. The government do have the numbers and they will ensure that it passes today. It is not good enough to have such a truncated process. But as Labor have indicated during the last couple of days, we are doing our best to ensure that there are sufficient privacy protections and that the government continues to have the opportunity to pick up those privacy protections and put them in the bill.

Senator STOTT DESPOJA (South Australia) (9.37 am)—I will briefly outline some of the concerns that the Democrats have with the amendments moved by the government last night, particularly amendment (10), which is in effect, by our understanding, a lowering of the threshold for the ACMA members. I understand that these amendments are being dealt with in a block, so I indicate that amendments (10) and (11) are of concern to the Australian Democrats. Amendment (9), being a technical amendment, is not such an issue.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Barnett)—Does the minister wish to return to government amendments (7) and (8), which were deferred last night?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.38 am)—I do. The committee will recall that yesterday we were talking about the amendment to clause 108, ‘Stored communications not to be accessed’. I have moved these government amendments, so I will not do so again, but I will explain to the committee how the wording works.

On the face of it, Senator Stott Despoja’s concern had some weight, and we deferred it. Senator Ludwig and I also looked at it and thought it did not look quite right, but when you look at it in context it does work and the wording is appropriate. Subclause 108(1) states:

A person commits an offence if:

(a) the person:

(i) accesses a stored communication; or

(ii) authorises, suffers or permits another person to access a stored communication; or

(iii) does any act or thing that will enable the person or another person to access a stored communication; and

(b) the person does so without the knowledge of the intended recipient of the stored communication.

The first part of that section says a person commits an offence if they access a stored communication. The second part is a requirement that the person did so without the knowledge of the intended recipient. We have expanded that. We are saying that the second element of the offence, if you like, is:

(b) the person does so with the knowledge of neither of the following:

(i) the intended recipient of the stored communication;

(ii) the person who sent the stored communication.

So we have expanded it to both parties—the person who receives the stored communication and the person who sent it. When you read that altogether, it says:

A person commits an offence if:

(a) the person:

(i) accesses a stored communication; or
(ii) authorises, suffers or permits another person to access a stored communication; or

(iii) does any act or thing that will enable the person or another person to access a stored communication; and—

and this is the amendment—

(b) the person does so with the knowledge of neither of the following:

(i) the intended recipient of the stored communication;

(ii) the person who sent the stored communication.

When you look at that, the offence is that you are accessing it with the knowledge of neither.

Senator STOTT DESPOJA (South Australia) (9.41 am)—I thank the minister for that clarification. That was precisely my point. You just said the sender ‘and’ the intended recipient. I draw the committee’s attention to the supplementary explanatory memorandum that was circulated on behalf of the government to accompany their additional government amendments. It reads:

Amendment 7 amends item 9 at Part 1 of Schedule 1 to amend the general prohibition against access to stored communication in clause 108 of the Bill. The effect of the amendments is to enable law enforcement agencies to access stored communications with the knowledge of the sender or intended recipient.

The reason I first drew the attention of the committee to the issue last night was that my reading of the amendment was that you would need both the sender and the intended recipient to know if you were to use the following terminology:

(b) the person does so with the knowledge of neither of the following:

(i) the intended recipient of the stored communication;

(ii) the person who sent the stored communication.

The government’s explanatory memorandum wants ‘or’. My reading—and I thought so last night when colleagues looked at it too—was that the amendment, by use of the word ‘neither’, would mean ‘and’. That sounds like an added protection to me, so I probably should not have drawn it to the attention of the committee as it would probably have resulted in legislation that meant you had to have the knowledge of both, but I wonder whether the minister can see the point that I am making—that the explanatory memorandum is hoping for ‘or’ but my interpretation of how ‘neither’ works is that you get both. Minister, in your last comment you said the knowledge of the sender ‘and’ the intended recipient, and that means both.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.44 am)—To clarify that absolutely, it is an offence if the person does so without the knowledge of ‘neither of the following’. That means one of the following, not both. If I gave the impression that both were required then that is incorrect. It is ‘neither of the following’. In fact, I inquired as to why you would not put an ‘or’ after ‘stored communication’. The advice I got was that that in fact would have the reverse effect. You would then have a cumulative effect in exactly the way that Senator Stott Despoja has just made out—that is, it would be an offence to do so without the knowledge of both. We are saying that as long as you have the knowledge of one of them you are right, and that is it. The way it is drafted, on the advice I have,
achieves that. That is the advice I have and that is what it means.

Senator STOTT DESPOJA (South Australia) (9.45 am)—I thank the minister for that clarification. I thought he had used ‘and’ in his comment. I do understand the intent of the amendment—that is not the issue. I am just wondering if down the track it can be interpreted in a different way—in a way that does have a cumulative effect. Obviously, the government is satisfied with the drafting and the effect of the amendment in its current form. But I still think that the fact that we have puzzled over it since yesterday evening probably indicates it is not as clear as perhaps would have been hoped.

Senator LUDWIG (Queensland) (9.46 am)—I did not particularly want to buy into it, but I do understand what the minister is saying. It is perhaps sloppy drafting at the end of the day. Quite frankly, a bit more time would probably have seen it clarified a bit better in the drafting of the word ‘neither’. What we are trying to protect are 3L search warrants, effectively, and other notices to produce where notice is served on the intended target—the computer or the stored communication or the emails. In that instance they will not get caught by this provision, because they will have the knowledge of the person who might be the recipient of the email. They will then have that person’s computer or SMS and they will be able to use an ordinary search warrant for that.

The point of differentiation between covert and overt is that it is overt. The person who has the computer, as I understand it, would have the emails, and the 3L search warrant would then be effective and not defective under the provision as it stood. I think that demonstrates the difficulty sometimes with this area. It is a very complex area. It does need clarifications, and people will now have to come to look at these debates to see what was intended. In my view that is not good enough. If the amendment moved by the government was not put forward the 3L search warrant would not have been able to be used in those circumstances, as I understand it. If I have that wrong then perhaps I need to be corrected too. My understanding is that the use of the covert for operation of the stored communication regime where a warrant would be required is for where neither the intended recipient nor the sender would have knowledge of the ISP when the warrant was required. That probably adds very little to the conversation that we have just had. Labor will support the amendment if it has the effect that the minister has indicated.

The TEMPORARY CHAIRMAN (Senator Barnett)—The question is that government amendments (7) and (8) be agreed to.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (9.49 am)—I move the amendment standing in my name on behalf of the Australian Democrats:

(2) Schedule 1, item 9, page 12 (after line 24), after subsection 113(2), insert:

(2A) Without limiting subsection (2), the affidavit shall set out:

(a) the name or names by which the person is known; and
(b) details (to the extent these are known to the chief officer) sufficient to identify the telecommunications and stored communications services the person is using, or is likely to use; and
(c) the number of previous applications (if any) for warrants that the agency has made and that related to the person or to a service that the person has used; and
(d) the number of warrants (if any) previously issued on such applications; and
(e) the date on which such warrants (if any) were issued; and
(f) particulars of the use made by the agency of information obtained by access under such warrants.

This amendment requires that an agency, when applying for a stored communications warrant, include more detail and specific information in the affidavit sworn by the agency. The information required is standard and not unreasonable to expect considering the privacy breaches that can, do and no doubt will occur through a stored communication warrant. We believe that the section which deals with warrant applications in the amendments, 113(3), is far too broad and so requires this specification. It does not give the issuing authority enough relevant information on which to base the decision of whether or not to issue a warrant. In particular, it provides information on when the last warrant was issued, which gives practical effect to section 119(5), which requires that further warrants not be issued if a warrant has been issued within the last three days. We are hoping for specificity in terms of more information. That is a not unreasonable protection to put into the legislation. Obviously, it is something that was discussed and canvassed by the committee in its deliberations.

Senator LUDWIG (Queensland) (9.50 am)—We were obviously looking at the same song sheet when we wrote these, Senator Stott Despoja; it is similar to the next amendment by Labor. It is from recommendation 4. Principally, it is a clarification to ensure a stored communication warrant adequately and clearly identifies the subject of the warrant and the telecommunications service for which it is sought.

Labor would probably oppose the Democrats amendment on the basis that we would prefer ours. But, if the government indicates that it is not going to support yours or ours then we are happy to support yours and watch ours go down as well. Be that as it may, we understand that we are all—at least the Democrats and Labor—seeking a tightening of the warrant identification of the subject and the service. We think it is an improvement to the proposed regime in this bill. We think it will provide adequate protections. On the basis of the principle we will offer support to the Democrats in this instance.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.52 am)—Clause 118 sets out:

(1) A stored communications warrant:
(a) must be in accordance with the prescribed form; and
(b) must be signed by the issuing authority who issues it.

It goes on to say:

(2) A stored communications warrant may specify conditions or restrictions relating to accessing stored communications ... It further states:

(3) A stored communications warrant must set out short particulars of each serious contravention in relation to which the issuing authority issuing the warrant was satisfied, on the application for the warrant ...

We are saying that that is best left to prescription of the form, and we believe that the prescribed form will include additional information, which is sought by the Democrats in this amendment. We believe that in relation to the affidavit, which is clause 113, it is sufficiently covered. Clause 113 states:

(1) The application must, if it is in writing, be accompanied by an affidavit—
that is straightforward—
(2) The affidavit must set out the facts and other grounds on which the application is based.

It also says:

... a written application may be accompanied by 2 or more affidavits that together set out each matter ...

We believe it is appropriate to set it out in that fashion. The prescribed form, which can be done by way of regulations, can then deal with the further information that can be covered. We believe that will cover the area that the Democrats are talking of. So it is a question of whether you, as I understand it, bring forward what Senator Stott Despoja is talking about from regulations into the bill itself. We would rather do that through prescribed form under regulations which, of course, are subject to the scrutiny of the parliament. I can foreshadow that we oppose this amendment, and the opposition’s amendment on similar grounds, because it covers a similar area although expressed differently.

Question negatived.

Senator LUDWIG (Queensland) (9.52 am)—I move opposition amendment (5) on sheet 4882:

(5) Schedule 1, item 9, page 12 (after line 28), at the end of section 113, add:

(4) Without limiting subsection (2), the affidavit must set out:

(a) the name or names by which the person is known; and

(b) details (to the extent these are known to the chief officer) sufficient to identify the telecommunications services the person is using, or is likely to use; and

(c) the number of previous applications (if any) for warrants that the agency has made and that related to the person or to a service that the person has used; and

(d) the number of warrants (if any) previously issued on such applications; and

(e) particulars of the use made by the agency of information obtained by interceptions under such warrants.

We have effectively had the debate on this, so I will not go over the substance of the matter. In truth, the government agrees with it but is not prepared to provide the amendment. It is about a belt and braces approach. The government has just demonstrated again that, although it agrees with the sentiment, the issue is how it should be expressed—whether it should be expressed in legislation or in a form that can be altered at the whim of the agency, I suppose. I do not have any problem in the sense that the agency would do its best but, if there is the opportunity in this instance to put it in legislation to give guidance, then it is a much better place for it to be. It is unfortunate the government will not pick it up.

Senator STOTT DESPOJA (South Australia) (9.55 am)—Of course it should be enshrined in the legislation and not on a form or in delegated legislation. I thank the opposition for their support of the last amendment. Obviously, the Democrats will be supporting the Labor amendments. The only difference I can see between the Democrat amendment and Labor’s is the inclusion of the particulars of the use made by the agency of information obtained by access under such warrants. Obviously, our amendment about that did not pass the committee. In this last ditch attempt, we will be supporting the Labor amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.56 am)—For grounds similarly expressed, the government opposes this amendment.

Question negatived.

Senator STOTT DESPOJA (South Australia) (9.56 am)—by leave—I move amendments (3), (4), (5) and (10) standing in my name on behalf of the Australian Democ-
rats which relate to the issue of legal professional privilege.

(3) Schedule 1, item 9, page 14 (line 28), omit “reason.”, substitute “reason; and”.

(4) Schedule 1, item 9, page 14 (after line 28), at the end of subsection 116(2), add:

(g) whether the stored communication is likely to include information which is subject to legal professional privilege.

(5) Schedule 1, item 9, page 15 (after line 17), at the end of section 118, add:

(4) A stored communications warrant must prohibit the collection of legally privileged information unless the contraventions to which section 116(1)(d) applies are punishable by imprisonment for a period, or a maximum period, of at least 7 years.

(10) Schedule 1, item 9, page 29 (line 19), after “information”, insert “or information subject to legal professional privilege”.

We have previously discussed the importance of maintaining legal and professional privilege and these amendments intend to give effect to that. Obviously, amendment (3) is a technical amendment. Amendment (4) adds potential breaches of legal professional privilege to the list of matters to which the issuing authority must have regard before issuing a stored communication warrant. Allowing access to stored communications, as we have stated previously, has severe and serious privacy implications. Where access to email, voicemail and SMSs of a lawyer may occur, the agency exercising the warrant is likely to come into contact with documents subject to legal professional privilege that do not relate to the investigation in any way. This amendment simply requires that an issuing authority have regard to this fact when issuing the warrant. We believe that legal professional privilege is a fundamental tenet of our legal system, and it needs to be protected. This was something that was raised during the committee process in submissions, both written and verbal, to the inquiry. We asked witnesses about how best we could seek to protect legal professional privilege.

Amendment (5)—because (1) went down—intends to protect legal professional privilege in the absence of a high threshold during the application process of the stored communications warrant. Obviously, I did not succeed in increasing that threshold, so this is another way of building in more protections, specifically for the issue of legal professional privilege. As I have stated previously, it is crucial that we protect legal professional privilege not only because of reasons of privacy but also for reasons of good public policy. That reminds me: where is Senator Brett Mason while these debates are taking place—our new guru on privacy law? Maybe he should be in here giving us the contra view.

Amendment (10) moves to make inadmissible in an exempt proceeding material that is subject to legal professional privilege. I cannot emphasise enough that this seems to be a fairly basic issue. I thought there was broad concern for the protection of such privilege. I am dealing specifically with legal professional privilege. I know we have had amendments dealing with, and discussion about, other forms of professional privilege concerning members of parliament, religious leaders and doctors. Obviously, there are a range of people and professions that are potentially affected by this legislation, but these amendments go to the heart and the core of a legal issue. I hope that the government will see fit to support these amendments. I hope that the Labor Party will support them too.

Senator LUDWIG (Queensland) (10.00 am)—We can go some of the way. The problem is in amendment (5). If you wanted to split (5) off, we would support the remainder. I think I would be inconsistent if I voted for
that. I voted against your seven earlier. For the sake of consistency, I am not going to change my mind now. As for legal professional privilege, the committee report expressed a sensible procedure and a way forward for the parliament to deal with the issue under this new regime of stored communication and the other parts of the bill. It appears that in these amendments Senator Stott Despoja has tried to draw that matter from the committee report and then has added amendment (5), which deals with the seven years and which was from her dissenting report. I do not take issue with that. The Democrats are clearly, in this instance, progressing their view.

Labor has consistently said that the committee report has struck the right balance in ensuring people’s privacy and ensuring that law enforcement agencies have the requisite ability to fight crime. This is particularly necessary for crimes like drug trafficking. The law enforcement agencies were able to demonstrate during the committee process to the senators on that committee that there were circumstances where these types of matters needed to be dealt with by the law to give them the power and to clarify that law in other areas. They made their case forcefully. In terms of legal professional privilege, the Law Council and others made their case very forcefully that these protections should not be watered down unnecessarily. We think that the current bill does that. If the amendments that have been proposed by the Democrats and Labor in this area were adopted, it would create a situation where the bill would be much improved. I leave it up to you, Senator Stott Despoja. If you can separate (5) from the others I will vote for the amendments.

Senator Stott Despoja—I’ll take what I can get!

The TEMPORARY CHAIRMAN (Senator Barnett)—Senator Stott Despoja, would you like to move Democrat amendment (5) separately?

Senator STOTT DESPOJA (South Australia) (10.03 am)—I would. I so move.

The TEMPORARY CHAIRMAN—We will put those separately.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.03 am)—The government has expressed its view on this previously. It is quite clear that when you are setting out to obtain a warrant of this sort you have a belief that this will be relevant to an investigation of a serious matter, but you never know—and nor could any person know—what it is going to turn up. You do not have a crystal ball which can tell you exactly what information will be discovered as a result of the warrant. And so, over a long period of time, our justice system has operated on the basis that law enforcement obtains a warrant under a strict regime.

Once the grounds have been made out, the warrant is issued and then the warrant turns up evidence. The police, or whoever is investigating the matter, then put together a brief. It goes to the DPP, to the court and to the prosecution. It is during the hearing in court that the court itself determines what is admissible as evidence. Before the matter even gets to court, the prosecuting authority will determine what will be led as evidence and what will not. Any good prosecutor worth his or her salt is not going to lead evidence which is going to be inadmissible or which is blatantly inadmissible. They will fall out of favour with the court if they do that too often. In any event, the court is the arbiter of what is admissible, and we believe that that is how it should continue to operate.

The theme of this debate is the same as saying that you should limit what you can access before you know what exactly is go-
ing to be turned up. Critics of that might turn around and say: 'There’s our point. You don’t know what’s there and that’s the danger of it all.' I point out that when a warrant is issued the issuing authority can impose conditions. They could include one which brought to the attention of the law enforcement agency the fact that there might be issues of professional privilege involved.

Warrants are the subject of annual reporting to the parliament. Whilst the details of the warrants are not, certainly the detail of any condition of a warrant can be the subject of judicial proceedings. If there were an abuse, one could, through judicial avenues, challenge the issuing of the warrant, what conditions are on it and whether the law enforcement agency concerned followed the conditions of the warrant. It would not be the first time in Australia’s history that a warrant has been challenged or the details of it have been questioned. The law books are full of those sorts of challenges. But I am saying that this continues the current regime, which is appropriate. Inadmissibility, or otherwise, of evidence is best left to the courts, and it is impossible to impose on anyone the ability to say, ‘If I execute this warrant, I will or will not come across legal professional privilege.’

I hasten to add: there have been cases where lawyers themselves have been charged. We have seen that recently in notable cases in Australia involving drug trafficking and other cases, where lawyers have been charged and have been part and parcel of the alleged criminal operation. So it is not as if lawyers are out there in an area where they should not be subject to scrutiny. We canvassed this yesterday, and we believe that the current regime should continue to operate in the format in which it has been operating successfully for some time.

Senator STOTT DESPOJA (South Australia) (10.07 am)—Even if the government and the minister cannot stomach amendment (10), which deals with the issue of admissibility, and even if the government says, ‘No, we cannot cope with the idea of legal professional privilege or information that is subject to not being admissible,’ surely they cannot argue that amendment (4) is scary or that it is going to have an impact—judicial or otherwise—when there is a list of the matters to which the issuing authority must have regard. They are listed in the bill, and they are things like: how much the privacy of any person or persons would be likely to be interfered with by accessing those stored communications under a stored communications warrant; the gravity of the conduct constituting a serious contravention; how much information would assist in connection with the investigation; to what extent methods of investigating the serious contravention that do not involve the use of a stored communications warrant have been used et cetera; how much the use of such methods would be likely to assist in connection with the investigation by the agency—and the list goes on.

To add to that an amendment about whether the stored communication is likely to include information which is subject to legal professional privilege is just something for the issuing authority to have regard to and to include in this gladbag of issues that the issuing authority must already have regard to. It is not saying, ‘Have regard to it and it is all going to be inadmissible in court.’

In conjunction with amendment (10), there are issues there. But they should have regard to whether or not legal professional privilege is going to be covered—in the same way that the first point in that list of matters includes the issue of privacy. Amendment (4) is not a scary amendment. It does not offer, in isolation, the strength of protection that I would like to offer lawyers and clients. I just do not see why that cannot be listed under
that particular section. You have got (a) to (f) already. It is simple to add (g), which says, ‘The issuing authority must have regard’. It is essentially to consider legal professional privilege—whether the stored communication is likely to include information which is subject to legal professional privilege. It is not binding in a way that is nerve-racking or in a way that means the warrant cannot be issued.

I just do not see why this is not a good amendment in the interests of public policy for this government. I would be happy to separate amendments (4) and (10) if that were required; obviously (3) is the technical amendment that adds ‘and’ so that you can get (g). But I do not understand the government’s rationale regarding this particular amendment, even if I can understand the so-called logic in getting rid of amendment (10).

Through the chair to Senator Ludwig: I thank the Labor Party for their support on the amendments that they have indicated they will be supporting. I recognise that they will not be supporting the high threshold. I understand the consistency in that argument.

The TEMPORARY CHAIRMAN (Senator Barnett)—I propose that we move Democrat amendments (3), (4) and (10) together, followed by (5), unless there is a view put that is contrary to that.

Senator STOTT DESPOJA (South Australia) (10.12 am)—I would like to move amendments (3) and (4) together, and then (5) and (10) separately. I genuinely ask the minister to respond to and make clear the concerns with amendments (3) and (4). I understand his concerns with amendment (10).

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.12 am)—If it is relating to professional privilege, I have made that point quite clear. That is a matter best left for the courts, and it has been done so in that way. This would be cherry-picking an aspect of interception law which does not apply elsewhere—because we do not have that elsewhere in relation to warrants. That then leads to not only untidiness but also undesired results. I think it is best left as it is, with clause 116 requiring the issuing authority to consider those aspects that are listed. The question of legal professional privilege should be left as it is so that it applies consistently across the Commonwealth’s laws. The government believes that changing that at this stage would be fraught with difficulty.

The TEMPORARY CHAIRMAN—The question is that Democrat amendments (3) and (4) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is the Democrat amendment (5) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that Democrat amendment (10) be agreed to.

Question negatived.

Senator LUDWIG (Queensland) (10.14 am)—by leave—I move opposition amendments (14) and (16) on sheet 4882:

(14) Schedule 2, page 62 (after line 26), after item 3, insert:

3B At the end of section 9B
Add:

(3) A warrant under section 9, in a case in which subparagraph 9(1)(a)(ia) applies, shall not authorise the interception or further use of communications which are subject to legal professional privilege.

(16) Schedule 2, page 63 (after line 30), at the end of the Schedule, add:

11 After section 47
Insert:
47A Warrant not to authorise interception of material subject to legal professional privilege

A warrant issued under section 46, in a case to which subparagraph 46(1)(d)(ii) applies, shall not authorise the interception or further use of communications which are subject to legal professional privilege.

Notwithstanding the debate we have had on legal professional privilege, we are going to have it again. What has not ceased to amaze me in the last couple of days is that before 1 July this government was far more accommodating in terms of the recommendations out of a Senate committee report, especially when it was a majority report. The report in this instance was almost unanimous in the sense that there were additional dissenting comments; it was not a dissenting report—I will take some licence from you, Senator Stott Despoja. In this instance, government senators and Labor senators said, ‘There are recommendations which we think the government should seriously look at.’ Prior to 1 July, the government would have had a good look at them and where it could meet them it would. It knew that it would have to come into this place and defend its position. If the opposition, the Greens, the minor parties and the Democrats could argue the case—and when Senator Harradine was here, he would sometimes join in the argument and we would try and persuade him as well—we could effect an outcome: we could move an amendment and have it succeed.

With that view in mind, many a time the government came to a position where, before it got to the floor of the parliament, it would negotiate, look at the amendment and come up with an answer that might meet the concern of the committee. Following 1 July, we now have government senators still doing their job in committees. They are still taking the metered course of looking at the legislation, seriously listening to submitters, taking their concerns on board and bringing recommendations through the committee process to influence government.

The Attorney-General, in this instance, I think, is lazy. I doubt he has even looked at the report, quite frankly. He has clearly picked up the obvious recommendation like the Spam Act, which really could not be ignored and had to be dealt with. He looked at his own amendments that he wanted to put through—and we saw that yesterday—and then did not come back to the other recommendations at all to look at whether they could be supported. He dismissed not only Labor’s position in terms of the report but also his own backbench committee, in effect. This is a position that the government senators should start to recognise: that even their recommendations in committee reports are ineffectual in trying to persuade this government on issues. Maybe they should start taking a different tack.

The problem is that this is a new regime—the stored communication regime. It is a new area. The submitters argued that it should not be in a separate regime; that it should be part of the telecommunications interception regime for real time as well. Blunn indicated in his review that there should be a separate regime. In so doing, he ranged across a number of areas. The committee heard from submitters that the issue of privilege should be dealt with in a practical way—and that ended up in the committee recommendations—that the bill should contain sensible amendments and that, in terms of B party, it required more protection.

With regard to stored communications, we can accept Blunn’s view, and the way the legislation would work would not necessarily mean you would need to have the same type of protection. But B party is where Blunn said, ‘limited and controlled circumstances’.

CHAMBER
Of course, in that, we cannot be guided any further than by what he said in his review. However, we can be guided by the committee report, which indicated it should be used in limited and controlled circumstances and made some substantive recommendations about the use of privilege. The substantive recommendations on privilege indicated that we should take a belt and braces approach.

I do not think it is an argument to say that the government wants to maintain consistency across all legislation. That would be news to me if the government did that. It would be a fine day, certainly, if the government said, ‘All our legislation across all our acts and various regulations is consistent.’ Of course it is not consistent. There are inconsistencies all over the place because of the very nature sometimes of the legislation and the requirements or there is an exception to the general rule. In this instance, a case can be made for this committee recommendation to be included in the legislation to provide the protections that are required. That argument can be made and it is being made today. I do not think it is an answer to say that the government wants to keep it consistent across the area. Even Blunn recognised that this area was more difficult and should be one of those exceptions to the general rule that would otherwise prevail. The committee report thought—and government senators thought also, might I add—that it should in fact be the exception to the general rule and that protections should be afforded. It is not onerous. It is not going to create any great difficulty.

In relation to the B-party protection of legal professional privilege, recommendation 22 of the report provides a straightforward way of ensuring that the communications for legal professional privilege are maintained. Labor wants to make the legislation regarding this protection explicitly clear so that it strikes out the use of interceptions in these cases in the first instance rather than dragging them through the courts. The amendment makes it abundantly clear that legal professional privilege is protected. On that basis we move that amendment and seek the government’s and the Democrats’ support.

**Senator STOTT DESPOJA** (South Australia) (10.22 am)—I can certainly give Senator Ludwig the Democrats’ support. We have indicated repeatedly, including in the last set of amendments—which unfortunately were unsuccessful—that the issue of legal professional privilege is important to us. That was, as Senator Ludwig outlined, the view of the committee and everyone, particularly the major parties and of course the Democrats. We also in our supplementary, additional et cetera comments in the report made it clear that this issue was of utmost importance to us. Witnesses from the legal profession and other sectors also identified that it was important to them. Recommendation 9 of the committee stated:

The Committee also recommends that the Bill be amended to require issuers of stored communications warrants to consider whether the stored communications are likely to include communications the subject of legal professional privilege and whether any conditions may be implemented to prevent the disclosure of such communications.

In our own ways both Labor and the Democrats have attempted to protect legal professional privilege, at a minimum by ensuring that the issuing authority has regard to—as in considers—whether or not something is likely to be subject to legal professional privilege. That does not bind anyone. The last amendment seemed really simple, logical and nice, but it was still lost. That gives me an idea of the government’s perspective.

The Labor amendment moves to prevent the issuing of a warrant where the interception of communications may be subject to legal professional privilege. I think it would be better if the clause had some kind of like-
lihood provision, because it cannot be definitely known that a communication will contain information subject to legal professional privilege before the interception has occurred. I think amendment (16) is comparable to—it is much the same as, I suppose—Labor amendment (14), but it includes a provision about the likelihood that documents of legal professional privilege will be intercepted. We included and supported the notion of likelihood.

Again, I think this is a really fundamental issue. I do not think it is one that would be scary to the government or, surely, the enforcement agencies. I am very disappointed that the government has not taken up the committee’s recommendations. I am not sure whether Senator Ludwig is right that this is a consequence of rushed processes or truncated timelines and committees or whether the further removal of protections for a range of rights, responsibilities or liberties of our society is the intent of the legislation. I think this goes the crux of the problems with this legislation. If we cannot even consider the issue of legal professional privilege as one that needs to be further protected in this legislation, and done in a way that is not threatening, then I think we have a big problem.

In addition to that, the Attorney-General said, ‘We’ll continue to consider the recommendations of the Senate Legal and Constitutional Committee and if necessary bring back further amendments in the spring sittings of parliament.’ That is the indication of someone who has taken careful consideration of the committee report, not someone who has not read it or treated it in a somewhat dismissive fashion. The Attorney-General has had close regard to this matter, as have the department, who have been working since the report was delivered on how we can address the situation. I totally reject Senator Ludwig’s comments. I think it detracts from the debate to sink to making those points.

In relation to this question, if we bring in one aspect of legal professional privilege, why not bring in what Senator Brown was talking about—parliamentary privilege? Why not bring in judges and others? Where do you stop? The fact is that the law of Australia has accommodated this very well. I mentioned the case of Carmody and MacKellar. That decision stood for the principle that it would frustrate legislative purpose if warrants could not be relied on to intercept a particular category of communications that are incapable of identification either before or at the time of the interception because you would be pre-empting a decision of a court. It is proper for the court to make that decision when evidence is brought before it. If you were told before you went that you could not pick up various aspects of information because they were barred, that would then hamper law enforcement significantly in the exercise or execution of warrants.

It is best have a strict regime for the issuing of those warrants. Law enforcement executes them according to law, and then it is for the courts to decide what evidence is admissible. That is the principle of Carmody
and MacKellar, which was a decision of the full court of the Federal Court. It is not just a whim of the government that we do not accept this. We are standing by a principle which has been enunciated at the level of the full court of the Federal Court and which, what is more, practice has shown to be a good one. The government opposes these amendments for those reasons.

**Senator LUDWIG (Queensland) (10.29 am)—** Minister, quite frankly, I reject the propositions that you have put.

An honourable senator interjecting—

**Senator LUDWIG**—I recollect it. The Attorney-General has picked up one substantive recommendation out of the committee report: the spam one. You might say that there are a few more, but that was the substantive one. It was a matter that, I think, the Attorney-General’s Department was embarrassed about at the one-day hearing that the committee had, because, of course, they should have picked it up. They did not really need the telecommunications authority to come along and say, ‘Hey, I’m in trouble if you do this.’ The Attorney-General’s Department looked embarrassed on the day, and they should have been embarrassed. That was the Attorney-General picking up the recommendation. I do not think he had a choice, quite frankly.

It was an error that needed to be corrected, and it was embarrassing that we had to get to a point where that authority had to make a submission to the committee to get the error corrected. One would have thought that a phone call to the Attorney-General’s Department saying, ‘Look, there’s a problem and we need it fixed,’ would have rectified it rather than having to go to the committee and then embarrassing the Attorney-General. I enjoyed it, I have to say; I do not suppose that they did very much. I could go into a couple of spam jokes, but I will not. I will save us all from that. It is an area in which we now have a position where Labor, the committee and the majority committee members, including Liberal backbenchers, have recommended that strong privacy protections, and the safeguards necessary to ensure that those privacy concerns are addressed, are included in this bill, and the government is dismissive of that position. That is where we have now got to.

Question negatived.

**Senator LUDWIG (Queensland) (10.32 am)—** I move:

(6) Schedule 1, item 9, page 15 (after line 17), at the end of section 118, add:

(4) Without limiting subsection (2), the warrant may specify that:

(a) stored communications which were transmitted prior to a specified date may not be accessed; and

(b) only stored communications sent to or by certain named persons may be accessed.

Here is a good opportunity. I move this amendment with some hope, I guess. The matters under consideration are issues about stored communication warrants. It is really a technical amendment that summarises, as I have said, Labor’s belt and braces approach to strengthening privacy protection. The purpose of this amendment is best summarised if you look at paragraph 3.71 of the committee report. It is a very short paragraph. If the government were serious about ensuring that there was an improvement to the legislation and if they had adequately looked at all the committee recommendations and the issues in some detail, one wonders why they would not pick it up.

This is what the committee report said:

... individual privacy protection ought to be the chief consideration in any regime permitting access to personal communications. This is particularly important where communications may in-
clude information subject to legal professional privilege. The Committee considers that additional considerations for issuing authorities such as those suggested above will only serve to enhance the privacy protection already outlined in the Bill.

Minister, this provides for a matter that was raised. The committee did not look at it in any long detail because it thought it was a pretty short point that you should pick up, quite frankly. The minister talked about consistency. How about some consistency with the Blunn review? That would help too. We would certainly achieve a much better outcome if you adopted consistency not only across your legislative framework but also out of the Blunn review. This is a matter that you could easily deal with. I call on the government to agree that they do want consistency with Blunn.

**Senator STOTT DESPOJA** (South Australia) (10.34 am)—The Australian Democrats will be supporting the opposition amendment. The amendment moves that a warrant may specify that communications prior to a specified date be inaccessible or that communications from a specified person be inaccessible. We believe that this recommendation is quite sensible. It gives the issuing authority discretion to prevent agencies from having the ability to access stored communications going back too many years. In some cases, the entire correspondence of some people is stored in their e-mail accounts. I am sure that none of us here do that, but nonetheless it is a sensible amendment. It is consistent and the Democrats will be supporting it.

On the issue of the recommendations contained in the Senate committee report, Senator Ludwig has made the obvious retort, which refers to the nature of the recommendations that have been picked up by the government, not just the lack of them. I do not think that 11 recommendations are a lot to boast about, just quietly, but there is also the fact that they are not exactly the largely substantive recommendations. I want to put on the record that the committee certainly had cross-party support for those recommendations. It is a chair’s report from the government, obviously, and signed on by the Australian Labor Party. I believe that the recommendations do not go far enough, but they are certainly sensible and constructive recommendations that ameliorate some of the worst aspects of the bill and build in some strengthened protections in many cases.

I do not say this naively, but I honestly thought that the government would consider those recommendations. I honestly thought that more than 11 recommendations, and certainly some substantial ones, would be picked up. Senator Payne was the effective chair of that committee. Senators Ludwig and Kirk, and of course I, are here in the chamber and we were present for the inquiry. I suppose we are still trying to do the work of the committee in this place. I do not think that 11 recommendations are a lot to boast about when we are dealing with reasonably significant matters. On behalf of the Democrats, I say that we will be supporting this amendment.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (10.36 am)—Firstly, the government reject any suggestion that we are in fact inconsistent in the way we have approached the Blunn report. I am advised the Blunn report did not canvass this particular issue. It did in general say there should be a balancing of privacy issues with law enforcement, but in no particular way did it mention any recommendation which would support the specificity of the opposition amendment. Indeed, it is the specificity of the opposition amendment which causes some trouble because it could qualify the very good work done by clause
116(2) of the bill. This clause addresses that balance between privacy and law enforcement. It says:

(2) The matters to which the issuing authority must have regard are:

(a) how much the privacy of any person or persons would be likely to be interfered with by accessing those stored communications under a stored communications warrant …

It goes on to list other things that need to be taken into account, but that is the gravamen of it. Then the opposition comes in with an addition which says the warrant may specify that stored communications which were transmitted prior to a certain time and only stored communications sent to or by a certain named person may be accessed. We think that is superfluous. It is not necessary. When you have a general authority given by clause 116(2)(a), which is a very important one, we do not want to fetter in any way the issuing authority’s ability to impose conditions in relation to privacy.

The opposition’s amendment, although it says ‘without limiting subsection (2)’, then goes on to specify certain things. We think that is unnecessary, it does not add to it and it should be left at clause 116(2)(a), with that general authority given to the issuing authority, who can then determine those conditions. There are a very broad range of them. It is a very clean sheet, if you like, to consider aspects of privacy. And I will touch on that again:

(2) The matters to which the issuing authority must have regard are:

(a) how much the privacy of any person or persons would be likely to be interfered with by accessing those stored communications under a stored communications warrant …

That is a broad remit, and so it should be. A more particular reference, I think, is unnecessary and unhelpful. The government therefore opposes the opposition amendment.

Senator STOTT DESPOJA (South Australia) (10.40 am)—Just quickly on the issue of the Blunn report, I was wondering if the minister could show us where the Blunn report recommends the introduction of equipment based warrants.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.40 am)—Whilst we turn up the report recommendations, can I say that at the very outset we made it clear that the amendments and this bill were the result of work done since 2004; I said that repeatedly. It was a result of the telecommunications bill which went through at that time and the result of recommendations by a parliamentary committee, and consequently we commissioned the Blunn report. There are aspects of this bill that are not covered by the Blunn report and we make no apology for that, because you do not commission a report and then slavishly say, ‘That’s all we’ll deal with—what the report dealt with.’ The government are being consistent in our approach to Blunn and we reject any allegation that we have not been.

Recommendation xvi of the Blunn report says:

as a matter of priority a unique and indelible identifier of the source of telecommunications be developed as the basis for access …

We believe what Blunn is referring to there is the IMEI, an equipment identifier. I think that covers that aspect. There is no inconsistency in the way we have put forward this bill and the way we commissioned the Blunn report and had regard to it.

Senator LUDWIG (Queensland) (10.42 am)—Where the Senate Legal and Constitutional Legislation Committee and Blunn agree, and the minister seems to disagree, is on the findings at the very beginning of the Blunn report. On page 5, it says:

That, as identified in the body of my report:
the protection of privacy should continue to be a fundamental consideration in, and the starting point for, any legislation providing access to telecommunications for security and law enforcement purposes.

The Senate committee and this subsequent amendment by Labor are seeking to achieve that purpose, as well as to ensure that the basic structures are not interfered with. Everybody agrees, except perhaps the Greens—but I will not go there because they are not here—that the telecommunications interception regime since 1979 has been and is a feature of our law enforcement agencies. Labor has sought, as part of the committee recommendation, for that to continue. It is a matter that the government takes issue with and it is clearly an amendment that is not going to get up in this chamber, but Labor seeks the support of the Senate in any event.

Question negatived.

Senator STOTT DESPOJA (South Australia) (10.44 am)—by leave—I move Democrat amendments (6) and (26) on sheet 4869:

(6) Schedule 1, item 9, page 19 (after line 18), at the end of Division 3, add:

124A Subject of warrant to be notified
(1) The chief officer must notify a person in respect of whom a stored communications warrant is issued of the existence of the warrant as soon as practicable following the issue of the warrant.
(2) Subsection (1) does not apply in relation to a warrant where, in the opinion of the chief officer, notification would prejudice the investigation in relation to which the warrant is sought.
(3) If subsection (2) applies, then the chief officer must notify the person, in respect of whom a stored communications warrant is issued, of the existence of the warrant, immediately once such notification would not longer prejudice the investigation.

(26) Schedule 2, page 63 (after line 30), at the end of the Schedule, add:

11 After section 48
Insert:

48A Subject of warrant to be notified
(1) The chief officer must notify a person, in respect of whom a warrant is issued under section 46B, of the existence of the warrant as soon as practicable following the issue of the warrant.
(2) Subsection (1) does not apply in relation to a warrant where, in the opinion of the chief officer, notification would prejudice the investigation in relation to which the warrant is sought.
(3) If subsection (2) applies, then the chief officer must notify the person, in respect of whom a stored communications warrant is issued, of the existence of the warrant, immediately once such notification would not longer prejudice the investigation.

Amendment (6) moves to inform the person against whom a warrant was exercised so that they are aware that a warrant was exercised and may seek remedies where they are a genuinely aggrieved person. This amendment takes into account consideration the agency, so as not to compromise any investigation they are conducting. It is fairly even handed in that respect, we believe. The bill, as we know, contains civil remedies so that an aggrieved person may have access to redress should they be adversely affected. This amendment seeks to give practical effect to the section by allowing a potentially aggrieved person to know about the existence of the warrant so they can then act on that information if it is required. Amendment (26) requires the subject of a B-party warrant to be notified so that they can have access to remedies. Obviously we are dealing with B parties as well.

Senator LUDWIG (Queensland) (10.46 am)—It will not come as a surprise to the
Democrats in this respect that we do not support the amendment as put forward by the Democrats. I can understand the principle behind the amendment, and perhaps we share the principle of improving the protections in this legislation to ensure that there is the right balance. It is not a matter that we think fits into that framework, although on that basis we accept the principle but perhaps not the final words that have been put forward. We do not see even a way of separating it so we could provide support. It is probably easiest just to indicate that we will not supporting these Democrat amendments.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (10.46 am)—The government will not be agreeing to these amendments. The covert nature of this regime is extremely important to law enforcement, and these amendments would effectively gut the whole operation of it. It would certainly render it of no effect. It really is quite a basic issue.

**Senator STOTT DESPOJA** (South Australia) (10.47 am)—I understand the numbers in the chamber but I ask the minister about his understanding of how people who are aggrieved would access those civil remedies. How would they be alerted to or aware of the process against them? Are there current safeguards that provide for that, in his view?

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (10.47 am)—We do have oversight by the Ombudsman, and of course we have the judicial system itself. There are two sorts of people we are talking about: the person who is under investigation, and the B party. The person under investigation gets evidence that is going to be produced at trial given to them in the depositions prior to trial. They know the process that is being conducted. They have an ability to challenge that in the pretrial process. If a B party was involved in evidence which was used in court, they could then have a remedy available to them if that reflected on them adversely or in some way affected them.

But if it was not produced and it was never used and there was no adverse impact for the B party then I would ask Senator Stott Despoja where any basis could lie for them taking action. The question has to be premised on the basis that there has been a wrong committed to the person concerned. If the person is under investigation, they can raise it all as part of the pretrial process. If it is a third party which has been dealt with improperly then you would know about it because it would be dealt with in the court itself. Action would have to be taken.

If there was a warrant executed which involved a B party and nothing was ever done in relation to the information concerning the B party, where would the harm be to the B party? You would have harm only if there were some action taken or they were prejudiced in some fashion. There would be a possibility of that occurring if you were to have proceedings in a court and that was all brought out. But, otherwise, it would never be acted upon. It could remain something which was of no consequence.

I fail to see where the action that Senator Stott Despoja is thinking of is. Is there some action in tort for defamation, say, or libel? Someone would have to say something about the B party. Is there some prejudice, some discrimination under the Racial Discrimination Act, where action was taken because of the B party’s comments? They would have to be actions consequential on the information obtained. Unless it were brought up in the courts, the B party concerned would not have any knowledge of the intercept. But, then again, the harm that is being complained of or suggested by Senator Stott Despoja would be hard to imagine unless it were acted upon.
Then there would be some demonstration of that harm by an overt act.

Senator STOTT DESPOJA (South Australia) (10.51 am)—I am not talking about harm. The bill provides for civil remedies if there is an aggrieved person. I am wondering how that person finds out that they are aggrieved or that some harm has been done to them. What I am tackling in this amendment is the issue of notification that a warrant has been issued. If the minister is aware of the specifics of the amendment dealing with the subject of the warrant to be notified, he will notice that it says:

(2) Subsection (1) does not apply in relation to a warrant where, in the opinion of the chief officer, notification would prejudice the investigation in relation to which the warrant is sought.

(3) If subsection (2) applies, then the chief officer must notify the person in respect of whom a stored communications warrant is issued of the existence of the warrant immediately once such notification would not longer prejudice the investigation.

That is built in. The minister says the ‘guts’ of this is a problem—letting people know. But there are safeguards in here. There are provisos to allow for notification that ensure that there is no material harm to the investigation.

I am not talking about penalties or harm. The bill provides for that; the bill provides for people who are aggrieved to seek civil remedies. I want to know how someone can find out that they can even access those civil remedies. How do they know that a warrant has been issued against them? When do you tell them? That is the substance of this amendment. It is not supposed to ‘gut’ the bill; it is not supposed to ‘gut’ the investigation; it is supposed to inform someone against whom a warrant has been issued. That can be done at a time that does not prejudice the investigation.

It seems very bizarre to me to have a bill that provides for civil remedies if you have been aggrieved as a consequence of having a warrant issued against you when you cannot know that a warrant has been issued. I am dealing with the specific issue of notification.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.54 am)—There are strict criteria for how a warrant will be issued. What Senator Stott Despoja is doing here is shying at shadows. The bill talks about harm and civil remedy. That is part of this country’s judicial system. You can only get a remedy if you suffer harm. If you suffer no harm at all, you cannot go to court and manufacture a case or an action out of thin air. You have to have suffered a disadvantage, which can be across a range of areas. What we are saying is that, where that harm is evidenced, the civil remedies apply.

If there is an investigation that involves a B-party warrant and nothing comes of it and another person is charged and dealt with and the communication with the B party is never realised, where is the grievance that Senator Stott Despoja is referring to that enables an action for civil remedy? If nothing happens, there should be no action. If there is no disadvantage suffered by the person, there is no civil remedy. We are saying that if there is harm then, sure, you have a civil remedy. You are saying, ‘I might be harmed and don’t know about it.’ With respect, that is a very difficult proposition.

Senator Stott Despoja—Is it?

Senator ELLISON—Under our law, any action has to be based on a case which demonstrates some disadvantage or harm. If a person never knows that they have been discriminated against—and this is across the board—they cannot bring the action.

Senator Stott Despoja—That is the point.
Senator ELLISON—But the fact is that this happens across the board in our system. The fact is that if you notify people that you have a warrant against them you will destroy the whole regime this legislation is creating.

If someone defames someone and that person never finds out about it, they are not capable of bringing an action—they cannot bring the action because they do not know about it. That is a basis of our system. If they do not know about it—it has not been demonstrated to them—they cannot argue the case, then, can they? What I am saying here is that, if there is no disadvantage, where is the action?

Senator STOTT DESPOJA (South Australia) (10.58 am)—This precisely goes to the fact that someone may be harmed. The information may leak. The protections that are in this bill—insufficient as they are—do not ensure that information will not get out. Say information does get out; say information about a person or their communications, stored or otherwise, gets out but that person does not know where that information came from. Isn’t it their right to know that they were the subject of a warrant or that their conversations and information were intercepted?

The notion that, ‘If you have been harmed but do not know about then that is okay,’ is precisely the problem that I have with this legislation. I imagine that anyone, whether a person in this chamber or a member of the public, would probably want to be notified if their conversations were subject to some form of monitoring or interception. That is logical, especially if that information is never used. If the minister’s argument is: ‘No harm can come to them. It wasn’t material to the investigation; it wasn’t needed. What’s the harm? If no harm’s been perpetrated against them and the material wasn’t damaging, why do they need to know?’ then this is where there is a line in the sand in terms of our particular views or philosophies, because I think people have a right to know.

This amendment ensures that people are notified and it does so in a way that does not prejudice the investigation. It is specifically worded in such a way that it does not apply in relation to a warrant where in the opinion of the chief officer notification would prejudice the investigation in relation to which the warrant is sought. So, when the minister talks about harm, I am not addressing the issue of harm done to people, whether it is one of those examples of discrimination or defamation or whatever it may be, because that is provided for.

But the fact that people do not know that there has been a warrant issued means that they may not know that harm has been done. Whether it is information or other things being leaked or accessed or information that is wrong, they do not know so they cannot access these remedies that are provided for in the legislation. If the government and the opposition really think that people do not need to know, then that is wrong. We are talking in many cases about retrospective notification, and the government will not even go for that. I think that this is a very damaging aspect of the debate and it worries me more that the minister thinks that harm is not done to someone if they do not know about it. What a ridiculous concept!

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.01 am)—I never said that at all. Senator Stott Despoja should not misrepresent me. I said that it was quite possible that wrong was occasioned to a person without that person knowing about it. You could be defamed in one part of the country and not know about it because you are living in another part. Where you have a legitimate search warrant and you find a letter, which is much like a stored
communication, from a third party, and you read that letter and it divulges some relationship between the suspect and a third party and that relationship could cause a great deal of harm to that person’s personal life, there is no requirement by law enforcement officers to communicate with that third party. There is no requirement at all. It is not acted upon; it is knowledge which has been gained during a search warrant. It may be extremely embarrassing to the person concerned, the third party, who is not under investigation but that does not mean that you have to notify every Tom, Dick and Harry that is mentioned or touched on in a search warrant of a house or a property where other third parties, albeit innocent, are mentioned or where there is information. It happens time and time again. It is all a question of what is admissible in the court. There is information that law enforcement comes by all the time during investigations which has no relevance and is discarded. But it does happen because we do not have the ability to say that we are simply not going to go into that house because we might find a letter which might embarrass someone or, if we do go into that house and we find an embarrassing letter we are going to phone them up and say, ‘We just found a very confidential piece of correspondence’—which is the same as an email or a telephone call—‘which is embarrassing to you.’ The search warrant quite rightly allows them to search for documents and to read documents. That happens. It is the same here. To go notifying people of this would destroy the regime. The civil remedies mentioned apply to unlawful interception and we have in place very strict measures for the warrant to be obtained under lawful circumstances, and that is clear in the bill.

Senator STOTT DESPOJA (South Australia) (11.03am)—In relation to the last part of the minister’s answer: how do they know? How do they find out if there is an unlawful interception or something has gone wrong if they do not know that they are being intercepted in the first place? How do they know?

Senator LUDWIG (Queensland) (11.04 am)—If Senator Brown were here I am sure that he would go to the analogy of the tree falling in the forest and whether it would be heard. It is a well-argued matter. In principle I see where you are heading. There is an issue surrounding it and I think that the principle needs addressing. I do not think this quite addresses the principle, and that is the difficulty. That is why Labor have indicated that we will not support it. The rationale that the Democrats have put forward is a sensible proposition but the amendment does not, in my view, address that.

We are trying to guard against certain investigations. One of the analogies—perhaps a better one than the tree in the forest—is: if there is an ongoing investigation by the authorities into a robbery, they do not usually go and tell the robber that they are investigating him at that point. Even when the investigation is complete I am not sure whether they then sometimes go and tell the people concerned. They could spend a lot of time running around telling people what they have been doing, but I would rather they do their work. They do not have a duty in that respect; they have a duty to investigate crime where they find it and to gain evidence and prosecute crime. That is the main role that they are supposed to have.

The problem with the amendment is that it does create quite a complex regime that someone would have to wend their way through. But I do not particularly want to argue against your amendment. I indicated that I was not going to support it. I can see where you are heading in principle and I agree with the principle, but I am not going to provide ammunition for the government to argue against your proposition. The underly-
ing principle that governments struggle with is how they ensure that people’s privacy is protected in such a way that no harm should come of it.

In fact, if you look at later amendments by Labor where we seek to strengthen the way information is held by agencies and the way it is then protected and destroyed when it is no longer required, that is really the other side of the coin in this debate. For a person who has been subject to a stored communications warrant, if the information is subsequently destroyed or held appropriately in an agency then there is a position which ensures that that information cannot harm someone. In any event, I do not want to take up too much time on this part of the debate.

Senator STOTT DESPOJA (South Australia) (11.07 am)—I acknowledge the robbery analogy that Senator Ludwig uses, but I think that falls down when we are talking about nonsuspects. In relation to any kind of prejudice of investigations, I want to put on record again that these amendments deal very clearly with the notion that a chief officer does not have to notify if there is any sense that that would be prejudicial to the investigation in relation to which the warrant is sought.

I want to make very clear that, if I am the subject of any telephone interceptions or what have you, I would like to know about it, especially if that material is not used in evidence or is considered irrelevant. I still want to know, and I would imagine that most Australian citizens would want to know too, especially if they felt that they were aggrieved or harmed in some way, whatever way that may be, so that they could actually access the civil remedies that are available under the bill. I think that is a pretty clear position, and I am very disappointed that these amendments will not be passed, but I read the numbers. Question negatived.

Senator STOTT DESPOJA (South Australia) (11.09 am)—by leave—I move Democrats amendments (7) to (9) on sheet 4869:

(7) Schedule 1, item 9, page 27 (lines 8 to 26), omit subsection 139(3), substitute:

(3) A contravention to which this subsection applies is a contravention of a law of the Commonwealth, a State or a Territory that is a serious offence.

(8) Schedule 1, item 9, page 27 (line 29), omit “paragraph (3)(a) or (b)”, substitute “subsection (3)”.

(9) Schedule 1, item 9, page 28 (lines 1 and 2), omit paragraph 139(4)(e).

These amendments seek to maintain the threshold for information obtained under a stored communications warrant at three years so that it may not be used in investigations of offences punishable by 12 months or for investigations which involve civil penalty units or regimes. It is inappropriate for Commonwealth bodies such as the Australian Taxation Office and ASIC to have the ability to access stored communications in a covert manner in order to investigate offences punishable by civil penalties. As I have argued previously, interceptions of stored communications are as invasive as interceptions of live communications, so obviously these amendments are intended to add some restrictions in dealing with those stored communications.

Senator LUDWIG (Queensland) (11.10 am)—Firstly, I seek clarification from the Democrats, through you, Temporary Chairman Forshaw. Do these amendments seek to take away the civil penalty regime as the second order? Perhaps the best way of describing it is that in the Telecommunications (Interception) Act there are two levels. The first is for the serious offences and then, for the subsequent use of the material, there is
the second. For stored communication, they have sought to emulate that by having a three-year penalty and a one-year penalty. In that instance, it would be the one-year penalty that you are seeking to restrict. The committee report indicated that it should not be extended to the agencies, outside of law enforcement agencies, and that the threshold should be maintained in the criminal regime. If the amendments are consistent with that, and I think they are, then Labor is happy to agree with them. If they go further than that then we would not accept them. I see you shaking your head, Senator Stott Despoja. On that basis, if they seek to do that, we would at least offer our support, because they would be consistent with our amendments earlier—and some we may not have got to yet—and with the committee report.

The difficulty we face with this new regime—both with stored communications and the subsequent area, although I will deal with just stored communications here—is that the evidence to the committee from a range of submitters about how agencies would use it was highlighted by the evidence of ASIC. I think ASIC blew the government's position out of the water, because they had been using notices to produce improperly—perhaps that is too strong a word—or at least not in a way that they were intended to be used or to operate. That highlighted to me that, if ASIC were typical of the agencies that would use this power, I am not sure that agencies are ready for it at this point in time. They may be. Perhaps subsequently, as part of the review process, they can put up a better case as to how they would ensure that they used it appropriately and only in appropriate circumstances and that it was utilised effectively as a tool in their investigations and in their ability to fight the regulatory offences and the types of issues that they meet. But, at this juncture, and having a look at the evidence, I am not convinced—and neither were the committee or government and Labor backbenchers—that this power should be extended.

As I understand it, that is what these amendments seek to ensure. They do so in a slightly different way, but it is one that I do not think the government is going to support. That is a pity. It would ensure that, in this instance, stored communications would have a regime in place that law enforcement agencies could use to effect appropriate outcomes, and the warrant regime, which the government was so keen to protect, would continue and the agencies could utilise the warrant regime that they have been utilising. They could utilise their notices to produce without impediment. ASIC indicated that they have not used this power in any event for the last 12 months, so I do not think there is a great need for it. It was certainly not demonstrated to the committee.

Senator STOTT DESPOJA (South Australia) (11.15 am)—As much as I really want the Labor Party to support these amendments, I fear they may go a bit further than the Labor Party were hoping, particularly in amendment (9) in relation to omitting paragraph 139(4)(e), which obviously effectively omits the pecuniary penalty line altogether. My reading of the amendment—and I suspect it is the government's or at least its advisers'—would be that it would have the effect of going further and would affect those agencies to which you referred. That is the Democrat intent, but perhaps that is not something that you would want to sign up to. I am not quite sure if that means you can support two of the three amendments, but we will see how we go.

Senator LUDWIG (Queensland) (11.16 am)—Senator Stott Despoja, you fail on page 28 of the—

Senator Stott Despoja—I should not have told you.
Senator LUDWIG—No. I was busily reading it. I am sure the government would have highlighted it. The point at which you fail is; a proceeding for recovery of pecuniary penalty for a contravention of the kind referred to in paragraph 3(c). We support you in principle, and my submissions certainly go to this issue, but you have taken that one little step too far, in our view. As a consequence, I should correct the record and say we will not be supporting your amendments. They are close but not quite there.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.17 am)—Without prolonging the debate—the matter has been fairly well ventilated—the government oppose these amendments. We believe that the Democrat proposal would totally undermine the regime that we are proposing. The one year threshold for the use of stored communications material represents an appropriate balance between the protections necessary for these communications and the operational needs of law enforcement. I think it is best left there. The government are opposed to these amendments.

Question negatived.

Senator LUDWIG (Queensland) (11.18 am)—by leave—I move opposition amendments (7) and (8).

(7) Schedule 1, item 9, page 32 (after line 21), after subsection 150(1), insert:

(1A) The chief officer must cause a review to be conducted annually of all information or records to which paragraph (1)(a) applies, in order to determine whether the records should be destroyed in accordance with subsection (1).

(8) Schedule 1, item 9, page 33 (after line 9), at the end of Division 1, add:

151A Other records to be kept in connection with access to stored communications

(1) The chief officer of an enforcement agency shall cause:

(a) particulars of each telephone application for a stored communications warrant made by the agency; and

(b) in relation to each application by the agency for a stored communications warrant, a statement as to whether:

(i) the application was withdrawn or refused; or

(ii) a warrant was issued on the application; and

(c) in relation to each stored communications warrant, particulars of:

(i) the warrant; and

(ii) the day on which, and the time at which, each access of stored communications under the warrant occurred; and

(iii) the name of the person who carried out each such interception; and

(v) each service from which stored communications were accessed under the warrant; and

(d) particulars of each use by the agency of lawfully obtained information; and

(e) particulars of each communication of lawfully obtained information by an officer or staff member of the agency to a person other than an officer or staff member of the agency; and

(f) particulars of each occasion when, to the knowledge of an officer of the agency, lawfully obtained information was given in evidence in a relevant proceeding in relation to the agency;

to be recorded in writing or by means of a computer as soon as practicable after the happening of the events to which the particulars relate or the information or statement relates, as the case may be.

These amendments deal with the reporting regime for stored communications. I will not take very long on them. These matters were
reflected in recommendations 10 and 11. In total, they strengthen the legislation by specifying time limits on which an agency must review their holdings of information accessed by stored communications warrants.

I think I made the argument a short time ago that this implements a reporting regime for stored communications. These amendments do not achieve all that was in recommendations 10 and 11. They are matters that we might come back to in the future when we have had sufficiently more time. There was not time to complete the drafting process that 10 and 11 would have required, and that is a complaint I make again. However, we have left two amendments that improve on the current situation in requiring agencies to improve their record keeping and review processes. I could not imagine why anyone would oppose that.

Senator STOTT DESPOJA (South Australia) (11.19 am)—Even though the Labor Party would not go that extra mile—or extra inch more likely—for the Democrat amendment the last time round, we will be supporting this. It is a good amendment. It is a sensible amendment. It requires a review of the records to be done so as to allow for the destruction of the records. It is also good because it will result in the agency being aware of the extent of their records and it will not allow records to be lost in the system. It gives practical effect to the destruction provisions, which were previously ineffective, as contained in section 150. It forces the chief officer to turn his or her mind to the information stored and, as such, the information will have to be destroyed forthwith. The Democrats will support this amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.20 am)—We are dealing here with the destruction of records and the keeping of records. In one case it is very good to keep the records and in the other case it is very good to destroy them. We believe that the bill has sufficient protection in relation to individual privacy and other aspects which are of concern. Clause 151 requires a chief officer of an enforcement agency to destroy stored communications information forthwith when such information is no longer needed for an investigation or prosecution. That, of course, deals with irrelevant material, and we have debated that earlier. Clause 152 further requires a chief officer of an enforcement agency to report to the Attorney-General on an annual basis the particulars relating to the destruction of stored communications information held by the enforcement agency. We believe that is appropriate.

On the other side of the coin, we believe that the keeping of warrants and the like is very important. Clause 151 provides that each enforcement agency must keep records of each stored communications warrant issued, each instrument of revocation, each evidentiary certificate and particulars of the destruction of information accessed under a stored communications warrant. The Ombudsman will have oversight of law enforcement agencies' use of stored communications warrants. And as the Attorney has said—and I have said it repeatedly—we will continue to consider the recommendations of the committee which were not adopted in this bill. The government is opposed to opposition amendments (7) and (8) for the reasons that I have mentioned.

Question negatived.

Senator LUDWIG (Queensland) (11.22 am)—I move opposition amendment (9):

(9) Schedule 1, item 9, page 33 (line 28), omit “3”, substitute “6”.

It provides for an extension of time for the Ombudsman’s report. It extends the time frame under section 153 as requested by the
Ombudsman himself and recommended by the committee.

Senator STOTT DESPOJA (South Australia) (11.22 am)—Once again, the Democrats will support the amendment moved by the Labor Party in its attempt to increase the reporting period of the Ombudsman from three to six months. We believe it is particularly important. It follows the recommendation from the committee as well as satisfies the request of the Ombudsman in his submission to the Senate inquiry to allow more time to report to the parliament due to the various constraints that are imposed upon him by, I suspect, an ever-increasing workload. I would hope that something is being done to assist the Ombudsman in terms of his resourcing so that he can continue to effectively carry out his duties. I note that this is a request by him and a committee recommendation. It is a good amendment and one that we happily support, and I hope the government will too.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.23 am)—For the record, the government opposes this amendment. It sees no reason to delay the report of the Ombudsman—in fact, it should be reporting which is fairly expeditious. I think the delay of it is undesirable, but the government will continue to, as I say, consider those recommendations of the committee. At this stage, there is no compelling reason the government sees to agree to this amendment.

Question negatived.

Senator STOTT DESPOJA (South Australia) (11.24 am)—by leave—I move Democrat amendments (11) to (17) standing in my name:

(11) Schedule 1, item 9 page 37 (line 26), omit “year.”, substitute “year; and”.
(12) Schedule 1, item 9, page 37 (after line 26), at the end of subsection 162(1), add:

(c) the number of warrants issued in relation to applications that the agency made during that year, where the warrant specified conditions or restrictions under subsection 118(2); and

(d) the categories of serious contraventions to which the applications related; and

(e) the number of warrants that permitted:

(i) 1 telecommunications service to be accessed; and
(ii) 2 to 5 telecommunications services to be accessed; and
(iii) 6 to 10 telecommunications services to be accessed; and
(iv) more than 10 telecommunications services to be accessed.

(13) Schedule 1, item 9, page 38 (line 1), omit “renewal applications”, substitute “further warrant applications”.

(14) Schedule 1, item 9, page 38 (line 6), omit “warrants.”, substitute “warrants; and”.

(15) Schedule 1, item 9, page 38 (after line 6), at the end of subsection 162(2), add:

(c) the number of warrants issued in relation to applications that the agency made during that year, where the warrant specified conditions or restrictions under subsection 118(2); and

(d) the categories of serious contraventions to which the applications related; and

(e) the number of warrants that permitted:

(i) 1 telecommunications service to be accessed; and
(ii) 2 to 5 telecommunications services to be accessed; and
(iii) 6 to 10 telecommunications services to be accessed; and
(iv) more than 10 telecommunications services to be accessed.
(16) Schedule 1, item 9, page 38 (line 14), omit “evidence.”; substitute “evidence; and”.

(17) Schedule 1, item 9, page 38 (after line 14), at the end of section 163, add:

(c) how many of the proceedings described in paragraph (b) above resulted in a conviction; and

(d) how many of the arrests made during that year were made on the basis of information obtained in accordance with a stored communications warrant issued in relation to a serious offence; and

(e) how many of the arrests made during that year were made on the basis of information obtained in accordance with a stored communications warrant issued in relation to an offence, not being a serious offence, which is punishable by imprisonment; and

(f) how many of the arrests made during that year were made on the basis of information obtained in accordance with a stored communications warrant issued in relation to a civil contravention.

These amendments also go to the issue of annual reports and move to ensure that more specific information is required of agencies that have access to the stored communications regime when they are compiling their annual reports for parliament. Some of the information required is the number of warrants issued; the specified conditions or restrictions in the warrant; the categories of offences they were used to combat; and the number of telecommunications services accessed under the warrant. Again, transparency and specificity should be contained in the report.

Reporting to the parliament, we believe, is a crucial component for accountability. Information that would be reported to the parliament under this amendment would ensure that members of parliament are aware of the frequency—or, indeed, infrequency—as well as what manner the warrants regime is being used for and for what purposes. In a democracy, I think this is a basic measure and one that we should support.

Looking at the further amendments contained on this sheet, amendment (13) seeks to correct a drafting error contained in section 162. Section 119(5) requires that no stored communications warrants be issued within three days of a previously issued stored communications warrant. As such, any further applications will not be renewal applications but rather further warrant applications.

Amendments (14) to (17) move to amend the annual reporting procedures. They will require more information to be presented to the parliament so that the number of warrants issued can be monitored. Again, we think this is an important part of accountability in this democratic process and something that I would have thought all members of parliament would be interested in and supportive of.

Senator LUDWIG (Queensland) (11.26 am)—We will support it. We have got following amendments that do the same thing. I am not going to add any significant comment at this point. The government is going to vote against it given its indication. I will make my point on it with my amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.27 am)—We believe that the reporting proposed by the government is sufficient. When you look at the Telecommunications (Interception) Act reports that are being furnished to the parliament, they are indeed detailed. They outline agencies that have sought warrants and relevant statistics; applications made; applications refused; and the number of warrants issued with conditions or restrictions. It is a comprehensive report. We be-
lieve that to go as far as the Democrats are suggesting could well have some operational impact and we are not inclined to support these amendments.

Senator LUDWIG (Queensland) (11.28 am)—What year was the last report that was tabled?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.28 am)—It was tabled for the year ending 2004—and 2005 is yet to be tabled. I understand it is going to be tabled very shortly and I will take up your concern with the Attorney-General.

Senator STOTT DESPOJA (South Australia) (11.28 am)—I ask the minister to explain exactly which parts of the amendment would potentially have an operational impact.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.29 am)—For instance: ‘How many of the arrests made during the year are made on the basis of information obtained in accordance with a stored communications warrant?’ This is what I understand your amendment (17) relates to. There are a number of other items there about the number of arrests that were made on the basis of information. That involves some detail which has not been previously divulged. Also, when you look at the totality of it you see that it can give a picture to organised criminals of what law enforcement is relying on. We are very careful when we talk about what we do rely on. To give you an example, AUSTRAC was an agency which, up until a couple of years ago, was virtually unknown. Unfortunately in some respects, it is now a very well-known agency and people are a lot more careful about their financial transactions—and I refer to criminals in particular.

I guess we are saying here that there is a general education of people with mal-intent regarding what is available to law enforcement. They study the trends very closely, just as we find that people have sat in the back of courts listening to the evidence adduced. It is well known that that is something the IRA used to do in hearings. They would listen to the proceedings to find out how the police went about their methods of investigation. It is something which we are seeing with organised criminals today. People sit in the hearing and listen very closely to the trial. You cannot stop that, but I am telling you that it is an issue. We have picked up changes in the modus operandi of people who have seen a certain method employed by law enforcement—that is, it has been used as a means of arresting someone and then prosecuting them. The next thing you find is that criminals have changed their methods.

In relation to whether or not the information could be provided on an in camera basis, we have a parliamentary joint committee which oversees the Australian Crime Commission. I recall that it has dealt with evidence on an in camera basis. Rather than have this displayed for consumption at large, I think it is best to stay with the level of detail that we have in the reports that we give to the parliament. Of course, extensive questioning follows on from that. As I mentioned, we have the Parliamentary Joint Committee on the Australian Crime Commission and we have the Senate Legal and Constitutional Committee, which has the purview of estimates and legislation. The AFP, Customs and the ACC are no strangers to these committees. But I think that to institutionalise that level of detail could well result in a revelation of methods which could then be interpreted by organised crime. While it is important for us to have details available to the parliament, there are avenues of inquiry that can be employed without revealing the
methods currently being used by law enforcement.

Senator STOTT DESPOJA (South Australia) (11.33 am)—I do not necessarily believe that this is telling people something they do not already know—that is, informing them about a warrants regime that exists. Even if it is, I think it is the right of members of parliament and the Australian people to know. With these amendments—just in case people are wondering whether I am requesting that we describe in infinitesimal detail what is going on—I am suggesting that we have the right to know how many of the proceedings described above resulted in a conviction. We are talking about working out whether or not the warrants regime is successful or is increasing the number of arrests that are made as a consequence of it. Amendment (17) reads, in part:

(d) how many of the arrests made during that year were made on the basis of information obtained in accordance with a stored communications warrant issued in relation to a serious offence; and

(e) how many of the arrests made during that year were made on the basis of information obtained in accordance with a stored communications warrant issued in relation to an offence, not being a serious offence, which is punishable by imprisonment; and

(f) how many of the arrests made during that year were made on the basis of information obtained in accordance with a stored communications warrant issued in relation to a civil contravention.

I think information about those distinct categories is important. I do not think it is going to be the criminal how-to guide 101. I think it is just giving some numeric detail as to the number of arrests that are made in accordance with warrants for those various categories—a serious offence, not being a serious offence punishable by imprisonment, and a civil contravention. To me, they are basic distinctions of which the parliament should be aware. The number of convictions that occur as a consequence of the warrants regime is important. We deserve some greater detail so that we can assess the effectiveness or otherwise of this regime.

These amendments are not intended to have an impact on operational matters—far from it. They are transparency and accountability measures that enable members of parliament and the public to know if this is working and working well. They are not about giving away secrets. I think it is very basic information. I do not see this as a particularly fretful measure that gives information to people or teaches them something or involves methods that people will learn from. I am assuming that most people will know that there is the opportunity for their conversations and/or communications in other forms to be accessed. This is about not only how many times it is happening but also what arrests took place as a consequence of this warrants regime and under what categories. I do not think that really teaches anyone anything particularly bad. In fact, if anything, I think it lifts the lid a little so that we can actually find out what is going on in the operation of this warrants regime. I think parliament needs more information. We are dealing with quite extraordinary law and powers here, and parliament needs this information.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.37 am)—For the record, the government will take on board Senator Stott Despoja’s comments. There are some other difficulties in relation to the categorisation of offences. Work is being done in relation to the annual reporting. I was not implying that Senator Stott Despoja’s amendments were necessarily a ‘how to’ guide for criminals; all I was doing was alluding to the potential problems
you can get when divulging information which, on the face of it, might seem quite innocuous and when compiled with other information can lead to a very good snapshot of how law enforcement operates.

We are working on the reporting arrangements. As I have said, we will continue to consider the committee’s reports. The concerns that Senator Stott Despoja raised will be taken on board during the course of those considerations.

Question negatived.

Senator LUDWIG (Queensland) (11.38 am)—by leave—I move opposition amendments (18) and (20) on sheet 4882:

(18) Schedule 2, page 63 (after line 30), at the end of the Schedule, add:

13 After section 61A
Insert:

61B Annual reports on warrant applications
(1) The chief officer of a law enforcement agency must, as soon as practicable, and in any event within 3 months, after each 30 June, give to the Minister a written report that sets out:
(a) the number of warrant applications made in that year to which subparagraph 46(1)(d)(ii) applied; and
(b) the reasons given to the issuing authority for each warrant application; and
(c) the occasions on which the agency has obtained, in execution of a warrant to which subparagraph 46(1)(d)(ii) applies, information to which it was not entitled under the warrant; and
(d) the occasions on which a warrant to which subparagraph 46(1)(d)(ii) applies has been issued, but no contact has been made with the person who is subject to the warrant, by the person under investigation for the serious offence.

(2) The Minister must cause a copy of the report provided to the Minister under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

(20) Schedule 2, page 63 (after line 30), at the end of the Schedule, add:

15 After section 61A
Insert:

61D Destruction of information obtained under a B-party warrant
(1) The chief officer of a law enforcement agency:
(a) must ensure that every record or report comprising communications obtained in accordance with a warrant in a case to which subparagraph 46(1)(d)(ii) applies is kept in a secure place that is not accessible to people who are not entitled to deal with the record or report; and
(b) must cause to be destroyed any record or report referred to in paragraph (a):
(i) as soon as practicable after the making of the record or report if the chief officer is satisfied that no civil or criminal proceeding to which the material contained in the record or report relates has been, or is likely to be, commenced; and
(ii) within the period of 5 years after the making of the record or report, or within each period of 5 years thereafter, unless, before the end of each 5-year period, the chief officer is satisfied that, in relation to the material contained in the record or report of a matter, civil or criminal proceedings have been, or are likely to be, commenced and certifies to that effect; and
(c) must cause to be destroyed any information in any form which is
not material to the investigation in relation to which the warrant was issued.

(2) Subsection (1) does not apply to a record or report that is received into evidence in legal proceedings or disciplinary proceedings.

These amendments deal with the reporting regime and also a strengthening of the destruction regime. I think we have already effectively had that debate in the last short while. I am not going to add any more; the amendments are self-explanatory. I just press upon the government that it does need an adequate reporting and destruction regime.

Question negatived.

Senator LUDWIG (Queensland) (11.39 am)—I move opposition amendment (10) on sheet 4882:

(10) Schedule 1, page 43 (after line 12), at the end of Part 1, add:

Telecommunications Act 1997
9A After subsection 280(1)
Insert:
(1A) To avoid doubt, section 108 of the Telecommunications (Interception and Access) Act 1979 applies to access to stored communications despite any provision in Division 2.

9B After subsection 282(2)
Add:
(2A) Subsections (1) and (2) do not apply where section 108 of the Telecommunications (Interception and Access) Act 1979 applies.

This amendment is with respect to a warrant required for access to stored communications. It came from recommendation 1 of the committee report, to strengthen the area of stored communications, and it is a clarification of the application of the Telecommunications Act 1997 to covert access to stored communications. This was a matter raised by Electronic Frontiers Australia in their submission to the committee. It is a sensible amendment, but I do note that the government has failed to pick up most of the sensible amendments that have been moved by the opposition and the Democrats. I am not going to take up too much of the committee’s time in waiting and holding my breath for the government to see sense.

Senator STOTT DESPOJA (South Australia) (11.40 am)—I hope you said you were not holding your breath. Otherwise we will need a replacement. I suggest that this is a good amendment. The Democrats will be supporting this amendment. It moves to implement some further entrenched safeguards into the Telecommunications Act regarding the prohibition on stored communications unless a stored communications warrant has been obtained. As has been previously stated, information should not be allowed to be accessed without a stored communications warrant, in order to protect the privacy of Australians. That is the bottom line and that is what some of us are trying to achieve here: to put some more safeguards into this bill to protect people’s privacy. We will be supporting the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.41 am)—We believe that the general prohibition introduced by this bill on access to stored communications is effective in ensuring that the provisions of the Telecommunications Act do not authorise access to stored communications. That is, this bill qualifies the Telecommunications Act as such. It covers an area so that the two operate in tandem, and this bill does bring with it a general prohibition against access to stored communications. I think that that deals with the concern that the opposition have with their amendment.

This is something that we will continue to look at. People have to realise that this bill is
being introduced at this time because of the sunset date of 14 June. It is important to get this bill dealt with at this stage. We will still be considering further aspects of the Blunn report and the report of the Senate Legal and Constitutional Committee. That will happen and, as I said before, if needs be there will be amendments in the spring sittings. But we do believe that this bill qualifies the Telecommunications Act and that this amendment is not necessary.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.43 am)—by leave—I move government amendments (13), (14) and (15) on sheet PA337:

(13) Schedule 1, item 19, page 45 (line 14), omit “or 3-2”.

(14) Schedule 1, page 45 (after line 20), after item 20, insert:

Intelligence Services Act 2001
20A Paragraph 14(2A)(a)

(15) Schedule 1, page 46 (after line 9), after item 24, insert:

Telecommunications Act 1997
24A Section 5

24B Subsection 313(7)
Omit “interception services”, substitute “interception or access services”.

24C Subsection 313(7)
Omit “under the Telecommunications (Interception) Act 1979”, substitute “or a stored communications warrant under the Telecommunications (Interception and Access) Act 1979”.

24D Subsection 313(8)
Omit “interception services”, substitute “interception or access services”.

24E Subsection 313(8)
After “intercepted”, insert “or accessed”.

24F Subsection 324(2)

24G Section 332K (note)

These are consequential amendments relating to stored communications. Due to the change of the name of the interception act, consequential amendments to the Telecommunications Act 1997 and the Intelligence Services Act 2001 are made by these amendments.

Amendments to the Intelligence Services Act update references to the interception act. Amendments to the Telecommunications Act update references to the interception act and require telecommunications carriers to provide reasonable necessary assistance in the execution of a stored communications warrant. A similar requirement is already in place in relation to the execution of interception warrants, and I commend these three amendments to the Senate as being more of a technical nature.

Question agreed to.

The TEMPORARY CHAIRMAN (Senator Barnett)—Next is Australian Greens amendment (2) to oppose schedule 1.

Senator STOTT DESPOJA (South Australia) (11.44 am)—To be fair, my understanding is that the Greens were keen to move that amendment, albeit in the absence of their leader. My understanding is that someone will be on their way shortly to do that.
The TEMPORARY CHAIRMAN—I propose that we move to Democrat amendment (22).

Senator STOTT DESPOJA (South Australia) (11.45 am)—That is what you get for being nice! Thank you, Chair, and thank you, Greens. I move Democrat amendment (22) on sheet 4869:

(22) Schedule 2, page 62 (before line 5), before item 1, insert:

1A At the end of section 6DA
Add:

(5) Despite subsection (1), a person holding an appointment to the Administrative Appeals Tribunal may not issue a warrant under Part VI in cases to which subparagraph 46(1)(d)(ii) applies.

This amendment is intended to remove the ability of the AAT members to issue B-party warrants. There has been discussion in the committee stage and previously about the concerns as to whether that is an AAT responsibility. We believe this is important considering the statistics that show that AAT members issue the most warrants out of the issuing authorities. We do not believe that is particularly appropriate, and the effect of my amendment will be to remove that ability.

Senator LUDWIG (Queensland) (11.46 am)—We oppose the amendment, as I think the Democrats would expect. It is a matter that the committee report said should be the subject of further review. I have said that before—I am not sure whether that was yesterday or the day before in this debate. Labor agrees that this area should in fact be looked at. On that basis, it should be looked at. The government could indicate more broadly that this area will in fact be looked at as well.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.47 am)—The government believe that members of the AAT, with a statutory qualification, are appropriate to issue these warrants, and we see no reason to change that. They have been in place for some time and have been operating effectively. We therefore oppose the amendment.

Question negatived.

The TEMPORARY CHAIRMAN—I propose that we go back to the Australian Greens amendment (2), which amends schedule 1.

Senator MILNE (Tasmania) (11.48 am)—The Australian Greens oppose schedule 1 in the following items:

(2) Schedule 1, page 4 (line 2) to page 61 (line 11), TO BE OPPOSED.

The TEMPORARY CHAIRMAN—The question is that schedule 1, as amended, stand as printed.

Question agreed to.

Senator LUDWIG (Queensland) (11.48 am)—by leave—The amendments were not grouped this way on the running sheet, but all the B-party amendments in fact should have been grouped together. I suspect that is not the Clerk’s fault. I move opposition amendments (11), (13), (15) and (17) on sheet 4882 and (1) on new sheet 4893:

(11) Schedule 2, item 3, page 62 (after line 26), at the end of subsection 9(3), add:

; or (c) communications made to or from a telecommunications service used or likely to be used by that person is likely to provide information relevant to the particular activities prejudicial to security which are stated in the application.

(13) Schedule 2, page 62 (after line 26), after item 3, insert:
3A Subsection 9B(4)
After “previously been issued”, add “unless subparagraph 9(1)(a)(ia) applies to the further warrant, in which case no further warrant may be issued”.

(15) Schedule 2, item 9, page 63 (lines 16 to 25), omit subsection 46(3), substitute:
(3) The Judge or nominated AAT member must not issue a warrant in a case in which this section applies unless the person making the application on behalf of the enforcement agency sets out evidence in an affidavit at the time of its application, or in the case of a telephone application, within one day after the day on which the warrant is issued, that:
(a) the agency has exhausted all other methods of identifying the telecommunications services used, or likely to be used, by the person involved in the offence or offences referred to in paragraph (1)(d); and
(b) interception of communications made to or from a telecommunications service used or likely to be used by that person would not otherwise be possible; and
(c) communications intercepted from the communications service will not breach any person’s legal professional privilege.

(17) Schedule 2, page 63 (after line 30), at the end of the Schedule, add:
12 At the end of subsection 49(5)
Add “; unless the warrant is issued in a case to which subparagraph 46(1)(d)(ii) applies, in which case no further warrant may be issued”.

(1) Schedule 2, page 63 (after line 25), after item 9, insert:
9A After section 46
Insert:
46AB Limitation on use of information derived from B-party warrants

Types of persons—A-party, B-party, C-party
(1) A person who would be likely to assist in connection with the investigation of a serious offence or serious offences is known as an A-party.
(2) A person who receives a communication from, or sends a communication to, a person described in subsection (1) is known as a B-party.
(3) A person other than a person described in subsection (1) who receives a communication from, or sends a communication to, a person described in subsection (2) is known as a C-party.

Use derivative-use indemnity applies to communication from C-party
(4) A warrant to which subparagraph 46(1)(d)(ii) applies can not be issued in respect of a person described in subsection (3) merely as a result of the action described in subsection (3).
(5) The provisions of this Act do not apply to any communication made by a person described in subsection (3) merely as a result of the action described in subsection (3) and any information given by such a person is not admissible in evidence against the person in:
(a) any criminal proceedings other than a proceeding for a serious offence; or
(b) any civil proceedings.

These amendments are recommendations from the committee report. As I have already said at least once today, it was a majority report. The government backbenchers and Labor agreed with the recommendations and agreed that B-party warrants should have protections consistent with the Blunn review—that is, that they go to ensuring that they only be utilised in limited and controlled circumstances. Opposition amendments (13) and (17) concerning no renewal of B-party warrants are consistent with ensuring that these amendments are not used as...
rolling warrants—in other words, they have a limited circumstance.

Labor believe that if we are to have a 45-day B-party warrant, then its renewal should also be limited. If a law enforcement agency cannot get the information in that time, then it should have a look at its own procedures. It begs the question, of course, of whether a real link can be made between party A and party B in that period. If there is a belief that a second warrant is required after the end of 45 days, then they can go back to the issuing authority and indicate that there is a requirement to continue to have that interception. The issuing authority then has an opportunity of hearing from them to ensure that it is required and consistent with Blunn and consistent with ensuring that the person’s privacy is kept at the forefront in the issue.

B-party warrants have provided another area of concern. In recommendation 18 the committee report highlighted an issue that also needs to be addressed, the tightening of B-party warrants issued by the Attorney-General under section 9 of the act. In relation to this warrant class, which ASIO uses for national security purposes, the Labor amendment tightens the definition to ensure that the B-party service that is to be intercepted is only able to be intercepted after the Attorney-General has satisfied him or herself that the B-party service:

... is likely to be used to communicate or receive information relevant to the particular activities prejudicial to security which triggered the warrant.

A number of submitters raised this matter that there should be—to use, from memory, their words—that link to ensure that B-party warrants are not used as a fishing expedition and are only used where it has been able to be demonstrated to the issuing authority that they have met the requirements under the current law and the proposed amendments to the current law and to reinforce the principle of limited and controlled circumstances.

Looking at the amendments which have been proposed in the broader area, (15) spells out the requirements for the issuing of section 46 warrants. This provides, in accordance with the committee recommendations:

The Judge or nominated AAT member must not issue a warrant in a case in which this section applies unless the person making the application on behalf of the enforcement agency sets out evidence in an affidavit at the time of its application, or in the case of a telephone application, within one day ... that:

(a) the agency has exhausted all other methods of identifying the telecommunications services ...  
(b) interception of communications made to or from a telecommunications service used or likely to be used by that person would not otherwise be possible; and  
(c) communications intercepted from the communications service will not breach any person’s legal professional privilege.

In total, it seeks to ensure that, as the Attorney-General spelt out, B-party warrants are utilised as a last resort and legal professional privilege in this instance is sufficiently protected. They are sensible amendments to B-party warrants to strike that balance between privacy and the needs of law enforcement agencies. The Senate committee saw that there was a need to ensure that that balance was there. The committee made a number of recommendations to ensure that people’s privacy was protected sufficiently whilst not impeding law enforcement agencies’ ability to fight crime. These amendments reflect those recommendations and try to achieve that balance.

It is disappointing that the government has not sought to pick them up. They are sensible amendments. They go to ensuring that the recommendations of the Blunn review are met and that, as I have said a couple of times
this morning, B-party warrants are utilised in limited and controlled circumstances. That is sensible. This government has not provided the right balance in the legislation.

Senator STOTT DESPOJA (South Australia) (11.56 am)—The Australian Democrats will be supporting these amendments. To clarify, are we dealing with amendments (11), (13) and (17) now?

The TEMPORARY CHAIRMAN (Senator Barnett)—Amendments (11), (13), (17), (15) and (1) on the new sheet.

Senator LUDWIG (Queensland) (11.57 am)—I will clarify. They are all B-party amendments. The running sheet does not reflect them in the way it should. They all relate to improving the position, they come from the committee report and, as I have said, they are sensible. They deserve the support of all parties in this chamber, and particularly the coalition backbench, who sat with us and saw that B-party warrants did need these protections. They do not detract from the ability of law enforcement agencies to do their work and to fight crime. They do ensure that privacy is maintained, because this is a sensitive area. It requires careful scrutiny to ensure that we get it right. I do not think in this instance that the government has got it right.

We have been talking a lot about B party. Party A is the person under criminal investigation. The B party is the nonsuspect or innocent person who might be in communication with A. You then have parties C, D, E, F and so on, who are not in communication with A when the warrant is first issued. The warrant is predicated on the basis that there is communication going on between A and B.

We need, as the law enforcement agencies have said, limited control in certain circumstances to access the communications of B, but what about C, D, E and F? These amendments ensure that there is protection for those people. When you start looking at innocent person B, where do you stop in terms of the innocent persons C, D, E, F and so on? It is so far down the line. They do require protection because of the very nature of this type of warrant. This warrant is not directed at a person who is under criminal investigation; it is directed at a person who is in communication with a person who is under criminal investigation. But C, D, E and F are being drawn into that frame, and they need not be. If they are being drawn into that frame, they need the additional protections.

Senator STOTT DESPOJA (South Australia) (12.00 pm)—Indeed, they do need those additional protections. Obviously, the Democrat approach to this bill has been an attempt to entrench as much protection of privacy for individual Australians as possible. Senator Ludwig makes the important point that we are talking about nonsuspects in these dealings. I think it is very important that we seek to do what Senator Ludwig, referring to Labor amendment (1) on sheet 4893, suggests: place some kind of limit on the derivative use of information obtained under a B-party warrant. I think that is incredibly important. We definitely support that amendment.

Introducing the concept of A parties, B parties and C parties into the substance of the act is, you bet, really important. Essentially, that seeks to stop any C party—a person who is not the person of interest and happens to contact the B party—from having information obtained during an interception used against them in any criminal offence proceedings, other than for a serious offence, or any civil proceedings. We think that is a good amendment and we will certainly be supporting it.

We support amendment (15), on the same sheet, as well. It increases the requirements...
for the issuing of B-party warrants. I note that those requirements are the same as those at the end of our amendment (23), which will come up shortly. I note, however, that the Labor Party amendment still allows members of the AAT to issue warrants. Obviously, from the debate on the amendments that we have just had, the Democrats have grave concerns. We do not support having the AAT as an issuing authority. We believe, not only from looking at the statistics, that it is lowering a threshold. It is making it easier for warrants to be issued or obtained.

So, with that obviously different view in relation to amendment (15) on behalf of the opposition, we certainly support amendment (11), which makes B-party warrants available only to enforcement agencies when investigating an issue to do with national security. We think that is a reasonable proviso. We think that is quite a good safeguard and we support that. It is a relevant amendment. It increases the threshold for the B-party warrants. Any protection for Australians against invasive measures such as the B-party warrants is welcomed at this late stage of the legislative process. The text of the amendment refers to the activities that are prejudicial to security. The inference from the description of the amendment suggests that it is for national security.

We support amendment (13). It prevents any further applications for B-party warrants to proceed. That leaves me with amendment (17). Again, the Democrats support that amendment. Senator Ludwig is right to refer to the deliberations of the Senate committee and the views of backbenchers in relation to the prevention of the renewal of B-party warrants. The Democrats have sought to achieve a similar outcome with our amendments. Our amendments allow for the renewal of B-party warrants where information obtained in the interception is material to the investigation and it is likely that further interception will result in further material information. Indeed, this was a recommendation that arose out of the committee proceedings—specifically, I think, in the submission provided by Electronic Frontiers Australia.

The period of operation of B-party warrants is limited to 14 days in our case, but I do not believe that there is a Labor Party amendment that deals with the period of operation. I still think that is important and deserves some consideration. I think I have covered all the new amendments—(11), (13), (15) and (17) on sheet 4882 and (1) on new sheet 4893. With those comments—again desperate to enshrine some protection; they are not protections that have come from out of nowhere; they are protections that have been signed off in most cases by a committee inquiry that had the support of both the government backbenchers and the Labor Party—the Democrats support the amendments before us.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.05 pm)—The opposition amendments, although they have been moved together, deal with discrete areas in relation to B-party warrants. Initially, the concern is about the different regime applying to ASIO and law enforcement agencies in obtaining the stored communications warrants. It was thought best to continue that first. The government’s view is that we should continue the different regimes for law enforcement agencies and ASIO. At the moment, we have a system where ASIO obtains warrants by application to the Attorney-General. Various requirements have to be met. That involves the Attorney-General’s Department and, in particular, ASIO. That has worked well. It would be unhelpful to now bring in a new regime for obtaining a stored communication warrant that is of a lesser standard or impact than a telephone intercept, which ASIO has under its current regime. It was thought best to continue that
same regime and include stored communication warrants as well as the TI regime that ASIO has at the moment. We also have to remember that ASIO deals with inquiries into national security.

**Senator Ludwig**—To preserve those regimes.

**Senator Ellison**—Senator Ludwig, we will get to that in a moment. I am just outlining the government’s rationale for this approach, because the Democrats, and others too, have been critical of it. ASIO inquires into matters of national security, and of course we have seen issues arise where evidence gained during intelligence operations cannot be brought into a court of law because of the different requirements involved in national security as opposed to criminal investigations. When it is a criminal investigation, you are then dealing with the prospect of that evidence being used against an individual for the purposes of prosecution. Understandably, we have a system which involves a judicial or quasi-judicial person. We have been talking about the AAT being the issuing authority. In a state where an AAT member is not available, law enforcement can go to a state magistrate—that is provided for as an alternative to an AAT member. We believe that that is appropriate for a stored communications warrant regime, whether or not it applies to a B-party warrant.

The next question is: do you restrict that evidence, the information that is gained, in the use of the B-party warrant? We would say that it should not be restricted. We say that what we are dealing with here is serious crime and national security—and, increasingly, the two are one, if I can put it that way. The CIA itself has said that transnational crime is a threat to national security. Organised crime in today’s environment is not the organised crime that we were dealing with 10 years ago. We have to have modern methods with which to fight organised and serious crime, particularly in an environment where criminals may well use telecommunications—which they increasingly are.

So the government does not accept that you should use one aspect of the regime for national security and not for law enforcement; the government does not accept that you should restrict the use of information from B-party warrants; and the government defends the fact that it maintained the different regimes for ASIO and law enforcement. We have an issuing authority regime, if you like, for law enforcement agencies and the Attorney-General application for ASIO. We believe that that has worked well and should continue to be reflected in this bill. But, as I have said, these matters are important ones. They are going to be considered on an ongoing basis by the government, and we will do just that. But we oppose amendments (1), (11), (13), (15) and (17) proposed by the opposition for the reasons I have outlined.

**Senator Ludwig** (Queensland) (12.10 pm)—These are recommendations that the government could in fact consider now rather than reject out of hand. The Labor Party took a position in respect of what the Senate committee report on the bill came up with, and in a very short time frame. We came up with amendments that would go to improving the protection of privacy while still striking the right balance, as I have said. The minister thinks that we are seeking to tinker with the two regimes; that is not the case. We agree that there should be two regimes. We see the need for national security interests to be separate from law enforcement interests and do not seek to gavel that position. And it is clear, in part, that B-party intercepts for law enforcement agencies do require protections.
The minister indicated that the government opposes these amendments. I think that perhaps cabinet government does, perhaps executive government does, but not many of his backbench agree with that position. I am sure they agree with ours, but they are not here to support that, which is a pity.

I am going to call for a division on these; I think they are important. But the government is not going to agree with our position on B-party warrants, so I want to foreshadow an amendment to delete schedule 2. Obviously, that will not gain support either, but we can deal with that in the same way, if the Clerk could circulate the amendment that would delete schedule 2.

Senator Stott Despoja—Do you mean the Greens amendment?

Senator Ludwig—I would rather have my own, quite frankly!

Senator Stott Despoja—I am happy to co-sponsor it, if you need a friend!

Senator Ludwig—I am happy for it to be co-sponsored. It can be circulated in the chamber now, if the government wants. But what I am foreshadowing is that we can deal with it in a compact way: we can have a division on the B-party warrants, then I can move that amendment to delete schedule 2 and we can have a one-minute division. That way there will not be two long divisions. Obviously, the government is not going to accede to the proposed improvements to the B-party regime, but I do not want to take up a significant portion of the Senate’s time.

The TEMPORARY CHAIRMAN (Senator Barnett)—Senator Ludwig, can I just draw to your attention that that is a part of the bill where the question is that it will stand as printed, so it not an amendment. You will be opposing the schedule, and the government will presumably be supporting the printing of the bill as it stands.

Senator Ludwig—That can be circulated now.

The TEMPORARY CHAIRMAN—We will deal with the schedule to be opposed separately. The question is that opposition amendments (11), (13), (15) and (17) on sheet 4882 and amendment (1) on sheet 4893 (revised) be agreed to.

The committee divided. [12.18 pm]

(The Chairman—Senator JJ Hogg)

Ayes............ 30

Noes............. 33

Majority........ 3

AYES


NOES

Senator Conroy did not vote, to compensate for the vacancy caused by the resignation of Senator Hill.

Question negatived.

Senator Ludwig (Queensland) (12.20 pm)—The opposition opposes schedule 2 in the following terms:

(1) Schedule 2, page 62 (line 2) to page 63 (line 30), TO BE OPPOSED.

The CHAIRMAN—The question now is that schedule 2 stand as printed.

The committee divided. [12.21 pm]

(The Chairman—Senator JJ Hogg)

Ayes......... 31
Noes......... 30
Majority....... 1

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

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

* denotes teller

Senator Conroy did not vote, to compensate for the vacancy caused by the resignation of Senator Hill.

Question agreed to.

Senator Stott Despoja (South Australia) (12.23 pm)—by leave—The Democrats amendments oppose schedule 2 in the following terms:

(18) Schedule 2, item 1, page 62 (lines 5 to 11), TO BE OPPOSED.

(19) Schedule 2, item 2, page 62 (lines 5 to 15), TO BE OPPOSED.

(20) Schedule 2, item 3, page 62 (lines 3 to 26), TO BE OPPOSED.

(21) Schedule 2, item 4, page 62 (lines 27 and 28), TO BE OPPOSED.

The intent of the Democrat amendments is to remove the Attorney-General’s power to issue B-party warrants for ASIO. I want to make it very clear that we are talking about B-party warrants for ASIO and removing the ability of the Attorney-General to issue those warrants. We believe that it is an important safeguard that should be implemented in order to maintain a relatively high level of oversight. These changes should be passed because of the high possibility of privacy
invasions under B-party warrants. Once again, I want to make it very clear that we are talking about ASIO and the Attorney-General’s power to issue those warrants to them. This is different from the issue of B-party warrants generally; it is specifically dealing with ASIO B-party warrants. Therefore, I hope the Senate will, with the recognition of that specificity, recognise the need to take that power away from the Attorney-General.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (12.26 pm)—We do not support these amendments. Unfortunately, they go further than we think is required in these circumstances. I will not talk to them at length. The points we make in relation to our amendments go to the committee report. The hard work done by the committee, including the backbench, brought forward recommendations which were reasonable. Labor sought to take those recommendations and provide an opportunity for the government to support them. The government has chosen not to support them today.

In this instance, as I said previously, in terms of the regimes in place, it is important to ensure that there is a distinction between the law enforcement regime and the national security regime. Those regimes have our support. In terms of the amendments, when you look at the provisions, they go beyond the majority recommendations. I understand that they are consistent with your additional dissenting comments.

Senator Stott Despoja—Supplementary; additional.

Senator LUDWIG—Yes. However described, they are not things we can support.

Senator MILNE (Tasmania) (12.28 pm)—I want to put on the record the Australian Greens’ opposition to schedule 2 as it stands. I will be supporting subsequent amendments and opposing the schedule as a whole because it does not draw an appropriate balance between security issues and privacy and basic freedoms.

Third parties having their phones tapped and emails read without their consent or knowledge simply because they contact somebody who government security agencies have an interest in is completely inappropriate in a democratic society. Innocent people who are unlucky enough to communicate by phone or email with someone suspected of a crime or of being a threat to national security are going to find themselves, without their knowledge, under this kind of scrutiny. I find that excessive.

We have to have security laws, but under these security laws everyone, including the tax office, will be able to trawl through the private emails, SMSs and phone conversations—and everything else—of people who have no idea that that is happening to them, and I find that appalling in supposedly a free country. That is the view that the Australian Greens take in relation to this. We do not believe that the government and its agencies should have the power to intervene with third parties in this way.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.29 pm)—I have outlined previously the government’s position in relation to the ASIO regime and the regime for law enforcement. We believe that the Attorney-General is an appropriate person in this case. If you can do it for telephone intercepts, you can do it for stored communications and warrants albeit that it relates to a B-party. We believe that we should stay with the same regime that we have.

The TEMPORARY CHAIRMAN (Senator Murray)—The question is that schedules 2, items 1 to 4, stand as printed.

Question agreed to.
Senator STOTT DESPOJA (South Australia) (12.31 pm)—by leave—I move Democrat amendments (23) and (24) on sheet 4869 standing my name:

(23) Schedule 2, item 5, page 62 (line 29) to page 63 (line 1), omit the item, substitute:

5 At the end of section 46A

Add:

46B Warrant for B-party interception

(1) Where an agency applies to an eligible Judge for a warrant in respect of a person and the Judge is satisfied, on the basis of the information given to the Judge under this Part in connection with the application, that:

(a) Division 3 has been complied with in relation to the application; and
(b) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
(c) there are reasonable grounds for suspecting that a particular person is using, or is likely to use, more than one telecommunications service; and
(d) there is a substantial likelihood that information to be intercepted under the warrant would assist in connection with the investigation by the agency of a serious offence by a person who is expected to contact the person subject to the warrant; and
(e) having regard to the matters referred to in subsection (2), and to no other matters, the Judge should issue a warrant authorising such communications to be intercepted;

the Judge may, in his or her discretion, issue such a warrant.

(2) The matters to which the Judge must have regard are:

(a) how much the privacy of any person or persons would be likely to be interfered with by intercepting under a warrant communications made to any telecommunications service used by the person in respect of whom the warrant is sought; and
(b) the gravity of the conduct constituting the offence or offences being investigated; and
(c) how much the information referred to in paragraph (1)(d) would be likely to assist in connection with the investigation by the agency of the offence or offences; and
(d) to what extent methods (including the use of a warrant issued under section 46) of investigating the offence or offences that do not involve the use of a warrant issued under this section in relation to the person have been used by, or are available to, the agency; and
(e) how much the use of such methods would be likely to assist in connection with the investigation by the agency of the offence or offences; and
(f) how much the use of such methods would be likely to prejudice the investigation by the agency of the offence or offences, whether because of delay or for any other reason.

(3) The Judge must not issue a warrant in a case in which this section applies unless the person making the application on behalf of the enforcement agency states in an affidavit at the time of its application, or in the case of a telephone application within one day after the day on which the warrant is issued, that:

(a) the agency has exhausted all other methods of identifying the telecommunications services used, or likely to be used, by the person involved in the offence or offences referred to in paragraph (1)(d); and
(b) interception of communications made to or from a telecommunications service used or likely to be
used by that person would not otherwise be possible; and

(c) communications intercepted from the communications service are not likely to breach any person’s legal professional privilege.

(24) Schedule 2, item 6, page 63 (lines 2 and 3), omit the item, substitute:

6 Section 47

Omit “or 46A”, substitute “, 46A or 46B”.

Amendment (24) is a consequential amendment. Amendment (23) moves to increase significantly the threshold that is required in order to obtain a B-party warrant. I think that important aspects to note are the requirements that: firstly, there is a substantial likelihood that the information to be intercepted under the warrant would assist in connection with the investigation by the agency of a serious offence; and, secondly, that it is expected that the person of interest will contact the third party. We believe that operation of the B-party warrants does pose a serious risk for privacy rights in Australia. Where there are no adequate or appropriate measures to ensure that these privacy rights are not respected, then the schedule should not be passed.

We have heard various arguments for that today. It is not as if we have come in here deliberately trying to gut or tear down the act or have a deleterious impact on operational matters. But it is evident that the legislation in its current form does not strike a proportioned balance between crime fighting and security and safety on the one hand, and the civil liberties and privacy rights of Australians on the other hand. We have lost that balance. The attempt in this debate by parties such as the Democrats to inject some safeguards into this legislation has effectively failed—though we have still got almost a page of amendments to go in terms of the running sheet.

Having said that, I note that some of the really substantial changes that could have been made to give people some confidence in the operation of this Telecommunications (Interception) Amendment Bill have not been made, and I think that is significant. It is significant and certainly of great concern to the Australian Democrats who have been involved in the discussions and deliberations on this bill from the beginning—and I include predecessors in that involvement. In terms of this specific piece of legislation, we have been present at the inquiry and have prepared a report—and along with Senator Ludwig, I have to say, I also smirk a little at it too. The Supplementary report with additional comments of dissent by the Democrats—I think we were aiming for the longest name of a Senate committee report. Nonetheless, it did sum up the fact that we endorse heartily the recommendations contained in the chair’s report and I put on record again that it was a majority report. We have backbenchers in here today who signed off on the legislative report but were forced to vote against the recommendations contained in that report. Doesn’t anyone have a problem with that? I think that it is quite extraordinary. Some of the safeguards built into that majority report and proposed for the legislation have since been voted against by the people who mooted them.

Maybe the Senate committee process is a farce now. I am not suggesting that we abandon it, but it seems extraordinary that we spent the day, albeit a short period of time, on a truncated inquiry with not enough time for verbal and written submissions and not enough time for us to deliberate over some of the questions on notice and questions that were responded to. I do acknowledge the work of the officers because I know that we gave questions without notice and on notice and they were responded to with what I would describe as alacrity considering the
time frame. But still it is not enough to turn up on Monday, table a report and expect that report to be dealt with—discussed and digested—and then have us rock up on Tuesday morning—I think Monday evening was the original suggestion—and debate a significant piece of legislation that poses a great risk to privacy rights in this nation.

These are some of our last attempts to put some constraints and some safeguards on B-party warrants. Again, they are not intended to gut or destroy the legislation but build in safeguards. That has not happened. Yes, amendment (23) that the Democrats are moving does go further than the majority report, as Senator Ludwig has pointed out. There is good reason for that because the majority report did not go far enough. Those recommendations contained in the majority report signed off by coalition and Labor backbenchers were good recommendations and even they have been flouted in the chamber today. These are further Democrat changes to the operation of B-party warrants. I think that they are reasonable changes that would increase the threshold in a way that would have a positive impact in terms of privacy as well as the security and safety of Australians. I commend the amendments to the chamber.

Senator LUDWIG (Queensland) (12.36 pm)—Given that Labor amendments in this area were defeated, we think that some improvement does come from the Democrat amendments to the protections not otherwise afforded and therefore we support these amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.36 pm)—I am obliged to other senators for the brevity of debate to the extent that we have been to the point but on these particular amendments I think that I should put before the committee the regime in relation to B-party warrants. We are dealing with a warrant which is in relation to stored communication related to a third party who is not the person under investigation.

The B-party amendments in this bill will only be used as an investigative tool of last resort and will be subject to strict controls and available only for the investigation of the most serious crimes. Specifically, a B-party warrant will only be issued to an agency where an agency believes it is necessary to intercept the communications of an associate of a suspect, and the agency must demonstrate that it has exhausted all other practicable methods of identifying the telecommunications services used or likely to be used by the suspect.

In addition, as per the existing interception regime requirements, an interception warrant will only be granted to an agency when an issuing authority is satisfied that (1) there are reasonable grounds for suspecting that a particular person is using or likely to use the telecommunications service and (2) information that would be obtained by interception would be likely to assist in connection with the investigation by the agency of the seven-year offence in which the suspect is involved.

The issuing authority must also have regard to the following additional factors: how much the privacy of any person would be likely to be interfered with by the interception; the gravity or seriousness of the offences being investigated; how much the intercepted information would be likely to assist with the investigation by the agency of the offence; to what extent alternative methods of investigating the offence have been used or are available to the agency; how much the use of such methods would be likely to assist in the investigation by the agency of the offence; and how much the use of such methods would be likely to prejudice
the investigation by the agency of the offence. That is a list which has to be complied with, and it is not in the alternative. That is a comprehensive list which requires the issuing authority to have regard to a number of crucial factors.

We believe that the B-party warrant regime we have in place has safeguards and measures which are of such sufficiency as to protect the rights of the third parties who are not suspects but who may be believed to be associated with the person who is under investigation. I want to put that on the record. I think I have outlined the government’s stance previously. The government is opposed to Democrats amendments (23) and (24).

While I am on my feet, I will clarify a statement I made yesterday. Last night, during the debate on the proposed government amendment for AFP network protection practices, I advised the committee that I understood that the AFP had discussed this issue with the AFP Association prior to the bill being introduced to the Senate. That was following a question from Senator Ludwig. The purpose of the government amendment, by way of background, is to allow the AFP to continue to do what it currently does in relation to network protection and maintaining professional standards in the AFP. Its purpose is to support existing policy and practice within the AFP, of which all AFP employees and the AFP Association have been aware of since its inception in 2003. However, in relation to the question that Senator Ludwig asked, I must advise the committee that the AFP did not specifically discuss it with the AFP Association prior to the bill being introduced into the Senate. When I gave that advice to the committee, I was relying on advice that had been given to me at the time. I think that sorts that issue out. And the government is opposed to Democrats amendments (23) and (24).

**Senator MILNE** (Tasmania) (12.41 pm)—I appreciate the minister’s explanation, but I would like to ask a couple of questions in view of that explanation. First of all, can the minister tell me whether there are any white-collar corporate fraud crimes that incur a penalty of seven years or more? If so, what would preclude the tax office from using these provisions to access stored communications—emails et cetera—from third parties who may inadvertently contact someone? Secondly, can the minister explain why this provision applies to federal and state members of parliament who, in the course of their duties, may well contact a range of people of all kinds? Does that mean that their communications are subject to government intervention and oversight?

**Senator LUDWIG** (Queensland) (12.42 pm)—If people could stick to the program, it would be easier. We are not talking about stored communication; we are talking about B-party intercepts—real-time interceptive communication. That should be the question, I suspect. I think the minister went to stored communication in his answer earlier, too. This is about B-party intercepts. If we could hold that point, if everybody concentrates on where we are at, we might be able to finish this debate.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (12.42 pm)—I will answer the Greens questions, but at this stage perhaps we could deal with Democrat amendments (23) and (24). There are a number of questions from the Greens. I will take them on notice and, in the course of this committee, I will advise the committee of the answers. But, at this stage, I suggest we deal with Democrat amendments (23) and (24), and I will deal with the other questions separately.

Question negatived.

CHAMBER
Senator STOTT DESPOJA (South Australia) (12.43 pm)—I move Democrat amendment (25) on sheet 4869:

(25) Schedule 2, item 10, page 63 (line 29), omit paragraph 49(3)(a), substitute:

(a) if section 46B applies, up to 14 days; or

This amendment is quite simple. It limits B-party warrants to 14 days.

Senator LUDWIG (Queensland) (12.43 pm)—The Labor Party are in a position to support this amendment, given that our B-party amendments failed. It is a simple amendment, so I will not go to it in detail. It deserves support.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.44 pm)—We believe that 45 days is appropriate. It is half the 90-day period for a real-time interception. Of course, there is nothing to stop law enforcement going for a shorter period of time, but that 45-day period is a maximum period. We think the 14-day period it too short.

Question negatived.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.44 pm)—by leave—I move government amendments (16) and (17) on sheet PA337:

(16) Schedule 2, item 7, page 63 (lines 8 and 9), omit subparagraph 46(1)(d)(ii), substitute:

(ii) another person is involved with whom the particular person is likely to communicate using the service; and

(17) Schedule 2, page 63 (after line 30), at the end of the Schedule, add:

11 After paragraph 100(1)(ec)

Insert:

(ed) in relation to applications of a kind referred to in paragraph (a), (b), (c), (d) or (e), the relevant statistics about applications of that kind that relate to warrants in relation to which subparagraph 46(1)(d)(ii) would apply if the warrants were issued; and

(ee) how many Part 2-5 warrants issued during that year are warrants in relation to which subparagraph 46(1)(d)(ii) applied; and

12 After paragraph 100(2)(ec)

Insert:

(ed) in relation to applications of a kind referred to in paragraph (a), (b), (c), (d) or (e), the relevant statistics about applications of that kind that relate to warrants in relation to which subparagraph 46(1)(d)(ii) would apply if the warrants were issued; and

(ee) how many Part 2-5 warrants issued during that year are warrants in relation to which subparagraph 46(1)(d)(ii) applied; and

13 At the end of paragraphs 101(1)(a), (b) and (c)

Add “and”.

14 After paragraph 101(1)(d)

Insert:

(da) in relation to periods of a kind referred to in paragraph (a), (b), (c) or (d), the averages of the periods of that kind that relate to warrants in relation to which subparagraph 46(1)(d)(ii) applied; and

15 At the end of paragraphs 101(2)(a), (b) and (c)

Add “and”.

CHAMBER
After paragraph 101(2)(d)

Insert:

d(a) in relation to periods of a kind referred to in paragraph (a), (b), (c) or (d), the averages of the periods of that kind that relate to warrants in relation to which subparagraph 46(1)(d)(ii) applied; and

Government amendments (16) and (17) relate to B-party interception. They impose a requirement for separate statistical reporting of B-party interception to ensure that the use of these powers is reported. Each year, all law enforcement agencies using the interception regime will be required to provide statistics on the number of B-party warrants applied for by law enforcement agencies: the number issued, the number of renewal warrants and the average duration of those warrants. These statistics will be reported in relation to each agency and in total. In addition, amendment (16) clarifies the operation of the B-party interception provisions to ensure the effective operation of these measures. These amendments are consistent with comments by Mr Blunn in his report and also with concerns raised during the Senate committee consideration of this bill. I commend the amendments to the committee.

Senator STOTT DESPOJA (South Australia) (12.46 pm)—The Australian Democrats will be supporting these amendments. The first one does not do anything to raise the threshold in relation to B-party warrants but it does make B-party warrants slightly more clear. Amendment (17) slightly increases the amount of information that is required in the reports. We think it is better than what already exists. Of course, I have already tried to tackle this issue through various means. The Democrats will support these two amendments even though they do not quite go far enough.

Senator LUDWIG (Queensland) (12.46 pm)—These are procedural changes. We do not oppose them; we do not support them either, particularly. We think that the government should have picked up our amendments, quite frankly, but I am not going to go there again. These matters might provide some improvement to the existing regime and on that basis we will not oppose them.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (12.47 pm)—I move Democrat amendment (27) on sheet 4869, standing in my name, on behalf of the Democrats:

12 After subsection 49(2A)

Insert:

(2B) Without limiting subsection (2), a warrant issued under section 46B must state that the warrant does not include the storage of:

(i) any communications that do not involve the person suspected of an offence under paragraph 46(1)(b); or

(ii) any communications not material to the investigation on which the application for the warrant was based;

and that recordings of any such communications must be destroyed immediately once the agency determines that this section applies.

This amendment requires that any communications not material to an investigation be destroyed. We think this is a particularly important provision because currently there are not adequate destruction provisions for this material. I have spoken about this in the committee stage and in other fora. I believe that the maintenance or holding of that information is problematic, especially when we are talking about communications that are not required because they are not material to the investigation at hand. There is no
reason why they should not be destroyed, and that is the intent of this amendment.

Senator LUDWIG (Queensland) (12.48 pm)—We do not support this amendment. In fact, we think it has already been dealt with. If you look at it you see that subclause 27(2B) provides:

Without limiting subsection (2), a warrant issued under section 46B must state that the warrant does not include the storage of:

(i) any communications that do not involve the person suspected of an offence under paragraph 46(1)(b) ...

It goes on to the effect that communications outside the investigation are not to be stored. That area has already been dealt with.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.49 pm)—The government are opposed to this amendment. I think we have covered this adequately before. I think there is a require-ment in the bill for the destruction of this sort of material. The requirement is that it be ‘forthwith’. We think that is sufficient protection in the circumstances. We recognise of course that irrelevant material should not be left hanging around. We believe it should be destroyed promptly if it is irrelevant.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.50 pm)—That is a good question; and it is a difficult one. The fact is that we are talking about what constitutes irrelevant material. During the course of an investigation it is not immediately apparent that evidence that is come across may be irrelevant material at the time. But it is provided for in the bill that material which is irrelevant should be destroyed forthwith. As soon as it becomes apparent that it is irrelevant it should be destroyed forthwith. If there was something there which related to another party and which might be of some interest and could be relevant, and you had not yet concluded the line of investigation, you would hold on to it until you were of a view that it was relevant and you wanted to put it into a brief for the prosecution. Or you would hold on to it until you thought you did not need it anymore. If that line of investigation had been exhausted and it was of no relevance then you would destroy it at that point. To simply say that you have a certain amount of time—to give a definite time limit—would make it almost impossible to carry out investigations.

I will give an example. The investigation into the Norfolk Island murder recently, in which there was an arrest, went on for some time. There was a good deal of investigation overseas, although I will not go in to it because it is now before the courts. That was a classic case where continual police work was required in sifting through evidence and making inquiries. A statement, document or stored item of information that you come across may not have relevance until you have discovered other pieces of the jigsaw puzzle, when you find that it is after all quite relevant. But as soon as it is apparent that it is irrelevant it should be destroyed forthwith.

Senator STOTT DESPOJA (South Australia) (12.49 pm)—I am not going to prolong this debate; and I know that I brought this issue up during the Senate committee. The minister has referred to the term ‘forthwith’ and I am just wondering what, in his mind, constitutes ‘forthwith’. Is there a time line associated with that? What does the minister associate the word ‘forthwith’ with in his mind? Does it mean tomorrow, immediately, 10 days or a week? I am not suggesting that law enforcement agencies are going to be hanging on to this information in an inappropriate way, but I would not mind a stipulation of what the minister’s understanding of that terminology is. Given that I have asked that of others, I may as well ask it of the minister.
The TEMPORARY CHAIRMAN (Senator Murray)—Senator Stott Despoja, before you speak, I should indicate to you that this amendment of yours refers to section 46B. An earlier amendment relating to section 46B was not agreed to and therefore this amendment probably should fall away. By all means, pursue questions if you wish. I would suggest that you might want to withdraw the amendment.

Senator STOTT DESPOJA (South Australia) (12.53 pm)—I was conscious of that and I am happy to withdraw the amendment. I think the questions were still relevant; they were not necessarily specific to that amendment. In fact, I always get nervous when the minister says something I have asked is a good question and then I look to you, Minister, for a specific answer to my question. I am glad you acknowledge that forthwith is an interesting question, but I think there is an issue in relation to stipulation of material. Having said that, I seek leave to withdraw amendment (27) on sheet 4869.

Leave granted.

Senator STOTT DESPOJA (South Australia) (12.54 pm)—I think we have a similarity here with an opposition amendment but I will move amendment (28) standing in my name on behalf of the Democrats:

(28) Schedule 2, page 63 (after line 30), at the end of the Schedule, add:

13 After section 60
Insert:

60A Dealing with information obtained under a section 46B warrant
(1) The chief officer of a law enforcement agency:
(a) must ensure that every record or report comprising communications obtained in accordance with a warrant under section 46B is kept in a secure place that is not accessible to people who are not entitled to deal with the record or report; and
(b) must cause to be destroyed any record or report referred to in paragraph (a):
(i) as soon as practicable after the making of the record or report if the chief officer is satisfied that no civil or criminal proceeding to which the material contained in the record or report relates has been, or is likely to be, commenced; and
(ii) within the period of 5 years after the making of the record or report, and within each period of 5 years thereafter, unless, before the end of each 5-year period, the chief officer is satisfied that, in relation to the material contained in the record or report of a matter, civil or criminal proceedings have been, or are likely to be, commenced and certifies to that effect.

(2) Subsection (1) does not apply to a record or report that is received into evidence in legal proceedings or disciplinary proceedings.

This amendment moves to make the destruction provisions in regard to B-party warrants essentially mirror those provisions that are contained within the Surveillance Devices Act. The current provisions only require that material be destroyed when the Chief Officer gets around to it, and I thought it might be more appropriate. I think this arises, as my colleagues may recall, from our debate and discussion in the committee. I might just check my evidence but I think the terminology ‘turns his mind to it’ was used. I think the Surveillance Devices Act, because of a better threshold, would be a better example and therefore more appropriately we should enshrine those provisions into this bill.
Senator LUDWIG (Queensland) (12.55 pm)—We do not support it. We think that if you read amendment (28) after section 60 and 60A, which then refers back to section 46B, I think 46B is not a matter that got up. In any event, for what it is worth, if you have got a question then perhaps you could deal with that. Mine was (20) and it failed. I think at that point it was similar to yours. There is not much point in re-running it.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.55 pm)—I think the arguments that I outlined previously are much the same. I will not go over them. The government is opposed to (28), and I suppose that is no surprise to Senator Stott Despoja.

Question negatived.

Senator MILNE (Tasmania) (12.57 pm)—The Greens oppose schedule 2 in the following terms:

(3) Schedule 2, page 62 (line 2) to page 63 (line 30), TO BE OPPOSED.

It was in relation to the extent to which, if there is any inconsistency between this act and Australia’s obligations under international treaties, including the International Covenant on Civil and Political Rights, Australia’s obligations under those treaties prevail and override the operation of this act. That was to be inserted together with:

(2) Nothing in this Act authorises the interception of communications:
(a) of a person unless the person is suspected of engaging in the planning of, or other involvement in, terrorist acts or murder;
(b) where those communications contain information which is:
(i) the subject of legal professional privilege; or
(ii) derived from information that is the subject of legal professional privilege.
(c) where those communications contain information:
(i) the subject of doctor-patient confidential medical communications; or
(ii) derived from information that is the subject of doctor-patient confidential medical communications.
(d) of Federal or State Members of Parliament

The Greens are totally opposed to schedule 2 as it has been amended to date and will not be supporting it because it does not concur with those sentiments.

Senator STOTT DESPOJA (South Australia) (12.58 pm)—If you thought that my amendments were groundhog day, I think, through you, Chair, to Senator Milne, the effect of the amendment voted on previously—the amendment moved by Senator Ludwig and me and I think divided on at that period to save the time of the Senate—dealt with the issue of B-party interception. If I am wrong, someone correct me, but that effectively sought to do the same thing, which is remove the operation of B-party warrants under this legislation. We have probably covered some of that in the absence of safeguards and protections that were required and our attempts on the crossbenches to improve that particular schedule in the bill. In the absence of that, we are all voting against the inclusion of the schedule in its current form. I have addressed those issues. I am not sure how we proceed, but I think that the views of most parties in this place are clear on this issue. If the Greens want to pursue this, I will certainly be supporting it on behalf of the Australian Democrats.

The TEMPORARY CHAIRMAN (Senator Murray)—If I can clarify for you, Senator Stott Despoja; the question has not been previously put that the entire schedule be opposed.

Senator MILNE (Tasmania) (1.00 pm)—I think there is some confusion here about what was attempted earlier in this debate. That is why I think that if there are going to
be arrangements made privately they should include all parties involved in debating this bill. I found it extraordinary to come in here and divide on whether schedule 2 should stand as part of the bill and then come back to talk about amendments to schedule 2. Effectively, you are saying we will have two divisions. We will have a division on schedule 2 as it stands, then we will move to amend schedule 2 and then we will have another division on schedule 2 further to those amendments. Clearly, the intention was to have the division before we had the debate. I do not approve of that way of proceeding with a bill of this kind. I do not appreciate the remarks made in the meantime. I was not party to the idea of dividing on a schedule before the amendments to the schedule had been discussed.

I take this opportunity to say that the Greens most certainly do not support the B-party interceptions that are being discussed, for all the reasons that I mentioned a moment ago and that Senator Brown talked about in the second reading debate on this bill. We think they go way too far in overriding privacy matters and fundamental freedoms and, in fact, the International Covenant on Civil and Political Rights. On that basis, I am very happy to move that schedule 2, as amended, be agreed to. Because of the process, I will be moving for a division as well.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.02 pm)—Firstly, I will advise the committee that I have some answers to Senator Milne’s questions. It is pertinent that I raise these now, at the point of the Greens’ proposal being discussed in the committee. Senator Milne asked whether it was white-collar crime that attracted a penalty of seven years or more. It clearly is, and there are a number of offences. Senator Milne asked also whether ASIC or the Australian Taxation Office could use B-party warrants to investigate white-collar crime. I point out that the interception powers, including B-party warrants, are strictly limited to police, anticorruption and national security agencies. As such, that does not apply to ASIC or the Australian Taxation Office. That is quite clear. White-collar crimes that are subject to the interception regime would be such things as major fraud and tax evasion. They are limited to the agencies of police, anticorruption and national security that I have mentioned. I think the issues that Senator Milne raised are not really of the concern that was indicated.

Senator Milne also asked: does this apply to members of parliament? Clearly, it does. All interception warrants apply to members of parliament. I make no apology for that. They should. The law and the investigative tools at the disposal of our law enforcement agencies across Australia should be able to be used in the investigation of all Australians. We made this very clear yesterday. We do not believe that politicians should be exempt. What I do say is that the courts can determine whether any evidence garnered from those interception warrants and which is the subject of court proceedings is admissible or not. In particular, I point to section 16 of the Parliamentary Privileges Act, which has specific relevance to parliamentary privilege. I point to O’Chee’s case, which went on appeal and which I think is one of the seminal cases on parliamentary privilege and the admissibility or otherwise of evidence in proceedings before a court. But that is for the court to determine.

When you are investigating an offence, all Australians are equal before the law and all Australians should be subject to the same powers of investigation without exception. We totally reject the idea that politicians should be in any way exempt from this regime. I think that covers the questions that I was asked by Senator Milne. In relation to
this proposal, we believe that the B-party warrant regime is a very important part of
the bill and we would oppose any moves to delete it.

Senator LUDWIG (Queensland) (1.05
pm)—Labor have already moved to oppose
the schedule. Our position on schedule 2,
concerning B-party warrants, has been stated
time and again. It is quite clear. I am happy
to support this amendment. The Greens can
move it. I do not have any difficulty with that
at all. It is quite proper and in order. It reiter-
ates our position that we oppose the position
that the government has come to on B-party
warrants. I will make the plug again that it
would be much better if they picked up the
committee recommendations.

Senator STOTT DESPOJA (South Aus-
tralia) (1.06 pm)—I think I have made the
Democrat position clear on the schedule in
its current form. Because of the time line of
this debate we are dealing with this proposal
to knock out schedule 2 after a similar
amendment that obviously was moved at a
different point in time. Since that point, some
improvements have been made but there are
still not sufficient safeguards built into the
legislation to make it acceptable to the Aus-
tralian Democrats. Once again, I put on re-
cord that we are supporting this amendment
and that we attempted to have a comparable
effect at an earlier hour.

Senator MILNE (Tasmania) (1.06 pm)—
I rise in relation to the matter the minister
just addressed. There was no suggestion
whatsoever from the Australian Greens that
federal or state members of parliament
should be exempt under the law from the
investigation of crimes. The issue that I was
referring to is whether this B-party intercep-
tion could be used by a government party to
snoop on the affairs of other members of
federal and state parliaments. That is the
point at issue here. It is not about avoiding
appropriate criminal prosecution or investi-
gation.

I agree that everybody should be equal
under the law in relation to that matter and
that any member of state or federal parlia-
ment involved in criminal activity ought to
be appropriately investigated. The issue is to
what extent members of parliament are able
to be satisfied that the government of the day
will not use their capacity for this third-party
interception to snoop on other members of
parliament and their activities. That is what I
am asking the minister: what are the guaran-
tees that you will not use this legislation,
under the guise of security, to invade the pri-
vacy of members of parliament who may, by
accident, talk to somebody who might be
under investigation in relation to any of these
matters?

I would like some assurance from the
minister that the government will not, in any
way, use this legislation to inappropriately
invade the privacy of members of parliament
in any other jurisdiction or political party.

Senator ELLISON (Western Australia—
Minister for Justice and Customs) (1.08
pm)—Senator Milne’s question does deserve
a response, because I can guarantee that this
bill is all about the investigation of serious
criminal offences and threats to national se-
curity. It is not in any way intended to give
law enforcement or other authorities a
mechanism to unlawfully investigate mem-
bers of parliament.

There are stringent conditions attached to
the issuing of these warrants, and they relate
to the outlining of the serious criminal of-
fence which is being investigated. If there is
a serious criminal offence alleged and it is
being investigated, then of course the law
must take its course. We believe that those
protections are in place and will certainly
protect any untoward attempt to abuse this
warrant process.
Senator Milne says that the Greens did not want to exempt politicians. I would remind her of the amendment moved yesterday by Senator Brown, which specifically referred to exempting federal or state members of parliament from the interception regime of this bill. That was moved yesterday by Senator Brown and, happily, it was defeated.

The TEMPORARY CHAIRMAN (Senator Murray)—The chamber is dealing with the Australian Greens amendment (3) on sheet 4889, which seeks to oppose schedule 2 as amended. The question is that schedule 2, as amended, be agreed to.

The committee divided. [1.15 pm]

(The Chairman—Senator JJ Hogg)

Ayes…………… 33
Noes…………… 30
Majority……… 3

AYES

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

NOES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Brown, C.L.
Campbell, G. Crossin, P.M.
Evans, C.V. Forsshaw, M.G.
Hogg, J.J. Hurley, A.
Hutchins, S.P. Kirk, L.
Lundy, K.A. Marshall, G.
McEwen, A. McLucas, J.E.

Milne, C. Moore, C.
Murray, A.J.M. Nettle, K.
O’Brien, K.W.K. Polley, H.
Ray, R.F. Sherry, N.J.
Siewert, R. Stephens, U.
Sterle, G. Stott Despoja, N.
Webber, R. * Wortley, D.

PAIRS

Ferguson, A.B. Faulkner, J.P.
Joyce, B. Carr, K.J.
Minchin, N.H. Conroy, S.M.
Santoro, S. Ludwig, J.W.
Trood, R. Wong, P.

* denotes teller

Senator Bob Brown did not vote, to compensate for the vacancy caused by the resignation of Senator Hill.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (1.18 pm)—I move Democrat amendment (30) on sheet 4869, which opposes schedule 3 in the following terms:

(30) Schedule 3, page 64 (line 2), TO BE OPPOSED.

This item is in relation to equipment based interception. This is an area that is still surrounded by uncertainties and confusion, as I think most of those who were engaged in the committee deliberations would understand. I note that earlier today when the minister was talking about the Blunn report, he used it as the motivator and the basis for this legislation. But, at the same time, when we came up with areas where perhaps the Blunn report recommendations were not followed, I think the minister at one stage talked about not ‘slavishly’ following a particular report, in this instance, the Blunn report. I know I asked the minister today where Blunn recommended equipment based warrants. His response was to refer to the quote in the report where Blunn refers to the unique identifiers.

The Australian Democrats believe that we should go back to the drawing board on this
one. There is the review process and other opportunities for the government to analyse the effectiveness of equipment based warrants. We know that even some of the best minds dealing with technology in Australia today were unable to understand how these warrants would work or, indeed, if they would work at all. We heard evidence from Electronic Frontiers Australia, who were confused as to how the warrants would operate. I note that the Blunn report recommended—and I know the minister used this quote as well—that:

... priority be given to developing a unique and indelible identifier of the source of telecommunications and therefore as a basis of access.

We happen to believe that the government has actually moved away from the recommendation of the expert reports which it commissioned. As a consequence, it has introduced a piece of legislation and an aspect to it, and some groups, and I suggest some people in this place, cannot work out the scope of its operation. I do not believe the Blunn report, the motivator for introducing this legislation—and there are some necessary updates to the telecommunications interception law—specifically recommended the introduction of equipment based warrants. We are very concerned about their technological application—whether they will actually work. We are concerned about the fact that the government and some agencies do not seem to have worked it out either. Therefore, we suggest that the government removes this schedule from the legislation and considers, during its review process or over the next weeks and months, a better way of implementing the intent of the equipment based warrants.

I have difficulty finding any evidence that supports the equipment based interception warrants. I think in particular the evidence provided by the EFA should be referred to. In their submission they state:

This proposal appears to have an inappropriately and unjustifiably high potential to result in interception of communications of persons who are not suspects (i.e. are not named in the warrant) because, among other things, the types of device numbers proposed to be used do not necessarily uniquely identify a particular device.

I asked the Deputy Privacy Commissioner, Mr Timothy Pilgrim, about a comment in his written submission which states:

The Office has not been able to fully determine the limits to the scope of the operation of Schedule 3 ... Mr Pilgrim said:

... it is an issue that we have been grappling with and, given our time to be able to devote to issues such as this, have not been able to fully explore ... What we are not able to grapple with—or have not had time to grapple with—is how that might be broadly applied in various scenarios.

That is in relation to equipment based warrants and the scope of the operation of that particular schedule.

We note again for the record that Blunn did not recommend the introduction of equipment based warrants. In fact, discussion in that report—and it is exemplified by the quote that both the minister and I have used—highlights the difficulties of accurately identifying a person through the use of international mobile service identifiers or such similar identification numbers. Again, the Democrats believe the operation of schedule 3 in its current form is not worked out and not tenable. We believe that at a minimum it needs to be referred for further discussion. The intent of this amendment is to ensure that equipment based warrants are not introduced and are not able to operate until we have more information and certainly more safeguards.

Senator LUDWIG (Queensland) (1.24 pm)—Labor does not support the position that Senate Stott Despoja is putting in respect of this amendment. We think equipment...
based interception warrants will be an effective tool to assist with the investigation of criminal activity. It escaped me originally when we were looking at this particular area during the committee process, but it became plain, that the legislation provides that they can use them where there is a unique identifier. My understanding is that, if there is not a unique identifier, they cannot use them, so the confusion is removed. We were operating at that time under a misunderstanding of how the provision would work. Blunn at 3.2.5 says that of course there should be work done to develop a unique identifier so that there are not multiple identifiers. He then said in the text that people who use— I am summarising—multiple SIMs and multiple handsets can and do evade the law in their criminal activities and there should be a way of dealing with that.

This provision seeks to do that. Whilst investigators can identify a unique number, they cannot pick up all circumstances. There will be circumstances they miss where there is more than one identifier. Therefore, I suspect they will also be supporting work and research into developing a unique identifier. In the interim this provision deserves support. It will fight crime. It will be an effective tool for investigators to use in this area, especially against criminals who are intent on evading law enforcement agencies by using multiple handsets, multiple SIMs and other sophisticated technologies in their criminal pursuits.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.26 pm)—The government is opposed to this amendment. In relation to the use of equipment, it is obvious that times are changing and that the environment we work in involves high technology. The Blunn report did allude to the use of equipment intercepts and equipment warrants. That was touched on in the answer I gave earlier to Senator Stott Despoja. I think to ignore this fact would be negligent in the circumstances. We use a warrant for intercepting telephone conversations. We have been doing that for many years, in quite appropriate circumstances. We now have to expand this in the modern day environment in which we find ourselves to meet modern technological and IT demands.

This is a very serious bill. It does have serious measures—that is not denied. But it is, after all, dealing with serious crime in this country and the threat of terrorism, which are in themselves some of the most serious issues facing modern Australia. If we are not up to the task and we do not provide these measures for our law enforcement and intelligence agencies then we will fail. I think the community would expect us to be doing this.

We have the safeguards, which I have mentioned, in the legislation, and we will continue to monitor this. Earlier there was some suggestion that law enforcement may abuse its position. We have introduced just this week legislation for an anticorruption law enforcement integrity commissioner and commission to back him or her up in this task to ensure that the office of law enforcement is not abused. I can understand the concerns that Senator Stott Despoja has expressed, but the government believes that if it were not to continue on this path in relation to matching emerging technologies it would be negligent.

Senator NETTLE (New South Wales) (1.29 pm)—I just indicate that the Australian Greens are supporting this amendment because it is identical to one that was moved in the name of the Australian Greens.

Senator STOTT DESPOJA (South Australia) (1.29 pm)—I wish to briefly put on record on behalf of all the Democrats, given the comments that the minister has just made in relation to ensuring that there are checks and balances and in particular an external
authority dealing with issues of corruption and safeguards, that it has long been a strong policy position of the Australian Democrats to support some kind of independent arbiter, if you like, in the form of a public interest monitor. I want to put this back into the debate for today as something that we hope the government will consider when dealing with reviews and assessments of this legislation and particularly the issuing of warrants generally.

We are all aware of the establishment of a public interest monitor in Queensland. I think that occurred in 2000. Over the years, the Democrats have put forward amendments to security legislation, the terrorism act, the suppression of the financing of terrorism, border security legislation and telecommunications interception legislation. We have repeatedly brought up the issue and sought to amend legislation to reflect public interest through the establishment of a public interest monitor that would in some way test the validity of applications and ensure that some third party provides an independent assessment for the Australian people. We believe that public interest is a huge factor in all legislation that we debate, but there are public interest elements in the bill before us today, particularly because of its impact on privacy.

We are strong supporters of a public interest monitor and we hope that the Attorney-General and, indeed, the Minister for Justice and Customs will consider the establishment of such a mechanism. It provides accountability mechanisms for Commonwealth law enforcement bodies. We believe that this would be a worthwhile investment that is effective and practical. The experience in Queensland suggests that this is the case. We believe that, given the design of our legal system, it reflects the view that justice is best served by having proceedings in which all interested parties are represented before an independent arbiter. It has been of concern to us for a long time that there is not that sort of external body.

People will reflect on the committee proceedings on this bill specifically. Submissions put forward the notion of a public interest monitor. Indeed, if I remember correctly, the submission from Electronic Frontiers Australia, when dealing with notification in relation to warrants, dealt with a couple of options, including one suggesting that kind of public interest monitor and/or ensuring notification in relation to warrants. I will not reflect on a vote of the Senate because I have already tried to ensure that people are notified of warrants being issued against them, particularly when the information that is obtained is not material to the investigation or it will not prejudice the investigation. I have dealt with that issue of notification, so I will not talk on that any longer. I want to get on record the strong support of the Australian Democrats over the years for, in the context of this debate, a position that may not be the same as but would be comparable to a public interest monitor. In relation to equipment based warrants, the Senate is aware of the views of the Democrats. I commend amendment (30) to the Senate.

Question put:
That schedule 3 stand as printed.

The committee divided. [1.37 pm]

(The Chairman—Senator JJ Hogg)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>46</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noes</td>
<td>7</td>
</tr>
<tr>
<td>Majority</td>
<td>39</td>
</tr>
</tbody>
</table>

AYES

Adams, J.
Bishop, T.M.
Calvert, P.H.
Chapman, H.G.P.
Eggleston, A.
Ferris, J.M.
 Fiffield, M.P.
Hogg, J.J.

Barnett, G.
Brandis, G.H.
Campbell, G.
Colbeck, R.
Ellison, C.M.
Fierravanti-Wells, C.
Forshaw, M.G.
Humphries, G.
Thursday, 30 March 2006

Senator NETTLE (New South Wales) (1.41 pm)—I will not proceed with Australian Greens amendment (4) because that is identical to the one we have just voted on. The Australian Greens oppose schedule 4 in the following terms:

(5) Schedule 4, page 72 (line 2) to page 77 (line 6), TO BE OPPOSED.

It is my understanding Senator Bob Brown has outlined reasons for this amendment previously, so I simply commend it to the Senate.

The TEMPORARY CHAIRMAN (Senator Chapman)—The question is that schedule 4 stand as printed.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.42 pm)—by leave—I move government amendments (18) and (19) on sheet PA337:

(18) Schedule 5, item 35, page 85 (lines 1 to 5), omit the item, substitute:

35 Section 82
Repeal the section.

(19) Schedule 5, page 85 (after line 5), at the end of the Schedule, add:

36 At the end of paragraph 86(1)(a)
Add “and”.

37 After paragraph 86(1)(b)
Insert:

and (ba) is entitled to have full and free access at all reasonable times to the General Register and the Special Register; and

38 Paragraph 86(1)(c)
After “agency”, insert “or the General Register or Special Register”.

39 At the end of section 86
Add:

(3) The Ombudsman’s powers include doing anything incidental or conducive to the performance of any of the Ombudsman’s functions under this Part.

These amendments repeal section 82 and modify section 86 of the Telecommunications (Interception) Act to ensure that the Commonwealth Ombudsman will have access to the warrant register compiled by the Attorney-General’s Department, to fulfil the important oversight functions under the interception regime. These amendments ensure the Commonwealth Ombudsman’s continued ability to have stringent oversight of the use of the interception regime by Commonwealth law enforcement agencies. These are straightforward amendments and I commend them to the committee.

Senator LUDWIG (Queensland) (1.43 pm)—Sometimes you do see sensible amendments from the government. In respect of improving the overall privacy protections, providing the Ombudsman with this oversight is sensible and Labor supports it. I will not go on any longer about that matter. I think it does make the point that this government has failed everywhere else.
Senator STOTT DESPOJA (South Australia) (1.43 pm)—Certainly, the Democrats recognise in particular amendment (18), which makes the provisions regarding the Ombudsman more relevant as the register for warrants will be transferred. Rather than going on about that, I might specifically ask about the government’s response to the recommendation in the Senate committee chair’s report dealing with the extension of the reporting period for the Ombudsman from three to six months. I mentioned that in relevant amendments earlier, but I am wondering if the government can put forward a formal or any kind of response to the committee’s recommendation that that period be increased from three to six months. On the issue of resources, I am wondering if there are any plans by the government to increase the resources available to the Ombudsman so that he can continue to cope with an ever-expanding workload—and, indeed, the requirement now that his reporting period be three months, despite the attempts of the Labor amendments, I believe, to extend that period to six months.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.45 pm)—That is a budgetary consideration, not one which we would include in the bill. Of course, we have said that the recommendations of the Legal and Constitutional Legislation Committee would be taken on board over the ensuing months. Senator Stott Despoja knows that, on budgetary matters, I cannot comment, nor will the government. That is where the situation lies.

Question agreed to.

Senator NETTLE (New South Wales) (1.45 pm)—The Greens oppose schedules 5 and 6 in the following terms:

(6) Schedules 5 and 6, page 78 (line 2) to page 87 (line 4), TO BE OPPOSED.

I understand Senator Brown has put forward the reasons and the rationale for the Greens position on this, so I will simply commend it to the Senate.

Senator LUDWIG (Queensland) (1.46 pm)—With due respect to Senator Nettle, I really worry about this in the sense that it is not sensible to oppose these schedules. These are improvements. The committee did not make any recommendations about these schedules. These schedules were picking up things that needed to be done as general improvements. If this is a general rail against the telecommunications interception, I can understand that, Senator Nettle. But, in this instance, in terms of what the schedules actually do, if you go to the committee’s report it might be helpful. If you want to look at the effect of the schedules you are seeking to take out, going to the background chapters is probably the best way. Schedule 5 is a transfer of functions. Schedule 6 contains provisions which are largely consequential and provide for specific state application where necessary. Obviously I am not going to support your motion relating to the transfer of functions which provides for a change of arrangements concerning the telecommunications interception remote authority connection in a sensible way. I will not say any more about that. They are sensible amendments, and we oppose the Greens position.

Senator STOTT DESPOJA (South Australia) (1.47 pm)—I would not be inclined to support the amendments without some clarification. I do not think Senator Brown put forward the rationale for some of these amendments. As you would note, in the supplementary report the Democrats did not come out opposing the transfer of functions in relation to the Attorney-General’s Department. The argument that was put forward by the department was that there were technological issues. The model was technologically outdated and no longer efficient. I have
no reason not to believe that to be the case. I do not really want to tamper with that proposed transfer at the moment from the existing TIRAC register to the secretary of the Attorney-General’s Department. I am quite happy to investigate or more closely view how operations work in the future, but at this stage I am not inclined to support the amendment.

Part two of amendment (6) seeks to remove schedule 6 of the bill, which introduces sections to allow this act to apply to the Whistleblowers Protection Act of Victoria. I am not sure I am ready to tamper with that, either. Through the chair, I say to Senator Nettle on behalf of the Democrats that I am afraid that I will not be supporting these amendments.

The TEMPORARY CHAIRMAN (Senator Chapman)—I will put the two questions separately. The first question is that schedule 5, as amended, be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The second question is that schedule 6 stand as printed.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.50 pm)—I move:

That this bill be now read a third time.

Senator LUDWIG (Queensland) (1.50 pm)—I will only speak for a couple of minutes in respect of this. The position we have now got to is that the government has voted down sensible amendments which came out of the committee process. It voted against its own backbench, voted against sensible amendments and voted against the committee’s process that provided for sensible amendments to be dealt with—in particular, sensible measures that would provide protection for B-party interception. It is recognised that the majority of this bill—schedules 1, 3, 4, 5 and 6—has merit and will provide an improved regime compared to the point where we have come from. There is no argument about that.

There is argument about the detail. We do not think you have got that detail or that balance right, and we moved amendments to give effect to that. But, in terms of the overall improvement to privacy, this bill achieves that—except for B-party intercepts. We made that point during the committee stage, during the second reading debate and in the Senate Legal and Constitutional Legislation Committee. The government’s own backbenchers made the point that this bill does not strike the right balance.

Labor recognises that the bill, taken as a whole, advances privacy. The B-party content of this bill, though, is not time critical and is not subject to the stored communications sunset clause which has caused this bill to be dealt with in great haste—the government cannot hide behind that. Further, the Howard government introduced only yesterday legislation which establishes the Australian Commission for Law Enforcement Integrity as promised some time ago—in fact, it was promised in the last federal budget. We understand that it was introduced yesterday and that the Senate Legal and Constitutional Legislation Committee will have an opportunity to look at it.

The majority of this bill, with the exception of B-party warrants, is reasonable. It is unfortunate that this government has not picked up the amendments that Labor has proposed, safeguards which would have struck the right balance. It really comes
down to a lazy Attorney-General, who has not had the opportunity to look at the recommendations, to bring forward amendments and to argue for them in here. That is why this extended process has occurred: because of a lazy Attorney-General. There is no other way of putting it.

The government could have picked up our recommendations during this debate. They have not. Therefore, they have not struck the right balance. Privacy is not sufficiently protected so far as B-party intercept warrants are concerned. But the whole of the bill should not fail as a consequence of this government’s lazy attitude to dealing with legislation.

Senator STOTT DESPOJA (South Australia) (1.53 pm)—It is clear that based on the numbers this bill will not fail. It will be passed, but I want to put on record very strongly once again the concerns of the Democrats not just about the policy deficiencies in this legislation but about the process—which Senator Ludwig has referred to. There was a majority committee report signed off on by backbenchers from both the major parties, yet it was almost completely ignored in this committee stage of the bill in terms of amending the legislation.

While we acknowledge that we have to readily and appropriately equip our law enforcement agencies to ensure that we have a safe and secure society, we also must have regard for democracy and human rights and, in particular, privacy. In this bill, we do not strike the proportioned balance that is required. The attempts by the Democrats to build safeguards and some privacy protection provisions into this legislation have failed.

I am really disappointed about the fact that we have had a truncated debate. I do not care what the government or others suggest; it is really only in the last few days or weeks that we have dealt with this legislation. Indeed, I acknowledge that it is a carry on from other bills that have been debated and examined. We all acknowledge the importance of the Blunn report. But this legislation deserved more time, and it certainly deserved more amendment.

The Democrats attempted to deal with, for example: the differential thresholds; the fact that we need to require more information from agencies that are issuing, for example, a stored communications warrant; and the fact that individuals upon whom a warrant is exercised should be notified so that if they are aggrieved they can access the civil remedies that are available under the legislation—that issue of notification. We are talking about nonsuspects, innocent Australians, who have the right to know if their calls or their communications are being accessed or intercepted.

We attempted to deal with the fact that warrants should not be issued by the AAT but should be authorised by a judge on the Federal Court, and that was not supported; the fact that warrants should be limited to 14 days, not 45 days, and that was not supported; and the fact that an issuing authority should not be able to grant a B-party warrant where that warrant is likely to breach professional privilege. Professional privilege is not secure under this legislation. I am not talking about professional privilege generally; I am talking about legal professional privilege. Our attempt to ensure that that is secure and protected under the legislation unfortunately failed too. Destruction provisions needed to be beefed up; they have not been sufficiently beefed up.

On the issue of equipment based warrants, I acknowledge the comments in the Blunn report but they still do not give an imprimatur to this specific schedule 3, which deals with equipment based warrants. We do not know how they are going to operate. We do
not know exactly how effective they will be. We should have gone back to the drawing board to deal with some of these issues before this legislation was passed.

You have seen attempts in this chamber by the cross-parties to stop schedule 2—which is about B-party warrants, the most controversial aspect of this bill—being passed. You have also seen attempts by the Democrats, and indeed the Greens, to stop schedule 3, which is in relation to equipment based warrants. They have not been successful.

This bill does not have enough privacy protections. It does not have enough safeguards. It should not pass in its current form. I am disappointed that some of the necessary updates to telecommunications interception law have taken place without those safeguards. Some of the recommendations from the Blunn report have to be implemented—we acknowledge that. But the rest of this legislation is not good enough, and our attempts to ensure that it is good enough have, unfortunately, failed.

How ironic it is that we deal with such legislation in the year which, as we were reminded in an address by Justice Kirby, is the centenary of the final exoneration of Alfred Dreyfus, a man wrongly convicted by evidence obtained in secret by security personnel. It is fitting that we acknowledge that centenary. The Democrats do not believe the bill in its current form should pass.

**Senator NETTLE (New South Wales)**

(1.58 pm)—The Australian Greens oppose this legislation. We believe that it is inconsistent with our obligations under the International Convention on Civil and Political Rights. It does not strike the right balance between the need to protect national security and to prevent serious crime and the need to protect individual rights to privacy and to freedom. Our concern is that this bill as a whole sacrifices the latter in the current climate of fear and threat of terrorism.

The definitions in this legislation have been described by legal experts such as Professor George Williams as ‘vague’ and ‘allowing for the potential for government agencies to misuse the power or apply it in an arbitrary manner’. The Law Council have said that this legislation means that people suspected of nothing will be under surveillance. They go on to say that this is the first time ever in Australian history that law enforcement agencies will be given the power to intercept telecommunications of people who are not suspects—inocent people. The Australian Greens oppose this legislation.

Question agreed to.

Bill read a third time.

**QUESTIONS WITHOUT NOTICE**

**Workplace Relations**

**Senator HURLEY** (2.00 pm)—My question is to the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that nearly four million Australian workers can now be sacked unfairly for any reason or for no reason at all and will not be able to do anything about it? Isn’t it also the case that all Australian workers—not just those in businesses with fewer than 100 employees—will lose their unfair dismissal protection if they are dismissed for so-called operational reasons? Can the minister confirm that if an employee loses their job for so-called operational reasons they may not be entitled to a redundancy payment? Doesn’t this show that the government has torn up the job security and protections of all Australian workers?

**Senator ABETZ**—Very briefly, in relation to job security for our fellow Australians, can I just remind the honourable senator that when her government had control over the levers of the economy over one mil-
lion of our fellow Australians were on the social scrapheap of unemployment. Today, from a high of over 10 per cent, we have halved that figure. The Australians who have benefited from our policies fully understand that the reason they have a job and job security today is because of our policies.

In relation to the specifics of the matter raised by the honourable senator, can I just remind her that every week 40,000 people change their jobs in this country; 12,000 of them do so on an involuntary basis. That was the way it was under the regime that Mr Beazley embraced. When the Australian Labor Party and the ACTU trot out the odd example—as they have done and will continue to do—of people being dismissed, it is just part and parcel of those 12,000 who were being dismissed in any event on a weekly basis for a whole range of reasons—such as because business was not going well, because people were closing down their businesses or because people were unsatisfactory in the workplace, thus prejudicing not only the workplace but also the other employees’ job security in that workplace. Sometimes these tough decisions have to be made.

In relation to job security, I would invite those opposite to also think and talk about jobs growth. There is no doubt, from survey after survey and study after study, that if we got rid of these unfair dismissal laws we would see a growth in employment. That is most welcomed by those who still want to enter the workforce and are unable to do so—or were unable to do so because of the jobs block of the unfair dismissal laws.

Senator HURLEY—Mr President, I would like to ask a supplementary question. Why does the government believe Australian workers should not be entitled to redundancy pay? Is the minister aware that redundancy pay has been a general entitlement for all Australian workers since 1984? Does the minister know that basic redundancy pay was established to give workers and their families some financial security after losing their job while they looked for other work? Why is the government now taking this basic right away from Australian workers and their families?

Senator ABETZ—As the honourable senator well knows, Work Choices legislated for the first time in a number of areas to in fact protect workers. What I would invite honourable senators and every Australian to do is look at the totality of the Work Choices package. If you look at the totality of the Work Choices package, you will see and understand why it is such a good package. This is the same sort of stunt that the Labor opposition used to do to my good colleague Senator Kemp in relation to the GST. They would try to pick out one little area of the tax reform and then try to blow it up, and try to distract people from the main game. Of course, even the Labor Party have now rolled over on roll-back and accepted GST. They ought to do the same on Work Choices.

Workplace Relations

Senator FERRIS (2.05 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Has the minister seen comments today which condone workplace sabotage? What is the government’s response to such comments?

Senator ABETZ—Unfortunately, I can confirm to Senator Ferris and the Senate that I am aware of these most concerning comments made this morning—comments that condone the use of workplace sabotage as a method of protest. Let me quote from news.com.au online today:

I worked for a long time in this country in the ‘50s and ‘60s and there was a lot of sabotage that went on in the workplace ... What concerns me is the sort of relationship that’s now been estab-
lished in the workplace is going to encourage that sabotage to take place again. I don't mean in a serious sense, but little things, like a screw being left out ... I don't advocate it. I just accept reality.

'I don't advocate it; I just accept reality,' said Senator George Campbell today. No amount of weasel words from those opposite can change the clear import of those words. With a wink wink, nudge nudge, Senator George Campbell is accepting workplace sabotage. Need I point out to honourable senators opposite the serious consequences of such action? We are talking about action that potentially puts somebody's life at risk by deliberately leaving a screw out of an item, and those opposite think it is a matter of hilarity. Mr President, you have really got to ask and wonder where the screw has been left out—and I think we know where it has been.

Free speech and the right to protest against laws you do not agree with is a fundamental right in this country. We support it, and we hold it dear. Yes, we do understand that there are some in the community opposed to Work Choices but, unlike Senator George Campbell, the government do not condone potentially deadly lawlessness as a method of protest. We on this side remember too well the violent demonstration in 1996 against our so-called policy before we had even introduced our first budget, Labor and the unions were there demonstrating against our budget, causing tens of thousands of dollars worth of damage all in the name, as Senator Ferris would recall, of allegedly protecting the battlers. The history is that, since that demonstration 10 years ago, those battlers have continued to support the Howard government, because they know who the true friend of the battler is. The true friend of the battler is not somebody who will deliberately leave a screw out of a product with potentially lethal consequences for one of his or her fellow citizens. This foolhardy intervention by Senator George Campbell in this current debate does provide Mr Beazley with yet another opportunity to show some leadership by repudiating the comments of Senator George Campbell and by repudiating industrial sabotage. We will wait to see Mr Beazley's response.

Workplace Relations: Unfair Dismissal

Senator CAROL BROWN (2.09 pm)— My question is to the Minister representing the Minister for Employment and Workplace Relations, Senator Abetz. I refer the minister to a question asked yesterday about employers who sack their employees and then rehire them on lower wages. Is the minister aware of the case of three employees who were sacked by the Melbourne construction firm InstallEx but then offered their old jobs back on a lower pay and with casual conditions? Weren't these workers then left with the choice of taking their old job back but now as a casual worker doing the same thing but on $20,000 less a year each or becoming unemployed. Isn't a system like that simply unfair and unAustralian?

Senator ABETZ—I understand from news reports that the three employees of InstallEx have been made redundant because there is not enough work for them. Apparently, they have been offered work on a casual basis under individual contracts. It is a fact that, under Work Choices, an employee who has been terminated for genuine operational reasons, is excluded from making an unfair dismissal claim even if they work for a business that employs more than 100 employees. However, an employer cannot unlawfully discriminate against an employee when terminating employment on genuine operational grounds. An employee who is dismissed for a combination of operational and discriminatory reasons—for example, because of race or age—is still able to obtain remedies for unlawful termination of—

Opposition senators interjecting—
Senator ABETZ—Why is it that the Labor Party do not want to hear about the benefits afforded to the workers of this country? I am advised that a senior inspector from the Office of Workplace Services undertook a site visit of InstallEx yesterday and found no evidence that InstallEx has failed to abide by its industrial obligations. I am also advised that the redundancies are genuine and that redundancy certificates for all three workers have been finalised and are being lodged with the appropriate fund to ensure the workers receive their lawful entitlements without undue delay. With regard to the three redundant workers, I understand that two of the three are already working for a separate company, InstallEx Vic. Pty Ltd, which operates in the residential building industry.

What we have here is a classic case where we have built in flexibility. Without this flexibility, they would be without a job. That was the Labor Party remedy, and that is why we had one million fellow Australians unemployed under their regime. They still do not get it. People would prefer a job rather than being on the social scrapheap of unemployment.

Opposition senators interjecting—

Senator ABETZ—You resided over one million of our fellow Australians in that disgraceful position. We said, ‘That is not good enough.’ We have reduced it by half, but we are saying that it still is not good enough. We have to do more. We want to do more. We will do more. As a result, people will have greater job opportunities with greater wages.

Senator CAROL BROWN—Mr President, I ask a supplementary question. Can the minister confirm that workers sacked and then offered their jobs back on lower wages will not be able to take action for unlawful dismissal and have no rights to dispute their dismissal? Can the minister also explain why the government thinks it is okay for employers to sack workers one day and rehire them to do the same job but on lower wages and poorer conditions the very next day?

Senator ABETZ—with great respect, this is the embarrassing situation opposition senators get themselves into when they have a pre-prepared supplementary question without listening to the detail of the answer to the primary question.

Cyclone Larry

Senator TROOD (2.14 pm)—My question is to the Minister for Arts and Sports, Senator Kemp, in his capacity representing the Minister for Families, Community Services and Indigenous Affairs. Will the minister inform the Senate on the Australian government’s assistance provided to those in my state of Queensland affected by Cyclone Larry?

Senator KEMP—I thank Senator Trood for his question. Of course we recognise his great concern for many of his constituents in relation to the cyclone. We are all aware that, on both sides of this country, communities have been battered or are about to be hit by some of the strongest cyclones ever recorded. There has been extensive damage, as many senators will know, reported throughout northern Queensland in the aftermath of Cyclone Larry. The people of northern Western Australia are currently preparing for the worst as Cyclone Glenda nears the coast.

In northern Queensland, towns and the surrounding rural areas were severely affected by Cyclone Larry, which dumped record levels of rain and caused substantial crop and building damage last week. As usual, the resilience of Australians in times of need has come through. With the help and support of volunteers and our emergency services, people in the region have begun the task of cleaning up and getting their lives back to normal wherever possible. The Australian government, along with the Queen-
sland government and local governments in the region, will be providing the support necessary to help people get back on their feet.

Earlier this week the Australian government announced a number of important measures. Firstly, there are ex gratia payments of $1,000 per adult and $400 per child for people whose family home was destroyed or made uninhabitable. Secondly, we are contributing $1.1 million to the Cyclone Larry relief appeal, matching a Queensland government contribution. We advanced $40 million to Queensland under the natural disaster relief arrangements. We will also be providing income support for farmers and small business operators. In addition we will provide a one-off, tax-free grant of $10,000 for small businesses and farmers affected by the cyclone to help them restock, replant, re-establish and clean up. Loans of up to $200,000 will be made available to affected farmers and small businesses. We will also reimburse excise paid on diesel or petrol fuel used to generate electricity until normal services are restored.

At the moment, recovery and relief efforts are focused on addressing the short-term needs of the communities impacted by tropical Cyclone Larry. The Prime Minister is announcing additional measures today to assist with the relief effort. I also draw attention to Centrelink, which is playing a significant role in the relief effort, with around 120 staff on the ground providing support to those in need. It is worth recording that, to date, Centrelink has processed around 19,000 claims and will have dedicated staff working to ensure claims are processed quickly. Re-construction will be a long, complex process, but we are committed to supporting the people of northern Queensland as they work to rebuild their homes and their communities.

The Australian government is monitoring the path of Cyclone Glenda, which is currently tracking parallel to the north-west coast of Western Australia. Emergency Management Australia is in regular contact with the WA emergency management authority about the progress of this cyclone. I am sure I speak for all Australians in hoping that the damage caused by Cyclone Glenda is minimal. However, as always, we must prepare for the worst. The Australian government stands ready to provide any assistance which may be necessary for those affected by the latest cyclone threat.

Workplace Relations

Senator WONG (2.18 pm)—My question is to Senator Abetz, the Minister representing the Minister for Employment and Workplace Relations. Can the minister confirm that the new Howard government Workplace Relations Act will stand at 1,388 pages, plus 566 pages of explanatory memorandum and a further 593 pages of regulations? Minister, doesn’t that total over 2,500 pages of industrial legislation, regulations and explanations? Can the minister explain just how employers and employees are expected to understand their rights and responsibilities under these changes? Doesn’t this show that the government’s so-called simple, single system is really nothing more than a complex dog’s breakfast?

Senator ABETZ—I only went to a public school but I trust my maths is good enough, unlike the senator opposite. On my calculations, the number of pages to which the honourable senator has referred will be not even the size of one award. So, instead of people having to look through mountains of awards, the system has been simplified. We will now have a situation where, instead of having to look through these awards that have turned into books, people can now go to one central place to determine the workplace relations of
this country in a unitary system. If you were to stack up all the state legislation on top of each other and then all the awards on top of that, my view would be that the chances are you would be hitting the top of the flagpole on top of this place.

**Senator WONG**—Mr President, I ask a supplementary question. Can the minister explain just how the government is going to ensure that employees and employers understand their rights under the 2½ thousand pages of industrial legislation, regulations and explanations? Will it be using the 5.9 million WorkChoices booklets which are still being housed at Commonwealth expense, at $8,000 a month? Minister, isn’t it the case that all of this complexity, regulation and bureaucracy results from the Howard government’s blinkered and ideological obsession with stripping away workers’ rights? Isn’t the real agenda removing the rights Australian workers have enjoyed for 100 years?

**Senator ABETZ**—I suggest to Senator Wong that after question time she goes straight to the Whip’s office and apologises for not using the word ‘extreme’ in the supplementary question. I think she used every description other than extreme, which seems to have become a necessity in opposition questions. What I think Senator Wong is suggesting is another wave of government advertising. I will pass that on to the Prime Minister—that Senator Wong and the Labor Party support another wave of advertising in this area. But can I suggest to Senator Wong that the award system was never explained by education campaigns to the workers of this country who had to wade through hundreds of pages and were never given educational time to have all these things explained to them. I will take Senator Wong’s helpful suggestion to the Prime Minister.

**Goods and Services Tax**

**Senator PAYNE** (2.22 pm)—My question is to the Minister for Finance and Administration, representing the Treasurer. Will the minister inform the Senate of the benefits to state governments, like my state of New South Wales, from the GST? Will the minister further update the Senate on progress being made by state and territory governments in abolishing the layers of indirect taxes that the GST was in fact meant to replace?

**Senator MINCHIN**—I thank Senator Payne for that very timely question. One of the major benefits of tax reforms introduced by this government and bitterly opposed, may I say, by those opposite is that for the first time in this federation it provided our state governments with a growth tax. For decades we have had the states and territories under both Labor and Liberal administrations complaining that they were too reliant on a range of inefficient indirect taxes and stamp duties which did not grow in line with the economy or with the state’s expenditure needs.

The goods and services tax that we introduced changed all of that. All states and territories now receive more from the GST than they would have if we had persisted with Labor’s system of inefficient state taxes and Commonwealth grants paid for by income tax and company tax. New South Wales, for example, which is Senator Payne’s state, has received $44 billion in GST revenues since the year 2000. On current policy settings it will receive a GST windfall gain of $2½ billion over the next four financial years. That is $2½ billion more than they would have got under the old system.

When the GST was implemented, it was agreed with all of the states that a range of stamp duties and other minor taxes would be abolished, including, of course, the Carr Labor government’s notorious bed tax. It was
also agreed in the intergovernmental agreements that a range of other duties, like mortgage duty and stamp duty on leases and hiring agreements, would be abolished when the state governments had sufficient revenue from the GST to do so. We know and it is perfectly clear that the Iemma Labor government in New South Wales clearly has sufficient GST revenue to abolish all of these state taxes, which the Carr Labor government agreed to do, but it is refusing to do so. Not only that; the New South Wales Labor government is the only state Labor government that is refusing to take action to abolish these taxes. I commend the other state Labor governments for doing so and I condemn the New South Wales government for not doing so.

At the same time, the New South Wales government has become the highest taxing state government in this country. The average resident in New South Wales is paying $500 a year more in state taxes than the average resident of Queensland and around $850 more than the average resident of Tasmania. Of course, New South Wales is taxing its citizens twice—once through the GST, and they get all of the GST; and a second time through their refusal to abolish these taxes which the Carr Labor government said it would get rid of back in 1999.

Now Premier Iemma is arguing that he cannot abolish these taxes because of the way the GST revenue is distributed. The system for distributing GST revenue is a system agreed to by the states and among the states. It has applied to Commonwealth grants from the Commonwealth government for decades before the GST was introduced. It is not a new system. It has been in place for decades.

Federal Labor, I think quite appropriately and properly, has been silent on this issue because they know that it is an inherent part of the Australian federation that we retain our well-tested, tried-and-true system of horizontal fiscal equalisation among the states. Contrary to the absurd claims made by Premier Iemma and his Treasurer, the way this system works is that the distribution of GST revenue between states simply reflects the ability of each state to deliver appropriate levels of services influenced by their circumstances. Obviously, states with more dispersed populations receive greater per capita amounts to reflect the difficulties of delivering equivalent levels of health, education and welfare.

As a senator for one of the smaller states with a big geographic spread, I strongly defend this system of fiscal equalisation. I know that all of my colleagues do and I am sure federal Labor does as well. It is, like this chamber, very much part of the federal compact in this country. So the New South Wales Labor government has really put forward an utterly spurious defence of its determination to tax—

**DISTINGUISHED VISITORS**

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from the Islamic Republic of Pakistan, led by the Hon. Chaudhary Amir Hussain, Speaker of the National Assembly. On behalf of all senators, I wish you a very warm welcome to Australia and, in particular, to our Senate. With the concurrence of honourable senators, I propose to invite the speaker to take a seat on the floor of the Senate.

Honourable senators—Hear, hear!

_The Hon. Chaudhary Amir Hussain was seated accordingly._

**QUESTIONS WITHOUT NOTICE**

**Christmas Island Mining**

Senator SIEWERT (2.28 pm)—My question is to the Minister for the Environment and Heritage, Senator Ian Campbell. I...
refer to phosphate mining operations on Christmas Island, which were allowed to continue in 1991 on the clear condition that they would never be allowed to clear more rainforest. Can the minister confirm that the mining company Phosphate Resources Ltd has recently conducted unauthorised clearing within the Christmas Island National Park? If so, what area is involved and what action does the minister intend to take against the company?

Senator IAN CAMPBELL—I have visited Christmas Island. I have in fact looked at the mining operations. Obviously, I have looked very closely at the proposal that is currently before the government to expand those operations. In some respects, those expanded operations would in fact impact on the fantastic rainforest on Christmas Island. As Senator Siewert knows, it is an extraordinary piece of Australian territory and an extraordinary piece of natural heritage for the world. It is something that is deserving of very high levels of protection.

We are very disturbed at any reports of breaches of the conditions that pertain to those phosphate mining operations on Christmas Island. All reports of incidents that impact on the biological, biodiversity and natural heritage values of the island that are subject to the stringent protection of the Environment Protection and Biodiversity Conservation Act will be fully investigated and, where prosecutions are recommended, prosecutions will be made.

Senator SIEWERT—Mr President, I ask a supplementary question. I ask that the minister undertakes to get back to me about the unauthorised clearing. I understand that it would have been done by the same company that is currently seeking approval to expand mining on the island and to overturn the existing moratorium on rainforest clearing on Christmas Island. If the clearing is found to have occurred illegally, would the minister have confidence that this company be trusted to act within conditions imposed on any mining? If so, how can the minister justify this confidence?

Senator IAN CAMPBELL—I am very happy to report back to the Senate and to Senator Siewert because she has displayed an interest in the very short time that she has been here—I was being a little bit cautious there. I do not agree on all things with the Greens but I do share with Senator Siewert a very strong interest in the environment of Christmas Island and other parts to the west of this place. It is a magnificent part of heritage, and I would have thought that if you were a mining company seeking to expand your operations on such a pristine environment as Christmas Island, you would be incredibly cautious about how you impacted on that very important environment. To answer your question, I could have very little confidence in a mining operator that illegally hurt our rainforest. (Time expired)

Skilled Migration

Senator TROETH (2.31 pm)—My question is to the Minister for Immigration and Multicultural Affairs, Senator Vanstone. Will the minister inform the Senate of the valuable work being done by regional certifying bodies to assist the temporary skilled migration program?

Senator VANSTONE—I thank Senator Troeth for her question. Being originally from country Victoria, she will understand the importance of skilled migration into regional areas and have a great interest in it. No doubt Senator Troeth heard Senator McEwen’s question yesterday, and it would have occurred to Senator Troeth that Senator McEwen had no idea about regional certifying bodies—who they are and what they do—and so has very kindly, for the assis-
tance of the Senate, asked this question to-
day. I am grateful to her for that.

The annual regional certifying body con-
ference is, in fact, being held in Cairns today
and tomorrow. The government works in
partnership with what we call RCBs to en-
sure Australia and, in particular, its regions
get the migrants with the skills that are
needed to help business grow and therefore
generate more Australian jobs. The regional
certifying bodies include state government
departments, local councils, statutory au-
thorities and some chambers of commerce
and private bodies. State or territory gov-
ernments endorse the RCBs and act as RCBs
themselves.

These bodies certify visas for Australian
regions for the 457 visa, that is, the tempo-
rary skilled visa; for the Regional Sponsored
Migration Scheme; for the skilled independ-
ent regional visa and, of course, for the new
trade skills training visa. These people are on
the ground, dealing with the local communi-
ties. That is where they live, and they can see
the real skill shortages. We want to help and
support regional employers to fill the jobs
that they need to. The state government en-
dorsed RCBs play a crucial role in ensuring
this happens through the part that they play
in the certification process of those visas.

Some visas have regional concessions,
where the sponsoring employer can demon-
strate that they are appropriate. Sometimes
the salary and skill levels for the regional areas will be a little bit below what is re-
quired in the metropolitan area. But the
RCBs need to certify that these people have
the right skills; that they will be paid the
right amount—never below the award; that
the position cannot reasonably be filled lo-
CALL

Senator TROETH—Mr President, I ask
a supplementary question. I ask the minister
to enlighten the Senate on the important mat-
ters that have been raised in the last few days
which she mentioned in her answer.

Senator VANSTONE—I thank Senator
Troeth for her question. What has happened
is that one of the Queensland government ministers has accused my department of denying a Queensland doctor a permanent visa because his son does not meet the health requirements. It is quite an emotive issue. Senator Wong and others always like to attach themselves to those, and this matter was raised. Senators might like to know that the Queensland government has to date rejected a proposal by my department to allow a health waiver on those sorts of visas, which would allow the doctor to stay.

My department has been consulting with the states and territories on introducing a health waiver for some skilled visas. Without the waiver, the department's hands are tied. The Queensland government stand out as the only government that have thus far said to us that they do not want the waiver at this point because they do not want the Australian government to pay, and if we do not, they do not want them. (Time expired)

Australian Broadcasting Corporation: Funding

Senator WEBBER (2.37 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. Has the minister's attention been drawn to a report today that the KPMG review into the adequacy of ABC funding found that the ABC needs an increase in funding of $125 million above inflation over the next three years if existing services are to be maintained? Isn't the report confirmation that the government has been running down the ABC for a decade? I ask whether the minister will now apologise for misleading the Senate yesterday when she stated: ABC funding has been maintained in real terms for the whole of the time that this government has been responsible for the funding in the ABC ... Can the minister give a commitment to a significant increase in funding for the ABC in the May budget? If not, can the minister identify which ABC services she would like to see cut?

Senator COONAN—I thank Senator Webber for the question. The KPMG review into the adequacy and efficiency of funding for the ABC has been prepared for consideration by the government as part of the budget process. The report does contain large amounts of commercially sensitive information on the ABC's internal operations. As a consequence of it being prepared for the purpose for which I have stated and because of matters that are completely confidential to the ABC, I certainly do not propose to canvass its contents at this time. I am very glad that Senator Webber has raised the issue of funding for the ABC. I will go into what the funding for the ABC is.

Senator Conroy—Apologise for misleading.

Senator COONAN—I have not misled the Senate. The government has maintained the ABC's funding in real terms since 1997.

Senator Conroy interjecting—

Senator COONAN—You might ask why the ABC's funding was maintained in 1996. It was because of the extraordinary debt left by the Labor government which this government had to address when it came into office. The ABC's funding was reduced in the 1996-97 budget because the ABC—like virtually all other government agencies, as we remember only too well—was required to contribute to the whole-of-government budget savings necessitated by the parlous financial situation inherited from the previous Labor government.

The question gives me the opportunity to remind the Senate of what the current funding arrangements are for the ABC. At the start of the new funding triennium in
2003-04—and of course we are coming up to the next one in the next budget—the government fulfilled its 2001 election commitment to maintain the funding in real terms. This year, 2005-06, is the final year of the current triennium. In the 2005-06 year the ABC’s total government funding will be $792.9 million of taxpayers’ dollars. The ABC will receive nearly $2.3 billion from the Australian government over the 2003-06 triennium. In the 2004-05 budget the government went beyond the terms of its election commitment and provided additional funding to the ABC of $4.2 million per year—ongoing and indexed. The funding was to assist the ABC meet the increase costs of television program purchasing.

In addition to the 2004-05 budget, the government continued the ABC’s regional and local program funding at a further cost of $54.4 million over three years from 2005-06. I know the Labor Party does not think that regional and local programming is important, but there are people around Australia who rely on local programming on the ABC and value these services. This government understands how important it is to those people who listen to the local ABC. Sometimes it is the only real source of news that they get.

The government has done this to provide the ABC with certainty in its planning for its range of radio, television and online services which have been funded under this initiative. We will continue to maintain the ABC’s funding in the next triennial funding round.

Senator WEBBER—Mr President, I ask a supplementary question. Has the minister seen comments attributed to a government source saying that the leaks from the draft KPMG report ‘are very selective’? When will the minister release the KPMG report so that the public are able to make their own judgment? When will the minister stop trying to hide from the Australian people the proof that the Howard government’s funding policies are running the ABC into the ground?

Senator COONAN—I do not know what question in her supplementary question Senator Webber expects me to address in one minute. So the answer to Senator Webber’s question is: I have already answered her earlier question. She should not try to rely on revisiting the issue when I have already answered it.

Tasmanian Forests

Senator MILNE (2.43 pm)—My question is to the Minister representing the Prime Minister, Senator Minchin. Given the Prime Minister’s promise in his now infamous 2004 election forest policy entitled ‘Preserving Tasmania’s old-growth forests’ and his ‘immediate protection’ of 18,700 hectares of old-growth forests in the Styx and Florentine valleys and along the eastern boundary World Heritage area, can the minister explain why the heavy machinery yesterday went into the very area the Prime Minister promised the nation before they voted for him would be protected? Will the government immediately intervene to stop all forestry activities in the area to give effect to the Prime Minister’s promise of forest protection in the Florentine?

Senator MINCHIN—This probably would be more appropriate directed to the responsible minister, Senator Abetz. But I am happy to answer the question for you.

Honourable senators interjecting—

The PRESIDENT—Order! There is too much noise in the chamber. Shouting across the chamber from both sides is disorderly.

Senator MINCHIN—Thank you, Mr President. I can report to the Senate that, on the advice that I have received, Forestry Tasmania is not undertaking new harvesting in the Florentine Valley. The road is simply
to provide access to possible coups for selective harvesting sometime in the future. The road itself has been approved by the state’s Forest Practices Authority and will not endanger any surrounding World Heritage values. The government has always believed that it was possible to have the best of both worlds in our forests, providing jobs while protecting the environment. That is what we achieved in the Tasmanian Community Forest Agreement. Not only are we increasing old growth forest protection in Tasmania to over one million hectares, we are also protecting the vast bulk of the Tarkine and a large proportion of the Styx Valley as well as reducing clearfelling and phasing out clearing of the native forest. The government did not promise to protect all forests in this area because of the need to maintain access to some higher productivity forest for timber production. Nevertheless, the agreement reserved an additional 6,460 hectares of predominantly wet eucalypt forests along the eastern boundary of the Tasmanian Wilderness World Heritage Area as well as significant areas of rainforest. That is a very significant conservation outcome so I think that Senator Milne has her facts completely wrong, as usual.

Senator MILNE—Mr President, I ask a supplementary question. Is the minister aware that the 6,000 hectares of the Upper Florentine that is now organised for logging and being coup’d is ringed on three sides by the Tasmanian Wilderness World Heritage Area? Will the minister undertake immediately to stop the road activity which is the precedent that will set the way for logging in that area? Alternatively, will he support a World Heritage endangered listing for the Tasmanian Wilderness World Heritage Area because the Prime Minister has failed to keep his promise? In his policy ‘Preserving Tasmania’s old growth forests’, he promised the immediate protection of 18,700 hectares of old growth forest in the Styx and the Florentine along the eastern boundary of the world heritage area?

Senator MINCHIN—It is absolutely outrageous to suggest that the Prime Minister has not honoured his promise. He is honouring his promises to the people of Tasmania in full. This was a major commitment to the people of Tasmania to achieve both the protection of vital forests and the protection of jobs, which of course Senator Milne has absolutely no concern for whatsoever.

Regional Services: Program Funding

Senator O’BRIEN (2.47 pm)—My question is to Senator Campbell, the Minister representing the Minister for Transport and Regional Services. I refer the minister to the government grant of $1.5 million for the dredging of Tumbi Creek under the discredited Regional Partnerships program. Can the minister confirm that despite the approval of funding in 2004 not one cubic metre of silt has been dredged from the mouth of Tumbi Creek? Can the minister confirm that the Tumbi Creek fiasco engineered by this government has cost Wyong Shire Council ratepayers more than $400,000 so far?

Senator IAN CAMPBELL—The thing about the Regional Partnerships program that is incredibly important in places like Tumbi Creek and Gunnedah and Rockingham in Western Australia and other regional areas right around Australia is that the Australian Labor Party have said that the program is a rort and that this sort of support to regional Australia should be closed down. The people who live around Tumbi Creek know very well that there are two approaches to supporting regional communities in Australia. There is the Labor approach, which is to stop the appropriation of funds to well-deserving regional programs right across the landscape, and there is the Liberal Party and National Party approach, which is to assist them.
Senator Forshaw—That is a lie!

The PRESIDENT—Order! Withdraw, Senator Forshaw. I ask you to withdraw that comment.

Senator Forshaw—I will withdraw it but I did not actually say that the minister lied. I just said that that was a lie.

The PRESIDENT—I remind Senator Campbell of the question.

Senator IAN CAMPBELL—There is a difference between the Labor approach to partnering with regional communities and providing funds. The Labor Party want to shut down Regional Partnerships. Last year Mr Lindsay Tanner went on Sunday morning television and said that the Labor Party, if it got elected to government one day, would close down this program and a range of other programs to return savings to the budget. I wrote to his leader, Mr Beazley, and asked whether a project like the one in Rockingham, for example—where Regional Partnerships is helping, with the strong support of Councillor Phil Edman, to ensure that that project goes ahead—would be closed down. Mr Beazley wrote back and said, ‘No, that is one of the good ones. That is all right.’

Labor chooses to attack projects like Tumbi Creek where the local community is trying to put in a long-term solution to the problem of the silting up of the mouth of the estuary. They are going through a proper process of calling for tenders, and of course you have to go through a proper process to ensure that the outcomes—

Senator Chris Evans—You didn’t go to a proper process!

The PRESIDENT—Order! Senator Evans, stop shouting across the chamber.

Senator IAN CAMPBELL—Senator Evans joins a cacophony of Labor Party politicians—

The PRESIDENT—Minister, I would remind you of the question and ask you to return to it.

Senator IAN CAMPBELL—Mr President, I am deeply appreciative of that reminder. The question was about Regional Partnerships and Tumbi Creek and accountability of that process. I am addressing the question but I am getting constant interjections from a Labor Party senator opposite who is deeply opposed to a coalition government giving financial resources to communities like Tumbi Creek to solve systemic problems within their communities. He is opposed to supporting communities like Gunnedah to get an ethanol plant going there and communities like Rockingham to build a marina facility. Why do these communities come to the federal government looking for this support? It is because the Australian Labor Party systematically ignores regional Australia. It comes up with a series of policies that ignore anyone who lives outside the cappuccino strip or the chardonnay belt of inner Sydney or inner Melbourne.

Senator O’Brien—Mr President, I rise on a point of order on relevance. This question was about Tumbi Creek and whether any dredging had been done. It is not about Rockingham. Would you draw the minister’s attention to the question again, please.

The PRESIDENT—I am sure the minister is going to conclude his answer shortly. He has almost one minute left, and I remind him of the question.

Senator IAN CAMPBELL—I appreciate the interjection, because it ensures that I am able to inform Senator O’Brien—and I am absolutely hopeful that he asks a supplementary question on this issue, because it is important to the people of Tumbi Creek—that they have advised that they are going to do short-term trials of a system of dredging. They advised the department on 26 March
2006. The Australian government will fund up to two-thirds of the total project cost, with a fixed cap of $570,000 for landfill and the costs of roadwork. I think all senators would want to ensure that the work at Tumbi Creek takes place in a way that ensures that it is effective and also environmentally appropriate. If it takes time to ensure that that occurs, then all of us should support the Tumbi Creek community and not continue to heap scorn on them, as Labor continues to do with them and regional communities around Australia.

Senator O’BRIEN—Mr President, I ask a supplementary question. Arising from the answer, do I take it that the minister is confirming that the Wyong council has decided it does not want to proceed with the original dredging project? Does the minister now confirm that the council proposes to cut the dredging project in half? I am not sure from the minister’s answer whether or not he has confirmed this. Has the government actually approved this project without announcing it? If it has not announced it, was it intending to delay that until it could generate another stunt for the member for Dobell during next year’s election campaign?

Government senators interjecting—

The PRESIDENT—Order! Senators on my right!

Senator IAN CAMPBELL—It is very hard for colleagues on this side to retain their composure when there is this constant attack on regional Australia. This is yet another attack on the people of that electorate, the people that the member for Dobell sticks up for. He has been a supporter of the dredging project. One of the hold-ups, of course, is the approval from the Labor Party controlled state Department of Lands in New South Wales. They have to go through all these sensible approval processes, which I referred to in the initial answer. The department will, of course, approve this when a funding agreement is put in place with Wyong. I mentioned in my previous answer the funding agreement that the department has offered, so no final approval has been made at this stage, according to this brief. But the Australian government will fund up to two-thirds of the cost at a fixed cap of $570,000 excluding GST. And I hope that the member for Dobell does go down there and make an announcement that attracts wide media opportunity and that we expose the hypocrisy of Labor on this issue. (Time expired)

Fishing Industry

Senator SCULLION (2.55 pm)—My question is to the Minister for Fisheries, Forestry and Conservation, Senator Abetz. Will the minister inform the Senate how the Howard government is acting to ensure the sustainability and profitability of our Commonwealth fishing industry into the future? Is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Scullion for his question and acknowledge his expertise on these matters, which is unsurpassed in this place. I know that we on this side genuinely appreciate his contribution in a whole host of areas, but especially in the area of fisheries. Senator Scullion, like those on this side, has a genuine concern for the people who live in the coastal regions of our country.

Today I opened the $150 million Commonwealth fishing concession buyout component of the Australian government’s $220 million Securing our Fishing Future package. This is by far the largest structural adjustment package ever offered to the Australian fishing industry and is a critical investment by the Australian government in its future. Together with reforms being enacted by the Australian Fisheries Management Authority, the tender aims to safeguard Commonwealth fish stocks for future generations and, at the
same time, better position the fishing industry for a profitable and vibrant future.

This package was developed by the Australia government in response to requests from the fishing industry and has managed to do a unique thing in natural resource management—that is, unite competing interests. This package has been welcomed by the commercial fishing industry, the recreational fishing industry and the sensible elements of the environmental sector, who all too often sit at opposite ends of the table. The tender process is open to all Commonwealth fisheries except joint authority or internationally managed fisheries, although the tender will focus on four target fisheries.

The tender design has been developed in very close consultation with the fishing industry and has been tailored toward achieving best value for money. While the primary focus of the tender will be restructuring Commonwealth fisheries, I can also reassure those fishermen in state managed fisheries who are affected by the declaration of marine protected areas in the south-east marine region, which are expected to be announced shortly by my colleague Senator the Hon. Ian Campbell, that they will also be eligible to participate in the tender. The package also includes an additional $70 million in complementary assistance for the industry and associated communities.

This is a package about balance. It balances the needs of the environment with the needs of business. It recognises that we need to take action in the short term to have sustainable and profitable fisheries in the long term. It allows those fishermen who want to exit the industry to do so with dignity while better positioning those who remain to be profitable. The package is yet another example of the Howard government’s ability to balance conservation with the needs of industry and employment, demonstrating once again why we are increasingly being recognised as the party best able to manage the environment.

I was asked about alternative policies. In this instance, I am very pleased to say that there is none. I welcome the support of all parties in this place for this vital initiative to safeguard our fish stocks and the future of our fishing industry.

Senator SCULLION—Mr President, I ask a supplementary question. Can the minister further inform the Senate of the long-term benefits of investing in sustainable management practices? Has the government taken into consideration any other policies in formulating its own policy?

Senator ABETZ—The point made by the honourable senator in his question is absolutely right: it is vitally important that we sustain our viable fishing industry. Not only is it a very important industry but also it is a very important product that we get from it: a health food that we as a community have to understand more and more. We in Australia produce premium quality Australian seafood, which is not only good for our economic wellbeing but also very good for our physical wellbeing. And so it is vitally important, if we want to maintain that resource for the benefit of future generations of Australians, that we have the benefit of that resource for generations to come. That is why I am delighted there is cross-party support for this initiative and cross-party support within the industry and the wider fishing and conservation sectors.

Senator Minchin—Mr President, I ask that further questions be placed on the Notice Paper.
QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Workplace Relations

Senator HURLEY (South Australia) (3.00 pm)—I move:

That the Senate take note of the answers given by the Minister for Fisheries, Forestry and Conservation (Senator Abetz) to questions without notice asked today relating to changes to industrial relations.

The Howard government Work Choices legislation is a systematic attack on the values of the Australian people. This legislation deserves to be torn up and comprehensively rewritten. That is not just the view of the Labor Party or members in this house; it is also the view and the lesson learned from the election in South Australia. The Howard government Work Choices legislation is an extremely unpopular piece of legislation, as we on this side of the house have learned from our candidates during the South Australian election—

Senator Ian Campbell—On a point of order, Mr Deputy President. I am genuinely trying to be helpful here. The senator needs to move a motion that the Senate takes note. She has moved that she takes note. She should move a motion that the Senate take note of answers and she can then obviously speak to it. It would be useful if we could get the form right.

The DEPUTY PRESIDENT—I hear what you are saying, Senator Campbell, but I think that would have been the way it would have been recorded in the Journals of the Senate. You have made your point.

Senator HURLEY—I will continue my remarks about the lessons that the Labor Party has learned from the South Australian election and from our candidates being regularly out there talking to ordinary people at their doors. The lesson is that industrial relations is a big issue.

For example, one of our candidates door-knocked an ex-serviceman who is over 80. He had never before voted for the Labor Party. He had always voted Liberal. He was going to vote Labor for the first time in the next federal election because of the industrial relations changes. He said that they were not what he had fought for during the war. They were not what he fought for, because he fought for Australian values. He fought for a fair go for all Australians. He did not fight for a society where there is no equality between Australians from all walks of life. He wanted equality in Australian society.

He did not want the kind of society where people in workplaces are subject to the whim of their employer as to whether they stay on in their job or go. He did not fight for a society where individuals have to go cap in hand to the boss to argue that they have done a decent job and deserve decent pay. He believed in collective bargaining. He believed in a society where employees are not pitted against each other for pay and conditions in a race down to the bottom.

This is the kind of example we have from the Liberal Party—where people in workplaces are set against each other: is one employee more lazy than another? Is another employee not doing the job? Is another employee not sucking up to the boss properly? Can you get better pay and conditions at the expense of some other employee who might be sacked or put in a casual position? This is the kind of encouragement we have from the current Howard government. They want employees to fight against each other and to have the employer benefit from that through lower pay and conditions.

This is the kind of society that the Howard government want. Howard’s economy is in favour of big business and big employers and is out of touch with ordinary people. Ordinary people say that that is not the kind of
They want the kind of economy where there are protections for employees—where, if they choose, employees can go to their unions to bargain collectively and to get protection.

Senator McGauran—They do. A system still exists if they choose.

Senator Hurley—Certainly. In the system that existed up till now if employees wanted the protection of the union they joined one and could ask for collective bargaining. What the Howard government has put in place is a system of individual workplace agreements where unions are excluded from the workplace in many instances. That is not the kind of economy that ordinary people in Australia want. It is not the legacy that that ex-serviceman or most Australians want to leave to their children. It is an Americanisation of the workforce, and people know enough about the American industrial system to not want it. That is a system where the employer has great leverage and the employee does not. You only have to look at Wal-Mart in the United States, the largest food retailer there, employing over a million workers. Wal-Mart workers receive lower wages than other retail workers and have to be heavily subsidised by the state in terms of benefits for health care, housing and so on. (Time expired)

Senator Johnston (Western Australia) (3.07 pm)—One has to wonder about how much sincerity the opposition brings to this debate. We see that Mr Combet and Ms Burke maintain that there will be a fresh round of campaigns against the WorkChoices legislation. This Labor opposition is bought and sold by the trade union movement of this country. Not only do they provide the money for the Australian Labor Party to survive; they provide the positions for union hacks to fill in this parliament. They are all from the trade union movement. What independent parliamentary contribution can they possibly make in those circumstances? They are the worst example of people hostage to a minority pressure group in our great country. They are bought and sold by the Australian trade union council. They have received $50 million from unions since 1996.

The facts are that under 13 years of Labor real wages for working men—their union membership; their constituency—went up 1.2 per cent, and Mr Keating proclaimed that as a wonderful thing; 1.2 per cent. Senator Campbell’s answer, if I can anticipate, will be: ‘It’s a lie.’ What else could he say when confronted by the facts. Real wages under the Howard government since 1996 have gone up 16.8 per cent for workers, for union members, for blue-collar workers in our great country. The Howard government has created 1.7 million new jobs since March 1996.

I want to take a moment to look at the mining industry in Western Australia. We produce world-class minerals and mineral processed products in Western Australia in iron ore, base metals, precious metals and rare earth minerals because every one of those companies has Australian workplace agreements. They are efficient. They are effective and—guess what?—the workers have never received so much in wages. Of course, this absolutely irks the Australian Labor Party and the union movement. They like the collective bargaining scheme that is straight out of Moscow. That is the way they like things. One size fits all—it does not matter how good you are, you get the same pay as the dill next door to you.

The essence of their message in all of this is: we do not want productivity; we want uniformity. Work Choices and the new reforms in the workplace brought to us by Minister Andrews mean that—and I have seen this first-hand, for senators’ benefit—
we have got rid of the ‘go away money’ mentality in terms of unfair dismissal for small business. Let us take an example that I saw: a drycleaner has a person who is negligent and causes him to carry a number of claims on his insurance to the point of making the business almost not viable, so he dismisses the person who is not doing the job properly. You go along to the Industrial Arbitration Commission and the first thing a union advocate says is: ‘I want five grand, 10 grand, and we’ll walk away.’ That is outrageous in this country. That is an abuse of power. That is the sort of thing that the opposition in this place want to protect and want to facilitate. I say: enough is enough. If you cannot do the job properly, you do not deserve the job and there are other people who will step in, do the right thing, appreciate the job and earn a decent living.

Senator CAROL BROWN (Tasmania) (3.12 pm)—I rise to take note of answers given by Senator Abetz during question time today. For months and months in this place Senator Abetz and his colleagues have claimed the unions and the Labor Party are Chicken Littles. They have claimed we are Chicken Littles running around prophesying doom now that the new industrial laws, the Prime Minister’s lifelong political dream, have passed this parliament. Senators opposite, aren’t the chickens coming home to roost? For that matter, Senator Abetz, a fair percentage of them are roosting on your doorstep in Tasmania.

Let us look at some of the reported incidents that have emerged since 27 March, three days ago. The Financial Review today reports in a break-out on page 7:

A Tasmanian sports club manager was dismissed on Monday after 10 years’ service. The worker was sacked at a disciplinary meeting ...

The meeting, we are told, was rescheduled from last Thursday to Monday, the day these laws came into force. A company called Triangle Cables sacked nine employees on Tuesday for no specified reason. The Melbourne company, InstallEx sacked the workers as permanent employees and offered them their own jobs back as casuals or independent contractors. Two people who worked in a photo lab in Sydney were sacked, one a permanent employee aged 65. A maritime worker from Cairns was sacked following a disciplinary meeting on 14 March. He did not hear a thing about it until 27 March, the day after these laws commenced.

During the year, those on the other side constantly argued that we needed to catch up with New Zealand and other countries around the world who have tried this workplace experiment. They implied that somehow we were missing out on something special that these countries had. As I said a few months ago, the irony is that they are actually right. But, while they were pretending that we were missing out on a positive world of workplace happiness and personal wealth aplenty for workers, the reality is now only too clear: we were missing out on a world of unnecessary hardship and unfairness—one of lower pay and poorer conditions for the hardworking men and women of this great country.

That is what these stories of hardship and unfairness tell us, and that is what Work Choices was always about. It was never about choice, flexibility or higher wages. It was about handing the limited power and rights that workers enjoyed to their employers. John White, owner of the Tasmanian firm Delta Hydraulics, which I am sure Senator Abetz is well acquainted with, put it best today on the front page of the Australian. As Brad Norrington reported:

The Howard Government’s new industrial relations laws have given John White the legal am-
munition he has wanted for many years to sack 10 per cent of his workforce.

“The gun’s been removed from the employee’s hand,” Mr White said yesterday.

The article went on to point out that, with 98 staff, John White’s company falls under the exemption from unfair dismissal for businesses employing fewer than 100 workers. While he claims that he will not be moving to sack workers overnight, it is a bitter time ahead for the Delta Hydraulics workforce, with White giving notice that he will be looking again in three months to see what productivity is like. This is exactly the kind of fear and intimidatory workplace practice that Labor feared under these divisive laws. It was always going to be this way under Work Choices and it is a national disgrace.

Again today in question time we found a government that is not prepared to address important questions about the demonstrated impact of these laws. Rather, we found a government hiding behind rhetoric, obfuscating and attempting to avoid at all costs questions of any kind. Question time is a quest for transparency and accountability. That quest for transparency should see ministers in this parliament and those who represent them in this chamber prepared to address the questions asked of them, especially on such a serious and important issue as the impact of the new industrial relations laws. But this government is turning a blind eye.

To see this we need only look at Telstra, a company that, for the moment, is still owned in large part by the Australian people and is subject to government control. On 28 March it was reported in News Ltd papers that Telstra was seizing on the commencement of these laws to ban union officials from some of its work sites. It was one of the first cabs off the rank once these changes came in. As we have seen, it is not alone now, a few days later. The sad fact is that this government refuses to tell the parliament anything, but its ministers are prepared to say all sorts of things to the right audience behind closed doors. (Time expired)

Senator McGauran (Victoria) (3.17 pm)—The former speaker, Senator Carol Brown, is absolutely right; industrial relations reform is a very serious matter and ought to be scrutinised. Its results ought to be looked at, because this deals with the working life and living standards of every worker and their family. We are happy to open up this industrial relations package, as we have with previous reforms, to scrutiny. You conveniently come in here and avoid putting the former industrial relations reforms to the test. The results are in. You know they are. You skirt around it with your exaggerated stories, with your misrepresentations. You are simply scavenging around for a single case, an exception, putting a bit of spin on it, putting a bit of exaggeration on it and misrepresenting it, hoping that it will prove your point.

But the point has already been proved when it comes to choices for workers. They have the choice to accept the collective system, with union representation—which has not been ruled out—or the choice to take up individual Australian workplace agreements. Those choices have been in place since 1996. What are the results? The results are that we have the lowest unemployment rate in 30 years or more. The results are that we have real wage increases of some 16.8 per cent. The results are that long-term unemployment—and that is a great test—has come down. Time does not permit me to read the figures on long-term unemployment, but it would be lost on no-one here that when you start digging into the statistics on people who have been unemployed for 12 months to two years you see that they are finding jobs. You know that the system really is working.
On top of that, some 1.7 million jobs have been created in 10 years. They are new jobs. That is the result of the first tranche of our industrial relations reforms—and you came in here and said the sky was going to fall in. When those reforms were tested down at the waterfront, you said it could not be done. Look at the waterfront. Has anyone heard of any strikes happening down at the waterfront lately? Have you noticed that the rates for lifting containers by crane are at world record levels? They are averaging 28 per hour and 42 on a good day in Melbourne. They are the results. They are in.

Senator Sterle—Would you work for less for doing the same job?

Senator McGauran—There will be no working for less. Senator Sterle interrupted from the other side to say that wages will be cut. In real terms, wages have increased by some 16.8 per cent. In your time in government, there were 13 years under the centralised, fixed system, where all bargaining was collective and was controlled by the unions. It was a centralised industrial relations system that locked out individual workers' choices and simply had the bosses and their lawyers tramping off to the Industrial Relations Commission to make deals with the unions and their lawyers. What were the results of that? Even Paul Keating, in the dying days of his prime ministership, was ready to reject that sort of system. The results were clear: in 13 years real wages increased by 1.3 per cent. That is a pitiful result for the people whom you purport to represent. What was the unemployment rate? Do you think the centralised system helped those workers during a recession? No, it did not. There were one million unemployed—a record in this country. It is a disgraceful record.

But I can tell you what did protect those workers during the Asian downturn and other economic bumps this government has seen during its 10 years in office: a very flexible industrial relations system and a government that is disciplined in its economic management. All of these reforms tie into each other, and Australian workers are not going to fall for your old GST stunts that failed or your first industrial relations reform stunts that failed. When are you going to learn? Are you just going to settle into opposition and run the same old tactics on every major reform, knowing that they are in the national interest but rejecting them for opposition's sake? You are in opposition for opposition's sake. You are getting far too comfortable across there. You are coming in here, running pathetic little scare campaigns. You must know by now that the Australian people are awake up to them. You are finished! (Time expired)

Senator Sterle (Western Australia) (3.23 pm)—I rise to take note of answers given today by the Minister representing the Minister for Employment and Workplace Relations. It is clear to me, having listened to the answers given today by the minister, that there may be some truth in the allegations made by the President of the HR Nicholls Society about the Howard government. If you believe the President of the HR Nicholls Society, the Howard government is engaged in a Soviet-style attack on the freedom of Australians. This is ironic because, just yesterday, Senator Abetz accused Senator Marshall of asking a question containing a notion of the old Marxist concept of class conflict. The Howard government likes to talk about how its so-called Work Choices regime is ‘simple, flexible and fair’. But when you look at the detail of the regulations the government released yesterday, you can see why the HR Nicholls Society is so convinced that Work Choices is a Soviet-style sham.
I know that Senator Abetz would not like to take my word for it, so I have some references for him. On 26 March 2006, on the *Inside Business* program on the ABC, Ray Evans, President of the HR Nicholls Society, said this about the government’s so-called Work Choices regime—and I am sure that Senator Brandis will be tickled pink to hear it:

It’s rather like going back to the old Soviet system of command and control where every economic decision has to go back to some central authority and get ticked off.

He went on to say:

I don’t believe the Howard Government is really that keen on freedom. This new legislation is all about regulation.

How about that? According to the President of the HR Nicholls Society, the Howard government is obsessed with regulation, opposes freedom, and wants to instil a Soviet system of command and control in Australian society.

**Senator Ferguson**—Mr Deputy President, I raise a point of order. I am somewhat confused. I detected that I heard Senator Sterle refer to yesterday’s answer by Senator Abetz, when we are supposed to be taking note of today’s answers by Senator Abetz. I wonder whether you could draw him back to today’s answer.

**The DEPUTY PRESIDENT**—Senator Ferguson, I think that your hearing is not exactly spot-on. At one stage he did refer to something that was said yesterday, but it was in the context of taking note of what was answered today. I call on Senator Sterle to continue his contribution.

**Senator STERLE**—And to think that Senator Brandis has been looking for reds under his bed all these years. If you believe the HR Nicholls Society, Senator Brandis would be better off looking for reds in the cabinet room.

Why would the HR Nicholls Society be so convinced of the Soviet-style inadequacies of the Work Choices legislation? In a speech on 13 December 2005, Ray Evans blamed ‘the government’s continuing acceptance of the Marxist dogmas’. That is heavy stuff. No wonder the Leader of the Government in the Senate, Senator Minchin, went off grovelling to the HR Nicholls Society on 3 March to do a bit of damage control. But no matter how much grovelling, crawling and backsliding Senator Minchin might have done—

**Senator Minchin**—Mr Deputy President, I raise a point of order. Surely such outrageous language—describing me as groveling and various other things—is outrageous. I ask you to rule that as unparliamentary language.

**The DEPUTY PRESIDENT**—Senator Minchin, that was a good try on a Thursday afternoon. Senator Sterle, I bring you back to your comments on the answers of the minister today.

**Senator STERLE**—Ray Evans was right to call the government on the contradiction between the Howard government’s propaganda and its actions, just as Des Moore, the Director of the Institute for Private Enterprise, was right when, in a speech on 3 December 2005, he said:

This new legislation is shot full of contradictions that, on the one hand, purport to “allow Australia’s employers and employees the freedom and the choice to sit down and work out the arrangements that best suit them” but, on the other hand, continues to severely constrain that freedom.

The Work Choices regulations contain a list of prohibited content. Apparently, Australian companies need to be protected from the possibility that they might want to make an agreement with their workers on some matters. The regulations prohibit the provision of payroll deduction facilities for union dues. The regulations prohibit leave to attend train-
ing provided by a trade union. I did not realise that Australian companies needed the Howard government to legislate to protect them from the possibility that they might want to agree to provide their workforces with payroll deductions for union dues. I did not realise that Australian companies needed the Howard government to legislate to prevent them from agreeing to send their workforce to union training.

The CFMEU, in my home state of Western Australia, set up the Construction Skills Training Centre in Welshpool, which is very highly regarded by its clients and provides quality training to workers. But apparently Australian companies need to be protected from themselves, just in case they might have the strange idea that training centres, like the Construction Skills Training Centre in Welshpool, might assist their workforce to be safer and more productive.

The Howard government have sent a clear message to the companies of Australia: ‘You can choose to bargain but only on our terms. You can choose to bargain on those issues we want you to bargain on, but you cannot choose to bargain about issues we prohibit.’ General Secretary Stalin would have been proud of the Howard government—even if the HR Nicholls Society is not.

Question agreed to.

Christmas Island Mining

Senator SIEWERT (Western Australia) (3.29 pm)—I move:

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

I am very pleased to hear that Senator Ian Campbell would have little confidence in anyone who would hurt our rainforests, because I am very concerned about the rumours coming out of Christmas Island about illegal clearing of rainforest in the national park there. I am also pleased to hear that he is going to investigate that. Christmas Island, as many people in this place probably know, is a unique and very special environment, one that I had an opportunity many years ago to visit.

Currently, the government has before it an application to extend mining into the rainforest on the island, which will overturn nearly 20 years worth of sensible policy on Christmas Island. As many people know, phosphate mining has been going on on the island for the last 100 years, with the result that 30 per cent of the island’s rainforest has now been permanently cleared and no-one has ever really been able to figure out a way to rehabilitate the limestone moonscape. Anybody who has been up there would know it is a moonscape that is the result of mining.

The original mined areas remain cleared today. When the mine finally did close in 1987, some enterprising former employees applied to reopen the mine to recover valuable resources from the old stockpiles and rework some of the areas that had already been cleared. This was approved in 1991 on the strict condition that there would be no further clearing of rainforest permitted. This company has had that long, from 1991 to 2006, to work out a way into the future and to work out that this mine would close when those stockpiles came to an end.

The Minister for the Environment and Heritage has an application before him to clear a further 200 hectares of pristine rainforest, some of which has common boundaries with the national park on Christmas Island. They want to extend the mine for another five to seven years. You do not have to be Einstein to work out that in another five years we will get another application for 200 hectares or so, with the reasoning that the precedent was set in 2006.
I will acknowledge that the Australian government has a mixed history with its treatment of Christmas Island. That treatment has ranged in the past from neglect to making it a dumping ground for unwanted asylum seekers—unwanted by the Australian government, that is. Then there is the more enlightened work that has been the highly successful program to protect the island’s red crab population from assault by the yellow crazy ants.

Everybody knows that the future of Christmas Island is ecotourism, not mining. In fact, mining undermines the values on which this island will in the future depend. It undermines people’s enjoyment of the environment, where all they can see is a moonscape and where there will be less and less rainforest.

Senator McGauran—What are all those union workers going to do on Christmas Island without mining?

Senator SIEWERT—Funny you should mention that. The Christmas Island Chamber of Commerce voted resoundingly against more rainforest clearing and native vegetation clearing. That is your economic argument for you. The future of this island is with ecotourism and with proposals such as the international research station, not clearing rainforest. You know what? We are going to run out of rainforest and phosphate at some stage, and then they will have no future at all. People do not want to go and see moonscapes. If you go up there, that is what you will see and that is what you will see increasingly if this proposal is allowed to go ahead.

How can we trust any company, if they have illegally cleared and if it is proved, and give them permission to go and clear more rainforest? It is ridiculous that in 2006 we could even be considering the clearing of absolutely unique, irreplaceable rainforest on this island on which a community will depend in the future. It is short-term economic thinking to increase a mine by clearing rainforest vegetation and increase the mining there for five years, when into the future people will be relying on the environment and ecotourism to sustain this unique environment. I am pleased that the minister is going to assess this illegal clearing, but I urge him to look at the bigger picture and reject any mining and any further clearing of rainforest on this island. If the government is investing in Christmas Island, it should invest in infrastructure and training that moves away from mining and into ecotourism and into proposals for international research centres that will make this island really the jewel of the Indian Ocean.

Question agreed to.

PERSONAL EXPLANATIONS

Senator HUTCHINS (New South Wales) (3.33 pm)—I seek leave to make a brief personal explanation as I claim to have been misrepresented.

Leave granted.

Senator HUTCHINS—Last evening the member for Lindsay made a contribution, a rare one, in the House of Representatives about me. There are a number of untruths in it, and I want to correct three of them. Firstly, she states:

Senator Hutchins has lost everyone from his faction. Leo McLeay, Senator Forshaw and Michael Lee have all departed the parliament.

Secondly, she says that I have never held a truck-driving licence or driven a truck. Before I entered parliament, before I became a union official, my last job was working for Sutherland council as a garbo, where we all drove the trucks. Thirdly, and finally, Miss Kelly quotes extensively from the Latham Diaries, in which I do not come out too well. Apparently, there are 17 mentions of me in...
there. I think it is quite a badge of honour to be slagged off by that Labor rat!

BUSINESS

Rearrangement

Senator COONAN (New South Wales—Minister for Communications, Information Technology and the Arts) (3.35 pm)—by leave—I move:

That, on Thursday, 30 March 2006:

(a) the hours of meeting shall be 9.30 am to adjournment;

(b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) shall not be proceeded with;

(c) the routine of business from not later than 4.30 pm shall be government business only;

(d) divisions may take place after 4.30 pm; and

(e) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills and items listed below, including any messages from the House of Representatives:

Telecommunications (Interception) Amendment Bill 2006
Family Law Amendment (Shared Parental Responsibility) Bill 2006
Family Assistance, Social Security and Veterans’ Affairs Legislation Amendment (2005 Budget and Other Measures) Bill 2006
Appropriation Bill (No. 3) 2005-2006
Appropriation Bill (No. 4) 2005-2006
Issues from the Advance to the Finance Minister as a final charge for the year ended 30 June 2005
Cancer Australia Bill 2006.

Question agreed to.

COMMITTEES

Mental Health Committee

Report

Senator ALLISON (Victoria—Leader of the Australian Democrats) (3.35 pm)—I present the first report of the Select Committee on Mental Health entitled A national approach to mental health: from crisis to community, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator ALLISON—I move:

That the Senate take note of the report.

I seek leave to incorporate my tabling speech in Hansard.

Leave granted.

The speech read as follows—

The Senate Select Committee on Mental Health provided its members with a unique opportunity to meet with people in the mental health sector—consumers, carers, health professionals and administrators. We received enormous community support, reaped the benefits of the hard work and dedication of many, and have been shown great hospitality around the country. I wish to thank all those who assisted the committee and its work.

We received over 600 submissions—from individuals and parents and carers of people describing the tragic outcome of a mental health system that failed them. Submissions came from state, territory and local government, from peak mental health organisations, from consumers from doctors and nurses, from police and prison services … and they told stories that provided the committee with a rich resource of material describing the complex system that is mental health in this country.

Mental health reform is now quite rightly at the top of the policy agenda for all governments. As a result, in February 2006 the Council of Australian
Governments agreed to initiate a rapid process of discussion and policy development on mental health. In order to inform the CoAG interest and process, the report we table today comprises the bulk of our deliberations and a suite of recommendations that the committee believes should be addressed in the CoAG policy reforms.

A brief additional report will follow shortly, and its recommendations will be no less important. However, this arrangement ensures that the Committee’s findings will contribute to and guide CoAG’s policy reform discussion. We sincerely hope that in addition to CoAG all governments, agencies and organisations will respond positively to the recommendations included in both reports.

The Committee heard an enormous range of evidence on many different issues. Some evidence reflected a strong consensus among contributors. Without a doubt, there is an urgent need for more mental health services. Reducing the stigma associated with mental health is important, but little help when little or no service is available to those who look for it. More services means more funding (Recommendation 1), but funding for mental health must also be used more constructively.

One message came through very clearly in this inquiry: there needs to be more community-based mental health care. More is needed because there is an unacceptably high level of unmet need. More is needed because too many people are failing to get service until they end up seriously ill in hospital. More is needed because community care can be better at fostering rehabilitation and recovery in, as the NMHS declares necessary, in the least restrictive environment.

We propose a Better Mental Health in the Community initiative, comprising the establishment of a large number—we estimate 400—community-based mental health centres; the distribution primarily determined on the basis of populations and their needs. These Centres will be staffed by truly multidisciplinary teams comprising psychiatrists, psychologists, GPs, psychiatric nurses and social workers.

The Better Mental Health in the Community infrastructure program should be rolled out over 4-5 years with contributions from both the States and Territories and the Commonwealth, with the latter establishing direct Medicare recurrent funding arrangements for employed or contracted mental health staff, and the former providing infrastructure and on-going management. With two levels of government sharing the load, the services will be responsive to the needs of the local community and provide better access for those in need.

The Committee also believes that the Better Outcomes initiative should be reformed. It was a very good initiative of the Government but has been limited by the small number of participating GPs and the caps that apply for patients and for the Divisions of GPs arrangements.

There is a strong argument for the relatively un-tapped pool of clinical psychologists to be much better utilised in Better Outcomes. We propose that there be a new set of Medicare schedule fees for mental health for psychologists, GPs and psychiatrists and that they acknowledge the time that the so-called talking therapies take. This would bring psychologists into the system as primary health carers but we accept that there needs to be an assurance for the government that this won’t cause huge budget blow-outs. I doubt there are enough clinical psychologists in private practice to cause a massive increase but in any case, we argue in our recommendations that participation in Better Outcomes would come with an obligation to collaborate with other mental health professionals, in combination or in conjunction with the mental health centre. This way, GPs and psychiatrists benefit from the knowledge and experience of psychologists and vice versa and patients would benefit from better coordinated care—which was the purpose of Better Outcomes in the first place. The fact that the Better Outcomes budget was so significantly underspent demonstrates the need for reform but we don’t want to throw the baby out with the bathwater.

We have confidence in the Divisions of GPs and in their work on Better Outcomes and they should continue to provide training for GPs who seek it but we have recommended the pre-requisite of training be dropped for participation in the program. It was always somewhat perverse that the GPs least trained in mental health were the ones dealing with these patients without assistance from mental health professionals and doubts were raised about the effectiveness of 6 hours training for level one. We understood that this was an in-
centive to get GPs involved in training but there is no evidence that the current rate of 20% of doctors participating in Better Outcomes will improve any time soon yet 100% of GPs will be seeing people affected by mental illness daily. It is also clear that the more integrated and collaborative our primary health system can be the more expertise will be developed by virtue of this collaboration.

It would make sense for the Divisions of General Practice to be restructured as Divisions of Primary Health so other disciplines could be brought into the system.

De-institutionalisation is a policy with the right goals, but the job remains incomplete.

What did we hope to achieve when no State or Territory in Australia has adequate community-based care? Area mental health services were set up but they too only deal with the most unwell. The obvious but unacceptable consequence was a shift in care for the seriously ill from psychiatric institutions to prisons, emergency departments, families, or worst of all, neglect and homelessness. We must do better. And not the piecemeal response of funding only pilot projects and short term grant-based programs which don’t go on to be funded, regardless of how worthy or successful they are. Funding must move to a more sustainable basis and perhaps governments need to forgo the satisfaction it gives them to announce brand new projects on a regular basis.

Assessing the success of the National Mental Health Strategy was at the core of our inquiry and we were convinced of the need for better defined targets, monitoring and of the need for all states to be brought into line with the national mental health plans. There must also be more explicit protection of consumers rights in the Strategy.

In addition to the National Mental Health Strategy and Plan, several other national strategies have implications for people who need mental health services. Unfortunately, these strategies are not always well integrated and sometime lead to perverse outcomes.

For instance, people experiencing psychosis while addicted to alcohol and drug have been refused assistance by both mental health services and alcohol and drug services; each claiming that the individual is more rightly served by the other service. One way to counter this is to integrate the NMHS, National Drug Strategy, National Suicide Prevention Strategy and National Alcohol Strategy. The specification of achievable targets and outcomes within these strategies is central to achieving this (Recommendation 2).

Mental illness is often poorly understood by the community, and even health professionals and researchers have limited knowledge about some conditions. People with a mental illness experience discrimination, marginalisation and often get too little say in their own treatment.

The committee believes that knowledge needs to be improved, discrimination eliminated, and consumers given a greater say in their own treatment. Existing organisations in the area of mental health can help in the pursuit of these goals.

The Mental Health Council and the Human Rights and Equal Opportunity Commission each have significant parts to play in the monitoring of progress on mental health service reform and monitoring human rights and discrimination. The committee has recommended that each of these bodies be given additional resources. It believes the Mental Health Council can play a role in regularly monitoring and reporting on progress under the National Mental Health Strategy.

The capacity of the Human Rights and Equal Opportunity Commission should be enhanced, to allow it to more fully examine human rights abuses and discrimination against people with mental illness. The committee was also particularly concerned about the barriers that people with mental illness face in getting access to supported accommodation. Discrimination in this area is something the committee would like to see HREOC investigate as soon as possible.

While existing bodies can perform these valuable functions, two new organisations are needed. It is essential that consumers and carers have a greater role as advocates, as experts and as promoters of good mental health. While some steps have been taken in this direction, the committee calls for the formation of a National Mental Health Advisory Council, made up of consumers, carers and service providers. This body should advise CoAG on consumer and carer issues, and act as promoters.
of mental wellbeing, illness prevention, and consumer involvement in service provision.

The committee also concluded that a Mental Health Institute is needed.

There needs to be more research in the area of mental health. There must be greater dissemination of that research. A Mental Health Institute would help set research and evaluation priorities for mental health. It would also disseminate information about successful pilot programs for service delivery.

Currently, treatment options for many consumers are too limited, and are too focussed on pharmacological therapies. The Mental health Institute would review evidence on treatment cost and effectiveness, and disseminate the results of those reviews.

As the Senate will know, the committee was given an extension to report on this inquiry until end April but on advice from the sector, we pulled out all stops to get the bulk of our report completed in time for it to be useful to decision making in CoAG currently underway. This means we will follow this report with the many other important but perhaps less urgent recommendations the committee wishes to make and we will table those in the next week or so.

It also means that a supreme effort to finalise this report was made by the committee and its secretariat.

I would like to thank sincerely my fellow committee members, Senator Humphries, Forshaw, Troeth, Webber, Moore and Scullion for working through 10,000 pages of written submissions, a record number of hearings and travel into each state and territory and into remote locations.

I thank them for their enthusiasm, their cooperation in delivering on an impossibly short time frame, for assisting with the 600 very detailed pages of report and for their willingness to be bold in our recommendations.

And I thank the secretariat for their above and well beyond the call of duty efforts in making it happen. I know they have put in a huge effort and am appreciative of their intelligence, dedication and excellent management of the process. So thank you to Dr Ian Holland, Secretary, Ms Kelly Paxman, Ms Lisa Fenn, Ms Eleesa Hodgkinson, Ms Jill Manning, Ms Loes Slattery, Mr Tim Davies, Mr Terry Brown and Dr Robyn Clough for a remarkable effort and a report I hope they can be as proud of as I am.

Senator FORSHAW (New South Wales) (3.37 pm)—I rise to make a few comments with regard to this comprehensive report that has been tabled today, recognising that in the short time available it will be impossible to do justice to it. I believe it is one of the most important reports tabled in this parliament for many years. It was certainly one of the most important inquiries that I have been involved in. The report runs to 17 chapters and hundreds of pages covering the evidence and submissions that were presented to the committee inquiry.

This report that we have tabled today is a first report. It comprises the bulk of the report plus what we would describe as the primary recommendations. We have released the first report and the initial recommendations ahead of the final reporting date that was established by the Senate to ensure that our proposals and findings are available to the federal and state governments in the lead-up to the coming COAG discussions.

It is a unanimous report. As I said, itcatalogues the enormous input from many groups and individuals who appeared before us in public hearings and/or made written submissions. The inquiry visited all states and territories and took evidence from groups, individuals, state and territory governments and professional groups. Effectively we heard from all of the participants involved in dealing with, experiencing and treating mental illness.

Many people showed enormous personal courage in making a submission or appearing before the inquiry. Anyone who knows anything about mental illness knows how hard it is for people to talk about it. Notwithstanding the improvements in recent years and I
think the greater understanding that is developing in the community regarding mental illness, there is still a large stigma attached to it. It attaches not just to those people who suffer mental illness but to their families and carers as well. I think it exists because at the end of the day most of us, if we have not experienced a mental illness, find it difficult to understand what it involves. I will come back to that at the conclusion of my remarks.

The essential message of this report is that we as a society and our health system have not served the mentally ill well. Some argued that we have failed. Many argued that it is a crisis situation. We certainly know that one in five Australians on average will at some point in their lives experience a mental illness. Fortunately for many, if they do experience one it will be a mild case of depression, but for many others it can involve a lifelong illness. That can be depression, bipolar disorder or schizophrenia. We all know the types of mental illness that people in our community have to endure.

I want to deal quickly with a couple of the key aspects of our report and recommendations, recognising that it is simply not possible to cover it all in one short speech. It is widely accepted today that the move to deinstitutionalisation, particularly following the Richmond report in New South Wales, was not a complete success. I would not say that it was a complete failure, but it certainly has left a lot to be desired. It is well recognised today that, in closing the institutions and many of the major psychiatric hospitals in this country, state and federal governments failed to provide the community based services that were supposed to replace those institutions.

Many people today cannot get access to affordable and adequate housing. Community based medical services, particularly CAT teams, are stretched to the limit. There is a lack of proper employment assistance. We know that there is a growing link between poverty and mental illness. We also know that comorbidity—that is, combined illnesses such as mental illness and drug or alcohol abuse problems—is on the increase.

There are huge pressures on the hospital and acute care system. We heard evidence constantly of people being unable to get proper care and access to an acute bed when it was needed because of the logjams that occur in emergency and accident centres around this country. We heard evidence very early in the piece that the first call is often on our police services, who find themselves increasingly involved in taking people who might be suffering a psychosis to the emergency and accident centre at a hospital and then being stuck there for long periods of time. We are aware also of the pressures on carers and families.

Our primary recommendations go to asking governments to significantly increase the funding for mental health services so that it reaches a figure of between nine and 12 per cent of the total health budget by 2012. We submit that that should be primarily directed to community based services. We make very detailed recommendations about the sorts of areas in which we believe those services should be improved and new arrangements established. We envisage the establishment of a better mental health in the community initiative which would lead to the establishment of around 300 to 400 community based mental health centres throughout the nation.

The other aspect I want to quickly turn to is that there is still a need for an adequate and appropriate acute care system. We find today that the acute care beds of psychiatric units are invariably located in public hospitals. In many cases, certainly in ones that I have visited, they are not appropriate and are inadequate. People who need an acute care
stay for a mental illness are generally not going to be confined to bed. They need space and room. It is ultimately about stabilisation and hopefully rehabilitation and recovery, and many of those facilities are not adequate. We are finding that the beds are not available in many cases. People go in through the A&E—the accident and emergency—service and they go back out the door again because they cannot get an acute care bed. So we are also urging that there be moves to improve that sector of mental health services delivery.

There are so many more issues that we could talk about—and I am sure that, in future remarks in this chamber, we will get a chance to deal with them—including: the workforce, human rights, issues that particularly affect Indigenous people or young people, the difficulties that women face in prenatal and postnatal depression, and the relationship between mental health and the criminal justice system. Those issues are all covered in our report.

I want to finish by saying that the best and most apt comment I ever heard about mental illness was said to me by my mother, who suffered from severe depression all her life. She once said to me, ‘Mental illness is the most painful illness of all because it is the pain you cannot explain.’ She did not mean any disrespect to anybody suffering from any other illness, but her comment adequately summed up what is at the heart of the issue. People suffering from mental illness often cannot explain that illness to others in ways we understand. Hopefully our report will assist people who suffer from mental illness, so that they can have access to appropriate and better services and can ultimately recover to lead fulfilling lives in our community.

Senator HUMPHRIES (Australian Capital Territory) (3.47 pm)—It gives me great pleasure today to be able to share in the task of putting this important report before the Senate. Hopefully it starts a debate in this place, in the broader community and in particular in the governments of Australia on solutions to what is an enormous problem facing our community. Mental illness is Australia’s great invisible epidemic. Of all of the diseases in our community, it exhibits the grossest mismatch between the cost of the disease, the disease burden, and the amount that is spent collectively by the community to address that cost.

In excess of about 60 per cent of mental illness goes undiagnosed and untreated. We would not accept that level of untreated illness in any other area of medical help. It is a disease which is little understood and, compared with other diseases, little talked about. If one’s Aunt May suffers from, say, cancer, we can be sure that she will be flooded with sympathetic cards, phone calls to inquire about her health, and other attentions. If our Aunt May suffers from bipolar disorder, the chances are that people will look the other way.

It is difficult to know exactly how much mental illness there is in the Australian community. We do not fully understand the physiology of mental illness: the causes and the pathway that those types of illnesses follow. Sadly, much mental illness eludes complete cure. One witness said that it is better to speak of recovery from mental illness rather than a cure. Of course, most profoundly, those who suffer from mental illness in Australia today do not talk about that illness in many situations for the very reasons that Senator Forshaw just alluded to. Indeed, in some cases it is difficult to define what mental illness is. Mental illnesses are juxtaposed to mental dysfunction, ranging from florid psychosis all the way through to eccentricity.
Much mental illness is internalised or privatised—that is, people suffer in silence because of the crushing weight of social stigma. But, conversely, when a person does not react in that way to their illness, there is a huge potential impact on the people around them—not just on their immediate family and friends but on the whole community. It is in this form that mental illness becomes in some ways the most socialised of illnesses, in that we all bear a cost for the failure to adequately address it. This point is made clear when we understand that many experience mental illness and self-medicate to deal with that reality. That is difficult to quantify because so much is unknown about the course of this illness, but a great deal of alcoholism and drug use, both licit and illicit, in the Australian community is attributable to the phenomenon of people self-medicating an undiagnosed or untreated mental illness. Of course, that phenomenon occasions an enormous cost on the Australian community.

For example, a death in a car accident caused by a person who is heavily alcoholic may not be put down to mental illness but, in fact, can be linked very clearly to that problem. It follows, of course, that to adequately deal with mental illness, to bring it under the umbrella of treatment and care, we need to engineer the reduction of stigma which inhibits so many people in this community from seeking treatment. We simply have to stop looking the other way when mental illness manifests itself in our community.

When Kylie Minogue announced some 12 months ago that she was suffering from breast cancer, there was a huge wave of public sympathy. I have to doubt whether that same kind of sympathy would have been exhibited had the announcement been that Kylie Minogue suffered from schizophrenia or bipolar disorder or manic depression.

The committee found that the failure to diagnose and treat mental illness early and effectively has huge downstream costs for the community. We talk a lot in this place about the benefits of early intervention, but it is here that we find the most powerful example of the costs that are occasioned to us all by the failure to deliver early intervention.

Typically, a person with mental illness will find themselves with enough insight to see that they are slipping into an episode of serious illness. They will seek help. Most commonly, that help will not be available. Their condition will deteriorate. They will either conduct themselves in a way that brings them to the attention of crisis services or end up in an accident and emergency department where, quite often, they will be turned away unless they are actually threatening harm to other people. Even the threat of self-harm does not constitute, in some cases, an adequate reason for being admitted to care in public hospitals in this country. By the time they are admitted, the level of illness is very serious and often necessitates very long bed stays. The medical costs to the community can be very significant, but the costs are even greater where an illness spirals into destructive behaviour which can ripple out into the rest of the community and is sometimes, in fact, no more than an appeal for help.

It is the committee’s clear view that we must establish an effective community based safety net designed and funded to give the mentally ill timely and effective treatment at an early stage of an illness. We suggest in our recommendations that that safety net should constitute a network of community based mental health centres employing a combination of general practitioners, psychiatrists, psychologists, psychiatric nurses and allied health professionals. Those services should focus on the high-prevalence low-acuity conditions which are largely
overlooked in contemporary treatment arrangements, such as depression, which goes largely untreated. In case you think it is wasteful to focus major attention on illnesses such as depression which are widely experienced, bear in mind that depression generates the highest burden of disability of any disease in Australia today. More than 500,000 Australians each year are severely affected by depression. It has a massive impact on the quality of life of Australians.

Much mental illness must necessarily be treated with drugs, and indeed the Commonwealth government has dramatically increased spending on drugs to treat mental illness in recent years. Regrettably, the reliance on drugs does overshadow the fact that a great deal of good can be effected with respect to mental illness by the use of lower level therapies, or talking therapies, as they are often described. That is the kind of focus which we believe the mental health system needs to acquire in order to provide effective interventions.

In other words, we believe that the centre of gravity of our response to mental illness in Australia needs to come down from acute-care wards in hospitals, where people so often end up when they are severely ill. Instead, our response should be delivered in the community by those with a sympathetic approach to the problems that are experienced by the mentally ill, in a way which provides the best kind of care. Very often, a person with severe mental illness may need, most appropriately, a bed and compassionate assistance—someone to listen, someone to talk to, someone to keep them on a medication regime. That kind of intervention can so often be very effective and prevent a great deal of illness as well as reduce the cost to the rest of the community.

This report contributes to an important debate at an important time in the development of better services for the Australian community. It is very important too that this report is a unanimous report, as Senator Forshaw noted. It is an example, I think, of Senate committees working at their best. We have taken evidence throughout this country and we have heard many hitherto unheard stories—that was itself a very cathartic experience for many people. We have conducted an exhaustive exploration of this issue and we have produced some consensual bipartisan recommendations which we believe the Council of Australian Governments, most immediately, can readily look at, pick up and adopt as solutions to these problems.

I want to thank the other members of the committee for their contribution to the spirit of this inquiry. I want to thank the committee secretariat, who worked under exceptionally difficult conditions to produce a report in very short order. I strongly commend this report to the Senate and hope it will be the basis of much important and immediate action in the future.

Senator WEBBER (Western Australia) (3.57 pm)—I will commence my brief remarks where Senator Humphries left off: I would also like to—and, I am sure, on behalf of all the members of the committee—thank the very diligent, professional and hardworking members of the secretariat, who were placed under enormous pressure in recent days; they went on an incredible journey with every member of this committee. Like Senator Forshaw, I also thank the many people who wrote submissions and were actually brave enough to appear before the committee and talk about their personal challenges and the journeys that they had been on. Like Senator Humphries, I place on the record my thanks to and acknowledgement of every member of this committee. It is a journey that seven individual members of this place have taken. For us to have come up with such a substantial report that we all feel con-
ident we can agree on and commit to is, I think, an achievement worth noting.

As has been remarked, mental illness is an issue that touches every section of our community. It is said that it affects up to 20 per cent of our population. In looking at the recommendations that our report contains, in looking at a holistic approach, I am sure it is the aim of every member of this committee not only to say to every government of every persuasion, ‘This must be one of your key priorities in addressing the health needs of our community,’ but also to come up with a solution that says to someone with a mental illness: ‘There is no longer a wrong door for you to go through. We are going to treat you as a whole person and we are going to try to come up with a solution that addresses your needs.’

As I have said in this place before, I live in the suburb of Mount Hawthorn in Western Australia. There are currently 3,912 people on the electoral roll in Mount Hawthorn. So, if you accept the 20 per cent marker I mentioned, approximately 780 people in my own suburb will actually be suffering from some kind of mental illness or mental distress at any one time.

It is therefore an issue that touches every aspect of our community and, I am sure, everyone in this building in a different way. Senator Forshaw has talked about his personal experience from a family point of view. It does not leave a section of our society untouched. Our former Premier in Western Australia has also been touched by mental illness and has gone on a very long and hard journey himself. We have people from the likes of Geoff Gallop to the woman who lives next door to me. She is of Greek origin. She has lived in her home for 40-odd years and has progressively suffered from very debilitating episodes of manic depression. Indeed, when I first moved into my home 10 years ago, she was in an institution, and so I did not realise the difficulties that family had faced. Not only did they have to battle with the stigma that Senator Humphries has rightly identified; but the stigma within our immigrant communities, within the more marginalised parts of our society, is even greater than within the mainstream or decision-making groups within our community.

In trying to finalise my very brief remarks, because I know the pressures this chamber is under and I am anxious that other members of the committee get the opportunity to speak, I just want to say that what has really struck me most of all the evidence that we saw was some evidence that we got from some young people in Victoria. There was one young woman in particular who talked about the challenges that she has faced from adolescence—she is now in her early 20s—and the impact that they have not only on her health and wellbeing but her ability to be a fully formed member of our community and her ability to obtain and maintain employment and training. At that point in time, she was feeling well and she was employed—she felt she had the capacity to be further employed than she was but she did not want to risk her mental wellbeing. She summed up her journey by saying, ‘They don’t hand out gold medals for the race that I have run.’ I think that is a fitting note on which to allow others to contribute.

Senator MOORE (Queensland) (4.02 pm)—I would also like to go on record today, on the day our report has been tabled, to acknowledge the amazing courage and contributions from so many people who felt that there was some genuine value in giving evidence to our Senate committee. When people read this report—and again, as I have said many times in this place, when the Senate produces a report that reflects the views of people from our community, there is an expectation that people will take the opportu
nity to read it—and see that over 500 people, organisations and practitioners felt that there was need in our community to respond to the issues of mental health, they will see that across our community there are people who have hope. They have hope that we as a society will listen to their stories and that we as a society will band together to respond. What we heard was that Australia has, over many years, acknowledged that we have the capacity to respond to the issues of mental illness in our community and at times we have been acknowledged as a leader in this area. We saw wonderful stories of treatments, collaborations and experiments that have involved many people and that have led to an expectation that there will doors. I think Senator Webber used that expression.

However, in our committee a great deal of frustration was mentioned. Before we move on to the next step—inevitably there must be a next step—it is important that we note this afternoon that, amidst the hope, a great deal of frustration was expressed by very many people: people who identified themselves as having mental illness at some time, their families, the people who worked with them through the journey of this illness and the people who worked to provide some response in this area. They consistently told us that they were angry because their concerns had not been listened to. Over many years, people had taken the time to come forward to tell governments at all levels and of all flavours that there was a need to respond with research, to look at the illnesses that had been identified and to work effectively with those people who were prepared to do so to come up with ways that will not be ‘one size fits all’. There is always a danger that people will come up with one solution that seems to be effective and try to force all problems to meet that one solution.

Out of this report it is clear that there is not one simple solution—but there can be a collaborative approach involving governments, health practitioners and the people who have the bravery to acknowledge that they are unwell. There must be that cooperation in our community because, if there is not, we will continue to run away from these issues. As we have heard from other speakers this afternoon, a sense of isolation and abandonment was identified by some families. They felt that their issues were not acknowledged and that their illness was not given the same respect as others in the community.

There are at the moment a number of clear recommendations that look directly at the COAG process. The important thing in bringing down this report today is that it is not overlooked in the various decisions that have been already announced and anticipated by the Prime Minister and by the various state governments, because we can do better. For too long, I think, we have run away from the issue. We as the Senate have a responsibility, because the people of Australia who want to be part of the solution have told us that they want us to respond to their needs.

To the secretariat, of course, I say thank you very much. You shared this journey. However, I think the real response will be in the future. We put down a number of recommendations. We now look to governments and to the community to put these into place. I do not want to come back to this place in a number of years time to find that once again people have had to be brave enough to come to their government and say, ‘You can help us, and there can be some result.’ I do not want to look at that despair, because that would mean that the effort that we have put in over the last few months will be wasted, and I do not think that we can walk away from that challenge. I seek leave to continue my remarks later.

Leave granted; debate adjourned.
PETITIONS

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

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

This petition of certain citizens of Australia draws to the attention of the Senate, the crisis in the medical workforce due to the neglect of the Howard Government.

Your petitioners therefore ask the Senate to:

• Increase the number of undergraduate university places for medical students,
• Increase the number of medical training places, and
• Ensure Australia trains enough professionals to maintain the quality care provided by our hospitals and other health services in the future.

by Senator Hogg (from 84 citizens).

Australian National Flag
To the Honourable the President and the Members of the Senate in Parliament assembled. The Petition of the undersigned respectfully showeth that:

1. We the undersigned wish to signify our strong opposition to any change in the design or colour of the Australian national flag.
2. We believe that the current flag has served Australia well and will continue to do so in the future and represents a true manifestation of the nation’s history.

And your petitioners, as in duty bound, will ever pray.

by Senator Kemp (from four citizens).

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

The Petition of the undersigned draws to the attention of the Senate the lack of regulation of pregnancy counselling in Australia.

Some pregnancy counselling services which are anti-choice give the impression in advertising material that they provide information on the three pregnancy options (keeping the child, termination, and adoption), when they do not. Such pregnancy counselling services have also been known to provide misleading information about the risks associated with abortion and to refuse to provide referrals for abortion.

Pregnancy counselling services which do not charge for the information they provide are not subject to the Trade Practices Act, which means they are not prohibited from engaging in misleading or deceptive advertising.

Your petitioners believe:

(a) Women have the right to know what sort of pregnancy counselling service they are contacting (ie anti-choice or non-directive) when they seek information about whether or not to continue a pregnancy;
(b) Misleading information provided by some anti-choice pregnancy counselling services has caused unnecessary distress for many women considering terminating their pregnancies; and,
(c) The Federal Government should urgently move to regulate pregnancy counselling in Australia (including banning misleading and deceptive advertising).

Your petitioners therefore request the Senate urge the Government to regulate pregnancy counselling in Australia (including banning misleading and deceptive advertising).

by Senator Stott Despoja (from 24 citizens).

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

The Petition of the undersigned draws to the attention of the Senate concerns that Austudy recipients currently do not have access to Rent Assistance, which means that thousands of students around Australia are missing out on up to $98 each fortnight simply because of their age.

Your petitioners believe:
(a) the costs faced by students aged 25 and over are usually equal to—if not greater than—those faced by younger students;
(b) there is no rational basis for excluding older students from the extra assistance that Rent Assistance can provide; and
(c) Austudy recipients should be eligible to receive Rent Assistance.

Your petitioners therefore request the Senate urge the Government to make Austudy recipients eligible for Rent Assistance.

by Senator Stott Despoja (from 981 citizens).

Education: Student Fees

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

The Petition of the undersigned draws to the attention of the Senate concerns that abolishing universal student union fees will disadvantage students—particularly poorer students and those in rural and regional areas.

Your petitioners believe:
(a) student organisations play an important role in protecting students’ academic and social rights, and it is essential this advocacy role is not compromised;
(b) poorer students will be hardest hit by so-called voluntary student unionism, as many will not be able to afford the full cost of services currently subsidised by student associations—such as counselling, child care and advocacy; and,
(c) these services are particularly important in regional and rural areas, where student organisations may be the only organisations providing them.

Your petitioners, therefore, request that the Senate oppose the Government’s legislation to abolish universal student union fees.

by Senator Stott Despoja (from 82 citizens).

Petitions received.

NOTICES

Presentation

Senator Stott Despoja to move on the next day of sitting:
That the Senate—
(a) notes:
(i) the Make Poverty History campaign’s White Band Day on Sunday, 2 April 2006;
(ii) the continuing tremendous efforts of the many non-government organisations involved in the Make Poverty History campaign, in pursuit of their commitment to the Millennium Development Goals,
(iii) the Government’s response to the tsunami crisis and aid budget increase and the understanding that this response may serve as a guide to Australia in supporting the Make Poverty History campaign to achieve its goal of halving world poverty by 2015,
(iv) that Australia has the capacity to assist the campaign in a particularly constructive and valuable way, and
(v) that an end to world poverty is attainable with the assistance and determination of nations such as Australia; and
(b) calls on the Government to continue to increase the proportion of budget funding for aid in the 2006 budget, consistent with its commitment to helping developing countries reduce poverty and achieve sustainable development.

Senator Stott Despoja to move on the next day of sitting:
That the Senate—
(a) notes that:
(i) the 50th Session of the Commission on the Status of Women was held in New York from 27 February to 10 March 2006, and
(ii) the themes for this session were enhanced participation of women in development—an enabling environment
for achieving gender equality and the advancement of women, taking into account education, health and work—and equal participation of women and men in decision-making processes at all levels; and

(b) urges the Government to sign the Optional Protocol to progress these issues more effectively and set an example for other countries around the world which have not yet signed the Optional Protocol.

Senators Stott Despoja and Bartlett to move on Wednesday, 10 May 2006:

That the following bill be introduced: A Bill for an Act to amend the Marriage Act 1961 to provide for same-sex unions, and for related purposes. Same-Sex Unions Bill 2006.

Senator Milne to move on the next day of sitting:

That the Senate—

(a) notes:

(i) the statement by the Prime Minister, Mr Howard, on 28 March 2006 that ‘whilst India is not a signatory to the [Nuclear Non-Proliferation] treaty, everybody knows that, her behaviour since exploding a device in 1974 has been impeccable’,

(ii) that India conducted nuclear tests in 1998, prompting the Australian Government to sever defence links with India,

(iii) that India resumed missile testing in 2001, using an intermediate range ballistic missile capable of carrying a nuclear warhead,

(iv) that India has still not become a party to either the Comprehensive Test Ban Treaty nor the Nuclear Non-Proliferation Treaty, and

(v) India has a well-developed, active and secret program to outfit its uranium enrichment program and circumvent other countries’ technology export control efforts, according to a recently-released report by the United States of America-based Institute of Science and International Security; and

(b) calls on the Prime Minister to rule out any change to the Government’s policy of refusing to permit the sale of uranium to India.

COMMITTEES
Selection of Bills Committee
Report

Senator SCULLION (Northern Territory) (4.10 pm)—I present the third report of 2006 of the Selection of Bills Committee and move:

That the report be adopted.
Senator SCULLION—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 3 OF 2006

1. The committee met in private session on Wednesday, 29 March 2006 at 4.22 pm.

2. The committee resolved to recommend—

That—

(a) the provisions of the Health and Other Services (Compensation) Amendment Bill 2006 be referred immediately to the Community Affairs Legislation Committee for inquiry and report by 9 May 2006 (see appendix 1 for a statement of reasons for referral);

(b) the National Health and Medical Research Council Amendment Bill 2006 be referred immediately to the Community Affairs Legislation Committee for inquiry and report by 2 May 2006 (see appendix 2 for a statement of reasons for referral);

(c) upon its introduction into the House of Representatives, the provisions of the Petroleum Retail Legislation Repeal Bill 2006 be referred immediately to the Economics Legislation Committee for inquiry and report by 2 May 2006 (see appendix 3 for a statement of reasons for referral);

(d) upon its introduction into the House of Representatives, the provisions of the Australian Nuclear Science and Technology Organisation Amendment Bill 2006 be referred immediately to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 2 May 2006 (see appendix 4 for a statement of reasons for referral);

(e) upon its introduction into the House of Representatives, the provisions of the Australian Research Council Amendment Bill 2006 be referred immediately to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 2 May 2006 (see appendix 5 for a statement of reasons for referral);

(f) the provisions of the Renewable Energy (Electricity) Amendment Bill 2006 be referred immediately to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 9 May 2006 (see appendix 6 for a statement of reasons for referral);

(g) the Australian Broadcasting Corporation Amendment Bill 2006 be referred immediately to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 9 May 2006 (see appendixes 7, 8 and 9 for statements of reasons for referral);

(h) upon its introduction into the House of Representatives, the provisions of the Australian Trade Commission Legislation Amendment Bill 2006 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 2 May 2006 (see appendix 10 for a statement of reasons for referral);

(i) upon its introduction into the House of Representatives, the provisions of the Export Market Development Grants Legislation Amendment Bill 2006 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 2 May 2006 (see appendix 11 for a statement of reasons for referral);

(j) the Migration Amendment (Employer Sanctions) Bill 2006 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report by 2 May 2006 (see appendixes 12 and 13 for statements of reasons for referral);

(k) the provisions of the Federal Magistrates Amendment (Disability and Death
Benefits) Bill 2006 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report by 2 May 2006 (see appendix 14 for a statement of reasons for referral);

(i) the provisions of the Law Enforcement Integrity Commissioner Bill 2006, the Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006 and the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report by 11 May 2006 (see appendix 15 for a statement of reasons for referral);

and

(m) the provisions of the Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006 be referred immediately to the Legal and Constitutional Legislation Committee for inquiry and report by 2 May 2006 (see appendix 16 for a statement of reasons for referral).

3. The committee resolved to recommend—

That the following bills not be referred to committees:

- Age Discrimination Amendment Bill 2006
- General Insurance Supervisory Levy Imposition Amendment Bill 2006
- Superannuation Legislation Amendment (Trustee Board and Other Measures) Bill 2006.

The committee recommends accordingly.

4. The committee deferred consideration of the following bills to the next meeting:

Bill deferred from meeting of 28 February 2006

- Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005

Bills deferred from meeting of 29 March 2006

- ASIO Legislation Amendment Bill 2006
- Aviation Transport Security Amendment Bill 2006

- Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) (Consequential Amendments) Bill 2006
- Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006
- Tax Laws Amendment (2006 Measures No. 2) Bill 2006

(Jeannie Ferris)

Chair
30 March 2006

Appendix 1

Proposal to refer a bill to a committee

Name of bill(s):
Health and Other Services (Compensation) Amendment Bill 2006

Reasons for referral/principal issues for consideration

In particular to examine the potential to improve the operation of the Advanced Payment Option, which is the subject of the main amendment to this bill.

This amendment seeks to repeal the sunset clause in order to maintain the status quo.

However, previous review of the act has identified that further improvements could be made to ensure claimants have greater portions of their compensation returned to them.

Possible submissions or evidence from:
Medicare Australia (responsible for administration of bill)

Committee to which bill is referred:
Community Affairs Legislation Committee

Possible hearing date:
Possible reporting date(s): 15 June 2006
Appendix 2
Proposal to refer a bill to a committee
Name of bill(s):
National Health and Medical Research Council Amendment Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bill as necessary
Possible submissions or evidence from:
Committee to which bill is referred:
Community Affairs Legislation Committee
Possible hearing date:
Possible reporting date(s): 2 May 2006

Appendix 3
Proposal to refer a bill to a committee
Name of bill(s):
Petroleum Retail Legislation Repeal Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bill as necessary
Possible submissions or evidence from:
Committee to which bill is referred:
Economics Legislation Committee
Possible hearing date:
Possible reporting date(s): 2 May 2006

Appendix 4
Proposal to refer a bill to a committee
Name of bill(s):
Petroleum Retail Legislation Repeal Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bill as necessary
Possible submissions or evidence from:
Committee to which bill is referred:
Employment, Workplace Relations, and Education Legislation Committee
Possible hearing date:
Possible reporting date(s): 2 May 2006

Appendix 5
Proposal to refer a bill to a committee
Name of bill(s):
Australian Research Council Amendment Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bill as necessary
Possible submissions or evidence from:
Employment, Workplace Relations, and Education Legislation Committee
Committee to which bill is referred:
Possible hearing date:
Possible reporting date(s): 2 May 2006

Appendix 6
Proposal to refer a bill to a committee
Name of bill(s):
Renewable Energy (Electricity) Amendment Bill 2006
Reasons for referral/principal issues for consideration
To examine the provisions of the bill as necessary, including the issues raised by the Scrutiny of Bills Committee
Possible submissions or evidence from:
Australian Conservation Foundation
CSIRO
Australian Business Council for Sustainable Energy
Hydro Tasmania
Pacific Hydro Ltd
Committee to which bill is referred:
Environment, Communications Information Technology and the Arts Legislation Committee
Possible hearing date:
Possible reporting date(s): 13 June 2006
Appendix 7
29 March 2006
Senator Jeannie Ferris
Government Whip
Selection of Bills Agenda
I write to seek your cooperation to add the Australian Broadcasting Corporation Amendment Bill 2006 to the agenda of the Selection of Bills Committee meeting on Wednesday, 29 March 2006.
I am available to discuss this matter with you if required.
Yours sincerely
George Campbell

Appendix 8
Proposal to refer a bill to a committee
Name of bill(s):
Australian Broadcasting Corporation Amendment Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bill as necessary
Possible submissions or evidence from:
Environment, Communications Information Technology and the Arts Legislation Committee
Possible hearing date:
Possible reporting date(s): 9 May 2006

Appendix 9
Proposal to refer a bill to a committee
Name of bill(s):
Australian Broadcasting Corporation Amendment Bill 2006
Reasons for referral/principal issues for consideration
Explore the rationale of the proposed changes to the ABC’s corporate governance arrangements. Assess the impact of the changes on the ABC’s governance.
Possible submissions or evidence from:
ABC, Friends of the ABC, DCITA, Ramona Koval, Quentin Dempster, Community and Public Sector Union
Committee to which bill is referred:
Environment, Communications Information Technology and the Arts Legislation Committee
Possible hearing date:
Possible reporting date(s): 2 May 2006

Appendix 10
Proposal to refer a bill to a committee
Name of bill(s):
Australian Trade Commission Legislation Amendment Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bill as necessary
Possible submissions or evidence from:
Committee to which bill is referred:
Foreign Affairs, Defence and Trade Legislation Committee
Possible hearing date:
Possible reporting date(s): 2 May 2006

Appendix 11
Proposal to refer a bill to a committee
Name of bill(s):
Export Market Development Grants Legislation Amendment Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bill as necessary
Possible submissions or evidence from:
Committee to which bill is referred:
Foreign Affairs, Defence and Trade Legislation Committee
Possible hearing date:
Possible reporting date(s): 2 May 2006

CHAMBER
Appendix 12
Proposal to refer a bill to a committee
Name of bill(s):
Migration Amendment (Employer Sanctions) Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bill as necessary
Possible submissions or evidence from:
Committee to which bill is referred:
Legal and Constitutional Legislation Committee
Possible hearing date:
Possible reporting date(s): 2 May 2006

Appendix 13
Proposal to refer a bill to a committee
Name of bill(s):
Migration Amendment (Employer Sanctions) Bill 2006
Reasons for referral/principal issues for consideration
• What sort of employment relations are DIMA finding when they conduct raids/investigations of workplaces
• What workplace conditions are DIMA finding when they conduct raids/investigations of workplaces
• What onus identification on the employer to determine whether someone is an unlawful non-citizen or has work restrictions on visa
Possible submissions or evidence from:
Committee to which bill is referred:
Possible hearing date:
Possible reporting date(s): 9 May 2006

Appendix 14
Proposal to refer a bill to a committee
Name of bill(s):
Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bill as necessary
Possible submissions or evidence from:
Committee to which bill is referred:
Legal and Constitutional Legislation Committee
Possible hearing date:
Possible reporting date(s): 11 May 2006

Appendix 15
Proposal to refer a bill to a committee
Name of bill(s):
Law Enforcement Integrity Commissioner Bill 2006
Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006
Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006
Reasons for referral/principal issues for consideration
Examination of that bills as necessary
Possible submissions or evidence from:
Committee to which bill is referred:
Legal and Constitutional Legislation Committee
Possible hearing date:
Possible reporting date(s): 2 May 2006

Appendix 16
Proposal to refer a bill to a committee
Name of bill(s):
Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006
Reasons for referral/principal issues for consideration
In order to assess whether the bill is compliant with the World Customs Organisation Framework of Standards
Possible submissions or evidence from:
Customs Brokers and Forwarders Council of Australia, Australian Federation of International Freight Forwarders
Committee to which bill is referred:
Legal and Constitutional Legislation Committee

Possible hearing date: Coordinate with other bills.

Possible reporting date(s): 19 June 2006

Senator MARSHALL (Victoria) (4.10 pm)—I move:

At the end of the motion, add “but, in respect of the provisions of the Australian Nuclear Science and Technology Organisation Amendment Bill 2006 and the provisions of the Australian Research Council Amendment Bill 2006, the Employment, Workplace Relations and Education Legislation Committee report on 10 May 2006.”.

Question agreed to.

Original question, as amended, agreed to.

NOTICES

Postponement

The following item of business was postponed:
Business of the Senate notice of motion no. 1 standing in the name of Senator Bartlett for today, proposing the reference of matters to the Community Affairs References Committee, postponed till 10 May 2006.

BUSINESS

Withdrawal

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (4.11 pm)—by leave—I move:

That the following government business orders of the day be discharged from the Notice Paper:

No. 20 Workplace Relations Amendment (Small Business Employment Protection) Bill 2005.
No. 21 Workplace Relations Amendment (Extended Prohibition of Compulsory Union Fees) Bill 2005.
No. 22 Workplace Relations Amendment (Right of Entry) Bill 2004.

Question agreed to.

CHILDREN: SEXUAL ASSAULT

Senator BARTLETT (Queensland) (4.12 pm)—I move:

That the Senate—

(a) notes that the recent Australian Local Government Association (ALGA) conference passed a resolution calling on ‘the Federal Coalition Government, the Opposition and all federal politicians to develop a national strategy in partnership with state and local governments and key stakeholders to address the issue of sexual assault on children in Australia’;

(b) congratulates the ALGA for demonstrating its commitment to this important national issue;

(c) notes that the Government will be convening two national conferences on abuse of children, which will bring together key stakeholders responsible for the care and protection of children; and

(d) expresses its support for the ALGA resolution and calls on all politicians to develop a national strategy on this crucial and pressing matter in partnership with state, territory and local governments and key stakeholders.

Question agreed to.

GENETIC USE RESTRICTION TECHNOLOGIES

Senator SIEWERT (Western Australia) (4.12 pm)—I move:

That the Senate—

(a) notes:

(i) that the Australian Government has not as yet stated a public policy position on genetic use restriction technologies (GURT), and has not yet undertaken a process of public consultation on GURT, and

(ii) the recommendation of a working group at the United Nations meeting on the Convention on Biological Diversity (CBD) in Brazil on Friday, 24 March 2006, to uphold the existing de facto moratorium on GURT, which is ex-
pected to be confirmed by the CBD’s plenary session in the week beginning 27 March 2006; and
(b) calls on the Australian Government to:
(i) cease all Australian Government advocacy of measures that would undermine the CBD’s moratorium on GURTs,
(ii) place a ban on research, development and use of GURTs in Australia, and
(iii) instruct all official delegates to future CBD meetings to advocate a complete and permanent international ban on GURTs.

Question negatived.

CLIMATE CHANGE
Senator MILNE (Tasmania) (4.13 pm)—
I move:
That the Senate—
(a) notes:
(i) the comments by the Prime Minister of the United Kingdom (UK), Mr Tony Blair, made in the House of Representatives on 27 March 2006, about the need for Australia to re-engage with global efforts to tackle climate change,
(ii) that the UK has released a new climate change program setting out the UK agenda for action on climate change, including a stricter emissions cap on industry,
(iii) that the Conservative Party in the UK has committed itself to emission targets for 2010, 2020 and 2050 and has said that targets ‘must be locked in through binding commitments, stretching decades into the future and reinforced by market-based emissions-trading mechanisms’, and
(iv) that during the South Australian election campaign, the South Australian Liberal Party committed to a 60 per cent cut by 2050 and to reduce the state’s emissions by 20 per cent by 2020; and
(b) calls on the Government to follow the lead of the other conservative parties by setting emission abatement targets and putting a price on carbon in order to send the clear signal that industry and the financial sector need if they are to invest in the new technologies required.

Question negatived.

GREAT BARRIER REEF MARINE PARK
Senator MILNE (Tasmania) (4.13 pm)—
I move:
That the Senate—
(a) notes that the Federal Government’s Climate Change: Risk and Vulnerability report states that:
(i) both the Great Barrier Reef and the Wet Tropics are very sensitive to changes in temperature and that an increase of as little as 2°C could have devastating effects,
(ii) climate model projections suggest that within 40 years water temperatures could be above the survival limit of corals, and
(iii) the value and uniqueness of World Heritage listed areas are already established and these should be given prominence in adaptation research and planning;
(b) further notes that:
(i) the World Heritage Committee considers that the Great Barrier Reef is one of many World Heritage sites that will become increasingly affected by climate change—other prime examples include the Kilimanjaro National Park, biosphere reserves such as the Cape Floral Region in South Africa and cultural sites such as the Venice Lagoon which is threatened by the rise in sea level, and
(ii) at the World Heritage Committee meeting of climate change experts at the United Nations Educational, Scientific and Cultural Organization Headquarters in Paris on 16 and 17 March 2006, the Australian Government joined with
the United States of America in arguing against the Great Barrier Reef being listed as World Heritage in Danger because of climate change; and

(c) calls on the Government to support inclusion of the Great Barrier Reef on the World Heritage in Danger list because of climate change.

Question put.

The Senate divided. [4.18 pm]

(The President—Senator the Hon. Paul Calvert)

Ayes……………... 29
Noes……………… 34

Majority……….. 5

AYES

Allison, L.F. Bartlett, A.J.J.
Bishop, T.M. Campbell, G. *
Conroy, S.M. Crossin, P.M.
Evans, C.V. Forshaw, M.G.
Hogg, J.J. Hurley, A.
Hutchins, S.P. Kirk, L.
Ludwig, J.W. Marshall, G.
McEwen, A. McLucas, J.E.
Milne, C. Moore, C.
Murray, A.J.M. Nettle, K.
O’Brien, K.W.K. Polley, H.
Ray, R.F. Siewert, R.
Stephens, U. 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.
Campbell, I.G. Chapman, H.G.P.
Colbeck, R. Cooman, H.L.
Eggleston, A. Ellison, C.M.
Ferguson, A.B. Ferris, J.M.
Fierravanti-Wells, C. Fifield, M.P.
Heffernan, W. Humphries, G.
Johnston, D. Lightfoot, P.R.
Macdonald, I. Mason, B.J.
McGauran, J.J. Nash, F.
Parry, S. Patterson, K.C.
Payne, M.A. Ronaldson, M.
Santoro, S. Scullion, N.G. *

Troeth, J.M. Trood, R.
Vanstone, A.E. Watson, J.O.W.

PAIRS

Brown, B.J. Joyce, B.
Faulkner, J.P. Minchin, N.H.
Lundy, K.A. Kemp, C.R.
Sherry, N.J. Macdonald, J.A.L.

* denotes teller

Senator Carr did not vote, to compensate for the vacancy caused by the resignation of Senator Hill.

Question negatived.

PARLIAMENTARY ZONE

Proposal for Works

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (4.21 pm)—At the request of Senator Ellison, I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the construction of the National Portrait Gallery.

Question agreed to.

PROTECTING CHILDREN FROM JUNK FOOD ADVERTISING BILL 2006

First Reading

Senator BARTLETT (Queensland) (4.21 pm)—At the request of Senator Allison, I move:

That the following bill be introduced:

A Bill for an Act to amend the Broadcasting Services Act 1992 to encourage healthier eating habits among children and to prohibit the advertising of junk food during certain times, and for related purposes.

Question agreed to.

Senator BARTLETT (Queensland) (4.22 pm)—I move:

That this bill may proceed without formalities and be now read a first time.

Question agreed to.
Bill read a first time.

Second Reading

Senator BARTLETT (Queensland) (4.22 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Protecting Children from Junk Food Advertising Bill seeks to put in place some restrictions on advertising to children that would protect them from the relentless efforts of the junk food industry.

This bill essentially makes food and beverage advertising on television during children’s viewing times subject to the same restrictions that apply to the advertising of alcoholic drinks.

It also places restrictions on the advertising in schools of companies whose principal activity is the manufacture, distribution or sale of junk food.

Australia is facing an obesity epidemic. Currently, 1 in 2 Australian adults and 1 in 4 children are overweight or obese.

And the rates are rising. If the current trends continue, within 20 years about half of Australian children will be obese.

Research shows that Australian children are not eating more than they did previously but they are eating more high-fat and high sugar foods and drinks than previously.

Children’s dietary choices have a lasting and long term effect on their health.

Overweight children are more likely to become overweight adults and to experience the same chronic health problems that are associated with adult obesity.

We are seeing alarming increases in young people in the incidence of type 2 diabetes, high blood pressure, sleep apnoea, high cholesterol, and orthopaedic problems because of excessive weight.

Childhood obesity is a complex problem that is caused by many factors. This means that no one intervention will resolve the problem and that the “battle” needs to be waged on several fronts.

Television advertising is one such front.

Australian children see on average 25,000 television advertisements each year and much of this is directed specifically at children.

Advertising conferences are held specifically on how to market to children and companies spend hundreds of millions of dollars every year on advertising directed at children.

And despite all their claims to the contrary, they do this because it works. Most parents would be well aware that television advertising can lead to a young child’s demands for the advertised product.

It is true that it is not possible to provide ‘incontrovertible proof’ of the relationship between advertising, junk food and obesity. That is because there are many factors which are at play.

There may not be ‘incontrovertible’ proof but there is an ever increasing body of evidence that is showing that children are susceptible to what they see on TV and that food advertising specifically influences children’s food preferences and increases their requests for foods that are high in fat, sugar and salt.

A major systematic review of the international evidence on the impact of food advertising to children released in 2003 concluded that it was not until the age of around 12 that children had the cognitive ability to understand the concept of marketing.

This same review found that food promotion has an effect on what food children prefer, what they buy (or hassle their parents to buy) and what they consume.

The American Psychological Association has also concluded that young children are uniquely vulnerable to commercial persuasion.

Surely marketing something to a child too young to understand the concept of marketing and therefore unable to counter it is wrong?

Television is the main way of advertising food to children. Even before they reach school age, when they are still unable to tell the difference between ads and other programmes and do not understand the purpose of advertising, children
are bombarded with advertisements to entice them to demand their parents buy a particular brand of high sugar cereal or to drink a certain soft drink.

Recent research has shown that almost all food and drink advertising on TV is promoting products that are high in sugar, salt and saturated fat and that these advertisements are much more common during children’s programmes then later in the evening.

A 1996 survey found that Australian children are exposed to an average of 12 food advertisements every hour.

The Australian Divisions of General Practice conducted a junk food advertising audit in 2003 and found that that during children’s viewing times there was an average of one junk food advertisement per ad break.

They also found that 99% of all food advertisements broadcast during children’s viewing times were advertisements for junk food. Very few food advertisements promoted foods that were in line with a healthy diet.

An Australian study released in 2005 found that confectionery ads were 3 times more likely to be broadcast during children’s programs than during adults’ programs on Sydney television stations and fast food restaurant ads were twice as likely to be shown during children’s programs than during adult programs.

Television advertising of food is clearly dominated by pre-sugared breakfast cereals, soft drinks, confectionary, savoury snacks, and fast food outlets.

This promotion contrasts sharply with the diet recommended by health professionals.

It is clearly time for the Federal government to face up to its responsibility and take on the junk food industry and regulate food advertising to children.

Their line that it is the role of parents to control what children eat is not good enough.

It is true that parents do have a role to play.

But many parents do not have the knowledge, the time, or the energy to counter the constant barrage of misinformation directed at children through junk food advertising.

Focusing on parents also absolves the government of its responsibilities in this area.

We already protect children from advertising of alcohol and tobacco and high levels of violence during TV programmes but when it comes to food and drink the government gives the companies free reign.

Of course much of children’s viewing occurs outside specified children’s viewing times.

We know that children’s peak viewing times are 5-9pm and that restrictions on advertising to protect children do not apply to these times.

It is time that the Government took children’s peak viewing times into account and reconsidered when restrictions should apply.

Of course it is not only television advertising that needs to be considered.

That is why we have included a ban on junk food advertising in schools.

There are increasing reports of sponsorship deals between schools and companies that produce fizzy drinks, potato chips and chocolates.

We need to promote healthy eating in schools. We should not be allowing the sale of these products in schools, whether through vending machines or in the tuckshops, and we should not be promoting them through allowing advertising by the companies that produce them.

The measures in this bill in themselves won’t eliminate obesity but they are a central part of the overall plan.

We need Government policies and programs that encourage and recommend good eating and proper exercise.

But we also need to remove the temptations of an unbalanced poor diet and activity from vulnerable eyes and ears and stomachs.

I commend this bill to the Senate.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.
COMMITTEES
Publications Committee
Report
Senator SCULLION (Northern Territory)
(4.23 pm)—I present the 11th report of the Standing Committee on Publications.
Ordered that the report be adopted

BUDGET
Consideration by Legislation Committees
Additional Information
Senator SCULLION (Northern Territory)
(4.23 pm)—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present additional information received by the committee relating to hearings on the 2005-06 budget and additional estimates.

Senator George Campbell
(4.25 pm)—I seek leave, on behalf of Senator Stephens, to incorporate a brief speech in respect of this report.
Leave granted.
Senator Stephens
(4.25 pm)—The incorporated speech read as follows—
I am pleased to speak on behalf of Labor Senators on this Report of the Economics Committee—the Review of Annual Reports. Sometimes these reports are dismissed as just ‘process’ issues, but in fact the Economics Committee has been engaged in lively discussion and consideration of its responsibilities in dealing with this year’s review.
The Committee has not taken its responsibility lightly, or dismissed the Review of Annual Reports As outlined in the report itself, the Econom-
ics Committee has considered a wide range of reports.

I understand that it is unusual for a Committee to make a recommendation, such as that which we have done today. That recommendation, as Senator Brandis has outlined, would help to simplify the task of checking that agencies have taken full account of reporting requirements.

Labor is particularly pleased with the inclusion of this key recommendation which advocates the inclusion of a compliance index in annual reports, particularly for executive departments and FMA Act agencies.

I am also particularly pleased to inform the Chamber that the Department of Finance and Administration is supportive of this key accountability measure. It is our understanding that Finance is taking steps internally to ensure departmental compliance with both the Financial Management and Accountability Act 1997, commonly referred to as the FMA Act. I am further advised that statutory authorities will also be asked by Finance to certify compliance with the Commonwealth Authorities and Companies Act 1997. This Act is commonly referred to as the CAC Act.

Together the FMA and CAC Act are the cornerstones by which federal departments and statutory authorities administer public funds appropriated to conduct their business. Labor contends that not only must agencies comply with the provisions of these legislative instruments, but they must be seen to comply. Clearly Annual Reports are the bedrock on which the public depends for its understanding of Commonwealth expenditure. The recommendation to include a compliance index in annual reports is therefore fully supported by Labor.

Labor has a proud history of adhering to high standards of public and fiscal accountability. That’s why Labor’s Shadow Minister for Finance, Lindsay Tanner established “Operation Sunlight”—an expert taskforce and consultation process to make our financial reporting system more effective, understandable and most importantly in the context of Annual Reports, more transparent.

Operation Sunlight has identified the need for the inclusion of a reconciliation matrix in all Commonwealth department annual reports. This would reconcile the measures put forward at the time of the May Budget in departments’ Portfolio Budget statements with the key document reviewing annual expenditure and performance—namely the Annual Report. Such a measure should include page numbers from both the preceding Portfolio Budget Statement and the Annual Report so that the community and interested stakeholders can easily cross reference both documents. Hence we could easily establish whether a department actually did what it said it would do, or more particularly, whether it spent what it said it would spend.

While the Review of Annual Reports does not advocate this measure, it is one I suggest now as a sensible future extension of what is advocated by the Review’s key recommendation. In commending the Report of the Review to Senators, I also foreshadow the reconciliation matrix initiative as one of a number of key initiatives that would feature in any future program of continuous improvement with respect to financial disclosure in our Commonwealth Annual Reporting cycle.

Ordered that the report be printed.

Foreign Affairs, Defence and Trade References Committee

Senator HUTCHINS (New South Wales) (4.25 pm)—I present the report of the Foreign Affairs, Defence and Trade References Committee entitled China’s emergence: implications for Australia, together with documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator HUTCHINS—I move:

That the Senate take note of the report.

I would like to thank the committee secretary, Dr Kathleen Dermody, Dr Richard Grant, Andrew Bomm and Angela Lancsar and I seek leave to incorporate my comments into Hansard.
Leave granted.

*The statement read as follows—*

This report, the second in the committee’s inquiry into Australia’s relationship with China, examines the factors shaping China’s foreign policy and the way in which other countries are adjusting to China’s emergence and the implications for Australia. In this context, it looked at China’s relations with ASEAN countries, with the United States of America, Taiwan, Japan, North Korea and the island states in the Southwest Pacific. It also considered China’s military modernisation. I can only touch on a number of issues that were discussed in the report.

China openly acknowledges that its diplomacy must serve its economic development. Chinese leaders espouse a foreign policy that places high importance on global stability, friendly and cooperative relations and good neighbourliness. It is deliberately cultivating special relations with countries rich in the natural resources it needs to continue economic development and is presenting itself to its citizens and the outside world as an advocate for global peace. It wants to reassure the world that its ‘peaceful rise’ does not pose a threat.

Although China’s foreign policy is designed to show its friendly face to the rest of the world, fears about its future intentions persist. Some, especially those with important economic links with China, such as Australia, are keen to strengthen their diplomatic relations but are aware that the relationship is not without challenge.

China’s emergence as a major economic and political force is having a profound influence on its neighbours in East Asia. The strength of the Chinese economy and its potential economic power in the future is increasingly drawing its neighbours into its orbit of influence. With China’s emergence as a manufacturing powerhouse and untapped consumer market, countries across the Asia-Pacific region, including Australia, view China’s booming economy as a source of significant economic opportunities. The willingness of these countries to become politically closer to China in order to secure the benefits of their economic strength is providing China with considerable political leverage in the Asia-Pacific region and beyond.

Despite the clear economic compatibility and recent warm political relations between Australia and China, there are potential difficulties. Most significantly for Australia, China’s emerging influence across East Asia is inextricably linked with the influence of the U.S. in that region. As a close strategic ally of the U.S., Australia’s positive political relationship with China will be significantly dependant on how these two large nations come to terms with the shifting balance of power in the region. Along with many countries in the East Asian region, Australia shares the desire to see China and the U.S. manage their relationship in a way that will encourage a stable and economically prosperous region. Whether or not Australia can continue to develop a close political relationship with China while maintaining close ties with our foremost ally, the U.S., presents Australia with a most challenging foreign policy issue.

Australia’s efforts to balance its relationship between prospective ‘peer’ superpowers has to date consisted of maintaining the best possible relations with both nations and hoping that zero-sum choices between them will not need to be made. The future health of the relationship between China and the U.S. will have significant implications for Australia, particularly given our close strategic ties with the U.S. and the trade benefits derived from China’s economic growth.

The committee believes that Australia must maintain its current position of presenting itself as an independent country whose abiding interest is in ensuring that the region as a whole remains politically stable and secure. It recognises that a cooperative Sino–U.S. relationship is crucial to Australia’s own interests in the region, particularly with respect to the U.S.’ regional security presence and China’s economic opportunities. It believes that Australia, as a friend to both countries, should encourage them, in pursuing their own interests, to place the highest priority on contributing to the stability and prosperity of the region as a whole. The committee underlines the important role that multilateral fora have in creating an environment conducive to cooperative and
friendly relations that take account of the interests of the region as well as of individual countries.

In keeping with its foreign policy, China maintains that its defence policy also looks to develop strong, amicable and mutually beneficial relations with other countries. The uncertainty of the nature and extent of China’s military build-up, however, has created an atmosphere of mistrust and conjecture and given rise to concerns about its strategic ambitions. Any steps taken by China to make its reports on military spending and capability more informative, accurate and comprehensive will at least remove the tendency for other countries to indulge in speculation.

The committee believes that Australia has an important role in encouraging countries in the region to work together to create an atmosphere that supports open discussions about regional military and strategic planning. It has recommended that the Australian government work with countries, which have a common interest in regional stability and security, in the ARF, APEC and EAS to promote confidence building measures, such as increased transparency in reporting on military spending and capability, that will contribute to greater regional stability.

The committee also notes China’s increasing importance as a dialogue partner on strategic and defence issues and the growth in the defence relationship with Australia in recent years. It believes that Australia is well placed to encourage China to adopt a more transparent reporting system. It has recommended that the Australian government work with China, as a good relationship with China, and its defence links in particular, to encourage China to be more open and transparent on matters related to its military modernisation such as its objectives, capability, and defence budget.

The committee recognises that China and Japan are two countries naturally positioned to exert great influence in East Asia. Therefore, a cooperative and peaceful Sino-Japanese relationship is vital for the stability of the region. There are, however, some deep-seated disagreements between China and Japan which flare from time to time giving rise to acrimonious outbursts and sour relations. The committee supports Australia’s current stand that the arguments are between China and Japan and that it should not interfere.

Even so, the committee believes that Australia has a role to encourage both countries to engage actively in regional fora where they can meet and discuss matters in an environment conducive to the resolution of problems.

The small island states of the Southwest Pacific have much to gain from the development assistance offered by donors such as China and Taiwan. It should be noted, however, that some of the island countries in the Southwest Pacific are among the smallest and poorest countries in the world and susceptible to the influence of others prepared to use their economic leverage to serve their own foreign policy objectives.

Diplomacy and aid in the Pacific region are intrinsically linked as China and Taiwan compete for recognition, often utilising the blunt foreign policy tool of aid payments. Clearly, the political rivalry between China and Taiwan in the Southwest Pacific creates an environment where corruption or political unrest can occur.

In this report, the committee highlighted its concern about the intrusion of China and Taiwan’s political agendas into the affairs of the island states of the Southwest Pacific with the potential for their interests to override and compromise the political stability and economic development of the recipient states.

The committee recommended that the Australian Government encourage both China and Taiwan to observe international guidelines for the delivery of development assistance in their aid programs to the Southwest Pacific. It also believes that it is vital to Australia’s interest for Australia to continue to take a leadership role in the Pacific Islands Forum and to demonstrate to all its members that Australia is committed to the ideals of the Forum.

This report has highlighted the complex and changing web of relations that exists in East Asia and some of the tensions that threaten to disrupt this network, particularly those existing between an increasingly influential China and the U.S. It has shown that Australia’s interests are very much caught up in this web. To safeguard its own economic and security needs, Australia relies heavily on the region remaining politically stable and economically healthy.
The committee believes that Australia should take a lead role to ensure that APEC remains relevant and on track by revitalising the process. Having said so, the committee supports equally the work being done in other regional fora such as ASEAN, ARF and the East Asia Summit. It has recommended that the Australian government demonstrate to East Asian countries a genuine interest in and support for ASEAN and the ARF, redouble its efforts to reinvigorate APEC and remain fully engaged with the East Asia Summit. The committee believes that the Australian government should look upon these fora as complementary.

Further it has recommended that the Australian government, through its good relations with the United States, encourage the United States to use its influence more effectively in the region, and in so doing, to improve its relationship with ASEAN and its member countries.

Finally, the committee believes that Australia needs skilled and well-trained analysts with a thorough understanding of China’s security priorities and the complexities of relationships in the region. In light of the importance of East Asia to Australia and the rapid and complex changes taking place in the region, the committee recommended that the Australian Government:

- place a high priority on building-up a pool of highly trained, skilled and experienced analysts specialised in East Asian affairs, and
- review the incentives it now has in place to attract and train highly skilled strategic analysts to ensure that Australia’s current and future needs for such trained people will be met.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Community Affairs References Committee Report

Senator MOORE (Queensland) (4.27 pm)—I present the response of the Community Affairs References Committee to the petition on gynaecological health issues, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

Leave granted.

Senator MOORE—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Reports: Government Responses

Senator IAN CAMPBELL (Western Australia—Minister for the Environment and Heritage) (4.27 pm)—I present two government responses to committee reports as follows:

Employment, Workplace Relations and Education References Committee—Unfair dismissal and small business employment

Parliamentary Joint Committee on ASIO, ASIS and DSD—Review of the operation, effectiveness and implications of Division 3 of Part III in the Australian Security Intelligence Organisation Act 1979

In accordance with the usual practice, I seek leave to incorporate the documents in Hansard.

Leave granted.

The documents read as follows—

GOVERNMENT RESPONSE TO THE SENATE INQUIRY INTO UNFAIR DISMISSAL POLICY IN THE SMALL BUSINESS SECTOR

JANUARY 2006

BACKGROUND

On 7 December 2004, the Senate referred to the Employment, Workplace Relations and Education References Committee the matter of unfair dismissal policy in the small business sector, with a reporting date of 14 June 2005. The inquiry also considered the Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004, which the Senate referred to the Committee on 17 March 2005.
The Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004 proposed amendments to the Workplace Relations Act 1996 to provide that an application for relief in respect of termination of employment may not be made if, at the relevant time, the employer employed fewer than 20 people. Since the bill was referred to the Committee, the Government announced its intention to legislate to exempt businesses with up to 100 employees from unfair dismissal laws, as part of its broader workplace relations reform agenda under its Work Choices legislation. The Workplace Relations Amendment (Work Choices) Act 2005 received Royal Assent on 14 December 2005.

The terms of reference for the inquiry covered:

- the international experience concerning unfair dismissal laws;
- the extent to which federal and state unfair dismissal laws adversely impact on small business;
- evidence cited by the Government that exempting small business from federal unfair dismissal laws would result in 77,000 more jobs in Australia;
- the relationship, if any, between previous changes to Australian unfair dismissal laws and employment growth in Australia;
- the extent to which previously reported small business concerns with unfair dismissal laws relate to survey questions that were misleading, incomplete or inaccurate;
- the extent to which small businesses rate concerns with unfair dismissal laws against other matters that effect running a small business;
- the extent to which small businesses are provided with current, reliable and easily accessible information and advice on federal and state unfair dismissal laws; and
- policies, procedures and mechanisms to reduce the perceived negative effect of unfair dismissal laws, without affecting the rights of employees.

The Committee tabled its report in the Senate on 21 June 2005. The majority report makes three recommendations. The Government Senators on the Committee produced a minority report, which does not make explicit recommendations.

**RESPONSE TO THE COMMITTEE’S MAJORITY REPORT**

For some years the Government has consistently argued that changes to unfair dismissal laws are needed to reduce the burden on business and to free up the jobs that these laws are costing the Australian economy.

The Government maintains its position that the unfair dismissal laws place a disproportionate burden on small to medium sized businesses, and that this manifests itself in the hiring decisions of these businesses. Workplace relations laws should not inhibit job creation.

The Government remains of the view that the most effective way to address this barrier to employment growth is to exempt small to medium sized businesses from unfair dismissal laws, while still retaining protections for employees under existing unlawful termination provisions.

The aim of the Government’s proposals in relation to termination of employment—announced on 26 May 2005 and enacted in the WorkChoices legislation in December 2005—is to create a streamlined, national scheme for dealing with applications in relation to termination of employment. This approach will ensure greater consistency across Australia. Until now, there have been six different pieces of legislation that address unfair dismissal, one in each state (except Victoria) and the federal system. This creates unnecessary confusion for employers and employees. The move towards a more efficient unfair dismissal system that will cover the field will expand employment opportunities in the small to medium sized business sector.

The Prime Minister, in an address to the Sydney Institute on 11 July 2005, put it this way:

Firms are concerned not just with the direct cost of defending an application or settlement, where that occurs, but costs in terms of time, paperwork and disruption to working relationships. … Without deep pockets or dedicated human resources departments, small and medium-sized businesses lack the capacity to cope with such claims. … These laws have a chilling effect on job creation by adding extra uncertainty for firms wanting to
employ staff. Employers are more likely to rely on family and friends as a result. Alternatively, existing workers may bear a burden by having to work longer or harder. Firms are also likely to rely more heavily on temporary or casual staff. Both the World Bank and the OECD have found that strict employment protection laws result in fewer permanent jobs being created. Those who bear the burden tend to be the young, the low-skilled and the long-term unemployed. … Either way you look at it, the cost of the existing unfair dismissal laws falls most heavily on firms and individuals who can least afford it.

Applications for relief alleging that a termination of employment was unlawful will still be able to be made under the reformed workplace relations system. The grounds on which such an application can be made include: temporary absence from work due to illness or injury, because an employee filed a complaint or was involved in legal proceedings against an employer or due to discriminatory grounds, for example, race, colour, sex, age, union membership, family responsibilities and pregnancy. The full list of grounds is in the attachment to the Government Senators’ minority report. In addition, employers will still be required to provide employees with the period of notice of termination prescribed under the Workplace Relations Act 1996.

Over the last decade significant legislative reform of the workplace relations system by the Australian Government has contributed to a strong economic performance and higher standards of living for Australians. The reforms in relation to unfair dismissal legislation are necessary if recent economic progress is to be sustained. The reforms will facilitate the creation of additional jobs in the small to medium sized business sector, by giving business the confidence to employ extra staff.

The Government stands by the evidence it has previously cited to support the claim that existing unfair dismissal laws represent a costly burden for small and medium sized enterprises and provide a disincentive for these businesses to hire staff.

Recommendation 1:
The committee recommends to the Senate that the Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004 be rejected.

Response
The Government did not proceed with the Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004. Changes to unfair dismissal laws were instead introduced in the Workplace Relations Amendment (Work Choices) Act 2005, which received Royal Assent on 14 December 2005.

An exemption from unfair dismissal laws to businesses with fewer than 100 employees has been provided in the legislation. Accordingly, the Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004 is redundant.

Recommendation 2:
The Committee recommends that the Government work with small business, unions and peak industry bodies to make unfair dismissal laws more effective by reducing the procedural complexity and cost to small business of the current unfair dismissal process.

Response
The Government considers the most effective way to minimise the impact and cost of unfair dismissal laws on small and medium businesses is to exempt them from the laws. It does not believe that any available means of streamlining unfair dismissal procedures would be sufficient to eliminate the disincentive to employment generated by the existing laws.

The Government currently funds and supports the provision of public information and education on termination of employment laws. The Department of Employment and Workplace Relations (DEWR), through its Office of Workplace Services, provides advice through its free telephone service (WageLine), its website (WageNet), and its Workplace Advisory Service. The Service has advisers in each state and territory to assist business, mainly small business, by providing information and education services on federal workplace relations matters.

Options for reducing the procedural complexity of unfair dismissal laws have previously been considered in the context of the Senate Inquiry into the Workplace Relations Amendment (Ter-
mination of Employment) Bill 2002 and the ALP’s Workplace Relations Amendment (Unfair Dismissal—Lower Costs, Simpler Procedures) Bill 2002. As outlined in DEWR’s submission to previous inquiries, none of the available measures to streamline the operation of unfair dismissal laws would remove the burden those laws impose on small and medium businesses.

The cost to a business of an unfair dismissal application is not measurable only in terms of monetary cost. For a small to medium sized employer to defend a claim, it requires the employer to leave the business to attend a conference or a hearing on the merits of the matter. In a small business, even half a day away from the business can cause significant disruption to the business’s operations.

A survey conducted by the Restaurant and Catering Association found that 38 per cent of owners had defended an unfair dismissal claim. The average cost to the employer of defending such a claim was 63 hours of their time, and $3,675 in legal costs. That estimate translates into $18.2 million in direct costs, and $15.5 million in indirect costs to the industry as a whole.

A recent study by Australian Business Limited (ABL) demonstrates that businesses pay “go away money” to former employees, rather than defend a claim at an industrial tribunal. Some 900 businesses participated in the survey which was conducted in late July-early August 2005. The study found that 65 per cent of businesses have experienced, or know of, speculative unfair dismissal claims by workers. Almost 40 per cent of businesses surveyed said that the practice of paying “go away money” occurred regularly, with another 30 per cent saying that it occurs occasionally. Former employees may receive between $5000-$25,000 as “go away money” so that employers can avoid defending themselves before the Australian Industrial Relations Commission (AIRC) or the NSW Industrial Relations Commission. The cost of defending a claim, even one without merit, can be up to $50,000.

The Government believes that introducing a single, harmonious set of unfair dismissal laws will do much to reduce the complexity and uncertainty of the current system. Until now, there have been six different workplace relations systems in Australia. As each state has different statutory requirements, there is confusion about the operation of unfair dismissal laws.

Most submissions to the Committee considered that the existing unfair dismissal laws are overly complex. Introduction of the unified workplace relations system based on the Constitution’s corporations power, which covers approximately 85 per cent of Australian employees, will contribute significantly to a less complex unfair dismissal regime in Australia.

Recommendation 3:
The Committee recommends that the Government make no further changes to unfair dismissal laws until an independent review has been conducted by experts selected from employee and union groups, employer groups and academics. The Committee recommends that:

• the review examine the Government’s policy on unfair dismissal and evidence used to support its legislation, relevant Senate Committee reports which have addressed the issue of unfair dismissal, state government views and any other relevant sources; and
• findings of the review be presented to the Council of Australian Governments (COAG) with a request that it develop a set of common principles to guide future reform of unfair dismissal laws at the state and federal level.

(Committee report, page 32)

Response
The Government does not support this recommendation, and passage of the Workplace Relations Amendment (Work Choices) Act 2005 has made it redundant.

The Government’s commitment to reforming unfair dismissal laws is longstanding. The proposal to exempt small businesses from unfair dismissal laws has been before Parliament in a number of Bills, including the Workplace Relations Amendment (Unfair Dismissal) Bill 1998 and [No. 2] 1998, the Workplace Relations Amendment (Fair Dismissal) Bill 2002 and [No. 2] 2002, the Workplace Relations Amendment (Termination of Employment) Bill 2002 and
The Senate Committee has inquired into unfair dismissal laws five times since 1998. Throughout this inquiry, and in previous inquiries, the Committee has conducted public hearings, invited submissions, and given parties the opportunity to present supplementary information to it. The Committee has received submissions from a wide range of employee organisations, employer organisations, and academics. Consequently, there has been much debate on the Government’s proposals to amend unfair dismissal laws and the views of the relevant stakeholders are well and truly in the public domain.

Neither does the Government support COAG involvement in developing principles for future reform of unfair dismissal laws. The Government already regularly consults with the States and Territories at twice yearly Workplace Relations Ministers Council meetings. States, other than Victoria which has referred its powers to the Commonwealth, do not support Commonwealth control over unfair dismissal proceedings.

The Government believes that its Work Choices legislation is in the best interests of all Australians.

MINORITY REPORT
Two Government Senators, Senator Guy Barnett and Senator Judith Troeth, produced a minority report that supports the principle of exempting small business from unfair dismissal laws. The minority report does not make explicit recommendations.

The Government Senators stress the significant role that small business plays in the Australian economy and society. They believe that perceptions and confidence in small business planning contribute significantly to the hiring decisions that small business make. The minority report cites evidence given by Ms Leila Yilmaz of the Victorian Automotive Chamber of Commerce who notes that “… rather than engaging additional employees, employers themselves are simply working longer hours or family members are encouraged to work longer hours.”

Senators Troeth and Barnett question whether the numbers of state and federal applications for relief in terminations of employment matters accurately illustrate the difficulties that unfair dismissal laws cause for small business. They support the submission of the Australian Chamber of Commerce and Industry that the published figures show the ‘tip of the iceberg’ because they count only cases where proceedings have commenced.

The Senators also support the introduction of a national workplace relations system. There have been different unfair dismissal laws in state and federal jurisdictions. This leads to applicants “cherry picking” the jurisdiction in which to lodge their claim, the Senators assert. Having one workplace relations system will provide certainty and stability for small business employers. Furthermore, the Senators believe that a uniform workplace relations system will provide small business employers with the confidence to hire new staff.

The Government supports the tenor of the minority report.

Parliamentary Joint Committee on ASIO, ASIS and DSD
Government response—March 2006

Recommendation 1: The Committee recommends that the issuing authority be required to be satisfied that other methods of intelligence gathering would not be effective.

Response: Not agreed.

The Government considers that it is not appropriate to explicitly require the issuing authority to be satisfied that relying on other methods of collecting the intelligence would be ineffective. This is because issuing authorities would not be in a position to make this assessment. Unlike the Attorney-General, they would not be briefed on or be fully across the security apparatus to know whether the criterion can be met. The Attorney-General, who has portfolio responsibility for ASIO and issues all of ASIO’s special powers warrants, is best placed to make a judgment about
ASIO’s reliance on, and the value of, other intelligence collection methods.
The Government also considers that there is no need for the added requirement. The issuing authority is already required to be satisfied that the Director-General had made the request in the appropriate manner, and had satisfied the legislative requirements. To issue the warrant, the issuing authority must also be satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence. The Government considers that these requirements are adequate for the issuing authority to perform their role of issuing the warrant.

Recommendation 2: The Committee recommends that, in order to provide greater certainty and clarity to the operation of the Act, the legislation be amended to distinguish more clearly between the regimes that apply to a person subject to a questioning-only warrant and that applying to detention.

Response: Agreed.
The Government considers that the legislation could be clarified without altering its substantive effect.

Recommendation 3: The Committee recommends that the Act be amended to achieve a clearer understanding of the connection between the period of detention and the allowable period of questioning.

Response: Agreed.
The Government considers that the legislation could be amended to clarify how the time periods under each of the warrants operate to remove any confusion between periods of detention and questioning, and to set out how time involving questioning or detention under the warrant is recorded.

Recommendation 4: The Committee recommends that:

- a person who is the subject of a questioning-only warrant have a statutory right to consult a lawyer of choice; and

- the legal adviser be entitled to be present during the questioning process and only be excluded on the same grounds as for a detention warrant, i.e. where there are substantial reasons for believing the person or the person’s conduct may pose a threat to national security.

Response: Agreed in part.

There are no contact limitations under a warrant that authorises questioning but not detention. Accordingly, under a questioning-only warrant a person is already free to contact a lawyer to be present if he or she wishes. The Government sees no difficulty in inserting a positive right of contact, as is the case with detention warrants.
The Government agrees that this right of contact should be limited appropriately. The Government considers that the limitations on contact with a lawyer of choice set out in current section 34TA should not be extended to the situation of a questioning warrant where there is no detention. However, it is appropriate for contact to be limited where a person is being detained. This should be the case not only where the warrant authorises a person to be detained (as currently applies under section 34TA), but also where a person is detained in connection with the warrant (by direction of the prescribed authority under a questioning-only warrant).
The Committee also recommends that a lawyer be entitled to be present during questioning proceedings. The current regime is premised on a lawyer being present during questioning proceedings (as reflected in section 34U). The Government does not consider that it would be appropriate to change the current regime in a way that would require a lawyer to be present at all times under either type of warrant. This policy is currently reflected in section 34TB. Imposing such a requirement could result in the delay of vital questioning relating to a potential terrorist attack while waiting for the availability of a particular lawyer. It could also undermine the choice of the subject as to whether the client wishes to have a lawyer present. However, a person’s right to contact a lawyer of choice remains.

Recommendation 5: The Committee recommends that subsection 34U(4) be amended and that individuals be entitled to make representations through their lawyer to the prescribed authority.

Response: Agreed in part.
At present the legislation is silent on whether a lawyer may approach the prescribed authority for permission to make a submission. However, the Government agrees that the legislation could allow the lawyer to address the prescribed authority. The Government considers it to be important for the flow of the questioning to be maintained to ensure the questioning process does not become adversarial and that it achieves its aim of gathering information. For this reason it would not be appropriate to elevate the role of the lawyer to one where intervening in questioning is permitted by the legislation.

Accordingly, the Government agrees that the lawyer should be entitled to address, with the prescribed authority’s consent, the prescribed authority during time where questioning is not taking place (where the prescribed authority defers questioning to allow for procedural matters to be addressed).

**Recommendation 6**: The Committee recommends that Division 3 of Part III of the Act be amended to provide a clearer distinction between procedural time and questioning time.

**Response**: Agreed.

The Government agrees that the legislation could be amended to distinguish more clearly between the actual period of time during questioning and time spent on procedural matters.

**Recommendation 7**: The Committee recommends that:

- Subsection 34U(2) be amended and communications between a lawyer and his or her client be recognised as confidential; and
- Adequate facilities be provided to ensure the confidentiality of communications between lawyer and client in all places of questioning and detention.

**Response**: Agreed in part.

The Government considers that legislative amendments could be made to clarify that communications between a subject and their lawyer under a questioning-only warrant (unless detention occurs in connection with that warrant) are not required to be made in a way that can be monitored. This is consistent with the current practice, by which private facilities are already made available through administrative arrangements. However, the Government is concerned to ensure that ASIO can monitor communications of a person who is detained for questioning. This is because there is a serious potential that disclosure of any information could undermine the gathering of intelligence for a terrorism investigation.

Monitoring would only occur where the warrant authorises a person to be detained, or where the person is detained in connection with the warrant (by direction of the prescribed authority under a questioning-only warrant). However, the Government agrees that where a person is questioned but is not detained there should be no requirement for communications to be made in a way that can be monitored.

Retaining ASIO’s ability to monitor contact in these circumstances does not necessarily mean that legal professional privilege does not apply. The communication must be confidential for the privilege to apply but the communication does not cease to be confidential simply through the presence of a third party. What must be considered is whether the communication is intended to be confidential and the circumstances of the third party’s presence. Section 34WA makes it expressly clear that the detention and questioning regime established under the Act is not intended to affect the law relating to legal professional privilege.

**Recommendation 8**: The Committee recommends that, in the absence of separate statutory right of judicial review, that a note to S34E be adopted as a signpost to existing legal bases for judicial review.

**Response**: Agreed.

The Government agrees that an explanatory note could be inserted for section 34E of the Act describing in summary form existing legal bases for seeking a remedy. This could include a statement that a person may, for example, be able to seek judicial review in the Federal Court under section 39B of the *Judiciary Act 1903* or in the High Court under section 75(v) of the Constitution.

**Recommendation 9**: The Committee recommends that Regulation 3B be amended to allow the Secretary to consider disclosing information,
which is not prejudicial to national security, to a lawyer during the questioning procedure.

Response: Not agreed.
The Government considers that there is no need to extend the Regulations to this situation. The Regulations assist in protecting sensitive material in court proceedings relating to a warrant. In the case of the questioning proceedings, if ASIO is requested to provide a document to a subject or their lawyer because it may be relevant to questioning, ASIO can already do so subject to national security considerations. Involvement of another decision-making process would unnecessarily slow and complicate the process.

Recommendation 10: The Committee recommends that:
• the supervisory role of the prescribed authority be clearly expressed; and
• ASIO be required to provide a copy of the statement of facts and grounds on which the warrant was issued to the prescribed authority before questioning commences.

Response: Agreed in part.
The Government agrees that the supervisory role of the prescribed authority could be more clearly expressed through amending section 34E of the ASIO Act to require that the prescribed authority make clear that it is their role to supervise the questioning proceedings and give appropriate directions.

The Government considers that it is not appropriate for ASIO to give the prescribed authority a copy of the full statement of facts and grounds on which the warrant is based. However, the prescribed authority does receive a copy of the warrant prior to questioning commencing. Together with exposure to the questioning process, this is sufficient for the prescribed authority to fulfil his or her role in supervising proceedings, including determining whether the continuation of questioning is appropriate and that legislative requirements and safeguards are being complied with.

Recommendation 11: The Committee recommends that:
• a subject of a questioning-only warrant have a clear right of access to the IGIS or the Ombudsman and be provided with reasonable facilities to do so; and
• there be an explicit provision for a prescribed authority to direct the suspension of questioning in order to facilitate access to the IGIS or Ombudsman provided the representation is not vexatious.

Response: Agreed.
While there are already clear provisions in the legislation relating to the making of complaints in the case of detention, the Government considers that provisions could be inserted into the ASIO Act to further clarify the ability to make complaints. These provisions would enhance the requirements to inform a subject of their capacity to make, and facilitate the making of, complaints particularly in the questioning-only warrant context.

Recommendation 12: The Committee recommends that an explicit right of access to the State Ombudsman, or other relevant State body, with jurisdiction to receive and investigate complaints about the conduct of State police officers be provided.

Response: Agreed.
Although the current legislation is flexible enough to enable complaints to be made to the appropriate bodies about the actions of State or Territory police, the Government considers that amendments could be made to clarify and facilitate complaints in appropriate cases (where State or Territory police are involved) to the complaints body for a police service in a State or a Territory in accordance with the laws in force in that jurisdiction. These measures would not affect the existing complaints mechanisms.

Recommendation 13: The Committee recommends that reasonable financial assistance for legal representation at rates applicable under the Special Circumstances Scheme be made available automatically to the subject of a section 34D warrant.

Response: Agreed in part.
At present all persons questioned or detained are automatically eligible to apply for financial assistance under the Special Circumstances Scheme of financial assistance. The Government does not
agree to automatic provision of assistance, but is prepared to put forward an amendment to the Act to include a statutory right for a person who is questioned under a warrant to apply for financial assistance.

**Recommendation 14:** The Committee recommends that the Commonwealth establish a scheme for the payment of reasonable witness expenses.

**Response:** Not agreed at this stage.

The Government is not currently prepared to establish a witness expenses scheme because there is limited evidence of any significant practical impact of questioning to date. However it will keep the matter under review in light of further experience with the legislation. In such cases it is always possible for affected persons to make an application to the Attorney-General for an act of grace payment.

**Recommendation 15:** The Committee recommends that the penalty for disclosure of operational information be similar to the maximum penalty for an official who contravenes safeguards.

**Response:** Not agreed.

The Government considers that it would not be appropriate to arbitrarily equate the penalties for officials and subjects questioned under a warrant (and other persons who are disclosed information in contravention of the non-disclosure obligations). The provisions are directed at entirely different circumstances. It is also important to recognise that the penalties stated are maximum penalties—it is for the courts in sentencing a person to decide what level of penalty should apply once a person is convicted of an offence.

Reducing the 5 year penalty for breaching the non-disclosure provisions would reduce the deterrent effect of the provisions. This is not acceptable given the sensitivities of passing on operational information which may compromise sensitive terrorism investigations and potentially risk lives. It would also not be consistent with the level of the penalty that applies to the other offences in section 34G of the ASIO Act.

Increasing the penalty for officials who fail to comply with all requirements would be inconsistent with other legislation providing for officials who contravene safeguards in connection with a preventative detention order (under section 105.45 of the *Criminal Code Act 1995*), which is also a maximum of 2 years imprisonment. Increasing the penalty would not be appropriate in light of the extensive oversight mechanisms (including a range of safeguards to ensure that a person’s rights are not abused by those exercising authority under a warrant), the possibility of additional avenues of redress (such as disciplinary proceedings), and the fact that other criminal offences may be available where official conduct amounts to an offence against the person.

**Recommendation 16:** The Committee recommends that the term ‘operational information’ be reconsidered to reflect more clearly the operational concerns and needs of ASIO. In particular, consideration be given to redefining section 34VAA(5).

**Response:** Not agreed.

The ‘operational information’ offence is designed to protect ASIO’s sources and holdings of intelligence, and its methods of operations. The term ‘operational information’ used in the secrecy provisions covers information ASIO has or had, a source of information or an operational capability, method or plan of ASIO. While this appears broad on its face, it must be read in context with the other elements of the offence.

**Recommendation 17:** The Committee recommends that:

- consideration be given to amending the Act so that the secrecy provisions affecting questioning-only warrants be revised to allow for disclosure of the existence of the warrant; and
- consideration be given to shifting the determination of the need for greater non-disclosure to the prescribed authority.

**Response:** Not agreed.
The Government considers that the current regime provides sufficient flexibility for permitted disclosures to be made in certain circumstances on a discretionary basis. The disclosure of the fact that a person is being questioned under a warrant may not be in the interests of security, even if the disclosure were narrow and tightly regulated. This is why it is specifically an element of the offence applying to disclosures while a warrant is current (subsection 34VAA(1)). It is vital that this strict level of confidentiality remain until the warrant expires to ensure that ASIO investigations can be effectively carried out.

The Government recognises that there may be situations where the disclosure of the existence of the warrant before it expires would not harm security. The Government considers that the legislation could be amended for the relevant decision-maker(s) under the existing permitted disclosure regime to be required to take into account certain factors (including a person’s family and employment interests and the public interest) on why the disclosure should be made in deciding whether to permit a particular disclosure.

Recommendation 18: The Committee recommends that ASIO include in its Annual Report, in addition to information required in the Act under section 94, the following information:

- the number and length of questioning sessions within any total questioning time for each warrant;
- the number of formal complaints made to the IGIS, the Ombudsman or appeals made to the Federal Court; and
- if any, the number and nature of charges laid under this Act, as a result of warrants issued.

Response: Not agreed.

Recommendation 19: The Committee recommends that:

- section 34Y be maintained in Division 3 Part III of the ASIO Act, but be amended to encompass a sunset clause to come into effect on 22 November 2011; and
- paragraph 29(1)(bb) of the Intelligence Services Act be amended to require the Parliamentary Joint Committee on Intelligence and Security to review the operations, effectiveness and implications of the powers in Division 3 Part III and report to the Parliament on 22 June 2011.

Response: Agreed in part.
The Government accepts the Committee's arguments about the need for ongoing review and a further sunset period, but considers that the 5½ year period is insufficient. The Government considers that a 10 year sunset period would be more appropriate, and it is also consistent with the sunset period applying to the recently enacted Anti-Terrorism Act (No. 2) 2005.

The Committee concluded that for the foreseeable future there are threats of possible terrorist attacks in Australia and that some people in Australia might be inclined or induced to participate in such activity. The Committee also recognised that the questioning regime has been useful in dealing with this situation. The 10 year sunset period will ensure that the legislation can be used over a period the Government assesses there is likely to be a need for these powers.

During this period the Government will also continue to assess the operation of the legislation in light of practical experience and will review its effectiveness and the need for it on an ongoing basis. It is always open to the Parliament to repeal laws at any time if they regard them as no longer necessary.

The experience of recent statutory reviews has shown that such reviews are resource-intensive and impact on operational priorities. Given these considerations and the ongoing need for the legislation, together with the fact that the Government is continuously reviewing the effectiveness of legislation, the Government does not consider that an earlier review is warranted. State and Territory Governments were of the same view about the time needed to properly make an assessment of the recent anti-terrorism legislation.

Accordingly, the Government considers that section 34Y of the Act should be amended to encompass a sunset clause to come into effect on 22 July 2016 (10 years after the powers would otherwise sunset under the current provision), and that paragraph 29(1)(bb) of the Intelligence Services Act 2001 be amended to require the Parliamentary Joint Committee on Intelligence and Security to review the operations, effectiveness and implications of the powers in Division 3 Part III and report to the Parliament by 22 January 2016.

Senator ROBERT RAY (Victoria) (4.28 pm)—by leave—I move:

That the Senate take note of the Parliamentary Joint Committee on ASIO, ASIS and DSD response.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

MARITIME LEGISLATION AMENDMENT BILL 2005 [2006]
JURISDICTION OF COURTS (FAMILY LAW) BILL 2005 [2006]

Returned from the House of Representatives

Messages received from the House of Representatives returning the bills without amendment.

FAMILY ASSISTANCE, SOCIAL SECURITY AND VETERANS AFFAIRS LEGISLATION AMENDMENT (2005 BUDGET AND OTHER MEASURES) BILL 2006

Second Reading

Debate resumed from 29 March, on motion by Senator Ellison:

That this bill be now read a second time.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

The TEMPORARY CHAIRMAN (Senator Moore)—In accordance with the running sheet we will move to the first amendments, which are opposition amendments (1) to (3) on sheet 4887.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (4.30 pm)—by leave—I move opposition amendments (1), (2) and (3) on sheet 4887:

(1) Schedule 3, page 23 (after line 10), after item 2, insert:
2A Clause 32 of Schedule 1
Omit the clause, substitute:

32 Income test
This is how to work out an individual’s reduction for adjusted taxable income:

Method statement
Step 1. Work out the individual’s income free area using clause 33.
Step 2. Work out whether the individual’s adjusted taxable income exceeds the individual’s income free area.
Step 3. If the individual’s adjusted taxable income does not exceed the individual’s income free area, the individual’s income excess is nil.
Step 4. If the individual’s adjusted taxable income exceeds the individual’s income free area, the individual’s income excess is the individual’s adjusted taxable income less the individual’s income free area.
Step 5. The individual’s reduction for income is 20% of the income excess.
Step 6. Work out the combined income free area using clause 33A.
Step 7. Work out whether the total of the individual’s adjusted taxable income and the adjusted taxable income of the individual’s partner for that year exceeds the combined income free area.
Step 8. If the total of the individual’s adjusted taxable income and the adjusted taxable income of the individual’s partner for that year exceeds the combined income free area, the individual’s income excess is nil.
Step 9. If the total of the individual’s adjusted taxable income and the adjusted taxable income of the individual’s partner for that year does exceed the combined income free area, the individual’s income excess is the individual’s adjusted taxable income less the individual’s income free area.
Step 10. The individual’s combined reduction for income is 20% of the income excess.

Step II. The individual’s reduction for income is the greater of the amounts calculated in steps 5 and 10.

(2) Schedule 3, page 23 (after line 10), after item 2, insert:

2B After clause 33 of Schedule 1
Insert:

33A Combined income free area
The combined income free area is $250,000.

(3) Schedule 3, item 3, page 23 (lines 11 to 13), omit the item, substitute:

3 Application of amendments
(1) The amendments made by items 1 and 2 apply in relation to the 2005-2006 income year and later income years.
(2) The amendments made by items 2A and 2B apply in relation to family tax benefit for the 2006-2007 income year and later income years.
(3) The amount referred to in item 2B will not be subject to indexation on 1 July 2006, but will be subject to indexation in accordance with the Act for the 2007-2008 income year and later income years.

These three matters all relate to the question of income testing and the income-free area. As I indicated in my contribution to the second reading debate, Labor is moving these amendments to try to deal with our concern about the current arrangements in relation to family tax benefit part B. We supported the legislation and the movement in the thresholds for Australian families but we are most concerned that this particular payment is not means tested. So these amendments seek to put an income cap for payment of FTB part B on those families who earn more than $250,000 a year—that is, the payment would not be paid to families with incomes over $250,000 a year if Labor’s amendments are successful. On our estimates that would create savings of about $7½ million a year and would affect 2½ thousand to 3,000 families.
They would be excluded from the payments of FTB part B.

The key point I want to make is that the FTB is not means tested. Traditionally in Australia over the last period, I think since Billy McMahon was caught out claiming the age pension, Australians have taken the view that welfare dollars, support provided by the government in the form pensions or allowances, ought to go to those in need. It ought to be on the basis that people receiving those benefits are those who need them. That is a principle that has been accepted by both sides of politics: welfare, social security, ought to be directed to those who are most in need and it ought to be means tested.

What we have with the FTB part B payment is, in my view, quite an obscene outcome. The situation is that, under this payment, millionaires and families on very high incomes can still be entitled to what is effectively a social welfare payment. It is just obscene. What these amendments seek to do is limit those payments to families in need. I picked the threshold of $250,000 purely to make a point, but it would probably be better assessed by a more rigorous appraisal. The point I want to make is that there is no defence for the Commonwealth, for Australian taxpayers, to be paying social security support to people of high wealth.

This has come about because the FTB part B is not means tested. Provided the secondary income earner—that is, the partner of someone on a high income—earns less than $20,000 if their children are under the age of five, or less than $16,000 if their children are over the age of five, they get some payment of family tax benefit part B. So we now know that in this country there are 70 families in which the major income earner is earning more than $1 million per annum, but some of them are receiving $3,300 in taxpayers’ funds in welfare. It is ludicrous and it is obscene—millionaires on welfare! Millionaires are being subsidised by working taxpayers in this country to the tune of $3,300 a year.

You have to ask yourself: how could we get to that situation? How on earth can we defend such a system? Why is this measure not means tested when we so carefully target a means test on all the other social security payments? We means test every dollar that a pensioner gets. Every time a pensioner, a single mum or an unemployed person earns a dollar over the threshold, we take some of that money back from them. We reduce their pension, and these are people on very low incomes. Age pensioners are on $13,000 a year but we pay the partner of a millionaire $3,300 in welfare payments. I would argue that that money would be better directed to the pensioners of Australia, who are living on very little income trying to make ends meet. It is just not acceptable that we have such disparity in our system.

The Prime Minister’s only defence for this proposition is that it is the same as providing a second tax-free threshold to the family for the effectively non-working partner, or to a partner who earns very little. That is actually not right. A second income earner in a family that earns more than a million dollars a year can still earn up to $6,000 a year without being taxed—that is, they have a totally tax-free area—and continue to receive a large proportion of family tax benefit B payment. So the Prime Minister’s defence is not right. There is no defence for paying welfare to high-income families.

We hear a lot from the government about mutual obligation and the scourge of passive welfare but in this case we pay partners of millionaires $127 a fortnight provided they do not look for work; their mutual obligation is not to work. So while the government talk about mutual obligation, getting people back
into the workforce and encouraging workforce participation, they pay high-income families—people with a family income of over a million dollars a year—$127 a fortnight as long as they do not look for work; that is their mutual obligation. Their mutual obligation is to stay in Toorak sipping lattes and to ensure they are not actually out there in the job market. Provided they are comfortable in the coffee shops of Toorak or Vaucluse, they will continue to receive $127 a fortnight of taxpayers’ money, because they are meeting their mutual obligation, which is not to look for work. That is ludicrous.

Look at what the government is doing to single parents as of 1 July. Contrast that treatment of single parents with the treatment of high-income families. It is obscene, it is indefensible and it ought to be stopped. Single parents who come into the system from 1 July will actually have their entitlements to an allowance to support them and their families reduced by $55 per fortnight. So single parents on very low incomes supporting kids—having to feed, clothe and send their kids on school excursions—are going to get $55 less per fortnight under the government’s changes to welfare while the government will not lift a finger to do something about the obscenity of paying high-income earners welfare.

We have been pressuring the government for a year or more on this issue and the government has refused to deal with it in any serious way. What message does this send to Australians when they hear that the government’s idea of equity is to permit this sort of situation to continue? It is completely indefensible. When you think of all the needs of people with disabilities, people who are unemployed, people on pensions and young disabled people who cannot get out of nursing homes because of the lack of public funding available, providing public funds as obligation-free payments to high-income earners, people who do not need the money, is sending completely the wrong message. It is indefensible and unfair, and it should not be tolerated in a society where we try to promote fairness. It certainly brings the whole welfare and income support system into total disrepute.

When you think of the way Indigenous people in this country are disparaged and referred to as receiving sit-down money and of the way the government goes on about disparaging those people, what I want to know is why the partners of millionaires are paid sit-down money. They are not sitting down in the dirt of outback Australia in communities without water, power and adequate housing. They are sitting down in coffee shops in Toorak and Vaucluse, collecting their taxpayer funds in the form of an obligation-free welfare payment. It is not good enough, and I urge the government to reconsider. The amendments are designed to encourage the government to end this practice, and I urge it to really reconsider its position.
The only two defences I have heard is it would cost too much to means-test this group of people and the argument that the Prime Minister uses about a second tax-free threshold, which, as I say, is completely wrong. If we can go to great lengths to ensure that families pay back debts as small as $50 to $100 in overpayments of family tax benefits and if we can go to great lengths to check what an old age pensioner might have earned in a part-time job and to make sure that they do not receive the full pension because of that income, surely we can ensure that people on high incomes do not receive scarce income support measures at the expense of those paying their taxes. So I urge the Senate to support the amendments.

**Senator KEMP** (Victoria—Minister for the Arts and Sport) (4.42 pm)—I listened very carefully to Senator Evans. Senator Evans, unlike some of his colleagues, can run an argument and can generally run it in a more moderate and sensible fashion. Unfortunately, today was not one of those days when we can attribute those qualities to Senator Evans. To suggest that this is an obscene measure and that it brings the whole Welfare to Work process into disrepute is absurd. It is completely over the top. It fails to recognise the nature of the benefits that we provide to families. It fails to look at the whole area of how government policy across a broad range benefits families. I remember that in the old days one of the proudest boasts of the Keating government was that the top tax rate was cut to 60 per cent. One wonders whom the major benefits of that went too. I suspect that when you cut the top tax rate, a lot of benefits—surprise, surprise—flow to the very high income groups in this community. Senator Evans did not stand up—maybe he was not in the chamber; if he was in the chamber he certainly did not stand up—and complain about that.

**Senator Chris Evans**—That’s different from paying them welfare.

**Senator KEMP**—We are talking about government public policy and how it benefits families; we are talking about a tax system and a welfare system. On the one hand, you say that your proudest boast is that the Keating government was able to cut the top tax marginal rate and then, on the other hand, you complain about these issues in relation to FTB part B, I have to say that, at the very least, you are not being consistent.

There was an error in the remarks you made. I have some briefing notes on that, which I will turn to. The way this government has given enormous emphasis to benefiting families is one that we are very proud of. We are very proud of the way that we manage this economy. What was really obscene was the very high levels of unemployment that existed under the Labor government. What was also obscene was a very low increase in real wages under the Labor government. What was particularly obscene was the way that the Labor government, in 13 years, failed to tackle the massive problems of Indigenous disadvantage. That was obscene. You can use the word ‘obscene’ in relation to those activities, but you cannot use it in relation to the measures that are before this chamber.

The amendments moved by the opposition are seeking to introduce a modified income test for FTB part B from July 2006, if a couple’s combined income exceeds $250,000. We do not support such an amendment. The key purpose of FTB part B is to provide extra assistance to single-income families caring for children. It is therefore not income tested for sole parent families. For couple families, FTB is available where the secondary earner has a low, adjusted income. The government considers that it is important to provide extra help to couples who choose to
have one partner remain at home to care for children. A higher rate of FTB part B is paid to families where they are caring for pre-school children aged under five. FTB part B has been especially designed to assist families who face both the normal costs of raising young children and the indirect cost of reduced workforce participation.

One purpose of FTB part B is to compensate single-income families for the fact that they have access to only one tax-free threshold. As Senator Evans knows, and I think he did refer to this in his argument, dual income families benefit from access to two tax-free thresholds. They also benefit from the lower rates of taxation applicable to their incomes of the graduated tax scale. The vast majority of FTB part B customers have incomes below the levels at which Senator Evans wants to means test this measure. I would make the point—

Senator Chris Evans—I agree with you.

Senator KEMP—He agrees with me. I regret to have to say this, but we are seeing the old Labor class war. The Labor Party has to relate somehow to its grassroots. We had Mark Latham’s attack on private schools in the last election and now we have Senator Evans attacking the very popular and important government FTB part B measure. It might work well in the trades halls around Australia, it might even rate well on the diminishing Labor Party branches around Australia, but it does not relate well to the Australian public.

Senator Chris Evans—We can match our branch members with yours in WA any time.

Senator KEMP—Senator, let me make the very obvious point: you would swap all your governments around Australia for the government in Canberra.

Senator Chris Evans interjecting—

Senator KEMP—You would, all your colleagues here would and the vast proportion of all your members would. But I do not think that sort of trade is available to either of us. It is true that you managed to sneak home in Western Australia; you had a surprising comeback in the last two days. I would describe that as a very lucky election. Sometimes you are lucky and sometimes you are unlucky.

Senator Chris Evans interjecting—

Senator KEMP—I think the general consensus is that, for reasons of which we are all too well aware, there was a reversal of positions in the last 48 hours of that election. It was a lucky election—and good on you. I am not complaining. I am not whingeing. Sometimes you win and sometimes you lose. The Labor Party is in desperate straits. Senator Evans’s remarks today illustrate that it is the same old Labor Party and it has a long way to go. You have to look at government policy overall for how we benefit families. This government has given a very high priority to families. Essentially, the vast proportion of Australian families vote for us because they know that we have delivered.

Senator Chris Evans interjecting—

Senator KEMP—The people who vote for us say that, under 13 years of Labor, their real wages rose by one per cent; under the John Howard government, their real wages have risen by 14 per cent. They say: 13 years, one per cent; 10 years, 14 per cent. I think you need no other figure.

Senator Chris Evans—If we are so bad, why do they keep voting us back in?

Senator KEMP—From where I stand in this chamber and from where I stand in this city, they keep on keeping you out. Senator, you are one of the more intelligent Labor Party members—
Senator Chris Evans—Don’t damn me with faint praise.

Senator KEMP—It is very faint praise because the benchmark is not set very high. Senator Evans knows of the serious problems that the Labor Party has. But let me just turn to what has been described to me as a ‘conceptual error’ made in the remarks by Senator Evans. Senator Evans argues that families can access a second tax-free threshold and collect FTB part B. Therefore, the argument is that FTB part B compensates single-income families for not accessing two tax free thresholds. I think that is a summary of Senator Evans’s argument. It is possible for a secondary earner and a couple to have an income above the tax-free threshold of $6,000 and still receive FTB part B. However, due to the lower income level of the secondary earner receiving FTB part B, such families would not receive the same tax benefit that is available to dual-income families from graduated tax scales. Therefore, I am advised, the amount of tax paid by the single-income family including those with incomes above $6,000 for the secondary earner would be higher than that paid by a dual-income couple with the same total income. I think, Senator Evans, the argument you have made is not one which, if you were to examine it statistically, would actually work.

Senator Chris Evans—That’s not the point.

Senator KEMP—I thought it was exactly the point. I mentioned to you what your argument was and you then nodded sagely. Then I said, ‘This is the advice that I have received.’ Then you say, ‘That’s not the point.’ I think it was the point. To cut it short, this has been an interesting debate, at least I hope so for some. The government will certainly not be accepting the amendments that have been moved by Senator Evans.

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

The committee divided. [4.57 pm]
(The Chairman—Senator JJ Hogg)

Ayes………………. 29
Noes………………. 32
Majority………. 3

AYES
Allison, L.F. Bishop, A.J.J.
Conroy, S.M. Campbell, G.
Evans, C.V. Crossin, P.M.
Hogg, J.J. Faulkner, J.P.
Hutchins, S.P. Harley, A.
Marshall, G. Ludwig, J.W.
McLucas, J.E. McEwen, A.
Moore, C. Milne, C.
Nettle, K. Murray, A.J.M.
Polley, H. O’Brien, K.W.K.
Siewert, R. Ray, R.F.
Sterle, G. Stephens, U.
Webber, R. * Stott Despoja, N.
Wortley, D. Wong, P.

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. Ferris, J.M.
Fierravanti-Wells, C. Fifield, M.P.
Heffernan, W. Humphries, G.
Johnston, D. Kemp, C.R.
Lightfoot, P.R. Macdonald, I.
Mason, B.J. McGauran, J.J.
Nash, F. Parry, S.
Patterson, K.C. Ronaldson, M.
Santoro, S. Scullion, N.G.
Troeth, J.M. Trood, R.
Vanstone, A.E. Watson, J.O.W.

PAIRS
Brown, B.J. Joyce, B.
Brown, C.L. Minchin, N.H.
Forshaw, M.G. Coonan, H.L.
Kirk, L. Payne, M.A.
Lundy, K.A.  Campbell, I.G.
Sherry, N.J.  Macdonald, J.A.L.

* denotes teller

Question negatived.

The TEMPORARY CHAIRMAN (Senator Alan Ferguson)—Order! Senator Ronaldson, I have got a speaker I am waiting to call and I cannot see.

Senator McLUCAS (Queensland) (5.01 pm)—by leave—I move Labor’s amendments (4) to (10) on sheet 4887:

(4) Schedule 5, page 25 (line 2), omit “Reducing allocation of child care places”, substitute “Allocation of child care places”.

(5) Schedule 5, page 25 (after line 14), after item 2, insert:

2A Section 206
Before “The Minister”, insert “(1) Subject to subsection (2),”.

(6) Schedule 5, page 25 (after line 14), after item 2, insert:

2B Paragraph 206(a)
Repeal the paragraph, substitute:

(a) procedures relating to the allocation of child care places to approved child care services, provided that such procedures:

(i) must specify that child care places may only be allocated if an application is received from a person able to provide approved child care services; and

(ii) must specify that decisions about the allocation of child care places are to be reviewed by the Secretary at least monthly;

(7) Schedule 5, page 25 (after line 14), after item 2, insert:

2C Paragraph 206(b)
Repeal the paragraph, substitute:

(b) matters to be taken into account in working out the number (if any) of child care places to be allocated to approved child care services, provided that the guidelines specify that the primary matters to be taken into account are the relative needs of:

(i) different areas of Australia for the kinds of child care places to be allocated; and

(ii) people in each area who have work, training or study commitments;

(8) Schedule 5, item 4, page 26 (lines 6 and 7), omit paragraph 207A(1)(a), substitute:

(a) that number has exceeded, for a continuous period of at least 12 months, the number of child care places provided by the service; or

(9) Schedule 5, item 4, page 26 (after line 25), after subsection 207A(4) insert:

(4A) If the Secretary reduces under this section the number of child care places allocated to an approved child care service, the Secretary must, within 7 days after the day on which the reduction takes effect, allocate the same number of places to one or more other approved child care services.

(10) Schedule 5, item 4, page 27 (after line 11), after section 207B, insert:

207C Details to be included in annual report
The Secretary must include, in the annual report made under section 232, details of:

(a) the number and the location of child care services which have been subject to a decision to reduce the number of child care places allocated to them;

(b) the number and location of child care services which have been allocated places taken from other services; and

(c) the number and location of child care services which have applied for places or for additional places but not been allocated those places or those additional places.
As we know, the Family Assistance, Social Security and Veterans’ Affairs Legislation Amendment (2005 Budget and Other Measures) Bill 2006 gives the Secretary of the Department of Families, Community Services and Indigenous Affairs the power to take allocated but unfilled places from a child-care provider. The justification given to allow this new power is that it allows redistribution of places from areas of low demand to areas of high demand, and that sounds an eminently reasonable proposition. But unfortunately that is not what is going to happen. Because the child-care allocation system is so slow and unresponsive, centres and family day carers will have to wait for two years to get back places taken away from them forcibly by the department. The question needs to be asked: who will have the power to decide when to take places and when to give? The answer is the department. This is the same department that, because of policies of this government, admits that it does not even know where child-care places are needed.

Labor senators asked the following questions about this issue during the inquiry that was undertaken on this bill. How prepared is the department to deal with this new power? Do the bureaucrats in Canberra know more than individual child-care operators know about the demand for these services now and six months into the future? The answers we received were quite concerning. The department admitted that it does not have any way to measure demand at a regional level. It does not know how many places are currently being utilised; it has ‘some sense of the numbers’. It has not yet decided on a definition of ‘excess places’. In other words, the government has decided to propose a new power to take away from a provider child-care places that have been consistently unused, but it has not decided on what ‘consistently unused’ means. This parliament is now being asked to allow child-care places to be involuntarily relinquished by child-care providers, despite the government not knowing where the areas of high and low demand are, nor how long a vacant spot needs to exist before the government can arrive on the doorstep and take it away.

Labor’s objections to these changes can be expressed quite simply and include the fact that places removed from one service do not have to be reallocated to another service. The system for reallocating places is rigid and slow. Generally places are only allocated within advertised windows wherein services are invited to apply, and there have been fewer than five such windows since the year 2000. Child-care services often have to wait up to two years from the point of request for new places for those places to be allocated to them. Parents around the country might be without a child-care place simply because the allocation system lags behind the new demand, and the government’s ability to accurately assess unmet need for child care is poor. It admits—on occasions when it suits—that that is the fact.

Labor is moving amendments to rein in the secretary’s new proposed powers and to improve the system of allocation. The amendments that we have proposed will limit the secretary’s power to reduce the allocation of places to a service unless, firstly, it has been continually vacant for 12 months and, secondly, it will be reallocated to another service within seven days of removal. The amendments oblige the secretary to assess applications for additional places to meet demand from child-care providers throughout the year—and we propose every month—and not just in infrequent and unpredictable windows. Lastly, the amendments will require the government to include in the annual FaCSIA report to parliament information about the number and location of services suffering an involuntary removal of a place, information about services that
have been reallocated those places, and services that have had requests for more places declined.

Senator SIEWERT (Western Australia) (5.05 pm)—The Greens support these amendments. During the committee hearings, I was quite concerned to hear that there was not an adequate assessment process of child-care places being carried out, in particular in regional Australia, where I believe there is going to be a significant increase in demand, particularly as it relates to the new Welfare to Work legislation that has come in. Outside of that, the department really has no idea how many places are required in regional centres. It has no process for adequately assessing the demand in regional centres, and when I asked about what process is in place in other areas I was told that it mostly depends on requests from existing centres. I do not think this is an adequate way to be handling child care in this country. I believe that the Labor opposition’s amendments go some way to addressing this issue but, as we articulated in a minority dissenting report to the committee hearings, we believe FaCSIA needs to be developing a robust assessment process to allow it to model future demands for child-care places, particularly in regional communities. We also believe it needs to be doing a bit of forward planning to address these identified future needs. We will be supporting these amendments.

Senator KEMP (Victoria—Minister for the Arts and Sport) (5.07 pm)—The government will not be supporting these amendments. I have listened carefully to the arguments that have been put forward. Senators who have spoken do not seem to understand some of the implications of the Labor Party amendments. One that has been drawn to my attention is that the proposed amendments would make a hypocrisy of the current voluntary relinquishment process. Senator Siewert, in practical terms, based on the amendments drafted by the opposition, the government would have to reject the child-care services’ voluntarily offered relinquished places unless we had an application for more from somewhere else. I think it just shows you the inflexibility of the amendments that have been proposed by Senator McLucas, which seem to have a rather serious unintended consequence. That is just one of the arguments why we will not be supporting the Labor Party amendments: they restrict the ability to redistribute places from providers that are not using them to those in areas of need.

The government does not accept the opposition amendments because they are counter to the purpose of the government’s provisions. The opposition amendments partially duplicate other provisions of the Family Assistance Administration Act. Prescription of administrative process is unnecessary red tape, in our view, in a sector that needs more flexibility, not less. To our mind, it is odd that the Labor Party would restrict the ability to redistribute unfilled places to areas of need when they often quite wrongly—I have been in the chamber when they have done this—claim that there is a child-care place shortfall. The substance of the opposition amendment is that funded places should remain idle for at least 12 months before they can be put to better use.

Senator McLucas—you don’t understand child care if you think that is worth emphasising.

Senator KEMP—Senator McLucas says that is not correct.

Senator McLucas—I didn’t say that.

Senator KEMP—In that case, Senator McLucas is conceding that is correct. I would have to say, Senator, you may have trapped yourself. This is what in the sporting area we say is an own goal. The public
would rightly expect that unused child-care places be allocated expeditiously to areas of demand, and the public in that case would be dead right. The opposition amendments would actually be a retrograde step over the current system of voluntary release and not improve flexibility, as is the government’s intent. Child care is about supporting parents and the carers they choose. I would have to say that parents seeking places for their children in areas of demand would be infuriated by Senator McLucas’s amendment, which would deny them access to places that are otherwise not being used. I do not know what Senator McLucas would say to those parents if this amendment was passed by the Senate.

Senator McLucas—If you take them away from places where they are used tomorrow, how would that work?

Senator Kemp—As I said, the substance of your amendments is that funded places should remain idle for 12 months.

Senator McLucas—Then we would know they really are idle.

The Temporary Chairman (Senator Ferguson)—Order! Senator McLucas, this is the committee stage. You will have a chance to ask further questions.

Senator Kemp—Senator McLucas has at least conceded the substance of my arguments and the public will make a judgment. Senator McLucas says places should remain idle for 12 months; I say they should not. I say that places should be given to areas of need and they should not be idle for 12 months in areas where there is not the demand. It is a very straightforward argument. Some places attract overhead funding. In those cases, the ALP amendment serves to spend taxpayer money on some places that are not only unfilled but that, I regret to say, entrench potential waste for periods of over 12 months. The government’s measure is a simple mechanism to better utilise all available child-care places. The ALP amendment does the opposite; therefore, in good conscience, the government cannot accept the amendments that have been moved by the Labor Party.

Senator McLucas (Queensland) (5.12 pm)—I was not going to make another contribution but, unfortunately, I have to. I need to ask the minister, then: if it is not 12 months that the place is going to be vacant for, what is the period of time that the department is going to use for the definition of an unused place?

Senator Kemp (Victoria—Minister for the Arts and Sport) (5.12 pm)—I think the general test of the department is not 12 months. The general test would be six months, a far shorter period. But the department is flexible. The department has the flexibility. Your arrangements would reduce the flexibility, and I think that is a pity. That is why we cannot accept them.

Senator McLucas (Queensland) (5.12 pm)—I will not labour the point but I have to say this sounds a lot like policy on the run. We asked that direct question in the Senate inquiry. We asked what the definition was of an unused place and the department was very vague. It had not been identified as yet. ‘It is more like six months.’ What sort of an indication is that to the sector? How long are you waiting for something to occur? This is not an arbitrary thing we can make up on the run. Let us be really clear about what the definition of an unused place is so that family day care providers in particular know what is going on. Is it six months, Minister? If it is, tell us. Is it six months in a regional place and two months in a city? What are the rules that we in this parliament are adopting today? It is unfair to family day care providers that we just pass this bit of legislation and will make it up later. I think it is only fair
that we know what we are passing here today.

Senator KEMP (Victoria—Minister for the Arts and Sport) (5.14 pm)—I think you do know. I thought you started off your remarks saying it was good to get a clear answer. I can just take that as a compliment that the question was put to me and I was able to give you a clear answer.

Senator McLucas—I didn’t say it was a clear answer because I didn’t get one.

Senator KEMP—It is not a good one because you want unused places to be held for 12 months. You think that makes a lot of sense, but we do not.

Senator McLucas interjecting—

Senator Webber interjecting—

Senator KEMP—What is an unused place? A place which is not being used, I would have thought. I do not want to be too complex in this, but an unused place seems to me—and I am looking at my advisers—to be a place which is not being used. They are nodding profoundly.

Senator Webber interjecting—

The TEMPORARY CHAIRMAN—Order! Senator Webber, you will get the call if you stand.

Senator KEMP—The other thing I would say to Senator McLucas and to Senator Webber is: I think you should have consulted with the sector. That is what you should do. The department has consulted with the sector, and the six-month period is understood and accepted. It does seem a little bit ironic that Senator McLucas—perhaps with the best of intentions; I make no judgment but I assume it was with the best of intentions—has moved an amendment that simply does not make sense. It does not make sense to the public. Senator McLucas could not explain this to a parent who could not obtain a place because of the inflexibility of the Labor Party amendment. Senator McLucas, I am a senator, as you know, who tries to answer questions, one who tries to assist the debate, but I think that this is a bad amendment and it is one which the government will not be accepting.

Question negatived.

Senator McLucAS (Queensland) (5.16 pm)—by leave—I move opposition amendments (11) and (12) on sheet 4887:

(11) Schedule 6, page 29 (after line 7), after item 1, insert:

1A At the end of clause 16 of Schedule 2
Add:

(3) The Secretary may grant an extension to this period of up to an additional 40 weeks if the Secretary is satisfied that a person has a legitimate reason for delaying his or her application for carer allowance.

(4) Without limiting subclause (3), a legitimate reason may be that:

(a) the person may be unable to readily access relevant services or advice; or

(b) the person may have a medical condition that would prevent him or her from applying; or

(c) the person may have a psychological condition that would prevent him or her from applying; or

(d) the person may have caring responsibilities that would prevent him or her from applying; or

(e) the person was unaware of the carer allowance; or

(f) the person was unaware of his or her entitlement to the carer allowance; or

(g) the person was unaware that the allowance is not income or asset tested; or

(h) the person experienced a delay in having a disability assessment undertaken; or
(i) the person underestimated at an earlier date the ongoing needs of his or her child; or

(j) there was a delay in the diagnosis of the child.

(12) Schedule 6, page 29 (after line 9), after item 2, insert:

2A At the end of clause 17 of Schedule 2

Add:

(3) The Secretary may grant an extension to this period of up to an additional 14 weeks if the Secretary is satisfied that a person has a legitimate reason for delaying his or her application for carer allowance.

(4) Without limiting subclause (3), a legitimate reason may be that:

(a) the person may be unable to readily access relevant services or advice; or

(b) the person may have a medical condition that would prevent him or her from applying; or

(c) the person may have a psychological condition that would prevent him or her from applying; or

(d) the person may have caring responsibilities that would prevent him or her from applying; or

(e) the person was unaware of the carer allowance; or

(f) the person was unaware of his or her entitlement to the carer allowance; or

(g) the person was unaware that the allowance is not income or asset tested; or

(h) the person experienced a delay in having a disability assessment undertaken; or

(i) the person underestimated at an earlier date the ongoing needs of the person from whom he or she is caring; or

(j) there was a delay in the diagnosis of the person for whom he or she is caring.

These amendments have their genesis in recommendation 2 of the chair’s report from the Senate Community Affairs Legislation Committee inquiry into these bills. As you know, Mr Temporary Chairman, the chair of that committee is a Liberal Party senator and convention is in this place that it is the government of the day that signs off on a majority report. So these are government senator recommendations. The second recommendation of that inquiry said:

1.39 The Committee recommends that the legislation be amended to allow a discretion for the backdating of Carer’s Allowance for a period in excess of 12 weeks where:

(a) it would have been unreasonable in all the circumstances for a claimant to have made an earlier claim for the Carer’s Allowance, and

(b) a failure to backdate would occasion significant financial hardship.

Labor’s amendments here today put into effect the intent of the committee in making that recommendation. The amendments identify and put into effect the concerns that were expressed during the inquiry about the limiting of backdating provisions. During my speech in the second reading debate I identified a range of those, and they include the fact that most potential applicants for carer allowance do not know that the payment exists.

There is a very poor knowledge in the Australian community of the fact that we have an allowance called the carer allowance. Concerningly also, there is very little action either by the department of families or by Centrelink to be proactive and explain to people that they are potential claimants for carer allowance. Centrelink do very little work—in fact, they said no work—to try and match the data that they have, to try and identify those people who obviously receive...
care, because they are on a disability support pension or are an aged care recipient, and find out who is providing care to them. They do not try to link the fact that there is a payment recipient with the fact that obviously or potentially that person will have a carer. They do not even use the systems that they have in front of them.

There is very limited advertising done by the department of families to promulgate into the committee information about the fact that the carer allowance exists. We can spend $50 million telling people about the Liberal Party policy on industrial relations, but I do not think we spend $100,000 telling people who are caring for their children or caring for their elderly loved ones that they are entitled to a payment of $94 a fortnight. We will spend $50 million telling people that we will sack them after 27 March, but we will not spend $100,000 telling people that they might be able to get a bit of assistance to help them out with this caring role that has been thrust upon them.

As well as the fact that many people are unaware of the carer allowance, we know that many people think it is a means tested payment. Well, it is not a means tested payment. It is not income replacement; it is a payment in recognition of the cost of providing care. But no effort is made to tell people that in fact this is a payment that recognises the cost of care and is not means tested. We know from the evidence given to us in the inquiry that people who live in more regional and remote places find it difficult to access Centrelink offices, to access the systems that are there to support them. So we know that people who are geographically isolated will have more difficulty accessing the carer allowance.

We also know that the forms that are used to apply for this payment are so poorly designed that even the medical profession have trouble filling them in. I raised that during my speech in the second reading debate the other night. The forms lead the person who is completing them to the view that they need to make a medical diagnosis, and we know that for many, especially for newborn children, it will take a long time to diagnose what condition they in fact have. We had a story given to us during the inquiry about a child in a family that had already had a child with a disability and it took 18 months to diagnose what ailment the child had. It was only then that the parent applied for carer allowance for that child. That is a circumstance where the family was connected to the system and even then they waited until the final medical diagnosis was made before making the application. These are the families that we are trying to pick up with this sort of amendment so that discretion can be applied when there is a legitimate reason for the person not applying.

We know that when a family is faced with the reality that either their child or someone in their family has had a disability or illness diagnosed and that they have to contemplate caring for that person for the rest of their life, it is a very traumatic episode for that family. It takes that family some time to deal with it. We were told by a number of witnesses that families in those circumstances suffer a sense of denial. They do not want to come to grips with the fact that their child or loved one has a significant and severe disability that will require care for the rest of their life. Because they are in denial they do not do the thing that reinforces the fact they have this child with a disability—that is, fill in the form and tick the box to say, ‘I have to care for my child and I probably will not be able to go back to work.’ Of course they are not going to do that.

The amendments that we are moving today pick up on that. In cases where there is a real, legitimate claim they allow the secre-
tary to backdate for the full 26 weeks for applicants for carer allowance (adult) and the full 52 weeks for carer allowance (child). Of the 42,000 people annually that are successful in receiving carer allowance, a huge proportion is fully backdated for carer allowance (child). There must be a range of reasons for that. I was quite astonished, though, that neither Centrelink nor the department do any work—none at all—to try to ascertain why it is that so many of these people do not apply in a timely way. We do not know why people do not apply in a timely way but we are going to cut them off anyway.

Some families with the child with a disability are going to miss out on nearly $1,900—money that will be well used for basic medical supports but also for changing the family home to accommodate the child with the disability. To a person, the witnesses to the inquiry said that that money would be well used. But this department and Centrelink do not do any work to try to find out why people do not apply in a timely way—but we are going to cut them off; that will be fine.

The other thing that annoyed witnesses to the inquiry was that in the lead-up to the last budget the government did what it usually does and talked with lobby groups—Carers Australia, the National Welfare Rights Network and a range of other welfare organisations—about the sorts of proposals they were contemplating in this budget. They talked about the good things that this government was going to do for carers. The carer organisations were quite happy to receive that information, but the government did not tell carer organisations about the sting—the fact that they were going to cut the backdating provisions for carer allowance.

The carer representative organisations feel that they have been dunned—that they have ticked off on the bonus payment that was being paid and a couple of other amendments that happened through that budget process but then they got the sting. This sting will not hurt those people who are current recipients of carer allowance; it will hurt a large proportion of the 42,000 people who will apply from 1 July. Like Welfare to Work, they have quarantined a certain group of people and will just hurt those people who will not even know they are being hurt. That is the way this government operates when it comes to the welfare sector.

I think these are sensible amendments. They are amendments that are supported in principle, shall I say, by the report of the Liberal Party members of the Senate inquiry. They are amendments that are practical. I think they are eminently supportable and I am sure that the welfare sector will see that this is a way forward. The other thing that these amendments will do is put the onus back on the department. If you do not want the bureaucratic trouble of people having to apply for a backdating outside the normal form process, then you get out there and start telling people about the fact that there is this thing called a carer allowance. You get out there and start working to make sure that people will apply in a timely way. Why do we not look up the list of people who are recipients of the disability support pension and write to them and ask, ‘Does the person who helps care for you get a carer allowance? They are probably eligible.’ Let us do some practical, sensible things to get people who are potential claimants into the system so we do not have this messy system of backdating, whether it be for the 12 weeks that this government is proposing or, as I am proposing because it is the right thing to do, to put it back to 12 months for carer allowance (child) and 26 weeks for carer allowance (adult). I commend the amendments to the chamber.
Senator BARTLETT (Queensland) (5.28 pm)—At the outset I indicate that the Democrats support these amendments. Later down the track the Democrats have an amendment to knock out this change of the government’s altogether. I believe that is the appropriate way to go. The evidence provided to the Senate committee inquiry in my view provided no grounds or justification for changing the current situation with regard to the length of time that carer allowance can be backdated after the application is first made. If that is unsuccessful, the best fallback will be for an amendment such as this. On those grounds the Democrats will support these amendments.

I should just clarify precisely what is being proposed here. The current situation is that people who newly apply for carers allowance are eligible to backdate that payment from the date of claim by 12 months if it is a carers allowance for a child or six months for a carers allowance for an adult where it is a sudden onset of the adult’s condition. The government’s changes in the legislation before us restrict the length of time the claim can be backdated to 12 weeks in all cases. These amendments provide the scope for backdating to be extended further than 12 weeks to as far back as the current length of time if the department is satisfied that a person has a legitimate reason for delaying their application for carers allowance. I should emphasise that, as Senator McLucas said, this is broadly consistent with the recommendation contained in the committee report and specifically signed off on by government senators and the committee chair, Senator Humphries. I quote paragraph 1.31 of the committee’s report:

The Committee acknowledges ... and considers that in a small proportion of cases, particularly those in which claimants are suffering particular hardship, there should be some capacity to provide for the backdating of the Carer’s Allowance over a longer period than 12 weeks.

It is there in black and white in the committee’s report that there should be some capacity to provide for the backdating of the carer’s allowance over a longer period than 12 weeks. I believe the capacity should be there in all cases where there is an eligible reason for it to be backdated, as currently exists in the law. The committee—the entire committee, I would suggest—clearly stated that there needs to continue to be some capacity to backdate the carer’s allowance for longer than 12 weeks. This amendment clearly does that.

I noted that the minister—I am sure quite genuinely—in speaking to the previous amendment about child-care places said that in all good conscience he could not vote for the Labor Party amendment because it was a bad amendment. Quite frankly, I cannot see how, in all good conscience, any government senator, and particularly those that are aware of this issue and the reality of what life is like for carers, could possibly do anything other than vote for this amendment. There are some members on the government benches who have a good record of promoting the interests and plight of carers. I urge at least one or two of them to stand up on this occasion and actually use the ability that they have in this circumstance to ensure that the interests of carers are protected—ideally, I would say, by supporting the Democrat amendment that is soon to be moved to eliminate this schedule of the bill altogether, but at least they could provide support for the amendment before us now.

I think it is clear, particularly for people from rural and remote areas, that there are quite likely to be circumstances where you are in a position of caring, whether it is for a child or an adult, and it takes a longer time for you to be able to put in an application for carers allowance—assuming you are aware
of it. I think that to show no regard for that is unfortunate in the extreme.

I should take the opportunity while I am on my feet to ask the minister, when he responds to this amendment, to also give some details to the Senate about what the government is doing in response to recommendation 1 of the committee. Recommendation 1 does not require any amendments but it does recommend the development and implementation of an education campaign aimed at raising awareness of the availability of assistance for carers and, particularly, the existence of carers allowance entitlement. I think it is important. This was a clear point that was made time and again at the Senate committee inquiry by those people who live every day with the reality of life as carers or represent people in that situation.

There is no point having Senate committee inquiries hearing from people who are directly affected, hearing from the people who walk in the shoes of people who care for family members and hearing directly from those at the coalface who know what the reality is and who know what needs to be done, getting that unequivocal information and advice from them and then ignoring it. Nothing is more guaranteed to increase people’s cynicism about the political process than doing things like that, where you get people before you; they tell you in black-and-white, absolutely clear-cut terms about something that needs to happen; the committee recommends that it needs to happen; and then nothing happens. I think it is very important for the government and the minister to clearly indicate to the Senate and, through the Senate, to the public and those organisations that I am sure are following this debate—if not now, then reading the transcript later—what the government is doing in response to this clear evidence that has been provided.

I will take the opportunity now, in relation to this amendment—and also as a broad-brush statement on the later Democrat and Greens amendments—to emphasise again the current situation for people who apply for carers allowance. Carers allowance is not ‘carers payment’ or ‘carers pension’. It is not an income support payment. It is, as Senator McLucas said, an additional payment in recognition—a fairly small recognition, in some cases—of the extra costs of people who are caring for children or adults. It is $94.70 per fortnight at the moment, so it is less than $50 a week. It is hardly a massive windfall for carers in that situation.

According to the government’s own evidence, the changes will mean that each year there will be around 26,000 people who apply for the carers allowance for adults who will lose, on average, about $410 as a result of this measure, and some will lose up to $663. That is based on current values. It will also mean that 16½ thousand people who will apply for the carers allowance for children will lose on average $1,450 as a result of this measure, and some of them will lose nearly $1,900.

I suggest that would compare to what Senator Evans was arguing about earlier with family tax benefit B, which is $3,300 a year but gets paid to people even if their partner is earning over $1 million a year. The government has just voted to retain that situation, where partners of millionaires can get over $3,000 in family tax benefit B, but it is still willing to proceed with this component, which will take away nearly $1,900 from over 16,500 people who are working and acting as carers for family members. You could not get a starker example of the distorted priorities of this government and how it is focused on buying votes, not on using the social security system to produce the best possible and fairest social outcomes.
It should be emphasised again that this is not a normal payment. It is not a normal payment because it is not means tested because it is not an income support payment. It is a recompense for expenditure. It is also different in the sense that it does relate to the illnesses of other people—family members and children. As I stated in my contribution on the second reading, carer allowance (child) is the modern version of the old child disability allowance, which also had significant scope for backdating, for the same reasons. I will not go over in detail what I said in my speech on the second reading last night, but the evidence was quite clear—and, again, the evidence is provided, even for senators who do not have experience or engagement with carers—to the Senate committee, from groups and people who lived this experience, that when many people first realise that their child requires extra care they focus first and foremost on getting diagnosis and assessment. Senator McLucas gave an example. There is an example in the committee’s own majority report from the Australian Association for Families of Children with Disability. They gave an example of a child who was close to three years old before the carers were finally able to get a diagnosis of cerebral palsy from doctors.

I spoke yesterday about the growing number of diagnoses for children on the autism spectrum and how that particular condition is one that can take a long period of time to diagnose as it represents itself in many different ways. It requires significant variations in the amount and type of care that is needed to be provided by parents. I also say that, because of the uncertainty surrounding that condition in many cases and just what it is that the child has to deal with, it can be a time of great difficulty for parents trying to find out precisely what it is about their child that they need to get about—I hesitate to say, ‘What it is that is wrong with that child,’ because it is not an issue of seeing it as an illness that somehow or other needs to be recognised as such; it is just a different characteristic. Nonetheless, it is a difference that requires different and often extra types of care or assistance.

In some cases children with that condition can grow into adults who not only do not need assistance but also can have extra-special abilities. So it is an unusual condition, but it is still a condition that can require a lot of extra caring, particularly in those early childhood years. However, it is a condition that a lot is unknown about, and it is one which can mean a lot of time is taken before diagnosis is given. In those sorts of circumstances, for parents who are often unaware of the carers allowance payment or simply so focused on clarifying what is needed and what the situation is—and it can take a long period of time—to not then get that extra bit of recompense for what would already have been an enormous amount of expense, time and opportunity cost not only is miserly but also sends a very poor signal. It sends a signal to those parents and carers who are already struggling financially and emotionally that the government either does not care or, in some ways even worse, just does not understand and does not recognise that this is a need and, indeed, a growing need.

We have recently had statements from the new education minister about the importance of early education and more focused early education for children, which is good, at least in principle. To be saying things like that at the same time as actually withdrawing support for parents who are doing their best to try and provide that extra care for children in those early stages where it can make such a difference is flying in the opposite direction. As I said yesterday, this is the sort of miserly measure that you can possibly comprehend might happen if you have a razor gang desperately trying to find a few dollars
here and there to fill in a massive budget deficit, but to be just taking away desperately needed support for carers in this country at a time when we have record levels of budget surpluses is simply inexcusable.

Senator SIEWERT (Western Australia) (5.43 pm)—To pick up where Senator Bartlett left off, I cannot but help thinking—and I cannot blame carers or the people they care for—that this is an extremely mean-spirited amendment to the Family Assistance, Social Security and Veterans’ Affairs Legislation Amendment (2005 Budget and Other Measures) Bill 2006. We are not talking about a lot of money per person here—1,900 bucks. Let us look at some of the things that that sort of money would help pay for. It would help pay for supporting the person being cared for. It would help offset the costs of diagnosis, which in many cases are huge for families. It would help pay for transport, pharmaceuticals and nappies. It would also help pay for necessary modification to homes, because, when a person acquires a disability, in many cases modifications have to be made to their homes. So those people and the carers for these people can acquire huge costs in many cases.

So, we are not talking about a huge amount of money per person or per carer. I think the Access Economics report has probably been quoted a lot during this debate, but when you look at the value of the care that carers contribute to Australia annually—a $30.5 billion contribution to our community—I think that carers are justified in believing that this is mean spirited. I must admit I certainly believe it is unfair and I believe it is mean spirited.

The Greens are supporting these amendments believing they go some way to addressing our concerns but, as people would be aware from our amendments circulated, we oppose schedule 6 and we do not believe it should go ahead. But if this particular notion does go ahead we at least think discretion should be built in, so we are supporting the opposition’s amendments because I think that we have a responsibility to provide support for carers. As has been pointed out, this allowance is to just offset marginally the costs that carers incur looking after the people that they love and care for. You see that in many, many cases carers are in the lower economic areas and that they had to give up full-time work—sometimes they give up full-time work and take part-time work or they take work with less responsibility in order for them to provide care.

If you look at the submissions that came into the hearings, all the carers groups—all of them—raised concerns about this and oppose this. They were not consulted and I also believe it is disingenuous if anybody from government tries to put the point that groups were consulted. They were told about the changes and because the amendments in this bill, as we know, include some positive things people were, of course, supportive of the positive things—and then afterwards they saw the thorns hidden when they did more reading.

As I said, we in the community need to be supporting our carers, giving them as much financial support as we can and not causing them unnecessary angst as this would. As has also been articulated today, there are many reasons why carers do not immediately apply for carers allowance. In some cases it is because they think they can struggle on without support. They do not want to acknowledge that there is a crisis in process and it is only when they actually come to the crisis point that they look around for what support they can get. Here, as a community, we are going to be saying, ‘Sorry, bad luck. You missed the cut-off date, you missed 12 weeks. That’s just tough,’ because we are an uncaring society.
In this society we are supposed to be going for economic growth because then we will have a better society. What sort of society actually cuts off funding for carers after 12 weeks and says, ‘Sorry, you’ve missed out’? It used to be 52 weeks or 26 weeks—depending on whether you are looking after an adult or a child—but now we are saying, ‘Bad luck, we’ve decided to cut it to 12 weeks. You’ve missed out. If the person you care for acquired the disability a little while ago, well, you would’ve been due back pay up to 52 weeks but, because the person you’re looking after acquired the disability after 1 July, well, it’s bad luck. You’ll only get 12 weeks. Bad luck, you can’t modify your home. Bad luck, you can’t buy those pharmaceuticals or support the person that you’re caring for.’

I think it sends a really bad message to the people who are looking after the most vulnerable in society, because that is what they are doing: they are looking after people who need help, who cannot look after themselves, and they are providing that care at great expense to themselves—at great expense both financially and, as we have heard on many occasions, to their own wellbeing. They are often the people that also become sick and then worry when they cannot look after the people that they are caring for.

If you look at the submissions we received during the hearings, look particularly at one from Carers Australia. They point out that they believe that these amendments: ... will further disadvantage and marginalise carers. The 2003 ABS Survey of Disability, Ageing and Carers indicates that carers are over-represented in the lower household income quintiles. These carers were identified as being at particular risk of low wellbeing in the Australian University Wellbeing Index Survey 2005. I put to you that they are going to be at an even greater risk of low wellbeing due to these types of amendments.

It is extremely disappointing that we even have to consider such amendments. As I said, in a time when we are supposed to be in significant economic growth we are penny pinching; we are penny pinching at the expense of the people who can least afford it and are most vulnerable, and I do not think it is a sign of a caring and decent society. We are not providing these people with a decent life. I think that they deserve that and they deserve all the support that we can give them, so we are supporting these amendments. But the Greens will be moving an amendment later to actually strike out schedule 6 and to not reduce the potential back pay at all—but we do support these amendments.

Senator KEMP (Victoria—Minister for the Arts and Sport) (5.50 pm)—I thank senators for their contributions in this important debate and no-one doubts the sincerity with which people come to this debate. These are issues which all senators should be concerned about and the question is, in the light of all the considerations that have gone on, what is the best way forward? The government, of course, has made a decision in the Family Assistance, Social Security and Veterans’ Affairs Legislation Amendment (2005 Budget and Other Measures) Bill 2006 that the best way forward is to make a number of very important initiatives. I suspect if I was critical of some of my colleagues’ contributions listeners would think—even if we do not accept the facts as they outlaid them—there was nothing in this bill to benefit carers when, in fact, there is an enormous amount in this bill which will be of great benefit.

Let me summarise just some of the thoughts. The FTB part A lower income threshold will see some 400,000 families receive more FTB. I would have thought that was very good news and in all the debates I have not heard one of the senators mention that. The bill will help reduce FTB and CCB debts by improving the way the estimates are
managed, and I think that is very good news. We have had a lot of debates on these issues in the parliament in the past.

The government recognise very profoundly the important role that carers play in our society, and we will continue to support them. The Australian government provided carers with direct payments—and I think this figure is interesting—including bonuses, totalling an estimated $2.2 billion in 2004-05. This is an increase of more than 175 per cent since 1999-2000. This is a very big increase in moneys paid to carers. However much our views differ on these amendments, I think we have to recognise that a genuine and important effort has been made to provide additional resources and assistance to carers.

Senator McLucas, we know that you have a great interest in this area. Indeed, I think the interest you have shown is appreciated by a lot of people. We agree with you that this has to be communicated to people. My colleague Minister Brough has indicated in the debate in the House of Representatives that there will be a communications strategy to make sure that people are better informed. I think that was the substance of one of the comments that you made. You made some comments about the forms. At this stage, I cannot judge the merit of what you said, but I have asked the advisers in the department to review the forms and see whether, in the light of your suggestions and experience, something can be done to deal with the concerns that you have. They will look very carefully at your comments and look at the forms. That provides a bit of a way forward on that issue that you raised.

Senator Siewert will be returning to the debate soon. Again, I think she shows a lot of interest in these issues and often makes very worthwhile contributions. I have to say that Senator Siewert very regularly attends estimates and committee hearings. That makes her quite unlike two of her colleagues Senator Bob Brown and Senator Nettle, who I have to say from my experience very rarely attend committee hearings—particularly Senator Brown. Her work and interest in this important area is certainly noted, and we listened carefully to the comments that were made.

I will go back to the Labor amendments moved by Senator McLucas, which relate to the backdating of the carers allowance. The government do not support these amendments. We regard the amendments as impractical. If passed, they would result in uncertainties and delays for applicants and those required to administer the act. The amendments go beyond the Senate committee’s recommendation. The committee limited itself to justifying backdating on the grounds of unreasonableness to have made an earlier claim and significant financial hardship. The amendments simply call for a legitimate reason. This is open-ended and far more than the committee recommended. That is the advice I have. The key purpose of the government’s changes is to standardise and rationalise the care allowance backdating provisions for adults and children. These amendments effectively maintain existing provisions. Current methods for assessing eligibility are based on functional ability or care needs. This removes the requirement for a final diagnosis for eligibility assessment and has introduced greater access to the payment.

The government is willing to keep the operation of the act under review. This will not be the last time these matters are debated in this chamber. Senator McLucas, as I mentioned to you, the substance of some of your remarks related to the need for an effective communications strategy. I might say that you made some unkind comments about government advertising. My only comment
to that is that I suspect you apply the same rules to the Beattie government in Queensland and its advertising. I will look with interest to see what you have said on that matter, because the Beattie government is a relentless user of taxpayers' funds for advertising and I assume you have made your in principle views known there. Senator, we are not arguing the point. There has to be a communications strategy here. It is important that there is one. We agree with you. Even more importantly, the minister agrees with you.

I turn now to the amendment to be moved by the Australian Greens regarding the carer allowance backdating. This amendment opposes the proposed backdating provisions for carer allowance due to commence on 1 July 2006 and contained in schedule 6 of the bill. The government does not support this amendment. The key purpose of the change was to standardise and rationalise the carer allowance backdating provisions for adults and children. This amendment maintains existing provisions. Prior to the introduction of carer allowance, the methods of assessing eligibility for care assistance for children relied on diagnosis. Current methods of assessing eligibility rely on functional ability or care needs. This removes the requirement for a final diagnosis for eligibility assessment and has introduced—again, I say this to Senator Bartlett—greater access to the payment. The amendments maintain the gap between the backdating provisions for adults and children. The current backdating provisions for adults are granted only as a result of an acute onset. That is the advice that I have received. Senator Bartlett also spoke about the recommendation in the report which related to the communications strategy. I think I have dealt with that particular matter in my earlier remarks to Senator McLucas.

**Senator McLucas** (Queensland) (5.58 pm)—I do recognise that the Senate is trying to get this legislation dealt with, but I do note that it has been very difficult for the minister to defend the policy of taking $1,900 away from a person who has just been diagnosed with having a child who is going to require care for the rest their life. It is difficult to defend taking $600-odd away from a person whose husband has just been diagnosed with multiple sclerosis. It is pretty hard to make the argument that that is a good policy or that that is a good thing when, in the same piece of legislation, we say, ‘It’s okay to allow a partner of a millionaire to get a payment from this government of $3,300 per year.’

There has to be a question of equity in the fact that those three measures appear in this legislation. How fair is that?

The minister says that the purpose of this is to standardise and to rationalise this payment. Those words do not work on people who are caring for children. They do not care about that; they did not want to be standardised. Well, maybe they would—maybe if their child could be standardised and so they did not need to spend the rest of their life caring for that child it could be a good thing. But you cannot do that. And to say to someone: ‘We’re going to standardise your payment, because then it fits neatly into the system that we operate as a government, and in doing so we will take away nearly $2,000 from you,’ is just not fair. So, Minister, it is hard to defend. I do acknowledge that, and I think you have acknowledge that in the tone that you have brought to this debate.

I am interested to know that the minister has said that he will undertake a communications strategy. I wonder if you could undertake to the Senate to table the proposal for the communications strategy within a reasonable period of time. Maybe you could indicate what period of time that would be. We would like to know whether it is going to be $50 million, like this government spent telling people what the Liberal Party policy
is on industrial relations. Maybe that is a good thing we could do with $50 million. Or maybe we could just give it back to carers because of the $35 million saving every year that this government is going to take out of carers’ pockets with the passage of this legislation.

The standardisation and rationalisation inherent in this measure do not recognise the nature of the payment. It is not income replacement; it is a recognition of the cost of care. That fundamental difference is the reason the backdating has always been far more generous than for other income replacement payments, other pensions. The minister does not get it. You just do not understand that it is a different type of payment. I urge the government, and I particularly urge those senators who signed off on the report that essentially recommends this amendment, to have the courage to do what they know in their hearts is right. And that is to vote for the secretary to have some discretion when the secretary finds out about these dire circumstances: the fact that people did not know the payment existed, the fact that they waited for the child to be diagnosed, the fact that they thought the payment was going to be income and assets tested, the fact that they live so far away from a Centrelink office that they could not get there. All of these reasons, we know, are reasons why people do not apply in a timely way—and yet we are not going to allow for a discretion to be exercised so that those individual families can have a little bit of support. It is not a lot of money that we are talking about, but we are going to take away from them. This is a sensible amendment and I commend it to the chamber.

Senator KEMP (Victoria—Minister for the Arts and Sport) (6.03 pm)—Senator, I think this is an important debate and it is about a very important issue. I have tried to avoid making too many heavy political points in this debate. We can all talk about government advertising and carry on there, but I just always note that Labor senators who seem to object to Australian government advertising never seem to object to state government advertising. It was an obvious point to make, Senator, and I think it was unfortunate, because I actually do think that you bring great interest and passion and expertise to this debate. I do not think you need to stoop to rather cheap political points. The fact is this government, through its carer allowance, has been able to very significantly increase funds to carers. You may have issues with the backdating, but it is quite wrong to suggest that this government does not value carers. It is quite wrong to suggest that this government has not increased funding to carers. I think it is a pity that you made those points in the way that you did. It is not the style that I think should come to this sort of debate.

The final point I make is on your question: would the communications strategy be available? That is a matter for the minister. But I have to say I am looking forward to estimates, and I am sure you will be pressing me closely on this issue.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that opposition amendments (11) and (12) on sheet 4887 be agreed to.

Question put.

The committee divided. [6.09 pm]

(The Chairman—Senator JJ Hogg)

Ayes............. 27
Noes............. 31
Majority........ 4

AYES

Senator Bob Brown did not vote, to compensate for the vacancy caused by the resignation of Senator Hill.

Question negatived.

Senator BARTLETT (Queensland) (6.12 pm)—The Democrats oppose schedule 6 in the following terms:

(1) Schedule 6, page 29 (lines 2 to 9), TO BE OPPOSED.

I just note the Democrats amendment and also the Greens amendment, which is identical, opposes schedule 6. I will not go over the whole issue again. We have basically been dealing with the substance of this debate in conjunction with the previous Labor amendments. To clarify, the Labor amendments were to enable a discretion for backdating to go for longer in certain circumstances. The Democrats’ preferred position is to keep the situation as it is. There has been no argument put forward, either here today by the minister or, during the committee hearings, by the department, that gives any rationale—beyond this being a simple savings measure—that could possibly justify what the government is doing here.

We have just heard the words—and the minister used them again—that the intent here is to ‘standardise’ and ‘rationalise’. It is typical bureaucrat-speak used to put a thin veneer of harmless-sounding intent over an action that will actually take money out of the pockets of carers. It is not even particularly accurate, I might say. It does not standardise it in the sense of making it the same as most other social security payments. All it does is standardise the carers allowance child and carers allowance adult provisions in regard to backdating. It does not standardise it with any other payments. So even that inadequate explanation is not particularly accurate.

The minister has also said, with some justification—it is the closest they have come, I guess, to some justification—that it does, to use his words, open up the payment to more people because eligibility for the allowance will be determined by the application of the child and adult disability assessment tools, which look to care needs and functional ability rather than a specific medical diagnosis. I certainly hope that is communicated accurately to all of the people who need to know about it. I am not sure that it will open up the payment to more people. But it may make them eligible sooner—that is true. The sim-
ple fact is that this is a savings measure that
is estimated to save the government $35 mil-
on. If it is saving the government $35 mil-
on, it will be $35 million that carers were
going to get that now they will not. So talk-
ing about opening it up or making it avail-
able a little bit earlier is clearly misleading if
it is suggested that that mitigates what the
government is doing. Otherwise, there would
not be anticipated savings of $35 million.

To very briefly recap, we are talking about
a payment that is $94.70 a fortnight—less
than $50 a week. As Senator Siewert empha-
sised, and as detailed in our additional com-
ments in the committee report, Access Eco-
nomics, who are not usually pointed to as a
bunch of bleeding heart leftie economists,
have estimated that carers contribute $30.5
billion worth of care to the Australian com-

I emphasise that when we talk about
backdating, particularly with extra care for
children—and not just those with significant
physical disabilities and things which are
more clearly diagnosable, although it obvi-
ously applies there—we must recognise that
parents often provide extra care for them in
those early childhood years and undergo ex-
tra costs for quite a long period of time
whilst trying to discover what the specific
situation faced by that child is and what,
therefore, the long-term consequences may
be.

I also emphasise that in many cases with
many conditions or behaviours that children
may exhibit you are looking not just at need-
ing to go to a GP and get a diagnosis but also
at getting assessments by specialists—and
not just medical specialists but also other
types of medical and health professionals,
like occupational or speech therapists or
other sorts of specialists. You are potentially
looking at therapy sessions, particularly for
children who may potentially be exhibiting
learning difficulties, pervasive developmen-
tal delay or, as I mentioned earlier, children
whose behaviour may be on the autism spec-
trum.

In many of those areas there is not a lot of
support available for children or their parents
who are in those sorts of situations. There is
not a lot of assistance available through
Medicare, for example. Most of this is not
covered by Medicare. Most of these things
are not covered in the school system either,
certainly not in the public school system or
in most private schools. So you are looking
at significant amounts of extra costs. If you
want to provide the sorts of therapies, for
example, that are provided for children who
are suspected of being on the autism spec-
trum, there is a quite significant extra cost
and they are often even hard to access. For
people in regional, remote or rural areas, it is
hard to even access them, let alone afford
them.

Those are the sorts of things that parents
are focused on with their children. They are
not focused on immediately saying, ‘This is
good. I might qualify for a payment. I will go
down and get it straightaway.’ They are fo-
cused on the needs of their children and it
can take a long period of time. Frankly, that
is why the child disability allowance, going
back to at least the 1980s, had backdating
provisions longer than other payments. It is
for precisely those reasons: because the extra
level of care could already have occurred for
quite a period of time before the situation is
recognised as one that will be ongoing and
people therefore then look at whether or not
there might be a payment like the allowance
for them to claim. That was the rationale for
it.
The fact that the eligibility provisions look to care needs and functional ability rather than a specific diagnosis might slightly mitigate that, but only slightly. It does not go to the core of it. The unacceptable fact that this amount of money will be taken from the pockets of carers at a time when they are quite likely to specifically need it not only puts them at a financial disadvantage but also sends a message that there is a lack of recognition of what is involved in these circumstances and what people in the real world are going through and will continue to go through. I think that is a negative message.

I note with appreciation the strong and ongoing support that well-known broadcaster Alan Jones has shown on carers’ issues. I do not always voice praise about some of the things Alan Jones says, but I know he has spoken about this area and I think he is spot-on. I believe one of the reasons that he is strongly committed to this area is that he knows what the reality is for many people: how difficult it is in the real world for people who are caring and people with young children who are only slowly realising that they may be caring for them for a long time. There is a growing recognition of the need to give as much as possible for early childhood assistance and we need to provide more resources in that regard. This is potentially a backward step and certainly reflects a message that is at odds with some of the other messages about the need for more focus on assistance in early childhood, particularly for those children who have different needs.

The harder we make it for carers, the more people there will be who will struggle and the more people there will be who just will not be able to provide the sort of assistance that is needed, particularly for children. In that case, I would also suggest that that actually makes measures like this a false economy. It might in a narrow sense save $35 million for the bean counters who are looking at the column item in this particular department under this particular payment but, if you look at the longer term flow-on costs of making life harder for carers, I think there is a good argument to say that it is potentially a false economy and the costs may well outweigh the meagre savings that are involved.

I make a final plea: it is within the power of any individual on the coalition benches in the Senate to ensure that this measure does not go ahead. It only takes one or two of them to show that individual commitment to this issue. I would suggest that this is one issue that certainly merits that extra piece of commitment to carers. This is a time when I believe it is merited for an individual coalition senator—a Liberal or a National Party senator—to vote along with the Democrats to remove this section from the legislation and ensure that that little bit of extra assistance that can be provided to carers is not lost to them.

Senator SIEWERT (Western Australia) (6.23 pm)—The Greens, as people would be aware, had the same amendment that Senator Bartlett has just moved. I would like to speak to that amendment relatively briefly because I did make a fuller statement earlier. While there may be some other positive initiatives in this bill, you do not give with one hand and take with another. Yes, carers may benefit from some of the provisions in the bill—the same as a great many Australians may benefit—but, on the other hand, we are taking away from carers. So the government is basically giving with one hand and taking away resources with another.

This government seems to have prided itself on promoting policies that encourage people to help themselves. However, in this instance, people who do help themselves and in fact others—carers supporting those in their charge—seem to be being discriminated against. They seem to be being penalised by
having the back pay provisions taken away. So while other members of the community are encouraged to help themselves, people who are helping themselves and others are being penalised.

As I articulated before, carers in our society are helping those who are in most need and are most vulnerable. By doing that, they make themselves vulnerable. As I said earlier, many of them drop full-time work or add their care on top of their work responsibilities or go to part-time work and then care for those they are caring for. They deserve the most support that our society can give them. Unfortunately, schedule 6 of the bill does not do that. As I said before, it seems absolutely mean spirited that as a society we cannot afford to give carers this small amount of money. When it gets down to per carer, it is a small amount of money that we are now taking away—but these carers make that small amount of money go a very long way.

Overall, this sends a really bad message to carers: that we do not value what they are doing and the care that they are giving the most vulnerable in our community and that we also disregard the financial value of what they do. So not only do we not appear to be valuing the emotional component and the care that they are giving but also we do not appear to be valuing the contribution that they make to our economy, which, as I said before, is around $30.5 billion. With this section we are saying, ‘We don’t value that. We’re not even going to give you back pay to help you deal with the section of your life where you are often in one of the biggest crises of your life. We are not going to acknowledge that it is difficult to deal with and that it is a really bad time in your life. We’re not going to give you space.’ We are saying to them, ‘You have to do it within 12 weeks of the immediate crisis happening and you coming to terms with a new life’—and in many cases it is a new life. We are saying, ‘You’ve got 12 weeks to do it; after that, it is bad luck. You’ve missed the point; you’ve missed the mark; you’re not up to speed—bad luck.’ I think that sends a really nasty message to carers.

The Greens do not think that is appropriate. We do not think that we should be sending such a depressing message to the carers of Australia. As I articulated before, we think it is unfair. As a community, we can afford to provide this small amount to carers. I do not think anyone can argue that we cannot afford this. We cannot afford to send this message—because it is not just a financial message that we are sending. We should be sending a message of our support and caring for carers. I strongly support this amendment and believe very strongly that we should be removing schedule 6 from this bill.

Senator SANTORO (Queensland—Minister for Ageing) (6.28 pm)—I listened very carefully to the contributions from Senator Bartlett and Senator Siewert. I think Senator Bartlett was the substantial contributor on behalf of the Democrats and the Greens, and I would like to acknowledge that, as usual, he spoke with great sincerity and conviction, which is something that I appreciate about Senator Bartlett’s contributions in this place.

I would like to note two positions put forward by Senator Bartlett. The first major point that he made was that the effect of the Democrats and the Greens amendments is similar to the effect that was sought by the ALP amendment, which was dealt with rather conclusively by the Senate a few minutes ago. I appreciate that there are differences in terms of the way that the ALP amendment and the Democrats and Greens amendments go about the business but basically you are changing the impact of the schedule as it stands now or, in the case of
this amendment, the schedule is being done away with all together should this amend-
ment be successful.

That was one thing I noted. The other thing I noted was that Senator Bartlett and
Senator Siewert just a minute or so ago con-
tended that Minister Kemp’s remarks did not
address the issues we are debating at the
moment, and that his remarks were uncon-
vincing. I would like to say that I listened
carefully to Minister Kemp’s remarks, and I
must admit that I found them highly persua-
sive—so much so that if I reiterated them it
would be unnecessary repetition. So I stand
by—and I think everybody on this side of the
chamber would stand by—Minister Kemp’s
remarks, and I urge the Senate to proceed
with further consideration of the legislation
before us.

Question put:
That schedule 6 stand as printed.
The committee divided. [6.34 pm]
(The Chairman—Senator JJ Hogg)

Ayes………... 29
Noes………... 26
Majority……... 3

AYES

Abetz, E.
Barnett, G.
Brandis, G.H.
Colbeck, R.
Ellison, C.M.
Ferris, J.M.
Fifield, M.P.
Johnston, D.
Macdonald, I.
McGauran, J.J.J.
Parry, S.
Ronaldson, M.
Scullion, N.G.
Trood, R.
Watson, J.O.W.

NOES

Allison, L.F.
Bishop, T.M.
Evans, C.V.
Hogg, J.J.
Hutchins, S.P.
Ludwig, J.W.
McEwen, A.
Milne, C.
O’Brien, K.W.K.
Ray, R.F.
Siewert, R.
Stott Despoja, N.
Wong, P.

Bartlett, A.J.J.
Conroy, S.M.
Faulkner, J.P.
Hurley, A.
Kirk, L.
Marshall, G.
McLucas, J.E.
Moore, C.
Polley, H.
Sherry, N.J.
Sterle, G.
Webber, R. *
Wortley, D.

PAIRS

Calvert, P.H.
Campbell, I.G.
Coonan, H.L.
Humphries, G.
Joyce, B.
Kemp, C.R.
Macdonald, J.A.L.
Minchin, N.H.
Payne, M.A.

Lundy, K.A.
Forsyth, M.G.
Brown, C.L.
Campbell, G.
Murray, A.J.M.
Crossin, P.M.
Nettle, K.
Stephens, U.
Carr, K.J.

* denotes teller

Senator Bob Brown did not vote, to com-
penstate for the vacancy caused by the resig-
nation of Senator Hill.

Question agreed to.

Bill agreed to.

Bill reported without amendment; report
adopted.

Third Reading

Senator SANTORO (Queensland—
Minister for Ageing) (6.38 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

CANCER AUSTRALIA BILL 2006

First Reading

Bill received from the House of Represen-
tatives.

Senator SANTORO (Queensland—
Minister for Ageing) (6.38 pm)—I move:
That this bill may proceed without formalities and be now read a first time.
Question agreed to.
Bill read a first time.

Second Reading

Senator SANTORO (Queensland—
Minister for Ageing) (6.39 pm)—I move:
That this bill be now read a second time.
I seek leave to have the second reading speech incorporated in Hansard.
Leave granted.

The speech read as follows—
The establishment of Cancer Australia as a new national agency delivers on the Government’s 2004 election commitment. The Government will provide a total of $13.7 million over five years to establish this new agency.
It will be an umbrella organisation to various cancer groups to provide leadership and vision, support to consumers and health professionals and make recommendations to the government about cancer policy and priorities. This should mean more research funding for cancer care, better support for those living with cancer, strengthened palliative care services, guidance in improvements in the prevention of cancer and better support for cancer professionals.
In addition, Cancer Australia will have a role in the implementation of the following initiatives as part of Strengthening Cancer Care:
• New approaches to mentoring regional cancer services;
• A grants process targeted at building cancer support groups;
• A national awareness campaign for skin cancer, to be developed in conjunction with State and Territory Governments;
• A new dedicated budget for research into cancer, to be administered in conjunction with the National Health and Medical Research Council; and
• Funding for Clinical Trials infrastructure for cancer patients.

Cancer Australia is being established in consultation with national and state cancer councils, other cancer organisations and people living with cancer. The national priorities and strategies for the development of Cancer Australia came from a workshop of key cancer stakeholders in March 2005. Cancer organisations have shown strong support for the development of Cancer Australia, to increase collaboration and reduce duplication in cancer control.
This bill establishes Cancer Australia as a new statutory agency. It outlines the functions of Cancer Australia and includes the terms of appointment and roles of the CEO, support staff and the Advisory Council.
The new agency will comprise a Chief Executive Officer (CEO), Advisory Council and support staff. The CEO will head the agency and will report to the Minister for Health and Ageing. The Advisory Council will be advisory to the CEO and will consist of a Chair and a maximum of 12 other members.
The Chair of the Advisory Council Dr Bill Glasson, former President of the Australian Medical Association (AMA) 2003-2005, has been appointed. The position of CEO has been advertised nationally with applications closing in February 2006.
In addition to government funding, it is expected that Cancer Australia will seek funding from other sources, particularly from the private sector.
An important first step in developing Cancer Australia’s role will be to map the current roles and responsibilities in cancer policy and determine future roles.
I look forward to Cancer Australia making an important contribution to improving Cancer Care in Australia in the years ahead.

Senator McLUCAS (Queensland) (6.39 pm)—It is ironic that here we are on the last day of the autumn sitting scrabbling to pass the Cancer Australia Bill 2006, a bill that we have been waiting for for more than 12 months. It was in September 2004 when the Howard government, pushed into action by the success of Labor’s cancer policy announcements, finally put out their cancer
policy with the establishment of Cancer Australia as its centre. But, since then, nothing has happened except for the announcement last year that Dr Bill Glasson has been selected to chair Cancer Australia and, finally and belatedly, the far more recent announcement of the remainder of the advisory committee members. Even now with the final enactment of this piece of legislation we will not see this body up and running inside two years since it was first promised. That means that many other election commitments on cancer made at that time have not been fully implemented because they are contingent on the establishment of this authority.

Labor’s inquiries at Senate estimates, through the Parliamentary Library and questions on notice have failed to elicit any real information about the state of implementation and the reason for the delays. In fact I asked through questions on notice, on 10 October last year, a series of very straightforward questions about cancer, including: where is the establishment of Cancer Australia up to; when will this body be set up—very straightforward questions—how many additional undergraduate places for radiation therapists were provided in 2005-06; and what is the current state of development and implementation of the continuing professional education modules for cancer professionals? They were extremely straightforward questions. Why has it taken since 10 October last year to the end of March to answer these very simple questions?

In the lead-up to making this contribution this evening, I thought it would be timely to ring the minister’s office to actually find out and advise him, as I did this morning, that I would make mention of this fact today. I can report to the Senate that earlier this afternoon my office received a call from Minister Abbott’s office to say that he has apparently signed the answer to that question, for which I am pleased, but I continue to wait to receive a copy of the answer. We need more than non responses to questions to understand why it has been so slow for the minister for health to enact, firstly, Cancer Australia and, secondly, the commitments that are attached to it.

This bill is to establish, as I said, Cancer Australia as a statutory agency. Cancer Australia will provide national leadership and coordination of cancer control in Australia, guide improvements to cancer prevention and care, and ensure treatment is scientifically based. It will coordinate and liaise between the wide range of groups and providers with an interest in cancer, make recommendations to the Australian government about a cancer policy and priorities, and oversee a dedicated budget for research into cancer. It will assist with the implementation of Australian government policies and programs in cancer control and undertake any functions that the minister, by writing, directs the chief executive officer to perform.

The stated aim is to provide a national voice with more research funding for cancer care, better support for those people living with cancer and strengthened palliative care services and better support for cancer professionals. The bill outlines the responsibilities and conditions of employment of the CEO and allows for the appointment of a chair and up to 12 other members of an advisory council. I must say that it is intriguing to note that the bill provides no criteria for the expertise of these members. This is surely a surprising oversight, given the important and sometimes technical work which Cancer Australia will have to perform and the imperative that a range of perspectives, including those of cancer patients, are represented on the council.

While it is hard to fault the qualifications of the people who have ultimately been named to the initial advisory council, we are
entitled to expect that there is some prescription about the qualifications of those who have been appointed. In particular it is, in our view, a serious oversight that there is no specific requirement that cancer patients and consumers are represented. That is why I indicate at this point that Labor will be supporting amendment (3) of the tranche of amendments which are being proposed by the Democrats to resolve that issue.

The government initially committed a total of $13.7 million over four years to 2007-08 to establish this new agency. Due to delays, this funding has been rephased over four years to 2008-09. However, it is unlikely that the $4.546 million allocated to 2005-06 will actually be spent this financial year. I should comment also that there is some concern about this statement in the minister’s second reading speech:

In addition to government funding, it is expected that Cancer Australia will seek funding from other sources, particularly from the private sector. Does this mean that the Howard government is not going to provide Cancer Australia with all the funds needed for this important policy work? Does it mean that a national government agency will be engaged in fundraising activities, using government funds to compete against not-for-profit community groups and non-government bodies for donations to cancer work? I hope the minister will use his response to clarify that position.

During the 2004 election campaign, two days after the release of Labor’s well-received cancer policy, the Howard government announced their Strengthening Cancer Care policy. Cancer Australia is a key plank of that policy. Cancer groups around Australia greeted this with reserved enthusiasm, which has diminished with the increasing delays in its implementation. The Cancer Council Australia, the National Cancer Control Initiative and the Clinical Oncological Society of Australia said in their joint submission to the recent Senate Community Affairs References Committee inquiry into cancer services:

There is great potential for reforming cancer services in Australia to better meet the needs of the individual patient, their carer and family. … the forthcoming establishment of the Federal Government’s new national cancer agency, Cancer Australia, could provide an authority for its implementation; and existing clinical practice guidelines, if adopted nationally, provide best practice protocols.

The mismanagement and absolute incompetence dashes the hopes of cancer patients, researchers, policy makers, health care professionals and the cancer councils and community groups for a coordinated and reinvigorated approach to cancer policy and funding priorities. It has also meant the untimely demise of the National Cancer Control Initiative.

The NCCI was the key expert reference group on cancer, set up to advise the federal government on all aspects of prevention, detection, treatment and palliation. It was proposed that the NCCI would be subsumed into the new Cancer Australia, and the NCCI had begun the essential task of developing initial priorities for the new body. However, the NCCI was provided with no further funds, and the last head of it, Professor Mark Elwood, was forced to send a letter to key constituents and supporters outlining the dilemma confronting the organisation and its staff. Many have left and all will leave in May.

Along with failing to deliver on Cancer Australia, Minister Abbott has retreated on the promise of a national screening program for bowel cancer. At election time the minister was promising that all older Australians—that is, over 55—would be screened every two years for bowel cancer and acknowledging that, every week, 90 people die...
from bowel cancer. That promise was dumped at budget time, and what was billed as ‘a major priority for the next term’ became a continuation of the current trials, not due to start until July 2006. But even this date is in doubt, as the states and territories are expressing concerns about the fact that significant funding, management and operational issues are still to be resolved.

The Australian Health Ministers Advisory Council met in February and they wanted answers about a whole host of issues. Unfortunately they found those answers were not forthcoming. The states and territories are concerned that the bowel cancer screening program has no clear set of objectives and strategies, has no clear specification of roles and will add additional cost burdens to the states. They are concerned that it has not addressed the need for affordable access to colonoscopy and it has no information and database management systems. Their concerns include that it has no clear funding arrangements between the states and the federal government and has no communication program to educate health professionals and consumers. They claim the whole program, a very important program for the health of all Australians, is at significant risk of failure.

But unfortunately there is more. Parliamentary Secretary Pyne’s only effort to deliver the promised program to help pregnant women quit smoking, which was also an election commitment, has been a media statement issued in June last year about an advisory group, which has yet to be announced and has yet to meet. About 20 per cent of pregnant women smoke, and babies of smoking mothers are more likely to be smaller, are three to four times more likely to die of sudden infant death syndrome and are more likely to suffer respiratory disorders and intellectual impairment. With such a large body of research showing that parental smoking has a serious impact on the health of babies, there can be no justification for delay on implementing this commitment.

I note that the second reading speech states:

… Cancer Australia will have a role in the implementation of the following initiatives as part of Strengthening Cancer Care:

- New approaches to mentoring regional cancer services;
- A grants process targeted at building cancer support groups;
- A national awareness campaign for skin cancer …
- A new dedicated budget for research into cancer … and
- Funding for Clinical Trials infrastructure …

I think we can be pretty sure that these election commitments are not up and running yet. The Howard government’s election commitments on cancer have been exposed as a sham. Mr Abbott has broken yet another election commitment in health. Australian cancer patients, their families and their treatment deserve better than this delay and incompetence.

In December of last year we all mourned the sad and untimely death from cancer of our friend former Senator Peter Cook. We all acknowledged his important last legacy in the recommendations contained in the Senate committee report, Cancer journey: informing choice. This report contained a raft of recommendations which, if implemented, could improve cancer care. The report deserves not just a detailed response but an expeditious one. In particular, the recommendation that requires us to establish a new Medicare item so that every cancer patient can have a multidisciplinary plan developed for them is a crucially important thing to do. This was Peter’s lesson to us, this was his experience and he was in a position to push it, unlike many others, and he has acknowledged that. We need to ensure that all Australians benefit...
from this, that doctors and health professionals work together and that we get a team approach.

Unfortunately, we are still waiting for the response to that report. Minister Abbot regularly pats himself on the back about his commitment to cancer but it seems that his commitment and enthusiasm do not extend to releasing the government’s response to that report, which has been on his desk since last July.

Labor supports this bill to establish Cancer Australia and in doing so we will also highlight the government’s failure to fully implement a raft of election commitments to prevent cancer and to improve cancer care. This is not a government which can lay claim to any real commitment to improving cancer care in Australia, and thousands of Australians will suffer unnecessarily as a result.

Senator SIEWERT (Western Australia) (6.53 pm)—I seek leave to incorporate Senator Nettle’s speech.

Leave granted.

Senator NETTLE (New South Wales) (6.53 pm)—The incorporated speech read as follows—

The Cancer Australia Bill is designed to establish Cancer Australia which is to be a statutory agency based within the Health and Ageing Portfolio. The government first announced the intention to set up this organisation back in 2004 as part of its Strengthening Cancer Care election policy.

Cancer Australia’s main functions are to improve coordination within the cancer sector; to guide scientific improvements to cancer prevention, treatment and care; to coordinate and liaise between the groups and health care providers with an interest in cancer; to make recommendations to the Commonwealth Government about cancer policy and priorities; to oversee a dedicated budget for research into cancer; to assist with the implementation of Commonwealth Government policies and programs in cancer control; to provide financial assistance, out of money appropriated by the Parliament, for research and for the implementation of policies and programs in cancer control; and for other functions as directed by the Minister.

The Greens are broadly supportive of this move to set up Cancer Australia, and in particular would like to encourage this Government to further develop programs such as this that focus on preventative healthcare, which is central to The Greens approach to health.

The Greens strongly advocate a preventative approach to healthcare because it helps people to stay well rather than just treating people when they get sick. Preventative health care delivered at a community level is the best investment we can make in the health of this nation. And it makes both medical and economic sense.

From time to time this government makes claims that it is increasing emphasis and resources in the area of preventative health care. However its attitude to universally accessible Medicare over recent years has undermined much of this good work. This government’s move to a two-tiered healthcare system that is based on a private system for the wealthy and a public system for everyone else is the wrong direction. The Australian Greens believe that access to a bulk billing doctor is a fundamental preventative health care measure.

The Howard government’s unsteady approach to preventative healthcare is further illustrated by the blight of tobacco-related illness. As a major cause of cancer, tobacco and its advertising remains an area where this government has fallen well short of the mark.

While The Greens are pleased with the roll out of the new health warnings on tobacco products we are concerned that manufacturers and retailers are doing what they can to shirk their responsibilities. Anne Jones from Action on Smoking and Health Australia or ASH points out that:

“Stockpiling by tobacco retailers and peel-off health warnings are two of the tactics being used to delay smokers and potential smokers (ie children) access to the new, graphic health warnings on all tobacco products”
ASH recently conducted spot checks on around 50 tobacco retailers in Sydney in the first 15 days of March and found that:

“The new health warnings were yet to appear on tobacco products—suggesting stockpiling of old stock—as graphic health warnings are required by law to be on all tobacco products produced from the 1st of March.”

A trend being followed by cigarette retailers to repackage cigarettes in tins that don’t require a health warning is another way in which display of these health warnings is being avoided. One major brand is packaging its co-called soft-packs inside popular black metal tins with health-warning labels that are very easy to peel off. Similarly some Sydney Hotels are selling cigarettes in tins that only feature the Hotel logo in a deliberate tactic according to ASH to cover up the new warnings.

People question the strength of the government’s commitment to reduce lung cancer when they look at the ongoing flow of political donations from tobacco companies to Labor, Liberal and the Nationals. Last year nearly $170,000 flowed to the Coalition from Phillip Morris Ltd who has Nick Greiner on the board and British American Tobacco. The obvious question people ask is “What do they get in return?”

Another preventative healthcare area where this government is falling short of their responsibility is the pressing issue of childhood obesity. Approximately 1 in 6 Australian children are now considered overweight. Childhood obesity leads to higher incidence of diabetes, heart disease, kidney disease and bowel cancer. Experts from the Australian Medical Association have recently expressed concern that the rise in childhood obesity may, for the first time in Australian history, result in a decline in the life expectancy of newborn children.

Concern with the level of junk food consumption, and in particular, the way that it is marketed to children, has been expressed by the Australian Medical Association, the Australian Dental Association and the Royal Australian College of General Practitioners. Even the former Minister for Children, Larry Anthony, referred to the need to consider tougher regulations on junk food advertising.

In a recent survey of over 1600 Australians, 86 per cent of respondents agreed with the statement that there should be more limits on advertising to children. Despite the widespread support for restrictions of junk food advertising from peak medical bodies and the overwhelming public support for such restrictions, there has been no indication that the Howard Government is willing to address this problem. They have so far lacked the political will to stand up to the manufacturers and advertisers of junk food and the television stations who broadcast such advertisements. It appears that pandering to pleas of the Coalition’s ideological brothers-in-arms is more important than listening to overwhelming public and expert opinion about what needs to be done for the health of Australian children.

And there are other areas that The Greens believe could do with an added dose of preventative care from this government. A vibrant nationally funded public dental scheme would allow lower and middle income Australians access to dental services. Because a regular checkup at the dentist for preventive maintenance is out of financial reach, many Australians now only see a dentist when expensive emergency work is required.

The same situation can be seen in the area of mental health, where early intervention is the key preventative mechanism to avoid a lifetime of mental health problems in later life. As I have said in this chamber before, the Howard government and other governments simply do not give mental health care services the priority they deserve, and this is well illustrated by the fact that Australia spends only seven per cent of its health budget on mental health issues while the OECD average is 12 per cent. The Greens yet again call on the government to take further action in this area, and in particular support additional resources for community based mental health care centres. We look forward to the report from the Senate Select Committee on Mental Health, and we hope that the government considers the committee’s recommendations positively.

Indigenous Health is yet another area of healthcare that requires significantly more federal resources and a good dose of preventative medicine. So many of the medical problems faced by the first Australians will be most effectively dealt
with using preventative approaches based on poverty alleviation and community education. There is simply no reason anyone in a rich country like Australia in the 21st century should be living with the scourge of preventable 19th century illness such as rheumatic heart disease.

This leads me to my final point which is that The Greens believe one of the most all encompassing preventative health measures with significant benefits to both mental and physical health is based on the protection of our environment. The protection of our forests, our waterways and our oceans, the reduction of pollution and prevention of chemical exposure, and ensuring the purity of our food supplies are just some of the paramount preventative health measures that The Greens will continue to work towards for the benefit of all Australians.

Senator HUTCHINS (New South Wales) (6.53 pm)—I endorse fully the comments made by Senator McLucas in relation to the Cancer Australia Bill 2006. I have had cancer and that, as it will become clear during my contribution, is why I am making this contribution this evening. Like a number of cancer sufferers—and my colleague here, Senator Moore, has also been through the journey—I am quite reluctant to talk about what I have been through. I was diagnosed with cancer three months after I came here. That was not good considering that I had decided, and so had my party, that I had some contribution to make to this place. I went through the journey of the chemotherapy, the radiation and all that that entails. I got very sick at one point. I spent about two weeks in the palliative care ward at Nepean Hospital, which one would call the dispatch rooms. It is not much fun being in that area when people are dying around you and you are hoping you are not going to join them—I can tell you.

I got through that with the support of my family, friends and colleagues and my faith. I got very ill again in 2003. I had to go through a probably unnecessary preselection, but that was a bit of bloody-mindedness by the leadership of my faction in New South Wales. When I first got diagnosed I had to get a letter from my surgeon to say that I was going to live, because there was a lot of quiet agitation within the ranks of some of the right of the New South Wales branch about the pending vacancy. So, unlike probably most of the people in this chamber, I have a letter to say that I am going to live. I have it framed in my office so everybody can see it when they come in.

During the last week of parliament in 2004 I was seriously ill again and was not able to make parliament. Last year I was out of action for some time. I had five operations last year. The first was in February, which was about 10 hours; there were three minor ones that were only for a few hours; and then I had another one in November which went for about 9½ hours.

As I said, I have been reluctant to talk about my illness because, as cancer sufferers will tell you, it is pretty much a private thing. While I was recovering I was looking at the Sunday Telegraph of 18 December last year in which there was an article by Paul Dyer titled ‘MPs working less.’ I read the article. This particular journalist slags off a number of colleagues. In particular, he says:

Senators and MPs can be granted leave for illness, family reasons or if they are on parliamentary business.

But federal politicians are not granted leave for other absences, such as holidays or campaign work.

The figures show 40 senators missed sitting days without being granted leave, amassing a total of 96 days off.

NSW Senator Steve Hutchins missed 11 days without leave. He also had 11 days off with leave granted.

The first time I rang the journalist I was quite angry about it and I explained to him what I have just explained to you, Mr Acting Dep-
uty President—on five occasions I was operated on and I was probably in hospital for at least two months last year. I explained this to Mr Dyer and I asked him if he would not mind clarifying it in the next edition of the Sunday Telegraph. The Sunday Telegraph came out on Christmas Day and has come out ever since and neither Mr Dyer nor the Sunday Telegraph have sought to clarify why I was absent from parliament. I have to go and get operated on again next Thursday. I can handle that and I am not worried about that. But if I am absent it will be because of illness, not because I am malingering or bludging somewhere.

As a cancer sufferer and a survivor, I want to comment on some of the things that cancer sufferers and survivors go through. If you have ever been to the cancer care units where you get the chemotherapy and the radiation therapy, you can see in a lot of people’s eyes whether they have surrendered or not. Some of them look quite healthy, active and prepared. They do not look ill at all but you can see in their eyes that they have surrendered. In a number of people’s eyes you can also see the anguish and the anxiety about what is going to happen next: ‘Am I about to depart?’ Unfortunately, people in that predicament—and I never felt that I was in that predicament—look for alternatives and quick fixes.

I spoke to my surgeon yesterday because I am going to see him again next Thursday, as I said. I’ll only see him briefly before he knocks me out! I asked Professor Cartmill about complementary and alternative medicines and he said to me that complementary treatments are used with conventional medicine—and this is my interpretation—whereas alternative treatments can and have been used instead of conventional medicine. That is probably the difference between complementary and alternative medicines. There have been plenty of examples over the last 30 years where people have had quick fixes offered to them and have grasped them.

The other thing that Professor Cartmill said to me was that the other test should be how expensive some of these CAMs are. You can look at the history of the last 30 years. In Queensland there was Milan Brych, who was offering all sorts of cures. In fact, he went from Auckland to the Cook Islands and ended up in Queensland. Joh Bjelke-Petersen wanted him to set up a clinic there. It was only the heroic efforts of the Liberal leader and Minister for Health, Sir Llew Edwards, that prevented Milan Brych getting started up there. He ended up in jail in 1993 in California. There was recently a veterinary surgeon called Ian Gawler who claimed that cancer could be cured through meditation and the adoption of a variety of diets and herbal treatments, including coffee enemas. This was proven to be of dubious nutritional value and has not gone anywhere.

There is a drug called laetrile that is apparently an extract of apricot pits. It has been banned in the US because it is of no value at all. In fact, it is regarded as dangerous, but laetrile clinics have been set up in Mexico and people go over there. There has been a view that shark cartilage can be a cure for cancer because, it is alleged, sharks do not get cancer—but I understand that sharks do get cancer. There is no value in that. There is something called a glucose-blocking treatment, a blood zapper, a white food diet and an energy cleaning machine. Stabilising of oxygen and electrolyte disturbances occur as a result of coffee enemas.

In just September last year the federal government had a review of what is called ‘microwave cancer therapy’. The National Health and Medical Research Council reviewed this microwave therapy practice by Dr John Holt in Western Australia. The review committee on the microwave cancer
therapy undertook the assessment of the methods used by Dr Holt, including examination of Dr Holt’s past and present patient records. They examined the published scientific evidence on microwave cancer therapy. The review committee found no scientific evidence to support the use of microwaves in treating cancer either alone or when combined with other therapies. The press release put out by the National Health and Medical Research Council, which is available for people—or I can give them a copy of it—goes into much more detail about why this treatment is not going to cure your cancer.

I made these contributions because I thought it was time to put on the record why I have been absent, particularly last year. I know that a lot of you were aware of that, and I got a lot of support and messages from all sides. In fact, I got a very nice phone message from the previous Leader of the Opposition, Mark Latham. I know that might surprise some on my side, but Mark left me a very nice message last year when he found out that I was still on the journey of cancer.

I commend this bill as a sufferer and as someone who has come through it. It changes your outlook on life a bit. Immediately after you recover you go about a million miles an hour. People try to catch you and you try to make up for a bit of lost time. I fortunately did not lose my hair from the chemotherapy. I got a No. 2 cut in case I was going to, but I never ended up losing it. As I say, I commend this bill. I know one of my colleagues has gone through the journey and is about to follow me. We help each other out every now and again, and talk about the past and what the future holds.

Senator WEBBER (Western Australia) (7.05 pm)—Senator Hutchins was actually referring to Senator Moore. Cancer is a journey that I have been fortunate enough to avoid, but I have known a number of people who have travelled that long journey. At the outset of my contribution I would like to place on the record my acknowledgment of the incredible journey that, in particular, Senator Hutchins has undertaken. It is a life-changing journey but, as we all know, there are a number of people—many members of this place, never mind the wider community—who have had to have their own personal battles with cancer. Most recently, apart from Senator Hutchins of course, was Senator Ferris, who I will refer to a bit later on.

From a Western Australian perspective, the late Senator Peter Cook—like Senator Hutchins in his contribution—sought to place on record some of the concerns that people may have about treatment options and about some of the people who call themselves professionals in this area. As Senator Hutchins, being someone who has suffered from that disease, tried to use his role in this place to the overall good of people, so did Senator Cook. When faced with what was ultimately a disease that took his life, it was certainly a little challenging for him initially, but he decided to use not only his suffering of that disease but also his role in this place to get us to focus on this enormous challenge to our community and to try and pull together a treatment regime and address the issues of those who suffer from cancer.

It is an incredible opportunity that we have in this place that we get to examine policy and make recommendations to government, and it is always moving when a member of this place takes and tries to use those very personal challenges and experiences to frame good public policy for the betterment of our community. It is a useful contribution that all of us make here, and it makes this chamber a much better place. In listening to Senator Hutchins’s contribution earlier, it is an incredibly challenging personal journey.
However, one things that concerns me, and it is one of the reasons I think that this legislation and the establishment of Cancer Australia will be to the betterment of the community, is that you are looking at people who are staring their future and their life in the face and a lot of these so-called quasiprofessionals prey on some of the most vulnerable members of our community. So it is very timely that we put some of those concerns on the record and we have an agreed position of progressing not just research but treatment for Australians.

The Senate would be aware that the Senate Community Affairs References Committee recently had an unusual process where we had a hearing regarding a petition that was tabled in this place about the issues of gynaecological cancer, the testing regime and treatment thereof, and the research that needs to be undertaken. One could not help but be moved by the evidence there. Unlike other cancers, where symptoms become very obvious, this is one of the most insidious and nasty cancers that a woman can suffer from. In fact, it has been a very personal journey in this place because Senator Ferris took us through her own experiences.

Gynaecological cancer is starting to affect more and more women, yet it is one of the hardest to detect because, if you are like many of the women, the only immediate symptom after this cancer has been developing for a while is unremitting tiredness. I can tell you that I, especially when I have been over here, have been prone to feeling unremitting tiredness, so that is not necessarily the best symptom—and if it is the only symptom it does not make detection that easy. So it is certainly my hope that we will continue to progress that issue. I know Senator Ferris has plans, as I said, to use her personal journey to frame good public policy and assist other women in Australia who may face that challenge.

However, I know from the evidence we got from the department at that time that the establishment of a body like Cancer Australia is going to make the coordination of research, testing and treatment of these challenging diseases a lot more effective in Australia, and for that it is to be commended. As has been said, there have been vast improvements in the treatment of not so much gynaecological cancer but other forms of cancer. Some cancers, when diagnosed, no longer have to be the death sentence that they once were. So if we can have a body that will pull together the research and improvements in treatment then that is all to the good. Of course, one of the most significant advances in Australia has been in the treatment of breast cancer, where we now have an incredible success rate. It no longer automatically has to be an invasive process. It is not fun, as I am sure others will be able to tell you, but it does not have to be as dramatic and invasive a process as used to be the case, and it is not automatically a death sentence, as was the case before.

I want to finish my brief contribution on this by again commending the role of the people who served on the cancer inquiry. People made a lot of comparisons to the cancer inquiry when dealing with the mental health inquiry report, which we tabled earlier today. Maybe it is because there is a group of people in this place who are interested in the same kinds of issues so we tend to be involved in the same inquiries, or maybe it is just that that is so much at the forefront of our minds. As Senator Humphries mentioned, we compared attitudes to mental health to the fact that there is a lot of community awareness and sympathy when someone says that they have been diagnosed with cancer. However, there is now a growing body that says: ‘When you’re diagnosed with that, we’re going to treat you as a whole person. We’re not just going to put you into
hospital and operate on you and remove the nasty bit or whatever the appropriate treatment model is. We’re going to try and address all of your needs.’ I know Senator Ferris says this was the case with the treatment she received at Canberra Hospital.

Cancer is a life-changing experience for anyone who has suffered from it. As with mental illness, all of us are touched by it—we have a family member, a friend or a colleague who has gone through it or we personally go on that journey. When talking to people who have been on those journeys, the most common thing that they say is that their life ended up in two different compartments—there is before they got sick and after they got sick. That is how life changing it is. That is the way they view what happened. Before they got sick they were a different person, psychologically, to when they came out the other end of the treatment regime. Maybe they are stronger. Maybe they are a better person. Maybe they have a greater outlook on life and the need to get on and confront the challenges of life. However, it is a very challenging journey to assist anyone to go on—never mind having to go on it personally. I therefore commend the government for creating Cancer Australia.

Senator MOORE (Queensland) (7.14 pm)—I certainly want to welcome the initiative of formulating Cancer Australia and I want to go on record this evening very briefly in this debate to acknowledge that we now have information about what this body is going to do and to make some comments about the kind of work we did. A number of us in this place were involved in the Community Affairs References Committee report, The cancer journey: informing choice, and we have spoken about it. I know that Senator Adams speaks about it quite regularly when we have the opportunity. That particular inquiry was formulated in very special circumstances. There was an urgency and a passion around the issue because of the experience of Senator Peter Cook. What came out of that particular inquiry that operated over a couple of months last year was some genuine commitment and hope for the future. That particular inquiry attempted—and I think successfully—to draw together the experience, the knowledge and the hope of a range of people in the Australian community who want to be involved. I know these words sound very similar to words I have spoken before in this place but, as Senator Webber has said, today we brought down the select committee report on mental health and consistently, whilst we were taking evidence and working through the process, the similarities came forward. But I will focus on this particular initiative.

Those of us who were privileged to be involved in the committee that produced The cancer journey: informing choice were able to work with a range of people across the Australian community who had amazing knowledge. These people had great expectations—of what was going to come out from this committee and from what they were led to believe by the promises made by the government during the previous election campaign. One of the positive aspects of that election process in 2004 was that for once the issue of cancer care was an election issue. Too often things like individual experiences are caught up in wider policy announcements but during the election process in the last federal election there were quite considerable and detailed policies before the Australian electorate focusing on the treatment and the development of research around cancer in Australia. That has got to be positive. After the election was over there was stated public commitment from the government that they were going to proceed with
a number of quite specific initiatives that were put forward at that time.

Our experience on the committee was that people had read that particular government proposal. They had accepted it and they wanted to be part of it. In fact, in framing the evidence that they gave to our committee, and subsequently when our committee framed our recommendations, we openly referred to what we hoped would be the role of Cancer Australia. There was a feeling when we were doing the community consultations and the submissions and the drafting of the report that was handed down in this place in June last year that Cancer Australia was imminent and that very soon the 12 specific recommendations in the committee recommendations—I think that there were over 30 recommendations—referring to the role of Cancer Australia would be operational.

Almost 12 months later we see this legislation—through the role it gives Cancer Australia and what is says Cancer Australia will provide to the community—picking up some of those things. In the list that is here in the legislation, Cancer Australia will be providing national leadership and coordination of cancer control. Certainly they were two things that were pointed out during our cancer inquiry that we desperately needed. There needed to be national leadership to draw together the various research bodies and treatment models that both Senator Hutchins and Senator Webber have referred to, and there needed to be genuine coordination in our community. We were looking at a real coordination and liaison role for this central body, instead of having people working in isolation and sometimes in fact operating in a very competitive model, seeking the research funding and the research brains across the country and finding that there was almost direct competition to draw to particular research areas the best brains and the best knowledge. In fact there was definitely a need at the national level to draw a more coordinated approach. With the best will in the world, if people are actively competing there may be less encouragement to share knowledge and success, and sometimes less chance of getting a better result by working together.

Clearly, the role of Cancer Australia must be to make recommendations to the government. That was said during the election promises: that the government would take the best possible advice. The role of this new body would be to provide detailed recommendations to the government about policy—and there is a range of things there—and also about priorities, because in this wide range there will always be a need for prioritisation. That is a very difficult issue, and, in trying to balance where the best value would be for immediate funding and consideration, there must be a process that involves a coordinated approach that looks across the whole view and does not get caught up with individual demands and the definite emotion and need that comes forward. There is need everywhere. We just have to be able to better organise and plan around that.

Throughout our process there has been very deep interest in the budget area. Whilst the new body, Cancer Australia, will not be determining exactly what the budget will be, it must have a role of overseeing what will be a dedicated budget for research into cancer. Consistently we had evidence during the cancer inquiry, and during the recent roundtable exercise on gynaecological cancers, to which Senator Webber referred, about the absolute need for a high level of funding into research. We know that the expertise is here in Australia. We are confronted by the amount of knowledge and commitment we have. But consistently the call comes that research must be effectively funded. Unless we do that at the local level, the resources will go elsewhere or be diverted into other
areas of research. So the idea, as put forward by the government, of the dedicated budget being overseen by this new body is strongly supported.

I particularly like the last one. Being an ex-public servant, I am very keen to see anything in a statement that says something like ‘undertake any other functions as required’, and I note that, in the process, that is one of the roles for Cancer Australia. So, given the concept of having the body and having its role spelt out the way it is in the legislation, of course we support it, and of course I will be supporting Senator McLucas’s amendments.

The issue that I would like to mention very briefly at this moment is the make-up of Cancer Australia. Through people being involved in their health issues, we have a greater knowledge now of the role of consumers. I do not actually like the term ‘consumer’, but it is accepted in the industry. By having people who are part of the process, who are living the experience, being involved in whatever way in the development of policy and in the coordination and administration of what goes on, the role of consumer is being reinforced in a range of areas. We heard today that the role of consumers in mental health is one that must be enhanced and also put into whatever legislation or regulation is developed. I add my voice to that call in the formulation of who exactly will be on Cancer Australia, because it must allow for people who have the immediate experience to be involved in this process. We need to be aware of the process that will be followed to appoint people to this body and of what kind of background they will have. We also need that process to be very public and transparent.

My point tonight is to show concern that a body that we had hoped would be imminently put in place in June 2005 is still in the consideration phase. It is sad that there has been that delay in the process, as we who were working with the community 12 months ago were of a clear understanding that this body was going to be instituted very quickly and in place and that the work would actually be being achieved rather than it happening sometime in the future. Of course all actions need effective planning and will operate into the future, but the delay in the introduction of Cancer Australia has already, in some ways, caused some distrust and concern in those bodies that the government needs to be involved in where we go next. All these areas rely firmly on a spirit of trust, a spirit of involvement and a spirit of loyalty. When you have already had a delay in expectations being met, it makes it that much harder to implement a positive move into the future.

I trust that the government will acknowledge that there is some concern in the community and in the medical profession about this delay and some hope that we will be able to move more effectively into the next stage, taking into account that there must be involvement in the community. Senator Webber and Senator Hutchins were explaining about the model of care in this area being transferred from one which is imposed upon people to one which is actually stimulated by the person at the centre of the treatment model. That same model should be extended, I believe, to the administration and the development of the policies from here on. It must involve those who are best able to talk about what it is like to live the cancer journey.

We strongly endorse the development of the Cancer Australia model. We have awaited it for too long, but we hope that it is yet another stage in something that the Australian people have been led to expect—that we will be a leader in this field and that we will in-
volve all of our community in our joint effort to defeat cancer in Australia.

Senator SANTORO (Queensland—Minister for Ageing) (7.26 pm)—I have really enjoyed the contributions from members opposite. I am stating the obvious when I say that everyone in this place has been touched by the scourge of cancer, either directly—and we have heard the personal testimonies of senators who have spoken tonight—or indirectly through closeness to a loved person, relative, friend or colleague, as has been the case in this place.

Let me pay tribute to those people who have spoken here tonight and to a couple who have not spoken on this bill. Senator Moore, as other people have said, has made the journey, and it is wonderful to see her so vibrant and so healthy on a night like tonight. I knew Senator Hutchins was ill, and I prayed for him, as we all did, but I did not know the extent of his illness until he outlined it tonight. I do hope that the public record in his local newspaper is corrected and that he gets the satisfaction which he so richly deserves and which is his due. Jeannie Ferris is a walking miracle, as far as I am concerned. Jeannie has come back looking as well as she does, still fighting the battle. Her courage, like that of Anne Lynch, has touched so many of us. We continue to pray and wish for them a total recovery so that they wish. The late Senator Cook blazed the trail as an example to us all with his inquiry and his sheer personal commitment under very adverse personal circumstances.

I know a lot of the feelings. My late father was diagnosed with severe cancer, and I went through the process of the hospitals and the doctors. I was assisted by other people who loved him, but I was there much of the time. Eventually, it was not cancer that got him; it was a heart attack, but cancer was there. I have had very direct experience. He passed away just over a year and a half ago. You cannot help but be touched, particularly by the testimony this evening.

I will not go through a lot of the detail of Cancer Australia. I have not said this before, Senator Moore, but I really do enjoy your speeches, and I really enjoyed the one you just delivered. You deliver them with such clarity and graceful movement always. I really do enjoy your speeches, and tonight was one of your great ones. I hope I do not do your political future any permanent damage by saying this, but you did clearly explain why this bill enjoys so much support in this place, including the support of the opposition and everybody else here.

I want to try to answer, in as bipartisan a fashion as I can, the concerns that have been raised by members opposite. Senator McLures raised several issues, and I will try to cover them. One of her questions was: will Cancer Australia be in competition with other organisations? I can assure her that Cancer Australia will not be competing with other organisations for charitable contributions. It may, however, receive funding from other organisations, from a state or territory government or from private organisations. But it certainly will not be out there competing for funds for which there is increasing competition, not just by organisations that deal with cancer issues but also by so many other very worthwhile charitable and community based organisations.

The theme that has come through from contributions opposite has been: why has there been a delay in implementing Cancer Australia? Senator Moore invited me to acknowledge that there is concern in the community about the delay. It has been mentioned by senators opposite and by those who have spoken in the other place. I do quite a
bit of mixing with people who do very good work in this area of vital research, and Senator Moore is right: some people have expressed concerns, but others think that the process that the government has put in place, and which will lead to a satisfactory outcome in this place tonight, has been a reasonable process. We have been working very hard to ensure that the governance arrangements for Cancer Australia are right, and I think that is an important point to acknowledge.

The consultations have been comprehensive, as one would expect them to be. Comprehensive discussions do take some time. The minister has moved forward where he has been able to; for example, the membership of the advisory council for Cancer Australia was announced on 7 March. I am pleased to hear that the council consists of key members of the Australian community, including a number of cancer experts and eminent professionals. Nobody disagrees with the appointment of an eminent person such as Dr Bill Glasson, the former President of the Australian Medical Association. It is a plus that he has agreed to chair the council, and I think that his stewardship will bring direction and focus to the activities and deliberations of the council. The advisory council will support the CEO of Cancer Australia. The process of recruitment of the CEO is currently being undertaken. The position was advertised in the national press, and applications closed in February 2006.

In the context of the discussion about the time that it has taken to arrive at the stage where we are tonight, I think it is important to state on the record that the Strengthening Cancer Care policy does deliver $189 million to improve cancer care in Australia. To date, the government has delivered on the vast majority of the commitments in the Strengthening Cancer Care package, including $10 million to the Royal Children’s Hospital in Melbourne and $7 million for the first round of local palliative care grants. That means funding for more than 80 local palliative care groups to support patients and their families. Grants of $1 million each have been provided to the Make-a-Wish Foundation and Camp Quality. The Breast Cancer Network has been provided with $200,000 per annum to assist with the development and dissemination of resources to help those diagnosed with breast cancer. We have also entered into a grant agreement with the Peter MacCallum Cancer Centre to provide $3.5 million over four years for training nurses specialising in cancer care.

In addition to those very worthwhile funding initiatives and the implementation of good policy, the government is currently finalising $5 million worth of grants to support clinical trials to 10 groups around the country. We are finalising $4 million in grants to some 20 organisations for mentoring regional hospitals and cancer professionals, and we have allocated $5 million for an MRI unit at the Sydney Children’s Hospital.

The question was also raised as to what is going to happen to the NCCI. The government recognises the valuable contribution made by the NCCI. That organisation’s management committee made a decision to wind up the initiative from the end of May this year—it was their decision—and the functions of the NCCI will be incorporated into Cancer Australia, but we will continue funding until the end of June this year.

The other serious point that was raised, and which I think deserves serious comment, is the claim that the response to the Senate committee report has been slow. Let me state right from the word go that we regret the delay in responding to Senator Cook’s important inquiry. Having said that, while there has been a delay in the response, the government has moved to implement one of the key recommendations from that inquiry.
Honourable senators would be aware that at last month’s COAG meeting the government committed to providing a new MBS item for case conferencing. From November that will provide increased support for cancer specialists to bring together all experts working with an individual patient. That has been one of the major themes of the contributions from all senators, including the very forceful way in which Senator Webber put the need to look at the totality of the treatment and the totality of the impact on a cancer sufferer’s attitude and physical wellbeing and the psychological consequences. Without in any way wishing to sound political, I am sure that all senators would agree that the best response to Senator Cook’s very worthwhile report is action on his recommendations. We have moved very substantially on what could be considered one of Senator Cook’s major recommendations.

It is also important to note that the peak organisation, Cancer Council of Australia, has described the commitment of the Howard government to improving cancer care in Australia as:

... the most comprehensive set of government-funded cancer control priorities ever announced in a Federal budget.

I wish to remind honourable senators opposite, who have not been stridently critical but have been critical of the delay in bringing to fruition Cancer Australia, that it was this government that actually put together that package that was so described by Cancer Australia; it was not the party of members sitting opposite. However, I do very richly and genuinely acknowledge their support for the initiative. I want to be totally moderate in my comments in responding to statements made by senators opposite by acknowledging the very strong bipartisan feeling that I sense in here tonight.

I would particularly like to talk about the national bowel cancer screening program. I was briefed quite extensively on this program this morning, because it is going to be a topic of some interest and possible contention at the forthcoming meeting of federal and state ministers at the ministerial conference in Wellington on Friday week. Because time is moving on, I will not say a lot about it other than to again remind the Senate that the Australian government provided $43.4 million over three years in the 2005 budget to phase in a national bowel cancer screening program, which is scheduled to commence in mid 2006. The Australian government is fully funding all the infrastructure and direct program costs of the national program. States and territories are being asked to provide colonoscopies where a program participant is referred as a public patient. Currently around 70 per cent of these procedures are funded under the Medicare Benefits Schedule. If any senators opposite wish to receive further detail as to where the implementation of that program is at, I would be happy to provide them with a briefing at a later stage or as early as is practical, which could be any time tonight or tomorrow after we wind up this debate.

I reiterate what I said at the beginning: I have really enjoyed this debate because of the bipartisan nature of it but, more importantly, because of the strength of the human spirit in facing adversity. Cancer is one of the most difficult adversities that anybody can face. I again pay tribute to those senators who have spoken here tonight. Good on you. As you continue to look after yourselves, just know that you have the best wishes, goodwill and prayers of everybody in this chamber.

Question agreed to.

Bill read a second time.
In Committee

Bill—by leave—taken as a whole.

Senator STOTT DESPOJA (South Australia) (7.42 pm)—by leave—On behalf of the Leader of the Australian Democrats, Senator Lyn Allison, I move Democrats amendments (1) to (5) on sheet 4843 revised:

(1) Clause 14, page 6 (line 5), at the end of subclause (1), add “in accordance with the merit selection process required by subsections (3) to (7)”.

(2) Clause 14, page 6 (after line 7), at the end of the clause, add:

(3) The Minister must by writing determine a code of practice for selecting and appointing the Chief Executive Officer and any acting Chief Executive Officer which sets out general principles on which selection and appointment is to be made, including but not limited to:

(a) merit;
(b) independent scrutiny of appointments;
(c) probity;
(d) openness and transparency.

(4) After determining a code of practice under subsection (3), the Minister must publish the code in the Gazette.

(5) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.

(6) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(7) A code of practice determined under subsection (3) is a legislative instrument.

I imagine senators would be familiar with these amendments. It is not surprising that the Democrats would move them. They relate to the issue of appointment on merit. I draw the committee’s attention to amendment (3), which actually specifies in relation to representation on the advisory council that one member should be a person who has had or currently has cancer. I will not speak to the rest of the amendments. Some you will be familiar with. Let’s face it, I am the stand-in tonight.

Senator McLUCAS (Queensland) (7.43 pm)—I indicate that Labor will be supporting these amendments and particularly draw attention to (3). Labor supports that amend-
ment implicitly. We have had some involvement in getting the words to reflect the views of community members who gave evidence, I think, to the committee of inquiry that Senator Moore spoke of this evening. We strongly support these amendments, particularly amendment (3), and I certainly hope the government will be adopting that amendment in particular.

Senator SANTORO (Queensland—Minister for Ageing) (7.45 pm)—The government will not be supporting the amendments. I would like to state briefly the reasons for that. In terms of the selection of the CEO and the advisory council, I can inform all honourable senators, including those who have just spoken, that the Australian government is committed to ensuring that the chief executive officer and membership of the advisory council of Cancer Australia are of the highest possible standing and calibre. We regard these amendments as unnecessary, particularly in relation to appointments, which we undertake on the basis of merit.

In terms of the specific references to consumer representation on the advisory council, I acknowledge it is a genuine concern of the senators who have spoken or who may not even have spoken. In regard to the proposed amendment that the Cancer Australia advisory council include consumer representation, I am able to advise the Senate that the Hon. Jocelyn Newman has already been appointed to the council. She is a cancer survivor and is a board member of both the National Breast Cancer Foundation and the Breast Cancer Network Australia. On this basis, the proposed amendment is not supported.

Question negatived.

Senator STOTT DESPOJA (South Australia) (7.45 pm)—I and on behalf of Senator Allison move a final amendment, amendment (1) on page 4863:

(1) Clause 37, page 14, (line13), at the end of subclause (1), add “, including a summary description of any advice or reports provided by the Advisory Council to the Chief Executive Officer”.

The amendment relates to making the advice by the advisory council public. No doubt this has been moved by the Australian Democrats in the interests of transparency and accountability. I understand it has some support. I commend the amendment to the Senate.

Senator McLUCAS (Queensland) (7.45 pm)—Labor will be supporting the amendment.

Senator SANTORO (Queensland—Minister for Ageing) (7.45 pm)—The government side of the Senate is not aware of the amendment. I have not sighted it and the advisers also indicate that they are not aware of it. I do not know where we go to from here on that basis.

The TEMPORARY CHAIRMAN (Senator Ferguson)—If I could help, I understand that the amendment was circulated on 28 March at 9.47 pm.

Senator STOTT DESPOJA (South Australia) (7.46 pm)—The amendment was circulated on 28 March at 9.47 pm. I am sorry that the government has not seen that amendment. I say in the absence of my leader that it looks like a jolly good amendment to me. The fact that it has the Labor Party’s support speaks volumes too. You know how big we are on accountability in this place, and I think that is just more of it. I commend it to Senator Santoro. Imagine what we are going to be like in about three hours time, people.

Senator SANTORO (Queensland—Minister for Ageing) (7.48 pm)—On behalf of whoever I need to apologise for, I do so and say that the government has not had sufficient time to consider this amendment. On that basis I recommend that we do not accept it. But I give you the assurance, Senator Stott
Despoja, that upon further consideration over the next couple of days, or certainly before we come back, I will discuss it directly with the minister and his senior advisers. If we have to come back for an amendment to reflect what you put before the Senate, I undertake to do that, and I or the minister will get back to you personally in relation to this matter.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator SANTORO (Queensland—Minister for Ageing) (7.49 pm)—I move:
That this bill be now read a third time.

Question agreed to.

Bill read a third time.

FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY) BILL 2006

Second Reading

Debate resumed from 27 March, on motion by Senator Santoro:
That this bill be now read a second time.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (7.51 pm)—I table a supplementary memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 28 March 2006.

Senator STOTT DESPOJA (South Australia) (7.51 pm)—I move Democrat amendment (1) on sheet 4866 revised:
(1) Page 3, (after line 11), after clause 3, add:

4 Review of operation of Act

(1) Within 2 years of the day on which this Act receives the Royal Assent, the Minister is to arrange to receive from the Australian Institute of Family Studies a report which the Institute has prepared on the review of the operation of the effectiveness and implications of the amendments made by this Act, with particular regard to:

(a) the impact of mandatory dispute resolution; and

(b) the extent to which the following people have equal access to services:

(i) people in rural or remote areas;

(ii) people with culturally and linguistically diverse backgrounds;

(iii) indigenous people;

(iv) people with health or mental health issues;

(v) people with low incomes;

(vi) people without access to technology;

(vii) any other group identified by the Institute; and

(c) any change in exposure to violence and abuse of both children and adults; and

(d) how effective the changes have been in achieving better outcomes for children, particularly the presumption of equal shared parenting and the new structure established by this Act for determining children’s best interests.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament with 5 sitting days of that House after the day on which the Minister receives the report.

This amendment is in relation to a review of the operation of the act. What the Democrats would like to see is a review of the impact of the changes brought about as a consequence of this bill within two years of its commencement. This amendment has been moti-
vated by concerns that have been expressed across the board about the potential impact of the changes contained in the legislation. This amendment will implement a comprehensive ambit of review. It will review the impact of the regime of mandatory dispute resolution, the change in exposure to violence and abuse of both children and adults, and the effectiveness of the bill in generating better outcomes for children. It will also look at a range of target groups to identify whether access to services has indeed been equal.

The review is proposed to be undertaken by the Australian Institute of Family Studies, who have the mandate under the Family Law Act to undertake research associated with the Family Law Act. The Democrats hope this review will help identify areas in which the bill is lacking, with the aim of improving the legislation to create better outcomes for families.

I do not think there is any failure to understand that this is a complex, significant and at times very emotional area of the law. Some of us have expressed a number of concerns with this legislation and we hope to rectify or ameliorate those during tonight’s committee stage. Regardless of the outcome of this deliberation tonight and whether amendments are passed or not, there is very good reason to analyse and review the changes made within a period of, say, two years, and that is the effect of the Democrat amendment. I commend it to the chamber and hope that it will receive support from the other parties.

**Senator Ludwig** (Queensland—Manager of Opposition Business in the Senate) (7.53 pm)—We are not minded to support the amendment, although not because we do not seek to have reviews in legislation—in fact, we supported one today. However, we do not support one in this area for a couple of reasons. It is a good idea to have reviews. In this area, it is more important to have continuous reviews to, in short, ensure that the family law is not something that is simply shelved after today and then returned to in two years time. People who live with this on a daily basis and others who are interested, including political parties, should be able to have input to ensure that this area of law is not static.

We need to ensure that the government’s response cannot be, ‘What we’ll do is put that in the basket, think about it and deal with it when the review is up.’ We would not want them to put it off until the review period so changes which might be required in the short to medium term do not occur. Even after that review period was up, you could end up with the government continuing to review it for a time. By the time you came back, three years might have gone by.

You have already indicated that the Australian Institute of Family Studies is conducting a review. You might expect the government to pick up, have a look at or develop anything that comes out of that. There will be other reviews, I suspect. What I would not want the government to do in response to some of those studies and reviews is to simply say, ‘We’ll look at it when it is up for review.’ I know that does not meet some of the concerns you have, Senator Stott Despoja, but in short we are not going to support the amendment. We think it is something that, as I have said, should be constantly reviewed, and I have outlined the reasons—and in truth I think they are compelling reasons—why in this particular area it is important to have an open mind.

**Senator Siewert** (Western Australia) (7.56 pm)—While I agree that there is a need for constant review, unfortunately I am not that confident that in fact we will have the necessary reviews, because there are already
Senator ELLISON (Western Australia.—Manager of Government Business in the Senate) (7.57 pm)—The government does not support this Democrat amendment. While the government recognises the value of research and evaluation in providing a sound evidence base on which to build future policy, it does not believe that a review which is locked in by legislation is appropriate. In response to recommendation 55 of the report of the House of Representatives Legal and Constitutional Affairs Committee on the exposure draft of this bill, the government agreed with a need for appropriate monitoring and evaluation of the effect of the legislation. I agree with Senator Ludwig that continual evaluation is more appropriate.

I should also mention the proposed Family First amendment (1). Senator Boswell is here in the committee today moving amendments on behalf of Senator Fielding from Family First as Senator Fielding is not able to attend the Senate due to ill health. Family First amendment (1) seeks a review as well. In that regard, we would say to both Family First and the Democrats that we will undertake an initial review of the bill in three years. That is an undertaking I can give to Senator Stott Despoja, and to Senator Boswell to convey to Senator Fielding. I appreciate that both those amendments are concerned with keeping this under review and scrutiny, and the government is not averse to that—this is just about the way we do it. We believe in constant evaluation. We also give the undertaking that in three years there will be an initial review of the legislation.

We should note that if there was to be a review in two years it would not take into account the full impact of the expansion in the funding of services, including family relationship centres, provided in the 2005-06 budget. We think three years is better, as that gives time for those effects to be felt. For those reasons, we oppose Democrat amendment (1) and we can foreshadow that we will oppose Family First amendment (1) as well.

Senator STOTT DESPOJA (South Australia) (7.59 pm)—I thank the minister for that undertaking. While I think everyone agrees that the notion of continuous review and assessment is a good thing, of course that is not actually enshrined in legislation specifically dealing with these changes. So, nonetheless, I thank the minister for that undertaking in this public forum. I hope that that will be a public and independent review that will, of course, be tabled in the parliament and indeed, the Democrats would have been prepared to support Senator Fielding’s amendment as a backup. Having said that, I thought that his amendment was somewhat more narrow than the Australian Democrats’ amendment. Nonetheless, I understand the numbers in this place and I think our views are made clear.

Question negatived.

Senator STOTT DESPOJA (South Australia) (8.00 pm)—The Democrats oppose item 3 of schedule 1 in the following terms:

(3) Schedule 1, item 3, page 4 (lines 16 to 22), TO BE OPPOSED.

In relation to this schedule dealing with family violence, the Australian Democrats have
made clear in our second reading contributions—and, indeed, in our Senate committee report—that we believe that the proposed introduction of a new definition of family violence is problematic. We would go so far as to suggest that the new definition will potentially do more harm than good. We believe that it may actually have an opposite effect: it may actually deter victims from alleging violence if they feel that they are unable to prove it.

We also find the proposal of a so-called objective definition a little extraordinary when it is clear from many studies and research into domestic violence that victims are usually in the best position to identify risks to themselves or to children. Mr Temporary Chairman, you may be aware that the Democrats disagreed with the chair’s report in relation to the legislation—the Senate Legal and Constitutional Legislation Committee’s report—over this provision, as we believed it would definitely be preferable to not implement a definition before examining the issue in depth and coordinating a national and uniform approach so that federal, state and territory laws can achieve consistency.

I think you will find that in upcoming amendments we deal with some of these issues but, at this stage, we do not support the proposed new definition of family violence. I think someone made a comment the other day after I had given my second reading speech that perhaps a better definition is ‘criminal assault in the home’. I do not know if we treat even the term ‘family violence’ differently from the way we treat other forms of violence and abuse. Nonetheless, I do not agree with the current provision in the legislation and I would hope that it would be opposed.

Senator SIEWERT (Western Australia) (8.03 pm)—Mr Temporary Chairman, you will see that we have an identical amendment. We are deeply concerned about the impact and the combination of not only this amendment but other amendments within this bill. I agree with Senator Stott Despoja that what will happen is that incidences will not be recorded. It will potentially be harder for people to substantiate incidences of family or domestic violence.

There is a substantial body of evidence that indicates the problem with domestic violence. I am extremely distressed, I might say, that not during the debate in here but during the wider public debate there have been a lot of claims made that try to diminish the occurrence and the incidence of domestic violence. I had thought that over recent years we have been making progress, gradually, on domestic violence and I think this has substantially set back the issues of domestic violence and actually exposing it in the family. In the report the Greens disagreed with the majority view of the committee.

The committee did express concerns about the issues around domestic violence. We are aware that there is a study ongoing and we believe it is most appropriate that we leave the existing definition of family violence until at least this study is done so that we have some new research that indicates the potential impact on domestic violence. There have been a number of, I think, flawed analyses of the impact of domestic violence that downplay it. As I said, the combination of this definition and a number of other provisions, particularly the issues over false allegations, and we will come to that, will seriously discourage women—and, let us be plain, in this instance we are talking about women—from bringing this issue up. They will be subjected then to compulsory mediation where they will not be able to express themselves adequately. They will be in situations where they are extremely distressed and in fear. I think this definition will significantly add to that provision.
There is no evidence that substantiates that women make false allegations nor is there evidence that where claims of domestic violence are substantiated that affects the contact outcome. The evidence does not exist for that, so I am a bit bewildered as to why so much effort has been put into trying to downplay the issue of domestic violence. That is what I believe is happening. We should be actually dealing with it in a full and frank manner and exposing it, and not leading to situations where women are going to be in fear and will feel like they cannot bring up this issue and adequately address it. We believe that the definition of domestic violence at this stage should stand as it currently is. If the studies show that there is a need to further define or redefine it, then that comes back after the studies in progress have been done. We support the Democrat amendment, as it is the same as our amendment.

Senator LUDWIG (Queensland) (8.07 pm)—In this instance, we support the Democrats’ amendment as an alternative to our own. We have our own amendment later on which seeks to effect what Labor think is a slightly improved outcome. This is further than what the government has proposed. Labor agree that the current subjective definition is preferable to the proposed objective definition for reasons that I will not outline now. I will take the opportunity when we get to Labor’s amendment on this area. We can then explain why our definition is deserving of support. Hopefully, the government may also see the benefit of having a better test than the one that is currently in the bill.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.08 pm)—The government opposes this amendment and the Greens amendment as well. I direct senators’ attention to government amendment (1), which will add a note to the definition of family violence. The note that we will be attaching reads:

A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety.

That is a clarification, if you like, of the definition of family violence. The government is very clear that there should be an element of reasonableness in the situation. This change has been implemented in response to a recommendation of the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs on the exposure draft of the bill and was the subject of significant consultation by the Attorney-General’s Department.

The government amendment that I have foreshadowed makes the situation even clearer and substantially implements recommendation 5 of the majority report of the Senate Legal and Constitutional Affairs Legislation Committee. This will ensure that, where there is a history of violence, it is intended that this be taken into account in determining what is a reasonable fear or apprehension. To rule it as being completely without accommodation of unique circumstances which might attach to a particular case is unfounded, because we are asking what is reasonable in the particular circumstances of the person. Is it correct to say, if a person is being unreasonable, you accept their version? If a person is being unreasonable about fear of violence, which they may well have overstated, should the definition attach? We do not believe so. We believe there should be this aspect of reasonableness, which was supported by both the House of Representatives committee and the Senate committee.

The family violence strategy announced on 26 February 2006 will support changes to the law by focusing on ways to improve the
processes by which allegations of violence raised in family law proceedings are handled so that they are dealt with quickly, fairly and properly. I believe that demonstrates further the government’s commitment to dealing with the question of family violence. I would certainly reject any claims that this government have not been mindful of the issue of family violence, which has been of increasing concern in Australia in recent times. For those reasons, the government are opposed to both Democrats amendment (3) and Greens amendment (2). We believe that our note in government amendment (1) will clarify things even further.

Senator SIEWERT (Western Australia) (8.12 pm)—My concern also extends to the use of the word ‘reasonable’. I cannot quote this directly because I am remembering off the top of my head, but evidence was given at the committee hearing around the issue of reasonableness. One of the examples given was of the situation in which an ex-partner had harmed the family cat in quite a distressing manner which was clearly intended to intimidate. The point that was made later on was that, when the partner was about to go into Family Court, they were sent a card with a kitten on it. Any reasonable person may think, ‘What a nice gesture; they got a card with a kitten on it’, whereas the person who got the card from their ex-partner knew the message that was being sent and responded in fear. I ask whose version of reasonable we are talking about. If you saw that, on the face of it you might think that was a nice reconciliation gesture, but the person receiving the card knew the message that was intended. The point I am trying to make is that it is not objective; it is subjective, and it is relative to the case. While I do acknowledge that it is an attempt to deal with the issue, I do not believe that the amendment that the government is moving meets those requirements.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.13 pm)—Now we are debating government amendment (1) with the note that I mentioned where we state whether a reasonable person in those circumstances would fear or be apprehensive about his personal wellbeing or safety. The question of a reasonable person in those circumstances fearing for their safety is not something which is inappropriate, because we are talking in the particular circumstances which would necessarily address the set of facts that Senator Siewert has outlined. It would not be one which is just taken at face value where people would say: ‘You got the card. Isn’t that nice?’ The note that we are adding to our definition requires further inquiry as to the particular circumstances. That means surrounding events and occurrences could be looked at, which is exactly what Senator Siewert has mentioned.

We do not believe in a totally subjective approach, because that would mean that anybody could make an allegation and be taken as having some substance without even having to go any further. Even at law in crime and civil jurisdictions we talk of a prima facie case in crime and we talk of the average reasonable person—the ‘reasonable man’ test—in terms of what is negligence. I think you have to have a balance between subjectivity and objectivity if the administration of justice is to be accommodated.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that item 3 stand as printed.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (8.15 pm)—by leave—I move Democrat amendments R(4), R(26) (27) and (28):

R(4) Schedule 1, item 3, page 4 (lines 18 to 22), omit the definition of family violence, substitute:
family violence means one of the following acts that a person commits against another person with whom he or she is in a family and domestic relationship:

(a) assaulting or causing personal injury to the person;
(b) kidnapping or depriving the person of his or her liberty;
(c) damaging the person’s property, including the injury or death of an animal that belongs to the victim;
(d) behaving in an ongoing manner that is intimidating, offensive or emotionally abusive towards the person;
(e) causing the person or a third person to be pursued:
   (i) with intent to intimidate the person; or
   (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;
(f) threatening to commit any act described in paragraphs (a) to (c) against the person.

R(26) Schedule 6, item 1, page 136 (line 19), omit paragraph 68N(b).

(27) Schedule 6, item 1, page 140 (lines 6 to 9), omit paragraph 68R(3)(b).

(28) Schedule 6, item 1, page 140 (after line 19), after paragraph 68R(5)(b), insert:

(ba) have regard to the need to protect all family members from family violence and the threat of family violence and, subject to that, to the child’s right to spend time and communicate with both parents and other people significant to the child’s care, welfare and development, provided it is not contrary to the best interests of the child; and

These amendments relate to the issue we have been discussing—the definition of family violence. The first amendment, R(4), proposes an alternative definition of family violence modelled on a definition from the Western Australian legislation. They have domestic violence legislation that has been updated and removes the objective assessment that is currently in this legislation, and it includes a range of prohibited behaviours. So the definition includes assault, kidnapping, property damage including the injury or death of an animal that belongs to the victim, intimidating, offensive or emotionally abusive behaviour, or threatening to commit any of these acts.

Amendment R(26) is designed to strengthen the operation of section 68N. It removes paragraph (b) to avoid the risk that referring to the objects and principles as they are currently drafted will expose people to family violence.

Amendments (27) and (28) amend section 68R of the bill which deals with the power of the court in making a family violence order in order to revive, vary, discharge or suspend an existing order, injunction or arrangement under the Family Law Act. Amendment (27) omits paragraph 68R(3)(b). The Democrats believe this provision is unnecessary. The paragraph requires the provision of new material to a state court before it can change a family law order. The Democrats believe that this may operate to obscure a history of family violence and this, in turn, means that the new incident will not be seen in the context of that history. The Democrats believe that all evidence should be able to be adduced so that a court may understand the very complete nature of the relevant violent relationship. Amendment (28) adds paragraph (ba) to subsection (5) of section 68R. This subsection deals with the relevant considerations that the court must have regard to in exercising the power under this section. The text of paragraph (ba) makes the reason for its inclusion quite obvious. It says that the court must:
have regard to the need to protect all family members from family violence and the threat of family violence and, subject to that, to the child’s right to spend time and communicate with both parents and other people significant to the child’s care, welfare and development, provided it is not contrary to the best interests of the child; ...

This paragraph clearly provides a further safeguard for children and I hope that it will be supported by the Senate.

Senator LUDWIG (Queensland) (8.18 pm)—We do not support this amendment. This is one of those definition areas where the devil is in the detail. We appreciate the intention of the first of these amendments, to introduce a conduct based definition of family violence. Labor have been advocating for the relevant parties to have a serious look at this type of approach. It is similar to approaches that have been adopted in other state domestic violence legislation. However, on the government’s proposal we have argued that it would have been better if this issue had been left until the Australian Institute of Family Studies have completed their study and considered the various alternatives.

The other amendments deal with interaction between federal parenting orders and the state family violence orders. We are notinclined to support changes in this area without more consideration—in other words, we are not prepared to do that on the floor of the parliament without having a more considered look at these issues. We have not had the opportunity of hearing from the states as to whether they share concerns with these amendments or they support them. Of course, this area does involve significant interaction between state and federal law. It is area which should not be settled hurriedly or on the run; it should be given sufficient time for a considered response. After the Institute of Family Studies have had an opportunity to look at this area Labor would be more hopeful that we would end up with a better position than what is being proposed by the government. Until that time we are not prepared to support these amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.21 pm)—The government opposes this for a number of reasons. Firstly, the definition that we have is rather prescriptive. I can appreciate what Senator Stott Despoja is trying to drive that here, but we believe that you need a compendious definition which is capable of absorbing the varying human circumstances that one comes across in family law. Having practised in family law to some degree, I must say that you are always amazed at the different circumstances you do come across.

I will give you one example from this definition. It says:

damaging the person’s property, including the injury or death of an animal that is the person’s property;

You can instil fear in someone without injuring an animal owned by them. I certainly could imagine circumstances where you could inflict injury or even worse on an animal and display it in such a fashion as to instil fear in someone. I think the film The Godfather did that very well with a horse’s head. That just demonstrates how, when you have such a prescriptive definition, you can distinguish things and say, ‘This is in and that is out.’ By having a prescriptive list you can exclude things. I just think that it is unwise to do so. We have taken on board the recommendations of both the Senate and the House of Representatives committees. I think that it is an appropriate response from the government. For those reasons, albeit I can understand Senator Stott Despoja’s line of argument, we believe that our definition is more appropriate.

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

Question negatived.

The TEMPORARY CHAIRMAN (Senator Watson)—We now move to opposition amendment (1) on sheet 4886—schedule 1, item 3, the definition of family violence.

Senator LUDWIG (Queensland) (8.23 pm)—I move:

(1) Schedule 1, item 3, page 4 (lines 18 to 22),

omit the definition of family violence, substitute:

family violence means:

(a) conduct, whether actual or threatened, by a person towards, or towards property of, a member of the person’s family that causes that or any other member of that person’s family to fear for, or to be apprehensive about, his or her personal well being or safety; or

(b) conduct, witnessed by a child, in which a person intentionally causes physical or psychological harm to a member of the person’s family.

This amendment deals with the definition of family violence. We would make the case that the position we are putting forward is an improved one. This amendment does two things—firstly, it reverts to the existing definition of family violence and, secondly, it adds an alternative definition that makes it clear that circumstances in which a child witnesses violence are included the definition of family violence.

This issue, of course, is very important to Labor. We are very concerned that the government is making a change to the definition of family violence without much consideration of its consequences. We are particularly mindful of the impact that this change will have in the context of compulsory mediation. It is unreasonable, Labor believes, to force people into negotiation with someone they are terrified of. It does not matter whether a court would consider that fear to be reasonable or not. If the person feels fear, it would certainly affect the outcome and fairness of the mediation. That is simply plain. To think otherwise, I think, misses the point. Cases such as these would clearly benefit from the structured and formal environment of the courtroom.

We are concerned that this change to the definition could put some circumstances of family violence beyond the reach of the court to consider. The Senate committee heard evidence about the types of cases that could in fact be affected—for example, those which have involved a long pattern of threatening or menacing behaviour in which any one incident might not be considered to reasonably engender fear. We need to be certain that the courts are able to deal with these sorts of cases appropriately.

Labor’s view, therefore, is that this is another issue which should be left until the AIFS has had a chance to consider the issue. It is not integral to this bill. There is no excuse for acting too hastily. The government does have the opportunity to not proceed with that and to in fact adopt Labor’s position. In particular, we would like to see some serious consideration of a conduct based test that focuses on the behaviour of the perpetrator of violence, not on the reaction of the victim. Similar approaches are used in the states and should be considered at a federal level.

The second part of this amendment deals with the circumstances in which children witness physical or psychological harm intentionally committed against family members. It would give due recognition in the law to the harmful effects to children of witnessing family violence. The House committee heard that this is a particular problem with the current law. We see no reason that this
simple amendment should not be addressed at this opportunity. We therefore seek the support of the government and minor parties.  

**Senator STOTT DESPOJA** (South Australia) (8.27 pm)—Senator Ludwig will have the support of the Australian Democrats for this amendment. I must admit that I was a little confused by Senator Ludwig’s earlier remarks when he opposed the Democrats earlier definition partly on the basis that there should be the inquiry or review and that the institute should be given time to report before we made these changes. But I do understand now in the context in which he has put forward the ALP amendment. It indeed seeks to return to a situation where, certainly for a start, there is the removal of the objective element.

I support the amendment. I think the Democrats’ definition, modelled on the Western Australian legislation, was better. I actually thought it was more of a compendium, to use the minister’s terminology, and not prescriptive in some respects, as the minister claimed. But I will not reflect on a vote of the Senate. Having said that, I do believe that our amendment was preferable. I believe that this amendment is certainly preferable to the legislation as it currently stands.

I have already outlined some of the concerns that we have with this. I think we are trying to address this in a very clinical way, but I want to make it very clear that this is not a trifling issue. This is not a mere issue of terminology and semantics. This is where laws change lives. This law and this change will affect lives. It will affect some of the most powerless people in our community—usually women and children. I do not care what gets said about me on the websites tomorrow for saying that. The reality is that these are the people we are talking about. We are addressing this in the most clinical fashion, because that is our job and role.

I want to make it very clear that family violence and criminal assault are of great concern to many of us here. I am scared that the impact of this change will be one that is quite devastating. Therefore, I seek to see these changes made. I recognise that my amendments on behalf of the Democrats have failed, but I certainly hope that, in a last-ditch attempt, this Labor amendment will not fail.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (8.30 pm)—The government is the first to concede that a child witnessing violence is totally undesirable; it is appalling that a child should be in those circumstances. But, as Senator Stott Despoja said, we should look at this in a dispassionate manner and look at a definition which will serve the interests of justice. That demands that we get definitions right. No-one who goes into the Family Court has a mortgage on right or wrong. We who stand outside and look in are lucky to be in that position, if I can put it that way. Certainly, my experience has been that you can never prejudge matters where you have human affairs involved, being as they are. So I would not seek to prejudge any particular group of people or in any way make an assessment as to where the rights and wrongs lie in relationships between husbands and wives. But I do say that we should have a definition which works.

We believe that the opposition’s proposal is unnecessary. This was a matter which was considered by the Senate Legal and Constitutional Affairs Legislation Committee. They did not see any merit in adding this clause to the definition. The government’s existing definition would cover a situation where witnessing violence causes a child to fear or be apprehensive for their own safety. I stress that. The government’s definition allows for a history of violence to be taken into account. We are saying that once you get into a
listing of circumstances you do so at your peril to the extent that you become prescriptive in your definition. We have a definition—with a note which hopefully will be passed and attached—which can stand the test of time and the administration of justice.

I believe that the concern that the opposition has is a legitimate one, and Senator Ludwig put his point clearly. But we have already accommodated for that in the broad definition that we have in the bill and also in the note that I will move at a later stage. I repeat that, in the government’s definition, a situation where witnessing violence causes a child to fear or to be apprehensive for their own safety would be covered. Furthermore, the government’s definition would allow a person’s circumstances, including a history of violence, to be taken into account. It is for that reason that the government does not support the amendment sought by the opposition. I stress that, whilst there is a great deal of concern for women and children and the position they can find themselves in, there are also men who are in the family law system. They should be remembered as well. We as a government have a duty to make sure that our definitions apply to all Australians, be they young, old or of whichever sex, and that they will serve the administration of justice in a manner which works and is fair.

Question negatived.

Senator STOTT DESPOJA (South Australia) (8.34 pm)—I move Democrats amendment (2) on revised sheet 4866:

(2) Schedule 1, page 4 (line 2) to page 34 (line 7), omit “equal shared parental responsibility” (wherever occurring), substitute “joint parental responsibility”.

This amendment changes any references in the legislation from ‘equal shared parental responsibility’ to ‘joint parental responsibility’. As has been commented on in the speeches in the second reading debate and in the Senate committee stage, the use of the term ‘equal’ has been of concern. It has been criticised widely. It is quite a divisive term in some respects, in that it focuses more on parents’ rights than on our responsibilities as parents. Parental responsibility should not be quantified. Children need qualitative approaches to parenting.

The Democrats feel that the use of the word ‘joint’ sends a clearer message to parents about a cooperative approach to parenting—where possible of course—instead of dividing them and pitching them against each other in a battle to be the winner in negotiations over their children. The intent of this legislation, as I understood it, was to try and provide a less adversarial approach and so less adversarialism in the system when it came to the issue of parental responsibility. I think that joint parental responsibility encapsulates that less adversarial approach much better than the terminology of equal. One seems to imply a quantitative approach as opposed to a qualitative approach, which is what we should be aiming for if our focus in this legislation is indeed the best interests of the children.

Senator SIEWERT (Western Australia) (8.36 pm)—The Greens support this amendment for very similar reasons—and in fact have an identical amendment. We believe that the content of the legislation is, unfortunately, more about parents’ rights rather than children’s rights. We believe that where parents should be coming from is their joint responsibilities. The children must come first. We do not necessarily believe that the amendment the government is proposing will result in the best outcomes for children in all cases.

Most kids’ living arrangements are established at the point of separation and finalised without the need to go to court, and those
arrangements do not change afterwards. With respect to responsibilities and doing things for children, it is not about control. I am deeply concerned that a lot of the debate happening outside this place has been about control of children and control of the ex-partner rather than about the wellbeing of the child. Certainly a number of emails that I have had have been about control. That is not to dismiss the fact—which I very deeply and freely acknowledge—that most men really want to nurture their children and jointly share responsibility for the children and do not want to control their children.

I am concerned that this legislation codifies control by either parent and is not about children’s rights or putting the children’s interests first. I am deeply concerned that this is about concentrating power and giving power over decisions rather than about what is in the best interest of the child. It also seems to be a one-way street when it comes to the situation where there is a residential parent and a non-residential parent and what happens to require that non-residential parents make sure that they fulfil their obligations as well. I believe that the concept of joint parental responsibility more clearly and plainly states what society expects from parents, and it does not put the rights of parents first; it puts the rights of children first and the child’s interests first rather than the parents’ interests first. So I join the Democrats in supporting this amendment.

Senator LUDWIG (Queensland) (8.39 pm)—This is an area where sometimes there is a lot to be said about getting the language right. We agree on the issue of renaming ‘equal shared parental responsibility’ to ‘joint shared parental responsibility’ but we do prefer our own amendment on that point. Just so we are in the right area: we are dealing with Democrat amendment (2) —and there is an identical Greens amendment—and there are also Democrat amendments (17), (22) and (23) which deal with all of those matters. Sometimes it helps to outline all of that because they deal with an important area. As I said, I think a lot turns on language, particularly in this area.

We disagree with removing the presumption of shared parental responsibility. We believe that parents should be encouraged to remain actively involved in their children’s lives post separation. Even if they do not live with the child, there are many responsibilities that can be shared jointly. Of course, the shared responsibilities should not apply when family violence is involved in the case. I do not think that anyone would disagree with that. We believe the protections in the bill, with our amendments, would help prevent this from happening. Having said that, we will keep a close eye on the effect of these changes and reconsider our position if evidence emerges that the protections are not sufficient. We will remain open in this area. We are not going to close our view on this.

We also disagree with the amendment to remove the provisions of the bill that would require the court to consider equal or substantial and significant time with each parent. Those provisions require the court to go through a step-by-step, clear and transparent process for determining how time should be spent between the parents. It should make it easier for parents to understand how the court will approach the issue, and this in turn will help to build and maintain confidence in our law and courts. I think it is important to keep coming back to that. In this instance, where we are going to have family relationship centres and there is going to be an expected level of mediation, there will also still be the court process. It is important to ensure that that provision is still there and that people understand that the court is there for those cases that require adjudication. The provisions do not remove the court’s power to determine residency arrangement on the
best interests of the child test. That clearly remains the paramount principle, as it should be.

They are the arguments as to why we will not be supporting the Democrat amendments—although I have couched our reasons more in an argument as to why we prefer our amendments. Ultimately, it will not matter, I suspect, as the government does have the numbers. Many hours ago I might have been saying something very similar, unfortunately. They will provide their outcome. What is disappointing in some respects is that the committee report, together with a number of committee reports, dealt with this. This area, as I said earlier, is one where sometimes people come with their own focus. I think it is sometimes helpful to stand back and have a look. You may not be there now but you might get there one day, and it is worth considering how it should, in truth, operate to ensure that there are outcomes that people can live with and outcomes that enable them to get on with their lives.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.44 pm)—The government opposes Democrat amendment (2), moved by Senator Stott Despoja, the Greens identical amendment and foreshadowed Democrat amendments (17), (22) and (23), which deal with discrete areas but which are nonetheless related to the question of equal shared parental responsibility. Firstly, on that presumption of equal shared parental responsibility, the government is saying here that the risk with joint parental responsibility is that you could have a situation where there is joint parental responsibility but where the non-resident parent only has a token role and it is viewed as such by the resident parent—that is, the joint parental responsibility does not have the effect of involving the non-resident parent as much as an equal shared parental responsibility might.

In the Democrat amendments (17) and (23), the Democrats are seeking to remove that presumption and, again, the government opposes this. It has taken on board the recommendation of the Every picture tells a story report from the House of Representatives Standing Committee on Family and Community Affairs, which took over 2,000 submissions over a lengthy period of time and heard from hundreds of witnesses. The government is saying that there has been a sound recommendation from that committee in this regard. It is not one which demands equal time, however. I can just clarify that issue. The government does not presume that an equal time arrangement is necessarily in the best interests of the child. Certainly, that is what was considered by the committee at length. In the Every picture tells a story report the committee concluded:

... the goal for the majority of families should be one of equality of care and responsibility along with substantially shared parenting time.

That does not equate to equal time. It can involve substantial periods of shared parenting time but not necessarily in the proportion of fifty-fifty. The government would of course make an exception where there is an example of abuse of children, violence between the parties or a history or violence; that obviously can involve an exception.

We would say that there is or should be a presumption of equal shared parental responsibility, which relates to shared decision making and shared responsibility for the children. The court will only have to consider an equal time arrangement where there is equal shared parental responsibility. I have seen cases of joint custody in the old days where the resident parent saw that as really being total custody and it was just a token effort on the part of the non-resident parent. Every child, subject to the exceptions I have mentioned, does benefit from having as much contact with their mum and dad as
they possibly can, and that is what we are talking about.

Senator STOTT DESPOJA (South Australia) (8.48 pm)—I will address my comments to the Senate, not just the gallery. The amendments that have been referred to, (17), (22) and (23), are to omit the provisions outlining the operation and effect of the presumption of equal shared parental responsibility. They will also omit the consideration of equal time or substantial and significant time arrangements. On the issue of presumption, the notion of joint parenting is of course preferable where it is in the best interests of the child. I do not presume to say what is in the best interests of the child; I just know that has to be taken into account. But the presumption detracts from the appropriate, open and individual assessment of what is best for each child’s unique circumstances. The Democrats are supportive of the concept of shared parental responsibility and strongly believe that all parents have a moral and legal responsibility to care for their children to the best of their abilities. However, we do have a number of concerns about the practicalities and possible outcomes of enshrining the presumption in law.

The court needs to be free to decide each case on its merits, and where—for whatever reason—shared parental responsibility is not in children’s best interests the court needs to be able to make this decision. So we consider that the presumption of equal shared parental responsibility as a starting point for determining where a child lives after parents separate generates more of a focus on parents’ rights than on what is in the child’s best interests. I am not going to stand here and say what is in the child’s best interests; I am going to let other people make that determination based on the child’s experiences and their unique circumstances. We consider that the current provisions in the bill objectify the child in the discussion, and the issue becomes one of entitlement. Again, it is a parent-centric notion.

The Democrats disagree with the inclusion of the provisions directing time to be spent with each parent. The focus on time that children should spend with each parent restricts what should be a lateral approach to deciding options for quality parenting after separation. In addition, it places responsibility for the maintenance of the relationship on the children, who will be forced to divide their time between parents. So the effect of the presumption, when coupled with the court’s requirement to consider whether it is equal or substantial and significant time, is arguably to create a de facto presumption and to compound the divergence from consideration of what is best for the children. The Democrats have serious concerns about this, and therefore we oppose the current provisions. As Senator Ludwig was quite right to point out, I should have put that on record earlier, as we are dealing with a range of amendments and proposals to this particular schedule.

Question negatived.

Senator STOTT DESPOJA (South Australia) (8.53 pm)—The Democrats oppose schedule 1 in the following terms:

(17) Schedule 1, item 13, page 19 (line 3) to page 19 (line 28), section 61DA, TO BE OPPOSED.

(22) Schedule 1, item 31, page 28 (line 1) to page 30 (line 18), section 65DAA, TO BE OPPOSED.

(23) Schedule 1, item 31, page 30 (line 25) to page 31 (line 9), section 65DAC, TO BE OPPOSED.

Senator LUDWIG (Queensland) (8.52 pm)—The only thing I was really going to add, and having listened to Senator Stott Despoja I think it is worth while adding it, is that when you hear the government’s point, that is the problem with it. They need to clar-
ify it again. If it was that obvious, they would not need to get on their feet and clarify it. Mr Ruddock’s original preference was to leave it the way it was. Unfortunately in this instance I think they try to explain it too much. If it is that plain, they could have left it. Notwithstanding that, we have our own amendment on this, as I indicated earlier. We do not need to explain it; I think it is obvious.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that these three items of schedule 1 stand as printed.

Question agreed to.

Senator LUDWIG (Queensland) (8.53 pm)—by leave—I move:

(2) Schedule 1, item 13, page 19 (line 3), omit “equal shared parental responsibility”, substitute “joint shared parental responsibilities”.

(3) Schedule 1, item 13, page 19 (line 7), omit “equal shared parental responsibility”, substitute “joint shared parental responsibilities”.

(4) Schedule 1, item 13, page 19 (line 27), omit “equal shared parental responsibility”, substitute “joint shared parental responsibilities”.

(5) Schedule 1, item 13, page 19 (lines 29 and 30), omit “equal shared parental responsibility” substitute “joint shared parental responsibilities”.

(6) Schedule 1, item 29, page 27 (lines 20 and 21), omit “equal shared parental responsibility”, substitute “joint shared parental responsibilities”.

(7) Schedule 1, item 30, page 27 (lines 24 and 25), omit “equal shared parental responsibility”, substitute “joint shared parental responsibilities”.

(8) Schedule 1, item 31, page 28 (line 6), omit “equal shared parental responsibility”, substitute “joint shared parental responsibilities”.

(9) Schedule 1, item 31, page 28 (lines 29 and 30), omit “equal shared parental responsibility”, substitute “joint shared parental responsibilities”.

(10) Schedule 1, item 31, page 28 (line 24), omit “equal shared parental responsibility”, substitute “joint shared parental responsibilities”.

It comes down to the language. This is an area where Mr Ruddock’s preference should have prevailed. I cannot say I have been agreeing with him lately but, in this instance, perhaps the parliamentary counsel got it right originally when trying to work out how this should be expressed in law. This group of amendments will change the use of the words ‘equal shared parental responsibility’ to ‘joint shared parental responsibility’. This is simply a matter of clear and unambiguous drafting. The drafters understood what they had to draft. They had to ensure that the definition relating to parental responsibility was clear but not a quantifiable thing that can be dissected into two equal parts. If that was what they wanted to do they would have used the word ‘equal’. What we mean by shared parental responsibility is that the parents exercise that responsibility together—that is, jointly.

There are many examples in the law where the word ‘joint’ is used to convey that. The parliamentary counsel would have drawn on their experience, as would Mr Ruddock when he agreed to the use of the word ‘joint’ rather than ‘equal’. You do not want the problems that might arise where definitional issues create the argument so that people argue about the words rather than the true outcomes. In the second reading debate, I talked about the importance of creating realistic expectations in this area. The risk of using the word ‘equal’ is that it creates and has the potential to create a false expectation that we are talking about something that is quantifiable: a quantifiable time.

As we know, there is bipartisan agreement against a presumption of equal parenting time. We should not confuse members of the public by using language that sounds like
equal time when we mean something completely different. Family law is an area with many self-represented litigants. In fact, at estimates I had the opportunity of talking to the registrar of the Family Court about self-represented litigants and trying to help them work through the issues. It is not always easy for the registrar and the court to deal with this area. We do not want to create even more confusion in this area. I think it is more important to ensure that the wording is clear and that unambiguous language is used. In this case the Attorney-General’s original phrase ‘joint shared parental responsibility’ was the appropriate phrase to use.

The Senate committee also recognised this problem, although it suggested dealing with it by adopting a definition of equal shared parental responsibility. In our view, that becomes a very complex solution when a simple one would do and, as I have suggested, the simple one is to go back to the original wording. The word ‘joint’ is sensible—‘joint shared parental responsibility’ does the trick very well. It is clear and unambiguous language. It should be adopted. The government will go through a complex explanation of why they have shifted from the word ‘joint’ to ‘equal’. They will say it creates greater clarity, I suspect. They will then have to say that it is the problem of joint that needed to be clarified. I am sure they will try that one as well but, in truth, I think the government will struggle to explain why they have shifted.

Senator STOTT DESPOJA (South Australia) (8.58 pm)—The Australian Democrats will be supporting the opposition’s amendments for the change in terminology from ‘equal’ to ‘joint’. We support that for much the same reasons as I outlined in my comments on Democrat amendment (2). We do note the difference in the inclusion of the word ‘shared’. The Democrats had omitted this word for reasons of simplification, but we do not particularly object to its inclusion in the ALP amendments, so we will be supporting them.

Senator SIEWERT (Western Australia) (8.59 pm)—The Greens will be taking a very similar position for the reasons I outlined and the reasons Senator Stott Despoja just outlined.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.59 pm)—The exposure draft of the bill did have the terms that Senator Ludwig mentioned, but of course an exposure draft is just that—it is out there for comment—and if we were to treat it as a fait accompli the opposition would be the first to complain. This was a process that was comprehensively consultative across the country, with, as I said, 2,000 submissions to the House of Representatives committee and hundreds of witnesses. The committee suggested the presumption that we now have—equal shared parental responsibility. That was endorsed by the Senate Legal and Constitutional Legislation Committee. We have taken on board their recommendations and we agree with them.

Question negatived.

Senator SIEWERT (Western Australia) (9.00 pm)—The Greens oppose schedule 1 in the following terms:

(8) Schedule 1, item 13, page 19 (lines 1 to 34), TO BE OPPOSED.

We have just been having the debate around the difference between equal shared parental responsibility and joint shared parental responsibility. We have been through those arguments before. As I have articulated before, I believe this puts the rights of the parents before the best interests of the child. I think we have been through these arguments fairly thoroughly. I am not convinced by the government’s position. I still believe that the government amendments put the rights of the parents before the best interests of the chil-
dren, and I believe we should be going for a joint parental responsibility approach rather than presuming an equal shared parental responsibility.

Senator STOTT DESPOJA (South Australia) (9.01 pm)—The Democrats will be supporting amendment (8) from the Greens. The amendment opposes the presumption of equal shared parental responsibility. Democrat amendments (17), (22) and (23), which were not successful, incorporated this amendment but would also have removed the references to equal and substantial and significant time. We will support this amendment, for reasons previously stated.

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that schedule 1 stand as printed.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (9.02 pm)—by leave—I move Democrat amendments (6) to (9), (11), (12), (14), (15), (18) and (19) on sheet 4866 revised:

(6) Schedule 1, item 8, page 6 (lines 9 and 10), omit “ensure that the best interests of the child are met by”.

(7) Schedule 1, item 8, page 6 (line 11), omit paragraph 60B(1)(a), substitute:

(a) except when it would be contrary to the best interests of children, ensuring that the children have the benefit of both of their parents having a meaningful involvement in their lives; and

(8) Schedule 1, item 8, page 7 (after line 3), at the end of subsection 60B(2), add:

(f) children have the right to live free from abuse, neglect or family violence.

(9) Schedule 1, item 9, page 8 (line 5), omit “subsections (2) and (3)”, substitute “subsection (3)”.

(10) Schedule 1, item 9, page 8 (lines 6 to 15), omit subsection 60CC(2) and the heading to subsection 60CC(3).

(11) Schedule 1, item 9, page 8 (line 8), before “the (first occurring)”, insert “subject to paragraph (b),”.

(12) Schedule 1, item 9, page 8 (lines 25 to 27), omit paragraph 60CC(3)(c).

(13) Schedule 1, item 9, page 9 (line 36) to page 10 (line 16) omit subsection 60CC(4).

(14) Schedule 1, item 17, page 21 (after line 36), after subsection 63C(2C), insert:

2D The primary focus of a parenting plan must be the best interests of the child. Parenting plans must consider:

(a) A child’s rights to stability, security and adequate and responsible care

(b) A child’s own social networks and their ongoing ability to maintain such networks

(c) A child’s school, sporting and other leisure activities

(d) Any other special needs of the child.

(15) Schedule 1, item 18, page 22 (line 28), at the end of paragraph 63DA(2)(c), add “and of the factors used for determining those best interests”.

These amendments seek to make changes to schedule 1 of the bill. Amendments (6) to (9) make changes to the objects in part VII. The changes are aimed at simplifying the bill and the factors the court must take into account when determining the child’s best interests. The Democrats believe that, with the bill as it currently stands, the construction of proposed section 60B risks misdirecting the court to consider two different sets of considerations as to what is in the child’s best interests. We believe it should be amended to reflect a reference to the best interests of the child. We have attempted to amend the bill accordingly.

We also want make sure the objects of the part are not an additional hierarchy of factors to be considered; we already believe the hi-
hierarchy in section 60CC is overcomplicated and problematic for a variety of reasons. We believe that amending the objects, as we are seeking to do, will deprioritise the right to contact focused on by the provision. We have qualified the ‘meaningful relationship’ provision so that it does not always conflict with the need to protect children from harm.

The Democrats also support the retention of the current structure of 68F because we object to the fact that children’s views have been relegated to ‘additional considerations’. Those senators who were involved in the preparation of the report, or indeed the second reading debate on this bill, will have heard senators, including me, outline our concerns that once again children’s best interests are being diminished or relegated in some way. Certainly we believe ‘additional considerations’ is a relegation. The bill of course is supposed to be about what is best for children, so I would have thought that their opinions should not be relegated to the position of an additional consideration.

We object in principle to the inclusion of proposed section 60CC(3)(c), and this group of amendments seeks to remove it. We consider this provision so problematic that we believe it would be best left out of these legislative changes. Proposed section 60CC(4) introduces a requirement for court to consider, when determining the child’s best interests, the extent to which each parent has fulfilled or failed to fulfil their responsibilities as a parent. It is similar, I guess, to the ‘friendly parent’ provision in its emphasis. I know that concerns have been expressed that the provision may encourage parents to focus on earning rights to their children. This is a concern that the Democrats agree with. We consider that the maintenance of stability in a child’s life is undermined by this amendment and it should not be introduced.

Amendment (18) of the Democrats seeks to introduce a provision that is based on a belief that parenting plans should not impinge on a child’s right to stability and security and their ability to maintain their own social networks and school, leisure and sporting activities. Finally, amendment (19) seeks to make the explanation of parenting plans and how they are determined much clearer for parents by including a requirement that advisers are to raise the factors for determining a child’s best interests.

Senator LUDWIG (Queensland) (9.06 pm)—I am not going to talk about every Democrat amendment in this group—(6) to (9), (11), (12), (14), (15), (18) and (19). That is a drafting technique I could have used this morning, quite frankly. In any event, I have learnt. One of the difficulties when you do it this way is that you then end up with me having to say this: we have little problem with many of the amendments in this group, especially those that would remove the hierarchy of considerations in the best interests of the child test—we moved similar amendments in the House through our shadow Attorney-General; however, we do oppose other amendments in this group.

In particular, we strongly oppose the amendment to omit section 60CC(4). We consider that section to be one of the bill’s strong points. Indeed, it comes from an idea proposed by our shadow Attorney-General that the court should be able to consider how parents have lived up to their responsibilities in the past when making orders for the future. It seems a critical point: if you are going to make orders for the future there is a view that you can look at what the conduct of the parties has been in terms of their responsibilities to live up to their previous orders. There might be circumstances that can be taken into account which might explain why they were not lived up to, for argument’s sake, or arguments as to why the or-
ders were followed. In other words, there is enough flexibility in there for people to say there were reasons. They can provide their reasons and ultimately a court will be able to adjudicate on that area. It ensures that those past issues can be taken into account so that people do not use orders for other purposes. If you do you will have to account for that.

Labor’s concern is that without this sort of provision parents could stand on their rights when it suits them and ignore their responsibilities when they choose. Parenting—and I think we have said this a couple of times—is about responsibilities to children. At some point I will have to live up to mine and explain why I am here. At some point I am going to be called to account on that, and rightly so, I suspect. Parenting is about taking the opportunity to be involved in the kids’ lives, to communicate with them, to spend time with them and to ensure they are properly provided for. I am really sorry I have to say all that standing here on a Thursday evening. This section reinforces those responsibilities and Labor strongly supports it.

Labor is not in a position to agree to the Democrat amendments—effectively in group 5 as I indicated earlier—but I did want to go through section 60CC(4) again. It is not only an amendment that has been put in the House by our shadow Attorney-General but also a very sensible one that creates and will allow as much fairness as possible in this area so the parties can live up to their responsibilities. If we are going to use the word ‘responsibility’ then the parties should have something to strive for. In other words, be responsible with these sorts of things.

It seems to me that a lot of the arguments that surround this are about people being irresponsible or having different views and different issues and not looking at what their responsibilities are to their children. It is always cause for reflection when you have to put that into legislation to ensure people will undertake those responsibilities, but if we have to we are not going to resile from it. These are necessary. Ultimately I will come to our amendments, but at this time we are not going to accede to the Democrat amendments.

Senator SIEWERT (Western Australia) (9.11 pm)—As senators are probably aware, we have similar amendments that deal with the best interests of the child, and in another amendment we seek to define ‘meaningful relationship’. The Greens are concerned about the two-tiered approach that is being taken in section 60CC, believing that it is a flawed process because there are two primary considerations. In situations where there is family violence we believe the two primary considerations cancel each other out. We do not believe that you can be fostering a meaningful relationship with the parent as well as protecting a child from harm.

We are also deeply concerned that the views of the child have been taken down as a secondary or additional consideration. We believe the process in the existing act is in fact better. As I said, we will be moving an amendment to define what a meaningful relationship is later.

We also believe that there are flawed assumptions underlying this proposal. It assumes that all children see contact with both parents as in their best interests in every case. We are also concerned that there is a presumption that a violent and abusive parent is better than no parent at all. I challenge that assumption. I know that other people do not necessarily believe that, but I am seriously challenging that assumption.

We are disappointed that the wishes of the child are thought to be a secondary consideration. Already access is granted to violent non-custodial parents against the express
wishes of the child. There are a number of studies that document that. A study by Michael Flood from the Australia Institute says: When fathers are subject to allegations of abuse, their chances of being denied contact with children are remote even if these allegations are substantiated, and the numbers of parents falsely accused of child abuse are tiny compared to the numbers of children who are being abused and about whom the Family Court never hears.

This paper goes on to describe other circumstances where the child’s wishes have been ignored.

The legislation as it stands effectively puts the parents’ desire for access ahead of the child’s need for safety and protection. We do not believe that is an appropriate approach to be taking in this legislation. We believe that, as has come through in many of our other amendments, the best interests of the child must be put first, and in some instances in areas of domestic violence and abuse the best interest of the child is not necessarily to be with both parents. It is not necessarily in the best interests of a child to be put with an abusive or violent parent. I do not believe that we should be codifying that.

As I said, we have further amendments that deal with meaningful relationship and subsequent amendments that deal with the best interests of the child. We do support the current existing approach in the act. We do not support the two-tiered approach. We believe that the two primary considerations are in conflict where you have situations of family violence and abuse. Therefore, we will be supporting these amendments.

Senator Ludwig (Queensland) (9.15 pm)—I only want to clarify one matter. I think I talked about 60CC(4) being amended in the House. I always get confused about that. They do not have a process as eloquent as ours, where we actually get to move amendments and argue about them. At least we still have that. I do not yet have any indication from the government that it is going to change. There are three reports that are central to this issue: Every picture tells a story, which was the first report into this area; the exposure draft committee, where our shadow Attorney-General provided a dissenting report and where the idea emanated from and, if they had had a committee such as ours, I am sure she would have brought forward an amendment there; then of course there was the Senate Legal and Constitutional Legislation Committee, which also inquired into the bill, although they confined themselves to certain parts.

This is an opportunity for us to look at all of those amendments and move them. I think I have made the point several times that this is a place where we can try to convince the government to pick up an amendment and where the opposition can support it. However, I am concerned that over the last couple of days it seems that the government has simply been going through the motions. I do not think that is quite good enough. Before 1 July there was a certain sense that committee reports and amendments that come here would focus the government on trying to find an outcome where an outcome may not be on its side. Notwithstanding that, we will press on.

Senator Ellison (Western Australia—Minister for Justice and Customs) (9.17 pm)—There are a number of issues here. I share the concern expressed by Senator Ludwig in relation to clause 60CC, which is headed ‘How a court determines what is in a child’s best interests’. We believe that is essential and we believe that the Democrats and Greens have really missed the point in their approach to this whole question. Perhaps it is best that I deal with the Democrat amendments in turn.

Firstly, I will deal with Democrats amendments (6) and (7), which purport to
remove the link between the objects and substantive provisions in part VII. The government is of the view that it is very important to link the objects of part VII in section 60B to a range of substantive provisions of that part. An example of that is those provisions dealing with the factors to be considered when determining the best interests of the child. You can see in the objects listed that you even have ‘protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence’. These are very important objects—no-one would disagree with that—and we want to maintain the appropriate link between the objects provisions and the substantive provisions, to make it clear that the objects provisions have a direct influence on the more substantive provisions of this part. So I think that the Democrat and Greens amendments serve to de-link that and detract from those very important principles.

The Greens have said that they are worried about violence and are concerned about protection from harm, yet our objects are linked to the substantive part. Section 60CC(2) states, ‘The primary considerations are’—primary, not secondary—‘the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence’. That is very important.

I turn to the other amendments of the Democrats. We are now looking at (11) and (12). Again, they centre on removing this two-tiered approach, which I have just touched on with 60CC. What we have done there is set out, in determining the best interests of the child, those primary considerations that are:

(a) benefit to the child of having a meaningful relationship with both of the child’s parents; and
(b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

They are the primary considerations and they give a clear direction to the court. We then go on to deal with additional considerations, and of course they deal with such things as ‘any views expressed by the child’, ‘the nature of the relationship of the child with each of the child’s parents’, ‘the willingness and ability of each of the child’s parents to facilitate a close relationship’ and ‘the likely effect of any changes in the child’s circumstances’. This is quite important, and it goes on; it is quite extensive. The court needs clear direction as to what is a primary consideration and what are additional factors. That is why a two-tiered approach is very important in ascertaining what is best for the child. The destruction of that by the Greens and the Democrats, I think, would certainly not advance the administration of family law in this country.

Moving on to Democrat amendments (14) and (15), the Democrats seek amendment (14) to amend the factors that the court must consider in determining the best interests of the child. The Democrats seek to remove the requirement for the court to consider, when making a determination of what is in the child’s best interests, the willingness and ability of each parent to facilitate and encourage the child’s relationship with the other parent. We think this is a very important factor to take into account. The government considers that a child benefits from both parents being involved in the life of that child, and that is of course subject to the primary need of protecting the child from harm. But to remove that as a consideration would be a retrograde step indeed.

Democrat amendment (15) seeks to remove the requirement that the court consider whether a person has fulfilled or failed to fulfil their parental responsibilities. Whilst the government believe that a child benefits from both parents being involved in its life—and that is important—we do have a provi-
sion which allows the court to consider the extent to which each of the child’s parents has fulfilled or failed to fulfil their responsibilities as a parent and their responsibility to facilitate the other parent’s ability to fulfil their responsibilities as a parent. This includes the extent to which each parent has taken or failed to take the opportunity to spend time with the child, communicate with the child and participate in decision making about major, long-term issues in relation to the child. A factor to consider would be if a parent had been overseas for a long period of time and then came back, arrived on the scene and purported to exercise substantial control over the decision making and care giving in relation to the child.

It could also cover a situation where a resident parent has failed to comply with orders about facilitating the other parent spending time with the child—and the court must take that into account when looking at future parenting orders, because you can also have the reverse situation. You may have a non-resident parent disappearing and then coming back on the scene, demanding full time and involvement with the child, or you may have a resident parent denying a non-resident parent the opportunity to become involved with that child’s life and barring them from such access. That has to be taken into account. I had experience of both situations when I practised as a legal practitioner before entering politics. It is a very important factor for the court to take into account. To remove that would be a deleterious move indeed.

We are also looking at Democrat amendments (18) and (19). Democrat amendment (18) seeks to prescribe what parenting plans should entail. The government does not believe that is necessary. The bill already sets out a wide range of issues that a parenting plan can deal with. Parenting plans have to be flexible—of course, one can only begin to imagine the different family scenarios that we have around Australia—and that is very important. The bill already requires advisers to inform parents that decisions made in developing parenting plans should be made in the best interests of the child.

Finally, as I understand it Democrat amendment (19) would add obligations that advisers should meet. The bill already contains a range of obligations that advisers have to meet in giving advice or assistance to people in relation to parental responsibility for a child and making parenting plans—and I have touched on that. This is intended to assist parents who are working cooperatively to develop safe and practical arrangements for their children after separation. These factors already reflect the primary considerations of the benefit to a child of having a meaningful relationship with both parents and the need to ensure the child’s safety by requiring advisers to inform parents about the child spending either equal time or substantial and significant time with both parents where this is reasonably practicable and in the best interests of the child. I suggest that that makes eminent common sense.

The Democrat amendment does not specify which factors advisers should inform parents about or what constitutes the best interests of the child when parents are making a parenting plan. Democrat amendment (19) says:

... at the end of paragraph 63DA(2)(c), add “and of the factors used for determining those best interests”.

That is what I have been referring to—the factors used for determining those best interests. So what exactly does that mean? The bill has already set out what the court must consider in determining arrangements for what is in the child’s best interests when it is making a parenting order. The Democrat amendment imposes these factors upon par-
ents who are working cooperatively to develop a parenting plan. It is inappropriate for advisers to tell parents that they have to consider the same matters that a court considers when that relationship has broken down—and this is the nub of the issue. We have factors for the court to consider once the relationship has broken down. When you have parents working together cooperatively, why add that further obligation on the advisers and the parenting plan? The parents are working well together anyway. They are working together cooperatively. Do not treat that in the same way as you do the situation where a relationship has broken down and the court has to make a decision and look at various criteria.

When parents are working together cooperatively, they are really in the best position to determine what is in the best interests of their children. The government would say, ‘Leave them well alone.’ Where parents are working together cooperatively, albeit that they are separated, that is perhaps the best result, rather than imposing these unwieldy requirements and criteria on them, which you would have in an adversarial situation where the parents are disagreeing with each other. You have a totally different situation. On one hand, the parents are disagreeing with each other and the court has to determine the situation. On the other hand, the parents are working cooperatively together. Do not cast the same criteria for that adversarial situation onto the situation where the parents are working cooperatively. For those reasons, the government opposes this group of amendments proposed by the Democrats.

Senator SIEWERT (Western Australia) (9.30 pm)—I would like to ask a question about the primary considerations and seek some guidance about what happens in the situation that I raised before, where primary considerations (a) and (b) are in direct conflict. I put it to you that it would be exceedingly hard to have the benefit of a child having a meaningful relationship with both its parents if you are also trying to protect that child from the physical or psychological harm of being subjected to or exposed to abuse, neglect or family violence. There are situations where those two primary considerations will be in conflict. No matter how much we would like to see the world through rose-tinted glasses, that is what is going to happen. Those two objects are in direct conflict and I would like to know how the government thinks that that should be dealt with.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.31 pm)—I do not quite see the conflict that Senator Siewert has suggested. The primary considerations are there, in (2)(a) and (b) of 60CC, and they are the benefit to the child of having a meaningful relationship with both of the child’s parents and the need to protect the child from physical or psychological harm from being subjected to or exposed to abuse, neglect or family violence.

They are different criteria; they are assessed differently because you look for different factors in determining those. Of course they are two primary considerations and where there is a conflict it is then for the court to determine the result of that conflict. That is, after all, why we have a Family Court, and we give it as much guidance as we can with this legislation. But they are two fundamental pillars, if you like. Where they are in conflict with each other that is for the court to decide. But if you can satisfy both of those and the criteria are met then you are well on your way to determining what is in the best interests of the child, and it builds a solid foundation for a finding which is based in the best interests of the child.

Senator Siewert, as I understand the question, you are saying, ‘How can you have these two fundamental pillars where they
could be in conflict with each other? Of course with human affairs that is always on the cards and I have seen it happen: where a child has a very good relationship with a parent who has been abusive to them. I have seen that because it is part of the unconditional love that a child can give a parent and it is, I think, quite tragic when you come across that. But the fact remains that both of those are fundamental pillars in the consideration of what is in the child’s best interests.

I am not saying that one should be greater than the other—it is a balancing which is required of the court and it is a difficult question. There is no question about it and I would say that I am not being arbitrary in the way I say that one should overtake the other—that is not the case. They are two essential pillars and they should provide guidance to the court and, where they are in conflict, the court determines that.

**Senator SIEWERT** (Western Australia) (9.34 pm)—Can I just clarify: are there circumstances in which the government believes that it would be impossible to meet primary consideration (a) in circumstances where a child has been subject to abuse or violence and it would be impossible to facilitate a meaningful relationship with that parent?

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (9.34 pm)—It is a hypothetical question. I think that there are certainly circumstances where, if a child has been abused by a parent, one would not allow that contact to occur. I have seen examples where contact has been allowed to occur under supervised circumstances and I have seen certain other limitations placed on contact where there has been violence involved.

It is an extremely serious situation where a child has been abused or the subject of violence—there is no question of that. But to give you a ruling to say that in any case where there has been violence you should not allow any contact whatsoever is really a question which has to be found in the facts. You and I cannot sit here in this chamber today and say, in an arbitrary fashion, that a relationship between a child and a parent is destroyed forever because there has been an element of violence, unless we know of the particular circumstances which have occurred. And that is all I am saying. To rule a line over human affairs is always very dangerous and that is what I am saying here: these two fundamental or primary considerations give direction to the court as to what it has to consider. I think that, when you look at the additional considerations, you can see that they definitely are secondary to those two primary considerations that I have been speaking of.

Certainly, it is in interests of any child to have a meaningful and loving relationship with a parent. That is a fundamental goal, but the contrast of that—or the opposite to that—is that you should protect a child from abuse and harm. I see no conflict in having those two as primary considerations. They are guiding stars, if you like, to navigate by and, again, it is for the courts to judge. I could well conceive of situations where there was such abuse or violence that you would not allow contact with the parent; I could envisage that. But I think it would be very brave of any one of us to say that because there was an element of violence you would rule out automatically any further contact between a child and a parent—that is all I am saying.

**Senator STOTT DESPOJA** (South Australia) (9.37 pm)—I am not going to debate this, but I do want to put on record through you, Madam Temporary Chair, that I am horrified by a couple of your statements tonight, Minister. I understand the point that you are making about children’s uncondi-
tional love but I think that, in doing so, perhaps a lack of understanding of the nature of power and abuse has been displayed this evening. Senator Siewert’s questions go to the heart of some aspects of this debate, but I will proceed with the amendments and ask that Democrats amendments (6) to (9), (11), (12) and (19) be considered together and that amendments (14), (15) and (18) be considered separate from them, if that is agreeable to the government and the opposition. My understanding is that the opposition support Democrats amendments (6) to (9), (11), (12) and (19). I therefore ask that these be considered separate from Democrats amendments (14), (15) and (18).

The TEMPORARY CHAIRMAN (Senator Moore)—The question is that Democrats amendments (6) to (9), (11), (12) and (19) be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN—The question is that Democrat amendments (14), (15) and (18) be agreed to.

Question negatived.

Senator SIEWERT (Western Australia) (9.39 pm)—I move Greens amendment (4) on sheet 4885:

(4) Schedule 1, item 8, page 6 (after line 22), after subsection (1), insert:

(1A) For the purposes of subsection (1), meaningful involvement means a relationship in which the child is not at risk of exposure to family violence, abuse or neglect.

This relates back to the issue that we were talking about earlier where the Greens are seeking to define what a meaningful relationship is—that is, for the purpose of subsection (1), meaningful involvement means a relationship in which the child is not at risk of exposure to family violence, abuse or neglect.

Senator STOTT DESPOJA (South Australia) (9.40 pm)—The Democrats will be supporting this amendment to the object section of schedule 1. We regret that safeguards that we have all attempted to include in this bill so far have not been supported in relation to this section. We consider that, by adding the qualifying paragraph (1A) to section 60B(1) of meaningful involvement, this particular amendment constitutes an improvement to the legislation. It will operate to restrict meaningful involvement referred to paragraph (1A) so that it does not include a relationship where the child is at risk of exposure to family violence, abuse or neglect. That amendment should be passed.

Question negatived.

Senator STOTT DESPOJA (South Australia) (9.41 pm)—I move Democrats amendment R(10) on sheet 4866 revised:

R(10) Schedule 1, item 9, page 8 (after line 14), after subsection 60CC(2), insert:

(2A) For the avoidance of doubt, the reference in paragraph (2)(a) to meaningful relationship means a relationship in which the child has not been and is not at risk of being exposed to abuse, family violence and neglect.

This amendment seeks to ensure that a meaningful relationship is limited so that it is one in which the child has not been and is not at risk of being exposed to abuse, family violence and neglect. The provision is self-explanatory. Its obvious intention is to protect children. We have made it clear that we do not believe that there are appropriate safeguards at present to protect children from harm but, obviously, we have a different definition of meaningful relationship, so I can see where this amendment is going and, with great disappointment, read the numbers.

Senator SIEWERT (Western Australia) (9.42 pm)—I am going to give this another go, because I just cannot give up on this one.
I think we need to put in a definition of ‘meaningful relationship’, because to expect a child to be able to express a meaningful relationship where that child has been subject to abuse or violence is too much. I think that we need to give some guidance to the court about what this parliament was thinking about when it was thinking about meaningful relationships. As I have already articulated, quite a bit of this bill seems to be focused on the parents’ desires and rights rather than those of the child. Some of the things I have heard tonight, like Senator Stott Despoja’s comments express, deeply concern me because, if you think that a child can form a meaningful relationship with an abusive parent where they have been subject to abuse and family violence, it is a very strange definition of a meaningful relationship and it points out even more clearly to me that we need a definition that goes some way towards defining for the courts what this parliament thought a meaningful relationship means. That is why I am having another go and support the Democrats’ amendment to try to get some meaning around this definition.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.43 pm)—The government, as I mentioned earlier, has elevated as an object of part VII, and a primary consideration for the court in determining the best interests of a child, the need to ensure that the child is protected from being subjected to, or exposed to, abuse, neglect or family violence. I just want to stress, for fear that my position may be misrepresented or misunderstood, that that is a primary consideration and, as such, it influences what is a ‘meaningful relationship’. What the government has done here is that it has considerations of equal weight: the safety of the child is not intended to be subordinate to the meaningful relationship; both factors are important and will be considered in the light of individual cases. To further define ‘meaningful relationship’ I think really does get us into more strife.

I think by having the meaningful relationship in one primary consideration and the protection of the child in the other, you have the two contrasting basic considerations. Rather than tamper with ‘meaningful relationship’, have the protection of the child as the other primary consideration. They can be competing interests; in happier circumstances they are not. But I make it very clear that the government have promoted, as a primary consideration and as an object of part VII, the protection of the child. We do not believe that it is necessary to therefore incorporate it into the definition of ‘meaningful relationship’. We think that would be fraught with even more danger and could then lead us down a very slippery path where all sorts of convoluted interpretations could take place. Rather, have the two basic pillars, as I have mentioned, rest there; and if they are in competition with each other, then it is for the court to determine.

Senator SIEWERT (Western Australia) (9.46 pm)—One of the issues here, and a point you just made, is that the situations that we hope do not occur very often, the situations where the circumstances are the most tragic and the most difficult, are the ones that end up in court. It is the hard cases that end up in court. Many of those, though not all of them, involve domestic violence, family violence and abuse. And it is in those circumstances where those two objects, (a) and (b), are going to be in direct conflict. I agree, and I hope, that children should have a meaningful relationship with both parents and not be in need of protection. Of course that is what we all want to see for our children. But there are circumstances where difficult cases end up in court, and it will be in the really hard cases where (a) and (b) will be in conflict. I am deeply concerned about the implications.
The chamber has already rejected the amendment proposed by both the Democrats and the Greens to restructure this and get rid of the two-tiered system. But at least we can help to give guidance by defining what we mean by a ‘meaningful relationship’ and specifically ruling out a meaningful relationship being one where the child is subject to violence and abuse by the parent in that relationship.

Senator STOTT DESPOJA (South Australia) (9.48 pm)—This is a real line in the sand amendment. It is not one that I believe will get us into ‘strife’ or lead us down a ‘slippery path’. It is one that makes very clear that ‘meaningful relationship’ is restricted and limited to one where a child ‘has not been and is not at risk of being exposed to abuse, neglect or family violence’. That makes it clear that that is a meaningful relationship. I understand the ALP will be supporting this amendment. I indicate to the chamber that I will be seeking to divide on this amendment so that we can record the vote of senators on this absolutely fundamental issue.

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

The committee divided. [9.54 pm]

(The Chairman—Senator JJ Hogg)

Ayes…………… 20
Noes…………… 23
Majority……… 3

AyEs

Barlett, A.J.J.  Campbell, G.
Hogg, J.J. Hurley, A.
Kirk, L. Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. Milne, C.
Moore, C. Polley, H.
Ray, R.F. Sherry, N.J.
Siewert, R. Sterle, G.
Stott Despoja, N. Webber, R. *
Wong, P. Wortley, D.

NoEs

Abetz, E. 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.
Ferris, J.M. Fierravanti-Wells, C.
Heffernan, W. Humphries, G.
Johnston, D. Lightfoot, P.R.
Macdonald, I. McGauran, J.J.J.
Nash, F. Patterson, K.C.
Troeth, J.M. Trood, R.
Watson, J.O.W.

PaIrS

Allison, L.F. Coonan, H.L.
Bishop, T.M. Parry, S.
Brown, B.J. Macdonald, J.A.L.
Brown, C.L. Campbell, I.G.
Conroy, S.M. Santoro, S.
Crossin, P.M. Payne, M.A.
Evans, C.V. Ronaldson, M.
Faulkner, J.P. Joyce, B.
Forshaw, M.G. Minchin, N.H.
Hutchins, S.P. Scullion, N.G.
McLucas, J.E. Fifield, M.P.
Murray, A.J.M. Vanstone, A.E.
Nettle, K. Kemp, C.R.
O’Brien, K.W.K. Adams, J.
Stephens, U. Mason, B.J.

* denotes teller

Senator Carr did not vote, to compensate for the vacancy caused by the resignation of Senator Hill.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Moore)—We now move to Democrats amendment (13) on sheet 4866 revised.

Senator STOTT DESPOJA (South Australia) (9.58 pm)—I move:

(13) Schedule 1, item 9, page 8 (lines 25 to 27) omit paragraph 60CC(3)(c), substitute:

(c) the willingness and ability of each of the child’s parents to facilitate, and encourage, a close and continu-
ing relationship between the child and the other parent, except where such a relationship would be otherwise contrary to the best interests of the child;

(c) paragraph (c) does not apply where the child has been, or is at risk of being, exposed to abuse, neglect or family violence in the relationship with the other parent;

Amendment (13) is an alternative to amendment (14). It proposes an alternative definition to the so-called ‘friendly parent’ provision. The Democrats seek to amend clause 60CC(3)(c) with the aim of ensuring that children are protected from harm—because we have been so successful so far. The Democrats seek to amend the provision to recognise the reluctance to facilitate a close and continuing relationship based on a genuine and well-founded concern about a parent’s capacity to parent or a concern about possible negative impacts on the child as a result of such a relationship. The changes to this provision are intended to take into account the need for parents to make protective decisions about their children. We believe that the provision as it currently stands needs to be redrafted so that what is in fact protective behaviour is not seen as disqualifying the parent who does not comply with the provision.

I suspect I can read the numbers on this one. If I could not succeed in getting an amendment passed that sought to define a meaningful relationship as one that did not have children at risk of abuse, neglect or family violence, I am not sure we will succeed on anything tonight, so I will keep my comments brief.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.00 pm)—The government will be opposing this amendment. But it is important to note during this committee stage that the government will expend $397 million on family relationship centres and contact centres, which are aimed at backing up the legislation, which will contain provisions such as the one which the Democrats oppose—that is, the question of parental relationships with children. It is all very well to say that parental responsibilities and the parents’ relationship with the child are factors which should be considered, but you have to back that up. We will do that with contact centres and family relationship centres. In many cases, there are people who, with some guidance and assistance, could well improve their parenting skills and roles, and we could increase the relationship between the parent and child as well as that between the parties themselves. I just put that on the record.

Question negatived.

Senator SIEWERT (Western Australia) (10.01 pm)—The Australian Greens oppose item 9 of schedule 1 in the following terms:

(5) Schedule 1, item 9, page 8 (line 1) to page 10 (line 32), section 60CC, TO BE OPPOSED.

Other attempts to amend this section of the legislation have failed. If we had been more successful in amending it, I might not have wanted to move this amendment. However, I do not believe that the proposals by the government are in the best interests of children. As I have said before, I believe that the existing provisions within the legislation that are taken to determine the child’s best interests should stand. The Greens do not support the tiered approach outlined by the government and believe that it should be taken out of the legislation.

Senator STOTT DESPOJA (South Australia) (10.02 pm)—The Democrats support the intention of the Greens in relation to their opposition to section 60CC. Obviously, we are disappointed that our attempts to move what we believe is an improved version of
that section have not been successful. We believe they would have more appropriately determined what was in the interests of children, so we support the Greens in this endeavour. We believe that the current construction of section 60CC will not necessarily provide beneficial outcomes for children, so we do not believe that this section should stand as printed.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that item 9 stand as printed.

Question agreed to.

Senator SIEWERT (Western Australia) (10.03 pm)—by leave—I move Australian Greens amendments (6) and (7) on sheet 4885 together:

(6) Schedule 1, item 11, page 12 (after line 23), after subsection 60I(1), insert:

(1A) Despite references in this Act to genuine efforts to resolve a dispute, a family dispute resolution practitioner is authorised to certify that a dispute is not suitable for dispute resolution and no further action may then be taken in relation to the matter in accordance with this Subdivision.

(7) Schedule 1, item 11, page 14 (after line 26), after subsection 60I(8), add:

(8A) A family dispute resolution practitioner must accept a sworn statement by a parent that violence or abuse has occurred as evidence of that violence or abuse.

As I outlined in my speech in the second reading debate, we have some concerns about the concept of compulsory dispute resolution and some of the requirements in the legislation that go with that. The concern, as I have outlined previously, is that it may create situations in which parents are forced into dispute resolution in inappropriate circumstances. While there are some provisions in the legislation that mean parties can go straight to court, we do not believe that those circumstances are broad enough. This will end up in circumstances in dispute resolution in which people do not feel equal. One of the partners, if they have been subjected to violence or abuse, may feel they are not in equal circumstances in the dispute. If you combine that with the concept of costs for false allegations, which we will get to later on, we believe that we are setting up circumstances in which mediation may not be successful.

That is not to say that we do not support the family relationship centres. We think that concept is a good one. We are concerned that, with the way this legislation has been formulated, most of the effort of those relationship centres will be put towards a system where the relationships have already fallen apart, whereas I understood that the concept of the family relationship centres in the first place was to try to help and foster relationships, not to deal with the end of a relationship. There is a substantial body of evidence that indicates that, unless mediation is handled extremely carefully, one of the partners—and I would hazard a guess that it would particularly be women—can feel that they have been in a situation in which they were not an equal in negotiations and their situations of violence or abuse were not acknowledged. During my speech in the second reading debate I read out quotes from people who had been involved in mediation in which they felt that they had not been able to express their concerns, that their concerns had not been heard and that it would have been better to have had a modified mediation process. Experts on domestic violence suggest that, in those circumstances, it may be better if there is a modified mediation process.

There has also been concern expressed that there will not be available sufficiently experienced counsellors and mediators to mediate in situations where there has been family abuse or domestic violence. Even to
recognise it, in many instances, takes specific skills. The concern was expressed in the committee hearing that there are not enough trained, experienced mediators in the current circumstances where people are required to do compulsory mediation to meet the need that is going to be created by compulsory dispute resolution. Amendment (7) adds the words:

A family dispute resolution practitioner must accept a sworn statement by a parent that violence or abuse has occurred as evidence of that violence or abuse.

This is so we get over the concept of people having to prove that they have been subjected to violence or domestic abuse.

What we are concerned about with the combination of the dispute resolution and the false allegations is that women will not come forward with their concerns about domestic violence and abuse. We believe that, if a person provides a sworn statement, that should be evidence enough that violence or abuse has occurred and they should therefore not have to go through compulsory dispute resolution. This expands the process of enabling exemption from compulsory mediation. The other amendment that we are proposing, amendment (6), inserts:

Despite references in this Act to genuine efforts to resolve a dispute, a family dispute resolution practitioner is authorised to certify that a dispute is not suitable for dispute resolution and no further action may then be taken in relation to the matter in accordance with this subdivision.

In other words, a practitioner should be able to say that a case is not suitable for mediation. We believe that that would deal with some of the very deep concerns that we have and that have been expressed about compulsory dispute resolution.

As I said, this is not to say that the Greens do not think mediation is a good thing. We do want to see the effort put in up front to deal with these problems through a much more conciliatory approach where resources are put in and people are dealing with trained, accredited mediators. Of course we want that, but we have to acknowledge that there are circumstances where that sort of mediation is not appropriate and will not work. Either partner may feel fear, and those cases are not appropriate for dispute resolution. There needs to be a mechanism—which is not contained in the current legislation—that enables them to not have to go to dispute resolution but to go through another process or to go straight to court.

Senator STOTT DESPOJA (South Australia) (10.10 pm)—The Democrats support amendment (6), which deals with authority being given to practitioners, as we do not believe the current exemptions in the bill cover all the circumstances where mediation may not be viable. In relation to amendment (7), I guess it is one mechanism of achieving that end. I accept it is a difficult and quite complex area, and I am not sure exactly what the answer is. Obviously, this is one mechanism, and it is an attempt to balance this and make it a little fairer. On those grounds, we will be supporting the amendments.

Senator LUDWIG (Queensland) (10.11 pm)—I have not been speaking on the Australian Greens amendments—not because I did not like them but because I did not think that I had much to add to the debate. However, on these amendments, what has prompted me is the Democrats’ support. I am curious about the proposed amendments for two reasons. If you look at the idea expressed in amendment (6)—and perhaps the government could reflect upon this as well—it looks like that has been picked up in the bill at page 14. At (aa) it says:

a certificate to the effect that the person did not attend family dispute resolution...
It seems to pick up the same issue that Senator Siewert and the Australian Greens are trying to encapsulate. It may not do exactly the same thing, but I think the spirit is being caught there and it would certainly meet our concerns. On that basis, we would not support the Greens amendment (6). It seems to have been dealt with sufficiently.

Amendment (7) is a bit more curious to me. It says:

A family dispute resolution practitioner must accept a sworn statement by a parent that violence or abuse has occurred as evidence of that violence or abuse.

There are a couple of wording problems. I assume when we talk about a ‘sworn statement’ it has to be signed and witnessed. This is not the court process we are talking about. You would expect evidence to be given in a court process, where that evidence would be heard viva voce or would be given under oath and then dealt with. In a family dispute resolution, it is more akin to mediation where the parties turn up and provide their statements or evidence.

But the reverse is the thing that really worries me. By implication, if a person does not turn up with a sworn statement by a parent that violence or abuse has occurred, is that then not evidence of that violence or abuse? That is what really worries me. Is it the case that it should not be accepted if a person has failed to provide the sworn statement—where one is not really necessary in this environment at this juncture? What would it mean if a person did not come with a sworn statement or they came with a statement but it was not sworn? Does that mean that the matter should not be evidence of that violence or abuse? I think it is narrowly cast in that instance and may lead to an outcome that is not fair to the parties, given that it is supposed to be a quick and reasonably less formal approach to get out of the court system. In this way, you are driving it back into a very court structured process. I will not take up any more time. I would be happy for you to explain it but, for the reasons outlined, we are not prepared to accept amendment (7).

Senator SIEWERT (Western Australia) (10.15 pm)—We are trying to find a mechanism whereby people who say they have been subjected to domestic violence or abuse can provide some form of statement that is listed in the legislation, so it can therefore be accepted by the mediation provider. I accept what you are saying about the reverse applying, Senator Ellison, but at the moment we are deeply concerned that people who have been subjected to domestic violence or abuse are going to find mediation very difficult. We believe the legislation at the moment is too narrow for exemptions, and we are attempting to widen the provision for mediation providers to say, ‘This should go straight to court because this person has been subjected to domestic violence or abuse.’

There may be circumstances where a person who has been subjected to domestic violence or abuse will not be prepared to sign a sworn statement because they are in fear; they may not take that action because they are scared. If there are trained mediators and facilitators provided in the family relationship centres then it may be that they pick this up. Then we would expect them to take action to say that the case is not appropriate for mediation. We were not intending that the reverse should apply—that, in circumstances where it is identified that a person might have been subjected to domestic violence or abuse and therefore their case is not appropriate for mediation, that person can then supply a certificate. Let me clarify: we do not want the reverse to apply but we are trying to broaden the provisions that are currently in the bill.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.17 pm)—The requirement in the bill that people wishing to apply to court for a parenting order must first attempt dispute resolution was the result of a bipartisan recommendation from Every picture tells a story. That is the background to it. Senator Ludwig has mentioned amendments introduced in the House that talk about the certificate concerned, and we have provided a means by which people can avoid being involved in dispute resolution if violence has occurred. That can be done by way of a certification, by a dispute resolution practitioner or by judicial proceedings where someone takes up the matter in pre-trial proceedings. I think that that is sufficient exception to the requirement for dispute resolution engagement, and I think that Senator Ludwig’s point is a good one—that if you have got a sworn statement then on the face of it you have got to accept that. What we are saying is that you leave it to the dispute resolution practitioner to determine the facts of the case. Again, you really cannot be too prescriptive in human affairs as to what may or may not take place. It is important to give those professional people the ability to assess it, make that determination and provide the certificate. I think that is the way to go. I think we do provide sufficient exception where there are cases of violence, and we do provide this in a number of ways—not just one. Therefore we oppose the Greens amendments.

Senator SIEWERT (Western Australia) (10.19 pm)—I have got concerns if, in a mediated circumstance, we are just leaving it up to the mediator to decide whether a person has been subjected to domestic violence or abuse feel that they are scared to tell their story when their ex-partner is in the room. They have felt: ... the violence was like a shadow in the room, so I could never talk about my wishes.

The article continues:

Many went ahead with mediation to try and find resolution—this is referring to women—with a man of whom they were fearful, rather than out of a desire to mediate for their own outcomes—a case of the best of few options. I wasn’t emotionally strong enough.

All women found the process of mediation extremely difficult. They felt unprepared for just how hard it was to mediate with their ex-partners. Neutrality is like saying your story doesn’t exist.

The point is that in some of these circumstances it is not appropriate that they enter into mediation in the first place and be in a situation where they are in front of the mediator and the mediator is making the decision. That is the point we are trying to make here: people should not have to go into a mediated situation where they are so fearful of their ex-partners that they are not prepared to say anything, where they will just go with the flow and where they feel like their story is not being heard. The issue with mediation is that the mediator is taking a neutral position. That can actually be disempowering for people who have been subjected to domestic violence. The point here is that it is not always appropriate to deal with it that way. That is why we are trying to put this amendment that says that where there is an instance of domestic violence the person should be able to put in a statement that claims that, so they are not put in a situation where they have to be in a room with their ex-partner and the mediator in the first place.

Question negatived.
The Democrats oppose item 11 of schedule 1 in the following terms:

This amendment seeks to omit section 60I, which introduces the regime of compulsory dispute resolution to apply prior to parents being able to go to court to seek a parenting order under part VII. Apart from what has been acknowledged and described as a somewhat paternalistic regime, the Democrats feel it is unnecessary to make this regime compulsory. By all means provide services to parents who would like to resolve things prior to events ending up in court, but do not force parents who feel court is an option—and it is the only option, in some cases, particularly in cases of high conflict—to mediate.

The regime, of course, does have some exceptions. I acknowledge that and we welcome them. But there has been no consideration for these exceptions in circumstances where people may be, say, part of a marginalised group in a community or cannot attend or access dispute resolution because of their particular situation or circumstances. We do not believe this regime has taken into account the needs of all families so, on the face of it, we are not impressed by it as it is currently composed. We do not believe that this section, 60I, should stand as printed.

Senator LUDWIG (Queensland) (10.26 pm)—I do not think it will come as any surprise that Labor does not agree with these amendments. Labor opposes this amendment, which removes the provisions of the bill requiring the parties to mediate disputes before applying for parenting orders, with limited exceptions. This is a matter I went through in some detail in my speech in the second reading debate. Labor supports these provisions in cases where separating couples have not been able to reach agreement on their own but are not so entrenched in their attitudes and disagreements as to require final orders from a court.

There is many a time that you can envisage circumstances where the parties may think they are so entrenched that only court will do but, having found themselves in mediation, they resolve the matters in dispute, which provides a better outcome. They then find that court was not the best outcome in truth. Cases involving what could be described as entrenched family conflict, especially cases involving violence, should not be forced into mediation. There is no argument about that. It seems quite clear. All of us agree that a formal, structured court environment is a far better place for those types of cases. Labor believes the critical issue here is in fact how this law is implemented and how it is going to be dealt with. Insofar as that is concerned, the opposition has said this on a number of occasions: we will be watching the government critically to see how they implement these family relationships centres—as well as the parts of this law more generally—to ensure that the outcomes that they promised do materialise.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.26 pm)—The government has outlined its position on the dispute resolution scheme well enough, I believe. Like the opposition, we will not be supporting this amendment.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that item 11 of schedule 1 stand as printed.

Question agreed to.

Senator LUDWIG (Queensland) (10.26 pm)—by leave—I move:

(6) Schedule 1, page 20 (after line 26), after item 16, insert:

16AA At the end of subsection 63C(1)
Add:
; and (d) the cooling-off period referred to in subsection (1AA) has expired.

16AB After subsection 63C(1)
Insert:

(1AA) A cooling-off period is a period of seven days after a parenting plan is made, revoked or varied during which either party may advise in writing that he or she does not wish to make, revoke or vary the parenting plan and accordingly, the parenting plan is not made, revoked or varied, as the case may be.

(7) Schedule 1, page 21 (after line 36), after item 17, insert:

17A Section 63D
Repeal the section, substitute:

63D Parenting plan may be varied or revoked by further written agreement

(1) A parenting plan may be varied or revoked by agreement in writing between the parties to the plan.

(2) Any variation or revocation under subsection (1) takes effect after the cooling-off period has expired.

Labor proposes a cooling-off period of seven days for parenting plans. Parenting plans are simple agreements reached between parents on how they will share parenting responsibilities and parenting time or other issues relating to the care of their children. Under this bill, these plans will have an increased status. They will be able to amend the content of parenting orders, and penalties will flow for breaches of plans. Labor has supported an increased status for parenting plans as part of a package of reforms aimed at encouraging agreements out of court rather than through litigation.

However, if parenting plans are to have a new status, they should also have new safeguards. We need to be certain that parenting plans reflect genuine meetings of mind between parents. We have already persuaded the government to insert a provision that would require parenting plans to be made free from coercion, threat and duress—and I must say that was a welcome position to gain from the government. But it was a bare minimum protection. It was not enough. The government could go further.

We picked up the idea of a cooling-off period from the House of Representatives Standing Committee on Legal and Constitutional Affairs. On many issues, the government has made a big deal of accepting the recommendations of that committee but not this one. I am interested to hear from the minister as to why not this one. In our view, a cooling-off period would be a valuable protection against people being bullied, cajoled or rushed into a parenting plan. I have to say that the concept is not new and has been reflected in other places for other reasons, but it is a sensible way for people to be able to draw breath, especially as in this area there is no requirement to receive legal advice before entering a plan.

Aside from providing this level of protection, a cooling-off period should also contribute to improved compliance with parenting plans. As you can readily grasp, if there were not a cooling-off period and one parent immediately regretted a plan, the chances of noncompliance would have to be higher. It certainly would make sense, with all the expense, stress and frustration that noncompliance generates, to have a cooling-off period. It is also a secondary way of reinforcing the point. If you have allowed the cooling-off period to expire, then, even if you are not completely satisfied with it, you have allowed your options to lapse and are more likely, I think, to then stick with the plan.

It should be kept in mind that this would not in any way weaken parenting plans. It does not affect the plans. It does not allow them to be voided or amended unilaterally on
a whim. It simply allows a cooling-off period of seven days. That is a very short time in the context of dealing with the period of the rest of your life in which you are going to share a loving relationship with your child—or at least the period until your responsibilities as a parent change somewhat, and you develop a different kind of relationship with your child.

These are not decisions that should be made lightly. They are serious and they do have profound consequences affecting the most important things in people’s lives—their children. As I have said, this is a straightforward, commonsense amendment that had the support of all the coalition members on the House of Representatives Standing Committee on Legal and Constitutional Affairs. I am surprised, in truth, that the government will not pick this up. This is not even an amendment that detracts from the way they say the bill should operate. It just allows parties to have that short pause as a cooling-off period before the parenting plan commences. I commend the amendment to the chamber.

Senator STOTT DESPOJA (South Australia) (10.32 pm)—I will be brief, because my immediate parenting plan is to be home by the time the babysitter runs out at midnight! I want to make very clear the Democrats’ support for this amendment. It is a sensible, logical amendment. It has the support of a number of parties. It has arisen out of committee discussions and indeed recommendations. It is a value-adding amendment—a seven-day cooling-off period for parents entering into a parenting agreement.

We believe it is highly likely that we will find examples of parents being disadvantaged in the negotiating process. Surely the addition of some time to consider the agreement they have made is a beneficial inclusion to this legislation. Protection for parents is important—and I might add that the Democrats’ next amendment on the running sheet is also designed to protect parents when forming agreements outside the courts. The Democrats will be supporting these amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.33 pm)—The government considered this carefully. It is true that we have accepted many of the recommendations of the committee, but in this case the government was of a view that the change was unnecessary, given that the agreements concerned are not legally enforceable. The government certainly believes that parents are capable of making their own agreements without regulatory interference, and the bill also provides, as an added safeguard, that parenting plans must be free from threat, duress or coercion.

It should also be noted that, in exceptional circumstances, a court can issue orders that are not subject to alteration by subsequent parenting plans. Exceptional circumstances are stated to include circumstances in which there is substantial evidence that one party is likely to apply duress or coercion against the other parent in seeking to secure a parenting plan. So we cover off on that aspect that was mentioned by Senator Ludwig in relation to bullying or standover tactics. Also, in relation to the fact that these agreements are non-enforceable, I think that we are looking at a situation where really the parents, the parties themselves, are the best people to work out what is best in the circumstances. The government believes that this would just add further regulation, which in the circumstances is not necessary. This does differ from the recommendations made by the parliamentary committee, which in many respects we agreed with—but in this case we did not.

Question negatived.
Senator STOTT DESPOJA (South Australia) (10.35 pm)—by leave—I move Democrats amendments (20) and (21):

(20) Schedule 1, item 25, page 26 (line 18), at the end of paragraph 64D(1)(b), add “provided the child’s parents and other persons to whom the parenting order applies can show that they have obtained independent written legal advice prior to signing the parenting plan”.

(21) Schedule 1, item 25, page 26 (line 19), omit “in exceptional circumstances”.

These amendments operate as checks in the process of developing parenting plans. We are attempting to ensure that these agreements are properly checked. We believe that proposed section 64D will effectively terminate prior parenting orders and we think that the risks posed by this are quite significant. We want to prevent parents from being pressured into an arrangement by another parent, especially in a situation where there is no scrutiny by a court. We believe that it is particularly important that parents are fully informed of their legal rights and of course their liabilities under these orders.

We think these amendments will actually increase protection for parents in negotiations. As I referred to in my earlier remarks, we are keen to ensure that there are protections built in for parents. We are also removing the words ‘in exceptional circumstances’ from proposed section 64D(2), so that a court will have unfettered discretion to ensure that its order cannot be overridden by a subsequent parenting plan. I commend the amendments to the chamber.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.36 pm)—The government opposes these two amendments. Just briefly, I will go through the reasons for that. Parenting plans are an important mechanism for parents to come to an agreement on their own, and I have already outlined that. A new provision in the bill inserts a default provision into parenting orders that they will be subject to any subsequent parenting plan. This is to allow a parent to agree to changes in how orders apply to them as the needs of their children change, without having to go back to court. That, we believe, is a very important aspect of this.

The Democrat amendment would defeat the purpose of this provision, which is to give people the opportunity to change their arrangements without having to use the court or the legal system. Parenting plans are voluntary agreements and parents can choose to go back to court if they need to. The other aspect dealt with the removal of the words ‘exceptional circumstance’. The bill inserts a default provision into parenting orders so that they will be subject to any subsequent parenting plan. As I said, this is to allow parents to agree to changes in how orders apply to them as the needs of their children change, without having to go back to court.

The bill includes the discretion for the court not to include the default provision in the parenting order in exceptional circumstances. This implements recommendation 34 of the House of Representatives Legal and Constitutional Affairs Committee report. It ensures that when changes in circumstances lead parents to negotiate an appropriate alteration of arrangements in relation to the child, they are not required to return to court in order to implement that alteration. The court will be able to use this discretion where it has concerns that a later parenting plan would be unlikely to be made in the best interests of the child.

The bill provides that ‘exceptional’ is to include circumstances where the court considers that there is a need to protect the child from physical or psychological harm or from being subjected to or exposed to abuse, neglect or family violence or there is substantial evidence that one parent is likely to seek
to coerce or use duress to gain the agreement of the other parent. This ensures that it is clear that the term ‘exceptional’ covers circumstances where there is a concern about the risks to the child where there is a risk the parent could seek to avoid parenting orders being enforceable by pressuring the other party to agree to a parenting plan. This of course was a concern that was mentioned by Senator Ludwig. We believe that these two amendments are inappropriate and we believe that what is in the bill is sufficient. The parties, the parents themselves, are the best people to come to an agreement as to what is best.

The TEMPORARY CHAIRMAN (Senator Brandis)—The question is that Australian Democrat amendments (20) and (21) be agreed to.

Question negatived.

Senator STOTT DESPOJA (South Australia) (10.39 pm)—I want to make a point but I will not speak too long on it. I would like to acknowledge not simply the lateness of the hour but also the fact that the Senate this week has sat comparatively late every night. I want to make it clear, once again, that this year has a very small number of Senate sitting weeks for a non-election year. Some of the legislation we have dealt with in relative haste this week and in particular today, such as the telecommunications interceptions law and indeed this legislation—fundamental, significant, quite comprehensive law—could have been dealt with in a more timely and considered fashion and at a more reasonable hour of the day.

The Democrats have made it clear that we are more than happy to sit more often as opposed to sitting longer hours and through the night. I am not sure whether this is a deliberate process whereby we operate as a sausage factory and ram the legislation through and feel concerned and constrained when it comes to holding divisions and proper debates. I am not sure whether that is the intention or simply that people, understandably sometimes, want more time in their electorate. At times this is farcical and tonight it is very annoying.

The Democrats oppose schedule 1 in the following terms:

(24) Schedule 1, item 41, page 32 (lines 13 to 22), TO BE OPPOSED.

This amendment follows recommendation 7 in the chair’s report of the Senate Legal and Constitutional Legislation Committee inquiry into this bill. This is another important matter. I said earlier that it was pretty much a line in the sand. This is an amendment that a number of us feel very strongly about. This amendment opposes the introduction of section 117AB, the provision allowing for the award of costs where a false allegation or statement in proceedings is proven.

We have said on record previously—in the second reading debate and in the committee stage—and I say it again now: we fear that the effect of this provision would be further promoting the existing problem of underreporting of family violence or criminal assault in the home. It increases the potential for violence and abuse and we are not convinced that there is a valid reason for the inclusion of this in the bill. I am not sure what arguments the government wants to put forward, but I want to again remind the Senate that the chair’s report of the Senate Legal and Constitutional inquiry was signed off by both major parties. This is a recommendation that, as I understand it, has support from government backbenchers and obviously the Australian Labor Party. I note that the opposition’s amendment is identical to the Australian Democrat amendment.

I hope that item 41 will be opposed, that it will not stand as printed. I urge members of the parliament, including those backbenchers
who were members of the committee and have, no doubt, felt strongly about this issue and made it clear in the report of the Legal and Constitutional Committee, to consider this position very carefully.

Once again we are back to the core issue in this debate, certainly the core issue for me, which is the issue of violence and abuse. This goes to the very heart of issues such as underreporting and the potential for violence and abuse in the home through this court order for false allegations or the insistence of the award of costs. I urge the Senate to think carefully. I indicate that this will be my only other division—my third division of the day, despite the fact I have put forward a number of amendments on a number of bills this evening and during the day. This is another one on which I ask the Senate to divide if there are other voices.

The TEMPORARY CHAIRMAN—Senator Ludwig, opposition amendment (12) is identical to the amendment just moved by Senator Stott Despoja. You could withdraw your amendment and we can simply debate Senator Stott Despoja’s amendment.

Senator LUDWIG (Queensland) (10.44 pm)—I am happy to do that. I seek leave to withdraw opposition amendment (12).

Leave granted.

The TEMPORARY CHAIRMAN—Senator Ludwig, do you wish to speak to the amendment?

Senator LUDWIG—I do, thank you. The amendment would remove the provisions of the bill that would allow costs to be awarded against people who make false allegations. Labor is sympathetic to those people who are falsely accused of violence or abuse against their ex-partners or their children. It must be truly devastating in the extreme to be accused of such a thing. However, we do need to be careful not to erect disincentives to people reporting family violence. The evidence received by both the House and Senate committees was that underreporting of violence is a much bigger problem in Australia than false allegations. If violence is an issue, it is something the Family Court must know about. It is central to the best interests of the child. What we must avoid, though, is a situation in which people do not raise genuine allegations of violence because they are worried that they will face cost penalties if the court does not believe them. That would be dreadful.

This is clearly a tricky issue. It is difficult to get the right balance between discouraging false allegations and not discouraging genuine allegations. Labor’s view is that the whole issue should be considered after the Australian Institute of Family Studies has completed its study of the interaction of violence and family law. That way, we will be in a position to work from some real data, rather than mere anecdotes and accusations.

The government has previously taken the arrogant attitude that it should make the law first and review it later. It seems to me that that is a theme of this government. However, we are pleased that the government senators on the Senate committee have agreed with our position. Hopefully the government will now see how untenable its position is. Now that Senator Payne and her colleagues have reached the same conclusion as Labor, I look forward to the government’s response. I look forward to the government—for once—moving to agree to a genuine amendment that comes from the crossbenches and Labor.

There are also a couple of areas on which I would like to seek the government’s view. They turn around the role of the mediator in this whole affair. If an allegation of violence is brought to a mediator, how does the mediator deal with it? Does the mediator report it? Does the mediator then have to judge it and provide evidence to the court? If a per-
son turns up for a certificate and says that they have been the victim of violence, does the mediator have to determine whether the allegation has truth in it or is false, and then report it as such? If they put it in their certificate and hand it to the court, what does the court then make of that? Does it say, ‘There has been a certificate from the mediator that says that there has been an unsubstantiated allegation from one of the parties,’ and therefore take it into consideration and penalise the party accordingly? Can you then effectively be penalised for what you have said and done in the mediation?

That is of great concern to Labor because, if it is so, you are not going to get the parties to go to mediation with all the information that they have. They will be guarded because they will be concerned that they will get there, they will say something and it will not be substantiated or the mediator will not think it is substantiated. The mediator might take an opening statement but then report it. The court looks at it, having received it from the mediator, and says: ‘There has been a false allegation made; costs can follow.’ It would be helpful if the government would clarify how the mediator would deal with those sorts of circumstances.

Senator SIEWERT (Western Australia) (10.49 pm)—The Greens strongly support this amendment, and I also raised concerns in my speech during the second reading debate. There is no doubt that there has been a concerted campaign aimed at all the information of the concept that there is a huge number of false allegations of abuse and that this is a bigger problem than the unreported and unrecognised abuse. It is acknowledged that there is a huge issue of unreported and unrecognised abuse and that violence orders are being abused as a legal tactic. There is no doubt that there has been a campaign around this.

We are deeply concerned that this clause will discourage people from making allegations of abuse and raising the issues of family violence and abuse. We are deeply concerned that it does not seem like there has been much rebuttal of the argument that there is a huge number of false allegations out there that have been put up to deny fathers. Let us name it: that is what the fathers groups are saying. They say that these false allegations are being raised to deny them access when, in fact, the research does not substantiate this at all. As I said, I have seen very little evidence that people have taken the trouble to put paid to these allegations. The research simply does not support that there is a whole range of false claims out there. I will take you to another study, by Michael Flood of the Australian Research Centre in Sex, Health and Society at La Trobe University. He says:

These examinations find that allegations rarely are made for tactical advantage, false allegations are rare, the child abuse often takes place in families where there is also domestic violence, and such allegations rarely result in the denial of parental contact.

He also goes on to say:

When fathers are subject to allegations of abuse, their chances of being denied contact with children are remote even if these allegations are substantiated, and the numbers of parents falsely accused of child abuse are tiny compared to the numbers of children who are being abused and about whom the Family Court never hears ...

It has been raised that false allegations are being raised to deny fathers contact, when the evidence from the Family Court shows that this is not true. It is not true (a) that false allegations are being made all over the place—the number is in fact tiny—or (b) that false allegations are being made to deny fathers contact. The evidence shows that, even when the allegations are substantiated, fathers are not denied contact.
However, the amendment is going to discourage people from making allegations in the first place, so we are going to get even more cases of unreported and unrecognised abuse and family violence. This is of extreme concern for us. It is pandering to the claim of false allegations, which has not been substantiated. Nor, if people do make allegations and they are substantiated, is contact denied. This clause is unnecessary because I do not believe the case for false allegations has been built. The impact it will have is to discourage women from making claims in the first place, which will lead to more unreported and unrecognised abuse and family violence. It is not going to have the impact that the government supposedly requires by supposedly getting rid of this huge number of false allegations, but it will have a deleterious impact on women and children. Combined with some of the other amendments that we have already talked about, this will potentially lead to more children being put in situations where they are exposed to further abuse and family violence.

We do not think this amendment is needed. As I said, we think it will have a deleterious impact. We believe that this issue was discussed quite well in the committee hearing. A recommendation was made by the committee. It was one of the few recommendations that I felt very strongly that the Greens could support, yet the government have ignored it. I strongly ask them to reconsider and to look at the evidence, because the evidence is not there. I put it to you that there is a pandering going on to be seen to be doing something about this when there is no issue in the first place. There is no issue that needs to be dealt with here—none—yet it will have an impact on women and children. It is not in the best interests of children, and I request that the government reconsider this and withdraw this particular amendment to the act.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.54 pm)—We are debating Democrat amendment (24) and opposition amendment (12). I think there are some misunderstandings here, and I will correct those. I refer to clause 117AB. It states:

Costs where false allegation or statement made
(1) This section applies if:
(a) proceedings under this Act are brought before a court; and
(b) the court is satisfied that a party to the proceedings knowingly made a false allegation or statement in the proceedings.
(2) The court must order that party to pay some or all of the costs of another party, or other parties, to the proceedings.

That is very clear. It is not an allegation which is made anywhere other than in proceedings brought before a court. So we at least have that clarified. It is not a statement made in the street. It is not a passing comment. It is a statement made in proceedings before a court—and that is what makes this all the more serious. If anyone is trying to play down the act of perjury then they should think again. Senator Siewert says, ‘You know, it doesn’t happen that often.’ I can tell you that one act of perjury is one act too many, because justice in this country and in any decent civilised society is based on truthful evidence. There can be no condoning of any false statement made before a court. We are not just talking about allegations of violence, which everyone is so taken with. I agree that that is important, but we are also talking about false statements. It could be a false denial. It could be a false statement about the other party, which is indeed deleterious in the extreme, but it may not relate to violence. I ask those opposite whether they have really thought about this carefully, because we are talking about a knowingly false statement or allegation—and we inserted ‘knowingly’ deliberately, because we were
not just talking about something that was in passing, an error or a faulty recollection; we were talking about someone who sets out to make a false statement and does so deliberately in a court of law.

Senator Ludwig asked, ‘How’s this investigated?’ It is in the court. The court is seized of the facts in the hearing before it, and the court deals with it accordingly. There are a number of ways a court could do that. If perjury is made out or the court feels it is made out, it can refer the papers to the police. But courts have been making orders for costs on the basis of proceedings being determined one way or the other for a long time, and in making that determination the courts have relied on the veracity of witnesses. That has been part and parcel of our legal system for a very long time indeed. It is certainly a very important provision.

This is about a false statement which is knowingly made in a court of law. If you do not think that should attract an order for costs then I really despair. Quite frankly, if someone lies in a court proceeding and perjury cannot be made out but the court is satisfied that a knowingly false statement has been made then costs should follow. Let us not get preoccupied with how many false allegations of violence are made. Let us look at the principle that is involved here, and that is that a knowingly false statement has been made in a court of law in this country. That should attract condign punishment if it can be made out in a criminal jurisdiction, but, if it is made out only to the satisfaction of the court, the court should be entitled to take appropriate action—and in this case an order for costs should follow.

Senator STOTT DESPOJA (South Australia) (10.59 pm)—I want to make very clear—and I am sure that I speak for others on the crossbench and all in this chamber—when I say that no-one is condoning false allegations. My understanding of the effect of these amendments is that this in no way goes to exempt perjury, let perjurers off the hook or fail in the sense that perjury cannot be established or you cannot have a debate or your day in court in relation to a false allegation. No-one is suggesting that there are not repercussions in that respect and that people do not have the opportunity to challenge in some way or, indeed, deal with through the courts or otherwise the issue of perjury or of false allegation.

There is an aspect to this particular provision in this legislation that we fear has a deterrent effect in relation to the reporting of family violence. Now this is not just some fringe group or non-mainstream perspective; this is something that was backed up by a number of submissions and evidence and, indeed, signed off on in a committee report that had cross-party support. Clearly it set alarm bells ringing for a number of members of this parliament—a number of senators, backbenchers, people from all political parties—as well as some of those representative and key groups who understand and deal with on a day-to-day basis not just some of the court and the legal issues but some of the issues in relation to family violence and family break-ups et cetera.

This is a serious provision, to which Senator Ludwig has offered one solution, which is to go back to the drawing board, wait for the review. At least have some understanding of the impact of this provision before you pursue it in the chamber tonight, before this is rammed through in a way that has little regard for the potential deterrent in terms of reporting violence that so many people are concerned that it may have. One act of violence is one act too many. We have to ensure that the provisions in this legislation are not preventing people from reporting acts of violence. This is one provision that people are broadly worried about—there is wide con-
cern about this particular provision. The Australian Democrat amendment will remove these provisions and in the meantime will enable review, as Senator Ludwig and others have suggested, and it will prevent any deleterious effect that this provision may have.

I would have thought that this would be a sensible solution, at least in the interim, for the government, given that the consequences of this could be so negative. To me it makes sense to wait for the Institute of Family Studies review or to at least investigate this particular clause in some more detail and to listen to the views of the backbenchers—the cross-party backbenchers who, through the Senate Legal and Constitutional Legislation Committee, expressed their concern and came up with the recommendation that this should be removed. Mr Temporary Chairman, I have made clear that this is the second area and the final area I would like to divide on if the voices are there, but I will not comment on this section any further.

Senator LUDWIG (Queensland) (11.03 pm)—I do not want to delay the proceedings too long tonight, but I want to follow up the minister’s answer to my question about mediation and court proceedings. Is the certificate part of the proceedings and, if the certificate were to include grounds that raised the issue of allegations of violence, would that then form part of the proceedings?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.03 pm)—The answer is that it is not in the court, as the section says. They are pre-trial proceedings, they are mediation proceedings and they do not form part of the proposed section.

Question put:
That schedule 1, item 41, stand as printed.
The committee divided. [11.08 pm]
(The Chairman—Senator JJ Hogg)

Ayes............ 22
Noes............ 24
Majority........ 2

AYES
Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Chapman, H.G.P.
Colbeck, R. Ferguson, A.B.
Ferris, J.M. Fierravanti-Wells, C.
Fifield, M.P. Heffernan, W.
Humphries, G. Mason, B.J.
Nash, F. Parry, S.
Ronaldson, M. Santoro, S.
Scullion, N.G. * Troeth, J.M.
Trood, R. Watson, J.O.W.

NOES
Bartlett, A.J.J. Bishop, T.M.
Campbell, G. Conroy, S.M.
Evans, C.V. Faulkner, J.P.
Hogg, J.J. Hurley, A.
Kirk, L. * Ludwig, J.W.
Lundy, K.A. Marshall, G.
McEwen, A. Milne, C.
Moore, C. Noone, A.
Ray, R.F. Siewert, R.
Stott Despoja, N. Webber, R.
Wong, P. Wortley, D.

PAIRS
Calvert, P.H. Forshaw, M.G.
Campbell, I.G. Allison, L.F.
Coonan, H.L. Murray, A.J.M.
Eggleston, A. O’Brien, K.W.K.
Ellison, C.M. Hutchins, S.P.
Joyce, B. Brown, B.J.
Lightfoot, P.R. Brown, C.L.
Macdonald, I. Carr, K.J.
Minchin, N.H. Crossin, P.M.
Payne, M.A. Nettle, K.
Johnston, D. Stephens, U.

* denotes teller

Senator McLucas did not vote, to compensate for the vacancy caused by the resignation of Senator Hill.

Question negatived.
Senator FERGUSON (South Australia)—(11.12 pm)—I seek leave for the motion to be put again.

Leave granted.

The CHAIRMAN—I will put the motion again. The question is that schedule 1, item 41, stand as printed.

Question put.

The committee divided. [11.17 pm]

(The Chairman—Senator JJ Hogg)

Ayes…………… 25
Noes…………… 22
Majority……… 3

AYES

Abetz, E. Adams, J.
Barnett, G. Boswell, R.L.D.
Brandis, G.H. Chapman, H.G.P.
Colbeck, R. Ferguson, A.B.
Ferris, J.M. Fierravanti-Wells, C.
Fitfield, M.P. Heffernan, W.
Humphries, G. Macdonald, J.A.L.
Mason, B.J. McGauran, J.J.J.
Nash, F. Parry, S.
Patterson, K.C. Ronaldson, M.
Santoro, S. Scullion, N.G. *
Troeth, J.M. Trood, R.
Watson, J.O.W.

NOES

Bartlett, A.J.J. Bishop, T.M.
Campbell, G. Conroy, S.M.
Evans, C.V. Faulkner, J.P.
Hogg, J.J. Hurley, A.
Kirk, L. * Ludwig, J.W.
Landy, K.A. McEwen, A.
Milne, C. Polley, H.
Ray, R.F. Sherry, N.J.
Siewert, R. Sterle, G.
Stott Despoja, N. Webber, R.
Wong, P. Wortley, D.

PAIRS

Calvert, P.H. Calvert, P.H.
Campbell, I.G. Campbell, I.G.
Coonan, H.L. Coonan, H.L.
Eggleston, A. Eggleston, A.
Ellison, C.M. Ellison, C.M.

Johnston, D. Stephens, U.
Joyce, B. Brown, B.J.
Kemp, C.R. Marshall, G.
Lightfoot, P.R. Brown, C.L.
Macdonald, I. Carr, K.J.
Minchin, N.H. Crossin, P.M.
Payne, M.A. Nettle, K.
Vanstone, A.E. Moore, C.

* denotes teller

Senator McLucas did not vote, to compensate for the vacancy caused by the resignation of Senator Hill.

Question agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.19 pm)—by leave—I move government amendments (1) to (5):

(1) Schedule 1, item 3, page 4 (after line 22), at the end of the definition of family violence, add:

Note: A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety.

(2) Schedule 1, item 43, page 33 (lines 11 to 17), omit subitems (1) and (2), substitute:

(1) Section 60CC of the new Act applies to orders made on or after commencement.

(2) The amendments made by items 13, 29 and 30 of this Schedule apply to parenting orders made on or after commencement.

(3) Schedule 1, item 43, page 33 (lines 26 and 27), omit subitem (6), substitute:

(6) The amendment made by item 22 of this Schedule applies to parenting orders made on or after commencement.

(4) Schedule 1, item 43, page 34 (lines 1 to 3), omit subitem (8), substitute:
(8) Sections 65DAA, 65DAB, 65DAC and 65DAE of the new Act apply to parenting orders made on or after commencement.

(5) Schedule 1, Part 2, page 34 (after line 7), at the end of the Part, add:

44 Grounds for discharging or varying parenting orders

The amendments made by this Schedule are taken not to constitute changed circumstances that would justify making an order to discharge or vary, or to suspend or revive the operation of, some or all of a parenting order that was made before commencement.

Note: For the need for changed circumstances, see Rice and Asplund (1979) FLC 90-725.

A vote may well want to be taken separately on each of these, I do not know, but I will deal with the government amendments (1) to (5) because they can be dealt with adequately together. Government amendment (1) deals with the definition of family violence. It adds a note to the definition of family violence to clarify that the test to determine reasonableness of a fear or apprehension of violence takes into account the circumstances of the person who is relying on the reasonable fear or apprehension of violence. I canvassed this earlier at some length in general debate on the definition of family violence and I will not go further than that, other than to say that this recommendation implements recommendation 5 of the report of the Senate Legal and Constitutional Legislation Committee.

Government amendments (2) to (4) relate to timing of the bill. These address concerns that the bill would not apply to court applications made prior to the commencement of the bill. Originally we had intended that the bill would only relate to new cases brought after the legislation took effect. This was, of course, an issue because there were people involved in current litigation who said, ‘Why can’t we have the benefit of the new legislation?’ Recommendation 10 of the report of the Senate Legal and Constitutional Legislation Committee recommended that there be an analysis:

... of the cost implications on current litigants, future litigants and the courts on maintaining two regimes for a period of three years for the determination of Part VII applications.

What it was getting at, of course, was that you would have this ongoing effect of the two regimes, if you like.

These government amendments provide that the key provisions in schedule 1, which change the way the courts approached parenting orders, will apply to all parenting orders made on or after commencement regardless of whether the proceedings were initiated before commencement or not. I think these amendments strike the appropriate balance between ensuring uniformity and not unduly disadvantaging existing litigants. The period between passage of the bill and commencement by proclamation will mean that existing litigants will have appropriate notice of the changes to the litigation prior to commencement. I think that is a fairly beneficial amendment to the bill.

Government amendment (5)—and I might stress that the Family Court has asked for this—clarifies the government’s intention that schedule 1 of the bill is not to operate so as to allow previously resolved parenting orders to be reconsidered purely on the basis of changes to the legislation. The case of Rice v Asplund clearly limits the court’s capacity to re hear matters to cases where there is a significant change in the circumstances of the parties or a significant matter that was not previously considered.

Of course, that is reasonable. One would not want to have court orders changed willy-nilly. But what we want to do is put beyond doubt that the changes to the Family Law Act 1975 brought by this bill do not consti-
tute such a significant change in circumstances as would require a rehearing of the matter. I think this is a very important amendment. We do not want hundreds of people applying to change orders just because of the change in legislation. It will mean that the change in legislation will not constitute a significant change. That is something which I believe reflects commonsense.

They are the five amendments that the government seeks to move. They are on three different aspects. Government amendment (1) is on the definition of family violence. Government amendments (2) to (4) are on the timing of the bill. Government amendment (5) is on the fact that this change in legislation will not be a significant change such as to found a basis for applications to vary orders. I commend the amendments.

Senator LUDWIG (Queensland) (11.24 pm)—We support amendments (2) to (4) and amendment (5). I will not go to those in any detail. Amendment (1) tries but in truth fails to implement one of the recommendations of the Senate legislation committee. The amendment tries to address one of the criticisms of an objective test—namely, that it does not allow the court to consider the subjective circumstances of the victim, such as a history of abuse that might make that person more likely to apprehend fear in circumstances in which the reasonable person might not.

Labor is not convinced that this government amendment is a real solution to the problem. Firstly, these interpretive notes are not binding on courts. Secondly, and more importantly, there is ambiguity in what it means to take into account particular circumstances—for example, do those circumstances just involve the history of the particular relationship or is the court allowed to consider a history of abuse at the hands of former partners or other family members? It is not hard to appreciate that a person in the latter category might be more disposed to feel afraid than the reasonable person in a similar particular circumstance.

The problem with an objective test is that it involves judges making decisions about what level of fear is or is not reasonable. Judges must find it impossible to empathise with the particular circumstances of each of the many and varied cases they see. This is why, as we have said, we want the whole issue considered by the AIFS so we can see what recommendations they can make.

In fact, we have been advised that this amendment could even make matters worse, constraining even further the court’s ability to put itself in the shoes of the individual, to use the Senate committee’s phrase. We are advised that the use of the phrase ‘particular circumstances’ could draw the court’s attention to only the circumstances existing at that point in time. We are also advised that the phrase ‘reasonable person’ is even more restrictive than ‘reasonable fear’, which is the terminology of the substantive provision. According to that advice, the former allows less and not more consideration of the experiences and feelings of the individual.

Given these concerns, we will oppose this amendment. We cannot accept the risk that it could reduce the ability of the court to deal with family violence even more than the current bill. As we argued on the proposed substantive provisions and on the Democrat amendment, we believe that it is inappropriate to be making policy on the run on this important definition. It may seem minor and technical, but it is actually a crucial definition for the operation of the family law system, especially the way it responds to the difficult issues of family violence.

The issue is not critical to the reforms we are considering. The government knows and understands that. We say: let us stop tinker-
ing. Let the AIFS study it and let us have a serious look at these recommendations before making any changes to the form of this definition. The government knows that it is tinkering to try to explain its position away. I think it has failed and should just give up.

Senator SIEWERT (Western Australia) (11.28 pm)—The Australian Greens share the concerns that Senator Ludwig just expressed, so I am not going to go through them again other than to say that we share those concerns and therefore oppose this amendment. I do seek some clarification, however. I am hoping that the minister can perhaps put it on record—that is what I am looking for. During the committee hearing it was expressed by witnesses that they were concerned that this would place a new, enormous workload on the Family Court because people would seek to bring past cases. It was very clearly stated by the department that in fact it does not apply to past cases. I think it would be a good idea to send a pretty strong message about that point because, judging by the number of emails that I have received, I think there are some people out there labouring under the misconception that they will be able to take past cases back to Family Court under this new legislation. I think it would be worth clarifying that point now so that it is on the Hansard.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.29 pm)—The Family Court has requested this very amendment—that is, amendment (5)—to address the situation that Senator Siewert has mentioned. As I said, we do not want hundreds of people trying to overturn past cases because of the change in the legislation. This amendment will ensure that does not happen. In view of what Senator Ludwig said, Mr Temporary Chairman, perhaps we can put government amendment (1), then amendments (2) and (4) together, followed by (5), as three separate votes.

The TEMPORARY CHAIRMAN (Senator Ferguson)—I am getting that message, Minister. With the concurrence of the Senate, I will put government amendment (1) first.

Senator STOTT DESPOJA (South Australia) (11.30 pm)—That is an agreeable process, but I still want the opportunity to address the amendments cognitively if I could.

The TEMPORARY CHAIRMAN—Yes, please do. Go ahead.

Senator STOTT DESPOJA—Senator Siewert may have some more questions, but I will start with government amendment (5). The Democrats agree with the government’s amendment to alter the application of these amendments in schedule 1. We acknowledge these amendments are an attempt to clarify the bill with the aim of preventing further litigation based on the changes in the bill. We agree with the clarification that the changes in the bill will not constitute changed circumstances that will justify the making of a new order when one is already in place, so we support that.

We will not support government amendment (1). The note that is proposed to be added to the definition of family violence by government amendment (1) will not give effect to the recommendation made in the Senate committee report that the test should be the reasonable person in the shoes of the individual. The reference to the note to being fearful about safety in particular circumstances if a reasonable person in those circumstances would be fearful would tend to draw a court’s attention only to the particular circumstances existing at a point in time. The use of the phrase ‘reasonable person’ is also likely to take attention away from the person’s reasonable fear and lead to the construction of a reasonable person that imports societal misconceptions about family violence. We actually think that the note makes
this worse and we believe it would be preferable for the Senate to remove it.

On government amendments (2) through to (5), we understand that the government’s intention is to give people the opportunity to avail themselves of the new laws with great haste. However, consistent with our opposition to the government’s introduction of those provisions, we oppose the application of those provisions to parenting orders that have not yet been made but have been applied for. We will oppose government amendments (2), (3) and (4) and are happy to for you, Mr Temporary Chairman, to proceed as suggested in terms of how you put those amendments to the vote.

The TEMPORARY CHAIRMAN—In the absence of further argument, I will move to put the questions. The question is that government amendment (1) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is now that government amendments (2) to (4) be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is now that government amendment (5) be agreed to.

Question agreed to.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.33 pm)—At the request of Senator Fielding, I move Family First amendment (1) on sheet 4865:

(1) Page 3, after line 11, after clause 3, add:

(2) The review required by subsection (1) is to be completed within 6 months of commencement.

(3) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 5 sitting days of that House after the day on which the Minister receives the report.

I also seek leave for a statement from Senator Fielding in relation to this amendment to be incorporated in Hansard.

Leave granted.

Senator FIELDING (Victoria—Leader of the Family First Party) (11.34 pm)—The incorporated speech read as follows:

This amendment is to ensure there is a review of the operation of the Act, two years after proclamation of these amendments, to establish whether the legislation has been effective. Many community groups do not think this legislation will be effective and a review would address those concerns.

The origins of this Bill date almost three years, to June 2003, when the Prime Minister announced a parliamentary inquiry into the issue. Many groups and individuals invested great time and expertise into that inquiry, and the subsequent inquiries, to see this Bill debated today. They want equal parenting time as the norm. If the Bill does not work, they want some assurance they will not have to wait many more years until there can be another attempt to fix the problem. A review after two years allows enough time to see how the legislation operates, but not so much that we will be waiting an inordinate amount of time for problems to be addressed.

I ask Senators for their support for the amendment.

Senator STOTT DESPOJA (South Australia) (11.34 pm)—I am happy to grant leave for Senator Fielding, particularly under the circumstances. As I have discussed formally and informally with other people in the chamber, I seek leave to incorporate my response to Senator Fielding’s amendments. If
leave is not granted, that is okay; I will stand up and have a rave, but I wish to incorporate my comments on Family First amendments (1) to (10).

Leave granted.

The response read as follows:

(1)
The Democrats support the need for a review of this legislation. That is why we introduced a review provision.

We recognise Senator Fielding’s intention but we think the review is limited.

The Democrats primary criticism of this review proposal is that it is to be conducted by the Minister. The Democrats position is that this review should be independent.

However a Ministerial review is arguably better than no review so we support the amendment.

(2) to (6)
The Democrats are unsure as to the appropriateness of Family First amendment (2)—or the need for it.

We have concerns about how or whether it would impact on the court’s application of the best interests test.

The objects of Part VII are already set out in new section 60B and new section 60B also sets out the principles underlying the objects.

The Democrats have some concerns about this amendment.

We are unsure what Senator Fielding’s intention is in stating that the provision declares the ‘public policy of the Commonwealth’—what exactly does this means?

The public policy amendment also only refers to the time ‘after separation or divorce’.

Senator Fielding’s public policy initiative conflicts with new section 60B(2) which refers to children having the right to know and be cared for by their parents—during the marriage, on separation and irrespective of whether their parents have ever been married or have ever lived together.

It is hard to see where Family First’s proposed section 61DC or amendment (3) is proposed to fit into the Act. It is hard to determine how other sections of the bill would operate if proposed section 61DC is agreed to.

New section 61 DA already provides that in making a parenting order, the court must apply the presumption that it is in the child’s best interests for the child’s parents to have equal shared parental responsibility.

New section 65DAA provides that where a parenting order is to provide for equal shared parental responsibility, the court must consider whether the child spending equal time or substantial and significant time with both parents would be in the child’s best interests.

Proposed section 61 DC actually undermines the other provisions of the Bill by inserting a hierarchy that starts with the assumption that the first preference should be that the child is to live with both parents jointly.

In contrast, the Bill only requires a court to consider equal time if it proposes to make an order for equal shared parental responsibility.

I would also ask what ‘jointly’ means this amendment is unclear.

Additionally, proposed section 61DC(2) says that if the court makes an order in favour of one parent only, then they must consider the factors set out in (a) and (b) as well as any other factors.

Does this mean that if the court makes a joint order, these factors do not have to be taken into account?

As to Senator Fielding’s proposed section 61DC(3) the Democrats would like to know how this operates in relation to 61F of the bill that refers to the needs of Indigenous children and the recognition that the court must give to kinship obligations and child-rearing practices of a child’s Indigenous culture.

The Democrats suggest that proposed section 61DC(3) may have the effect that a parenting order cannot be made on the basis of a child’s race when this may be an appropriate order to make because of a child’s Indigenous heritage.

Amendment (4) again gives preference to joint living orders over orders that a child live with one parent only. The Democrats query whether this is necessary.
Family First Amendment (5) provides that in considering an application for the modification or termination of a parenting order, the court shall recognise 'evidence of substantial and repeated failure of a parent to adhere to the parenting order.

The Democrats are unclear as to whether proposed section 61DE suggests that an overarching factor in a court's consideration of an application for modification or termination of a parenting order is substantial and repeated failure to adhere to the order.

If it is an overarching factor, it makes no allowances for reasonable excuses—in contrast to the compliance regime—and appears to be weighted against 'custodial parents' whose failure to adhere to orders may be due to concerns about violence, child abuse or abduction.

The Democrats believe this is completely unacceptable.

In relation to amendment (6), proposed section 61DF is designed to affect the best interests test in relation to parenting orders. It states that there is a rebuttable presumption in an application for a parenting order that it is in the child's best interests to maximise parenting time and involvement with children it appears that 'maximising' means ensuring as far as possible that each parent has 50% of parenting time.

This is quite different to new section 61 DA which talks about equal shared parental responsibility which entails joint decision-making about major long-term issues in relation to the child. The Democrats believe this amendment is exceptionally divisive and we oppose it.

(7) + (8)

Family First’s proposed section 61 DG—or amendment (7)—sits uneasily with the rest of the Bill.

Its philosophy by providing that pending the making of a parenting order a child shall, as far as practical, spend time with both parents equally (presumably, this means living with each parent equally).

This provision will only be displaced where it is shown to be detrimental to the best interests of the child.

So, what this provision is really saying is: we don't care that this arrangement may not be good for the child—as long as it's not bad for them!

It is unclear whether this provision relates to the period before a parenting order is made or before an interim parenting order is made.

To date, the Family Court’s approach is that when it makes an interim order, the best interests of the child are the paramount consideration and those interests will normally be met by retaining stability for the child pending a full hearing.

The court will not disrupt a child when it is in a secure arrangement—it will maintain stability. The Democrats support this approach and reject this amendment.

Proposed section 67MA—or Family First amendment (8)—states that in the absence of an order to the contrary and in the absence of consent of the other parent, if a parent who has a child living with him or her plans to change the location of a child for more than 30 days, he or she must notify the other parent and state the reasons for the change.

There are some practical difficulties with this amendment.

Firstly, the amendment seems to encompass both permanent moves and temporary moves. Would this include holidays?

Secondly, the fact that the notice must be given at least 45 days before the change in location is problematic. For instance, in some cases it may not be possible for a parent to know this far in advance that their location will change.

The Democrats also make the point that this provision is unnecessarily adversarial and it may also increase the potential for litigation.
Family First amendment (9) operates with the intention of providing ‘non-custodial’ parents a right to their children’s medical, dental, law enforcement and school records.

The Democrats feel that this amendment omits consideration of the duty of confidentiality health carers have to their clients.

It also ignores the ability of children who are legally competent, who may not wish that their records not be disclosed to a third party which may include a parent.

As Democrats Privacy Spokesperson I object to this inclusion of this provision on the basis that I do not think that the Family Law Act is an appropriate vehicle for considering this issue.

The Democrats oppose this provision—which once again is promoting the rights of parents over the rights of children.

This provision is offensive in its application.

New section 117AB allows for costs for false allegations or statements in proceedings and the main reason that this provision has been objected to is because of the impact this may have on victims of violence.

This provision has ignored the committee’s recommendations. It has ignored the wide body of evidence provided at the inquiry about the vulnerability of victims of family violence.

Section 117AB could apply to both parties in proceedings but this provision targets victims of child abuse or family violence specifically.

The Democrats are keen to see any evidence that supports the need for this provision? Perhaps Senator Fielding has evidence to prove it that courts have been inundated with false allegations?

I have been informed by a representative of a peak, experienced body of family law practitioners that even if a finding is made in the Family Court of family violence—it is usually deemed to be genuine and based on a genuinely perceived protective purpose.

The Democrats reject this amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.35 pm)—This amendment seeks a review of the operation of the legislation. I reiterate my earlier comments and the undertaking given by the Attorney-General that there will be a review of the legislation in three years time. That undertaking was given when the Democrats moved their amendments. I now do so, Senator Boswell having moved Senator Fielding’s amendment for the review.

Question negatived.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.35 pm)—I seek leave to have Senator Fielding’s voice recorded as supporting the amendment.

Leave granted.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.35 pm)—by leave—At the request of Senator Fielding, I move Family First amendments (2) to (6) on sheet 4865 together:

(2) Schedule 1, item 7 (after line 13), after section 60B, insert:

60BA Public Policy to be considered when applying Part

The Parliament of Australia, in recognising the fundamental need of every child to experience the love, guidance and companionship of both parents in an every day setting after their separation or divorce, declares that it is the public policy of the Commonwealth to maximise the time and involvement each parent is willing and able to contribute in raising their child or children after the parents have separated or dissolved their marriage and to encourage parents to share the duties and responsibilities of child-rearing to affect this policy.

(3) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

61DC Orders made in disputes over where child lives

(1) In disputes involving where a child is to live, the court shall make a parenting
order according to the best interests of the child in the following order of preference:

(a) the child to live with both parents jointly; or
(b) the child to live with either parent; or
(c) the child to live with any other person determined by the court to be suitable and able to provide an adequate and stable environment suitable for raising the child.

(2) In making a parenting order in favour of one parent, the court must consider among any other factors:

(a) whether one parent is more likely than the other parent to facilitate and encourage the most parenting time and involvement of the other parent; and
(b) whether or not each parent is able to provide the parenting time they request.

(3) A parenting order may not be made on the basis of a parent’s gender or race.

(4) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

**61DD Statement of reasons for parenting orders**

(1) If a court does not order that the child is to live with both parents jointly, the court shall state in its decision the specific findings of fact upon which the order that the child not live with both parents jointly is based.

(2) An objection by a parent to an order that the child live with both parents jointly or conflict between the parents is not a sufficient basis for a finding that the order is not in the best interests of the child.

(5) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

**61DF Modification of parenting order**

(1) In considering an application for the modification or termination of a parenting order the court shall recognise evidence of substantial or repeated failure of a parent to adhere to the parenting order.

(2) The court shall include in its decision on an application made in accordance with subsection (1) the reason for modifying or terminating the parenting order if either parent opposes the modification or termination order.

(6) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

**61DF Presumption of parenting time**

(1) In an application for a parenting order in accordance with this Part, there is a rebuttable presumption that maximising the parenting time and the involvement which each parent is willing and able to contribute in raising their child is in the child’s best interests.

(2) Maximising parenting time is achieved by ensuring that:

(a) the parent is not denied the ability to spend as much parenting time as that parent is willing and able to contribute; and
(b) the parent does not have his or her requested time reduced when to do so would result in increasing the amount of parenting time the other parent contributes to exceed 50%.

(3) The presumption in subsection (1) may be rebutted by demonstrating with specific reasons that it is not in the best interests of the child after consideration of clear and convincing evidence with respect to any or all relevant factors set out in subsection 68F(2).

(4) The burden of proof for rebutting the presumption of parenting time is on the objecting parent or party.

I also seek leave to have Senator Fielding’s statement relating to these amendments incorporated in *Hansard*.

Leave granted.
Senator FIELDING (Victoria—Leader of the Family First Party) (11.36 pm)—*The incorporated speech read as follows:*

Family First's top priority is the welfare of children. The first question we must ask is: what is in the best interests of children? It is a sad and unfortunate fact of life that many relationships end. It is crucial that we find the best way of dealing with these situations to minimise the damage, particularly to children, but also to parents.

These amendments are about the Senate recognising that the best place for children, even after a relationship breakdown, is with their mum and dad. When a relationship ends, the way to maintain equal access for children is shared parenting. If a parent has not done anything wrong, why should the child be penalised by effectively losing one of their parents?

For this to work, both parents have to want to exercise their responsibility and be with their child. It is not our purpose to force parents to exercise shared parenting. But Family First would hope that all parents would want to. Just because a relationship ends, does not mean the job of being a parent ends.

Family First's principle amendment in this group is amendment 6, which is a rebuttable presumption that maximising the parenting time and involvement of each parent is in the child's best interests.

Equal parenting time must be the starting point when considering arrangements after parents have separated. But this can be rebutted by demonstrating that equal time is not in the best interests of the child. For example, due to a parent’s work or travel commitments or because one parent could pose a threat to the physical, psychological or emotional wellbeing of the child, that presumption could be overturned.

These amendments are fair and reasonable. I ask Senators for their support for these amendments.

Senator LUDWIG (Queensland) (11.36 pm)—I am in the chamber and so, unfortunately, I cannot seek to incorporate my speech. It is a wonder Senator Joyce did not seek to incorporate from Antarctica and achieve his favourite pastime of being able to vote from afar.

The main aim of these amendments is to create a presumption of equal parenting time. This goes back to the very beginning of this debate several years ago. People listening to the debate tonight would be familiar with this issue, which we started off with a lot earlier this evening. Every detailed analysis of this proposal ends up with it being rejected. The original *Every picture tells a story* committee rejected this unanimously across all parties. All up, this issue has been considered by three parliamentary committees, none supporting an equal time rule.

Labor believes that the court has to consider the best interests of the child first, not the rights of parents. The best interest of the children cannot be determined by first reaching for the calculator. Children cannot and should not be treated as if they can be cut down the middle. Labor does support the increasing number of separated couples who are choosing equal time arrangements. We hope that the changes encouraging family dispute resolution and parenting plans will give them the flexibility they need to make those arrangements work. We also support the changes requiring the court to give consideration to equal time or substantial and significant time. This will encourage parties in the courts to consider the issue but not impose it when inappropriate.

It is the case, and it is very welcomed, that many of the old gender roles are breaking down. We no longer see family relationships in the simple terms of mother as carer and father as breadwinner. Our law does need to change to keep up with these changes. We believe consideration of equal time is the right step to take, but we oppose a presumption of equal time, because one size does not fit all. We believe in the paramountcy of the best interests of the child test,
not parents fighting over children as the spoils of a marriage break-up.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.39 pm)—The government opposes these amendments. Whilst the government appreciates the concerns of those supporting these amendments and we strongly believe in both parents having a meaningful involvement in their children’s lives, the government acknowledges that an equal time arrangement may not be appropriate in all circumstances. Accordingly, the government has required that a court consider in cases where the presumption of shared parental responsibility is made out whether an equal time arrangement is in the interests of the child and is reasonably practicable. If equal time is not awarded on this basis, a court must consider substantial time enabling the non-resident parent to be involved in the child’s day-to-day routine.

I would stress again, and it should be noted by the Senate, that the effect of the new provisions will be monitored on an ongoing basis. I think that people should be conscious of that. The government cannot support these amendments for these reasons and others that I outlined earlier in relation to similar arguments.

Question negatived.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.40 pm)—I seek leave to have Senator Fielding’s vote recorded as supporting the amendments.

Leave granted.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.40 pm)—by leave—At the request of Senator Fielding, I move Family First amendments (7) and (8) together:

(7) Schedule 1, item 13, page 19 (after line 34), after section 61DB, insert:

61DG Domicile of child pending making of an interim parenting order

Unless it is shown on written application by either parent to the Registrar to be detrimental to the best interests of the child, the child as far as practical shall spend time with both parents equally during the time that the court considers an application on where the child shall live.

(8) Schedule 1, page 32 (after line 4), after item 36, insert:

36A After section 67M

Insert:

67MA Change of domicile of a child

(1) In the absence of an order to the contrary, a parent that has a child living with him or her as a result of a parenting order shall notify the other parent if he or she plans to change the location of the child for more than thirty days together with the reason for the change of location, unless there is written consent by the other parent to the change.

(2) To the extent possible, notice must be served personally or given by certified mail, not less than forty-five days before the proposed change in location and proof of service of the notice required by this section must be filed with the court that issued the parenting order.

(3) A parent who is notified of a change of location of a child may apply to the court to seek modification of the parenting order.

(4) Failure to give notice of a change of location of a child or failure to show good cause for the change of location of a child may be factors to be considered in determining whether the change of location was changed in good faith.

I seek leave to have Senator Fielding’s statement relating to these amendments incorporated in Hansard.

Leave granted.
Senator FIELDING (Victoria—Leader of the Family First Party) (11.41 pm)—The incorporated speech read as follows—

Amendment 7/8—grouped together

Domicile of child

Unless it is shown to be detrimental to the best interests of the child, Family First believes the child should live with both parents equally during the time the court considers an application about where the child lives.

The financial implications to either parent of joint residency is not sufficient reason for denying a child’s right of residency with each parent and should not be taken into account by the court.

Family First believes the court should not recognise interim orders that establish the ‘status quo’ and deny a child’s right to equal parenting time.

There is also a very reasonable requirement that parents give each other notice of a parent’s plan to move a child to a new location for more than 30 days. In other words, parents have to keep each other informed.

In the absence of an order to the contrary, a parent who has the child living with him or her shall notify the other parent if he or she plans to change the location of the child for more than 30 days, unless there is written consent to the change.

I ask Senators for their support for these amendments.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.41 pm)—The government does not support these two amendments. I think we have covered the arguments extensively previously. I will not go over those again but I would point out that the Family Law Council has recently released a discussion paper on relocation decisions. Submissions are due in mid-April and the council will provide advice to the Attorney-General by early May this year. The government will consider whether changes to legislation are required in light of the council’s advice. In the circumstances, it would not be appropriate to pre-empt that advice. Having regard to the amendment put by the Family First Party, the government would invite the Family First Party and indeed all interested stakeholders to contribute to the Family Law Council’s review of this difficult issue.

Question negatived.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.42 pm)—I seek leave to have Senator Fielding’s vote recorded as supporting the amendments.

Leave granted.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.42 pm)—At the request of Senator Fielding, I move Family First amendment (9):

(9) Schedule 1, page 32 (after line 6), after item 37, insert:

37A After section 67Y

Insert:

67YA Parent’s right of access to records of child

Notwithstanding any other provision of this Act, unless the court orders otherwise, access to records and information relating to a minor child, including but not limited to medical, dental, law enforcement and school records, shall not be denied to a parent that does not have the child living with him or her.

I seek leave for a statement from Senator Fielding in relation to this amendment to be incorporated in Hansard.

Leave granted.

Senator FIELDING (Victoria—Leader of the Family First Party) (11.42 pm)—The incorporated speech read as follows—

Amendment 9

Access to records of a child

This is a simple and commonsense amendment. Family First believes it essential that both parents have access to records and information about their child, including information about their
child’s medical, dental, law enforcement and school records. If we want to ensure shared parenting, we have to be able to share information about a child. There is the opportunity for the court to decide in special cases if providing that information is inappropriate.

I would appreciate senators’ support for this amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.42 pm)—The government will oppose this amendment. It would not be appropriate, in the government’s view, for the Family Law Act to interfere with legislation dealing with access to medical records which are governed by Commonwealth, state and territory laws. Given that this provision has not been the subject of consultation with the wider community, the government will not be supporting this amendment at this time. I bring to the attention of the Senate and Senator Fielding that the government will consider further whether this issue requires legislative attention.

Question negatived.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.43 pm)—I seek leave to have Senator Fielding’s vote recorded as supporting the amendments.

Leave granted.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.43 pm)—At the request of Senator Fielding, I move Family First amendment (10):

(10) Schedule 1, page 32 (after line 6), after item 37, insert:

37B After section 67Z

Insert:

67ZA Malicious false accusations

(1) Evidence of a malicious false report of child abuse or family violence is admissible in proceedings between parties relating to where the child lives or relating to parenting time and the court shall make a finding on the matter of a malicious false report.

(2) If a court makes a finding of a malicious false report of child abuse or family violence made before or during a proceeding in accordance with this Part, the finding shall be grounds for the court to restrict the parent-child relationship between the child and the person found by the court to have made the malicious false report.

(3) If a court determines, based on the evidence presented to it, that an accusation of child abuse or family violence made during a proceeding is malicious and false and the person making the accusation knew it to be malicious and false at the time the accusation was made, the court may award reasonable costs, not to exceed all costs incurred by the party accused as a direct result of defending the accusation, against the person determined by the court to have made the malicious and false report. For the purposes of this Part, person includes a witness, a party, or a party’s legal representative.

(4) On application by any person requesting the ordering of costs against another party under this Part, the court shall issue a direction for the other party to show cause why the requested costs should not be imposed and shall schedule a hearing on the matter not later than 15 days after a direction is given in accordance with this subsection.

(5) For the avoidance of doubt the remedy provided by this section is in addition to any other remedy provided by law.

I seek leave for a statement from Senator Fielding in relation to this amendment to be incorporated in Hansard.

Leave granted.
Malicious false allegations

Family First believes it is important to discourage false reports of child abuse or family violence.

If a court determines, based on evidence presented to it, that an accusation of child abuse or family violence is false and the person making the accusation knew it to be false at the time it was made, the court may impose a reasonable financial penalty. That penalty should not exceed all costs incurred by the party accused as a direct result of defending the accusation, and reasonable lawyers’ fees incurred in recovering the sanctions, against the person making the accusation.

No one is at risk if their allegations are true or if they believed them to be true.

A malicious false report of child abuse or family violence would be grounds for a court to consider restricting the parent/child relationship between the child and false accuser.

Family First understands the Australian Institute of Family Studies is undertaking research into violence and family law and some people have argued this issue should not be addressed until that research is published. I do not want to discount the importance of that research, but there will always be research underway and there will always be an excuse not to act. The research can be taken into account in future amendments.

I ask Senators for their support for the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.44 pm)—The government opposes this amendment. It would be inappropriate to implement further specific measures at this time in relation to this amendment which deals with malicious and false allegations. We have had extensive debate about this matter. The Australian Institute of Family Studies has been tasked to consider means to improve court processes where allegations are raised. These issues can be further considered in light of that research. I would suggest that Senator Fielding and Family First and others who have been involved in this debate might feel that they have something to contribute.

Question negatived.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (11.45 pm)—I seek leave to have Senator Fielding’s vote recorded as supporting the amendments.

Leave granted.

Senator SIEWERT (Western Australia) (11.45 pm)—The Greens oppose schedule 1 in the following terms:

(9) Schedule 1, page 4 (line 2) to page 34 (line 7), TO BE OPPOSED.

As has been articulated in this discussion and our comments during the second reading debate, the Greens have very strong concerns about this bill. We tried to make amendments and suggestions to make it better. We do not believe that this bill, even with the government amendments, deals with our issues of concern. We are deeply concerned about the impacts that these amendments are going to have, particularly on children and women who are exposed to family violence and domestic violence. Those are our particular strong concerns. We therefore feel that we have to oppose schedule 1, given that the amendments to substantially improve it were not accepted.

The TEMPORARY CHAIRMAN (Senator Ferguson)—The question is that schedule 1, as amended, be agreed to.

Question agreed to.

Senator STOTT DESPOJA (South Australia) (11.46 pm)—by leave—I move Democrat amendments (25) and (29) to (37) on sheet 4866.

(25) Schedule 5, item 5, page 133 (lines 3 to 9), omit paragraphs 68M(2)(b) to (e), substitute:

...
(b) a person with whom the child is to live under a parenting order; or
(c) a person who is to spend time with the child under a parenting order; or
(d) a person who is to communicate with the child under a parenting order; or
(e) a person who has parental responsibility, or a component of parental responsibility, for the child.

(29) Schedule 8, item 48, page 153 (lines 3 to 5), omit subparagraphs 26B(1A)(a)(ii) to (iv), substitute:

(ii) a person is to spend time with a child; or
(iii) a person is to communicate with a child; or
(iv) a person is to have parental responsibility, or a component of parental responsibility, for a child; or

(30) Schedule 8, item 49, page 153 (lines 20 to 22), omit subparagraphs 37A(2A)(a)(ii) to (iv), substitute:

(ii) a person is to spend time with a child; or
(iii) a person is to communicate with a child; or
(iv) a person is to have parental responsibility, or a component of parental responsibility, for a child; or

(31) Schedule 8, item 64, page 157 (lines 14 and 15), omit subparagraphs 65Q(1)(a)(ii) and (iii), substitute:

(ii) a person is to spend time with a child; or
(iii) a person is to communicate with a child; and

(32) Schedule 8, item 74, page 159 (lines 1 to 8), omit paragraphs 67K(1)(a) to (caa), substitute:

(a) a person with whom the child is living under a parenting order; or

(b) a person who is to spend time with the child under a parenting order; or
(c) a person who is to communicate with the child under a parenting order; or

(caa) a person who has parental responsibility, or a component of parental responsibility, for the child under a parenting order; or

(33) Schedule 8, item 75, page 159 (lines 11 to 17), omit subparagraphs 67Q(a)(ii) to (v), substitute:

(ii) a person with whom the child is to live under a parenting order; or
(iii) a person who is to spend time with the child under a parenting order; or
(iv) a person who is to communicate with the child under a parenting order; or
(v) a person who has parental responsibility, or a component of responsibility, for the child;

(34) Schedule 8, item 77, page 159 (line 26 to 33), omit paragraphs 67T(a) to (caa), substitute:

(a) a person with whom the child is to live under a parenting order; or
(b) a person who is to spend time with the child under a parenting order; or
(c) a person who is to communicate with the child under a parenting order; or

(caa) a person who has parental responsibility, or a component of parental responsibility, for the child under a parenting order; or

(35) Schedule, item 78, page 160 (lines 1 to 7), omit subparagraphs 68B(1)(b)(ii) to (v), substitute:

(ii) a person with whom the child is to live under a parenting order; or
(iii) a person who is to spend time with the child under a parenting order; or
(iv) a person who is to communicate with the child under a parenting order; or
(v) a person who has parental responsibility, or a component of parental responsibility, for the child;

(36) Schedule 8, item 88, page 161 (lines 21 to 25), omit paragraphs (a) to (ab) of the definition of responsible person, substitute:
(a) with whom the child is supposed to live under the order; or
(aa) who is supposed to spend time with the child under the order; or
(ab) who is supposed to communicate with the child under the order; or

(37) Schedule 8, item 90, page 162 (lines 3 to 8), omit paragraphs 70M(3)(a) to (ab), substitute:
(a) a person with whom the child is supposed to live under the order; or
(aa) a person who is supposed to spend time with the child under the order; or
(ab) a person who is supposed to communicate with the child under the order; or

This group of amendments makes minor but, we think, important changes to the language of the bill. We believe that these are important amendments because they bring the focus back to where it should be: children. They are designed to reinforce parental responsibilities towards children rather than parents’ rights over children. So I commend the amendments to the chamber and once again record my dismay at the policy and the process with which we have dealt tonight. I think this is a sad day in many respects. We know laws change lives, and I suspect this legislation will change some lives for the worse. That makes me deeply upset, but given that my babysitter has only 10 minutes to go I cannot elaborate on those views in a third reading address. I commend my amendments to the chamber.

Question negatived.
Bill, as amended, agreed to.
Bill reported with amendment; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.49 pm)—I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

APPROPRIATION BILL (No. 3)
2005-2006

APPROPRIATION BILL (No. 4)
2005-2006

Second Reading
Debate resumed from 29 March, on motion by Senator Kemp:
That these bills be now read a second time.
Question agreed to.
Bill read a second time.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.51 pm)—I move:
That these bills be now read a third time.

Senator ROBERT RAY (Victoria) (11.51 pm)—Earlier today the government presented in this chamber its response to the review by the Parliamentary Joint Committee on ASIO, ASIS and DSD—now the Parliamentary Joint Committee on Intelligence and Security—of the effectiveness of division 3 part III of the Australian Security Intelligence Organisation Act. Typically, this very important response was not debated in this chamber. It just goes back to the fact that there is rarely a rational distribution of time in this chamber. We wasted 10 minutes on a
mindless Greens notice of motion, we have had notices of motion read out—it is typical that this parliament often wastes time on trivia and misses some of the more relevant debates.

When this legislation was originally introduced, it was, to say the least, controversial. It installed a very tough regime, but it was all about the collection of intelligence, not about the collection of criminal evidence. I have to say that the original legislation, as it was presented to the parliament, was the most abysmal I have seen in my time in the Senate. This was basically because citizens could be detained for an unlimited amount of time, they were denied legal representation, they were not protected from self-incrimination, 10-year-old girls could be strip-searched— I could go on and on about the faults of the bill.

However, that bill was reviewed by the joint intelligence committee and by the Senate Legal and Constitutional Legislation Committee, and was thoroughly reviewed by my colleague Senator Faulkner. What emerged from the negotiations after those two reports and the efforts of my colleague was a piece of legislation most of us could live with. What emerged was tough but balanced legislation, legislation that incorporated both scrutiny and checks and balances.

One commitment was to review the legislation within three years, a task that has now been completed by the joint intelligence committee. What did we find? We found that the new regime has been used sparingly, with not one detention warrant issued in three years. We found that the prescribed authority has conducted its proceedings with fairness and that ASIO has used professional interviewers. We have concluded that this is a valuable tool in gathering intelligence to prevent terrorist acts.

Some shortcomings in the system have been found and recommendations made accordingly. It is pleasing to see that the government has picked up many of the recommendations, either in whole or in part. Before I turn to those, let me voice two concerns. Firstly, I remain concerned at the role of state police in all these activities. It is essential that state police be involved. More often than not they are quite valuable in tracking down the people to be interviewed. But they also sit in on the proceedings of the prescribed authority, and there is some evidence that their role is not as it should be.

Most people would remember that in this legislation derivative use is not banned. We worry about the fact that the police make suggestions to the ASIO interviewers to ask questions about criminal matters, not intelligence matters, and then the police can make a derivative use of the evidence gathered there as a lead to go and look for other evidence. They cannot use the statements in a judicial proceeding, but they can gain knowledge from them, because if a person refuses to answer a question that may incriminate them from a derivative use point of view they are subject to five years in jail. I would hope that a very close eye is kept by the government on this potentiality rather than reality into the future.

The second problem I have is that, within the act, there is a provision that the report of the joint intelligence committee must be cleared by the relevant agency and the relevant minister. I do not challenge that in any way. I just think that this particular agency, ASIO, takes an overbearing attitude to their censor’s role and sometimes their suggested amendments do not comply, in my view, with the requirements of the legislation; they go beyond it. I have detected a slight change of attitude in the last year in the way ASIO responds to these matters, and I would urge the Attorney-General to closely monitor it.
because you want to have a responsive agency.

Having said that, I would like now to turn to one or two of the recommendations. I think it is excellent that the government has accepted the right of individuals to appeal to the state Ombudsman. This was not covered off in the original legislation. Because state police forces are involved, there was no previous right of appeal. If it was the AFP, you could go to the federal Ombudsman, but, if it was a state matter, there was no right of appeal.

Secondly, the government has accepted the recommendations to enhance the rights of lawyers in these matters. Historically, I have never been one to argue for a higher legal involvement, but it became apparent from the evidence in one or two instances that you need a higher involvement by lawyers. For instance, in the hearings of a prescribed authority—depending on who the prescribed authority was—lawyers could not intervene in proceedings to have the questions clarified so that their clients understood them. This is remarkably important when, if the clients falsely answer, they could be sentenced to five years in jail. It is just a matter of getting the balance right, and I am very pleased that the government has accepted these recommendations.

The one really jarring note in this government response is its almost insolent dismissal of the committee’s recommendation as to the length of the sunset clause. A unanimous recommendation by nine members of the committee, from all parties—Liberal, National and Labor—was that a sunset clause be adopted. We took a three-year sunset clause and recommended that it be 5½ years—quite a generous extension of the sunset clause. We nominated a specific date for the sunset clause that fitted sensibly with the electoral cycle and meant the review and the revote on the legislation would be at the midpoint of a parliamentary term, not subject to all sorts of emotive pressures. It could be rationally dealt with at the time.

I think a 5½-year sunset clause was a very reasonable proposition from the committee. But what do we get from the government? ‘Oh, no, we’re not going to have that. We’ll have a 10-year sunset clause.’ Well, I do not think 10 years is a sunset clause, frankly. How many people in this chamber will be here in 10 years time? Looking around, I guess there may be one or two—maybe none. Senator Polley is here, so we will say one. So, in 10 years time, Senator Polley, I want you to closely look at this legislation again, because we will probably have gone through three director-generals by then. I do not think 10 years is a justifiable thing and I thought I would put that view on the record right now.

The main value of a sunset clause in this case is to keep an agency honest. When an agency know that they are going to be reviewed in three or four years time they tend not to abuse their powers. When it is 10 years away, why would they worry about it at all? This is not any ordinary piece of legislation. This is a remarkable piece of legislation that allows people to be questioned without a right of protection of silence. It allows people to be detained for 28 days and to be questioned at a variety of times over those 28 days. There is a major slice at civil liberties in this legislation. I do not challenge that, because what we are trying to deal with is the threat of terrorism. But what we also want to do is put in the necessary checks and balances, the necessary scrutiny, so that no abuse can occur.

Really, a 5½-year sunset clause is a protection for ASIO. It is not a luxury to give them 10 years. They would be better off with a 5½-year sunset clause than they ever will
be with a 10-year one. We tested this with witnesses from Attorney-General’s and from ASIO. We asked, ‘Why do you want no sunset clause at all?’ ‘Well,’ they said, ‘it is resource intensive to have a review and a sunset clause and it distracts from our main mission.’ I have to tell you, Mr Acting Deputy President, if an organisation is not robust enough to suffer scrutiny, if it cannot mobilise the necessary resources to explain itself, it should not be in business. It is a pathetic excuse. Basically, when you read this response, that section amounts to inconsequential spin. It is pathetic. It is just plain weasel words. They have been tested and they could not come up, yet they have repeated the same old arguments.

So what has changed? Why have a three-year sunset clause and move to a 10-year sunset clause? I will tell you why: it is rule 39-37. When we put a three-year sunset clause in, the government did not have a majority. Now that the government has a majority, rule 39-37 applies and we are treated with absolute contempt. This is simply hubris at work, and I find that part fairly sad.

Friday, 31 March 2006

Senator FAULKNER (New South Wales) (12.02 am)—I too want to speak briefly on the third reading of the Appropriation Bill (No. 3) 2005-2006 and Appropriation Bill (No. 4) 2005-2006 to canvass the same issue that Senator Ray addressed in his speech a moment ago. I support the statements that he made. If we look briefly at the history of this matter: we have just had a government response brought down to the review of ASIO’s questioning and detention powers that was conducted by a committee that was effectively the precursor to the current Parliamentary Joint Committee on Intelligence and Security. That government response dealt with all 19 recommendations of the joint committee. In simple terms, six were agreed to, six were not agreed to, six were agreed to in part and one was not agreed to ‘at this stage’.

I want to focus my remarks, as did Senator Ray, on recommendation 19, which was the recommendation of the joint committee in relation to the sunset clause. Here the government response was described as ‘agreed in part’. That is very misleading. It really was not agreed to at all. The history of this goes back to the original bill introduced in 2002 and passed in an amended form in 2003. The sunset clause proposed in that legislation, agreed to in 2003, was such that the new ASIO powers would expire in 2006. In its review of the legislation—something also provided for in the act itself—the joint committee recommended a sunset clause to come into effect on 22 November 2011. As Senator Ray said, that is in 5½ years time, and that was to follow a review conducted by the joint committee by June 2011. The government has now proposed a sunset clause to come into effect on 22 July 2016. That is to follow a review to be completed by January 2016. I want to quote the responsible minister, the Attorney-General, Mr Ruddock, who said this in relation to the sunset clause:

The longer period will also ensure that the legislation can be used over a period the government assesses there is likely to be a need for these powers.

That is what Mr Ruddock said, but I would say that it is not for Mr Ruddock or the government to make that assessment at this stage, by itself, on behalf of future parliaments—on behalf of a parliament that, as Senator Ray says, perhaps no-one who is sitting in this chamber at this time will be a member of. I do not know—I cannot predict the future. I would be happy enough to be alive, frankly, and I certainly will not be a senator at that time, though I have a very close interest in this legislation, as I think any fair senator would say. I was responsible
for opposition amendments, both on the floor of this chamber, in moving them and seeing them agreed to, and for having many other opposition proposals agreed to by the then Attorney-General, the discredited, I am afraid, Mr Daryl Williams. There was a great deal of involvement by opposition at that time and a great deal of involvement by this chamber.

There is no doubt that the proposal to have a sunset clause apply in 10 years time, in four parliaments time, is a contempt of the Senate chamber but particularly a contempt of the joint committee that brought down a very fair all-party report. What the government has done here is thumbed its nose not just at the opposition in this place but at all the government senators who took the provisions of this legislation seriously and really did involve and engage in a serious debate around those quite extraordinary provisions. If you are going to have a sunset clause of 10 years, I would argue, do not have one at all.

Remember this: the legislation contains unprecedented powers and those unprecedented powers warrant a thorough and appropriate level of scrutiny and oversight. It needs to be thorough and it is the Parliamentary Joint Committee on Intelligence and Security that has been charged with that responsibility of scrutiny and oversight by the parliament. We need to remember that as we look at this issue of not just the sunset clause but all the provisions. I am concentrating on the sunset clause because I am limited in time. We need to remember that the powers contained within this legislation are extraordinary powers. They break down long-standing legal traditions that date from the time of the Magna Carta in the 13th century. For interest’s sake I will quote parts 38, 39 and 40 of the Magna Carta to the Senate chamber tonight. Part 38 says:

No bailiff for the future shall, upon his own unsupported complaint, put anyone to his “law”, without credible witnesses brought for this purpose.

Part 39 says:

No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

Part 40 says:

To no one will we sell, to no one will we refuse or delay, right or justice.

You go right back to the 13th century—to 1215—where some of the fundamental legal principles that everyone in this parliament holds dear date from.

I want to say, as I have said before—I probably take a slightly different view to Senator Ray on this—that I believe that ASIO’s detention and questioning powers are barely acceptable. Senator Ray has said that he believes that most of us could live with them. That is true but I think they are barely acceptable. I certainly support, and have done publicly for years, ASIO having enhanced powers to deal with the threat of terrorism in our community, but getting the balance right on this has always been the challenge for this parliament.

Strong review mechanisms were always part of the compact that led to the bill’s original passage in 2003, and it included of course a sunset clause, the capacity for review of the legislation by the joint committee to examine the operations, effectiveness and implications of the act, and the provision by ASIO in its annual report of information and statistics on warrants, questioning time, the prescribed authorities that were used and the like. These were fundamental to the bill’s passage in 2003 and it is absolutely appropriate with these quite extraordinary powers that this parliament ensures that there is a proper review conducted at a reasonable time for such extraordinary powers.
I believe that the parliament will not be fulfilling its responsibility if the government continues to propose a sunset clause to apply in 10 years time—or 10 1/2 years time effectively—from this date. That is not acceptable, it is not appropriate, and we have a responsibility in this chamber and in this parliament to ensure a proper process of examination and scrutiny of how these powers are used and the effectiveness of the legislation.

It is not appropriate to have powers that I believe are best described as emergency powers. They are not just my words. When the legislation was first introduced the then Attorney-General, Mr Williams, said, ‘These measures are extraordinary.’ He went on to say, ‘But so too is the evil at which they are directed.’ Fair enough, but they are extraordinary powers.

If you have these extraordinary powers, the like of which we have not seen at any other stage in Australian history except for wartime—and by ‘wartime’ I mean the two world wars; we have not had powers like this at any other time except during the period of the First and Second World Wars—they should not go without examination, without review and without scrutiny for a decade or more. I hope that the government and the Attorney-General will reconsider what is an absolutely inadequate response to recommendation 19 of the report of the Joint Committee on ASIO, ASIS and DSD, and a very contemptuous response, given the efforts that the then joint committee put into its report on ASIO’s questioning and detention powers.

Senator FERGUSON (South Australia) (12.16 am)—I want to respond briefly, for just a couple of minutes, on a couple of issues that have been raised both by Senator Ray and by Senator Faulkner. As Acting Chair of the Joint Committee on ASIO, ASIS and DSD for the duration of the inquiry into the questioning and detention powers, the review of that legislation, can I say that we worked long and hard to make sure that at the end of the day we had unanimous recommendations. It is true that we had 19 recommendations. It is also fair to say that in most instances, even where there are unanimous recommendations from committees, the government does not always see fit to accept all the recommendations of a committee, even if they are unanimous.

The issue that has been raised at length is that of the sunset clause. As a member of that committee and as someone who chaired that committee, I place on the record the fact that I still support the recommendations of the committee in relation to that sunset clause. One of the issues that Senator Ray touched on—but I do not think it was made quite clear to everybody—was that, in reviewing the questioning and detention powers, we could only review half thoroughly, because there had never been anybody detained. We would have liked to have been able to look in total at the questioning and detention powers to see whether they were working correctly in both cases. We were satisfied with the work that was being done on questioning—we made recommendations we thought would improve that regime, and some of those recommendations have been accepted—however, we were unable to review whether or not the detention powers that were put in place by this parliament a couple of years ago actually were working in the way that we would hope they would work.

In discussion with members of the opposition and of the government, we had a good think about the issue of having a sunset clause in the legislation, and we came to the agreement that there should be one. I know it was opposed by some people and it was supported by others. Some did not want even to renew the legislation, but as members of that committee we thought—and we unani-
mously came to this view; it was a good, balanced position—that we should have a sunset clause but one with a reasonable time limit.

I hope we do not have to use the detention powers; I hope they never have to be used, that there is no cause to use them. However, if at some stage in the next four or five years they are used, we will have a chance to review them to see whether they are working properly and whether they are doing the job they set out to do. It was with that in mind that we thought we would give the sunset clause 5½ years. It would not be reviewed in the next parliament; it would be reviewed in the parliament after that. We thought that was a substantial amount of time. I remember discussing this with Senator Ray and we said, ‘Neither of us will be here to review it. It will be somebody else’s job.’ We thought it was a fair and reasonable arrangement.

While the government have not accepted that proposition of ours and have instead come up with a 10-year sunset clause, I think I should place on the record that I believe that our recommendation was a good compromise. In coming to the 5½-year sunset clause, we were working on a compromise which we thought satisfied the arguments of both groups—those who did not want the legislation to proceed any further and those who did not want a sunset clause at all. We felt that this was a good and reasonable compromise. I place on the record my disappointment that the government did not accept that recommendation. Some of the other recommendations that they did not accept I did not think were that important, and they accepted a lot that were important.

As acting chair of the committee at the time, I felt I should respond on this issue, and I am quite happy to put those thoughts on the public record in this place.

Question agreed to.

Bill read a third time.

ADVANCE TO THE FINANCE MINISTER

Consideration resumed from 8 February.

In Committee

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.20 am)—I move:

That the committee approves the statement of Issues from the Advance to the Finance Minister as a final charge for the year ended 30 June 2005.

Question agreed to.

Resolution reported; report adopted.

COMMITTEES

Membership

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.22 am)—by leave—I move:

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

Community Affairs Legislation Committee—

Appointed—Substitute member: Senator Siewert to replace Senator Nettle for matters relating to Family and Community Services

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

Appointed—Substitute member: Senator Fierravanti-Wells to replace Senator Patterson for the committee’s inquiry into the Australian Broadcasting Corporation Amendment Bill 2006

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

Appointed—Participating members: Senators McLucas, Nash and Scullion
Parliamentary Library—Joint Standing Committee—
Appointed—Senators Hutchins and Webber.

Question agreed to.

ADJOURNMENT

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.22 am)—I move:

That the Senate do now adjourn.

Westpoint Collapse

Senator WATSON (Tasmania) (12.22 am)—It is again unfortunate that some 4,000 investors have pitifully lost a substantial level of their savings because of the high-risk, high-interest property schemes under the Westpoint banner. With respect to my distinguished Senate colleagues from Western Australia, I observe that perhaps Western Australia, because of the business successes and entrepreneurship in that state, have become quite risk averse, and unscrupulous promoters, financial planners, accountants, lawyers and others have taken advantage of the tolerance to high risk to gain a cheap buck.

Some years ago, this scenario was with the mass marketed tax schemes; today, it is through a property development called Westpoint. The carefully planned financial arrangements involving promissory notes put such moneys outside the regime of ASIC, the regulator. I submit that the solution requires a change to the law to bring all such arrangements within the disciplines and regulatory framework of the Managed Investments Act, a proposal that I floated in this chamber in June 1997 in relation to another matter. At that time, when addressing this chamber in support of a change to the regulation of unit trusts, I stated:

Investor confidence and efficiency in our fund raising industry are two measures which are integral to turning around our savings industry...

... it is time for the government to deliver an enhanced regulatory arrangement to better protect the non-super investment products.

We have come a long way since that time, and I have been pleased to be part of a government that has delivered for Australia what are internationally recognised as world-class superannuation and managed investment regimes. However, it is with great concern that I consider the impact on the estimated 4,000 to 6,000 investors that had investments with the Westpoint Group. I particularly noted in the report in the 16 March 2006 edition of the Business Review Weekly that over 60 per cent of the investors in Westpoint appear to be self-managed superannuation funds. These are people who relied on the fact that, while their investment was attracting high returns, it was considered to be low risk because of a guarantee by Westpoint. Little did they know that they were investing on the basis of information memoranda in the largely unregulated world of promissory notes.

The Westpoint fiasco has shown that there are problems not only with the regulator detecting and acting on risky promotions but with the law as it currently operates. The ASIC chairman, Jeff Lucy, told investors at a recent presentation that the Western Australian government had in 2002 raised with it concerns about the apparent gap in the Corporations Act in relation to promissory notes, yet ASIC did not take action in relation to the promissory notes for two years following the matter being brought to its attention. The fact that we are still waiting for the Supreme Court of Western Australia to rule on whether promissory notes issued by a Westpoint company were debentures or interests in a managed investment scheme is quite
unsatisfactory and highlights a gap in the law that I believe should be addressed.

Denise Brailey, President of the Real Estate Consumer Association Inc., stated in an article on 25 November 2005 that she had passed a Westpoint information memorandum through to ASIC in 2001 raising concerns particularly with the promotion of the promissory notes as capital safe because of the Westpoint guarantees via a second ranking mortgage. ASIC did not take any action, and Westpoint set up a further 11 projects over the following four years. These are matters that I intend to raise with ASIC in the context of the next Senate estimates hearings.

Why did Westpoint happen? Westpoint was a property developer with buildings going up all over the country. Westpoint was desperate for cash, and so offered high investment returns and commissions for distribution. To their investors, they promised a guarantee of 12 per cent interest, and to financial planners they offered up to eight per cent in commissions on funds raised. In comparison the Westpoint income fund, a regulated managed investment scheme, offered investors an indicative fixed rate of return ranging from nine per cent for a one-year fixed term to 10 per cent per annum for a three-year term. The fund offered advisers a maximum commission of only 2½ per cent.

While I note that the ASIC investigation is continuing in relation to the group and that action has been taken to wind up certain entities in the Westpoint Group, this is a matter that the government should seek to address at both a legislative and a regulatory level. Mezzanine finance generally is a recognised high-risk commercial product. It was the abuse of the product that regulators should have been looking into. The fact that it was offered to unsophisticated investors should attract a higher level of protection under the law and should be a focus of regulatory attention. We regulate fundraising to retail investors under a regulated disclosure regime. Disclosure cannot remove risk, and if you know that an investment is a high-risk proposition you must be prepared to suffer the loss in the same way that you will pocket the profits if the investment is successful.

While this parliament cannot prevent a company from making a loss in the same way, it cannot ensure that a company is profitable; however, we are responsible as legislators for the legal structure providing fundamental protections to investors and ensuring that disclosure is appropriate. Westpoint illustrates that there is still work to be done in ensuring that Australia has a regulatory regime that promotes investor confidence and efficiency while ensuring that retail investors are aware of the risks of such an investment. Both advisers and investors are reliant on the disclosure of information that is adequate or fit for purpose in making an informed investment decision. The provision of this information is primarily the responsibility of the entity and persons offering the investment opportunity. The noted writer Terry McCrann stated in the Adelaide Sunday Mail on 12 March this year that the solution is not more red tape but effective disclosure and effective professional financial planning advice while not killing the riskier investments that are a crucial part of our economic and business success.

Let me conclude tonight by presenting a challenge to ASIC. I have with me here a copy of yesterday’s Money insert from the Sydney Morning Herald. Can ASIC tell me how many of the advertisements for investment moneys in this insert, this paper, come under their responsibility? Furthermore, which ones, I ask ASIC, are outside their bounds and just why is that the case? This is an area in which we need to take action to protect our fellow Australians and to make
sure that they can invest with confidence that the market is being properly regulated. I thank the Senate and I look forward to legislative action.

**Tasmania: Election**

**Senator POLLEY** (Tasmania) (12.30 am)—I rise to speak on the recent outstanding results for the Labor Party in the Tasmanian state election. On Saturday, 18 March, Tasmanians voted to return Labor leader Paul Lennon as Premier and to continue to prosper into the future under a majority Labor government. The Tasmanian people went to the polls amid speculation about the future of the state and the effect that this election would have on that future. But, for the third consecutive time, the voices of the Tasmanian people rang out loud and clear with the same message: Labor.

It is the first time Premier Lennon has been returned to government as Premier, having taken over from the late Jim Bacon in tragic circumstances during the last term. The clear victory by Labor means the party will govern for a historic third term and the people of Tasmania can be assured of a strong government that will look forward to the future.

On polling day and in the campaign that preceded it, the issue of the Howard government’s unfair industrial relations changes was a major one for many Tasmanian voters. Tasmanians, like the rest of the country, stand to be severely disadvantaged by the attack on the rights of Australian workers that unions and the average Joe have been fighting for since Federation. The Australian Labor Party was founded on those very values that the Prime Minister and his arrogant government believe they can take away with the swoop of a pen.

Tasmanians, like their South Australian counterparts, knew that they had to take a stand against these un-Australian laws and sought the protection of a Labor government that they could trust. Even state MHA and former leader of the Tasmanian opposition Sue Napier said in a newspaper interview following the election that the federal government’s IR changes had become a factor in the voters’ decisions on polling day. The backward IR laws were the final nail in the coffin for an already weak Tasmanian Liberal Party. When it comes time for the Australian people to choose who they want to run this country, the Prime Minister will also rue the day he ignored the voice of the people and stripped them of their basic rights as workers. Premier Paul Lennon’s message was the same as that being declared by the Australian Labor Party nationwide: our workers’ rights are not negotiable; we will not bargain with our lifestyle.

The Tasmanian people have chosen to continue supporting a Labor government that has created 32,000 jobs since 1999 in an ever-improving economy; a government that has cleared $1.6 billion in debt inherited from the last Liberal government; and a government with a progressive vision for the future. I wish to extend my personal congratulations to Premier Lennon and the Tasmanian Labor government on an outstanding result. They ran a hard and honest campaign and displayed honour and integrity.

Unfortunately, the leader of the Tasmanian Greens, Peg Putt, cannot be afforded the same compliment of honour and integrity. While the then opposition leader, Rene Hidding, was gracious in defeat and acknowledged that Premier Paul Lennon was a worthy opponent throughout the campaign, the leader of the Greens delivered a speech that smacked of sour grapes. She seemingly managed to blame every person but herself for her party’s inability to secure the six seats that they had hoped for to gain the balance of power over a minority government. Indeed, gracious in defeat Peg Putt was not. Ms Putt...
effectively managed to insult the intelligence of Tasmanians by suggesting that they had been manipulated by what she deemed to be an anti-Greens campaign. However, the fact of the matter is that Tasmanian voters are not dumb, no matter what Ms Putt would have us believe. Tasmanians voted on the issues that mattered to them. They voted on the issues that will affect their everyday lives and they knew that the only way to ensure that their livelihoods were safe was to return a majority Labor government.

Federal Labor believes that the Tasmanian people, much like the South Australians, who also unequivocally re-elected Labor, the Rann government, were looking for stability and a government they could trust. I believe we will see the same situation emerge around the country as other state elections are run and won by Labor governments. Voters are craving a government that they can trust at a time when the Howard government has tried to pull the rug from under them. The election result in Tasmania is a clear indication that Tasmanians consider the economy and its continued prosperity to be of great importance, and the majority of voters do not believe the rhetoric that Tasmanian forests are under grave threat. Tasmania has a sustainable forest industry; that is a fact. Other parts of the world, like Indonesia and South America, are where you will find forestry industries that are unsustainable. The forest industry is responsible for thousands of jobs state wide and makes up a sizeable part of the rapidly growing Tasmanian economy. Tasmanian workers wanted reassurance from their government that the industry is going to continue and thrive.

Much has been said about the plans to build a $1.5 billion pulp mill at Bell Bay in northern Tasmania. The Greens can make all the noise they like, but the vote for a majority Labor government was also a clear endorsement by the Tasmanian people of a pulp mill. Before the election, Gunns Ltd Chairman John Gay made it clear that the fate of the pulp mill rested on the outcome of the state election. It is clear that Tasmanian voters took that into account when going to the polls, and the majority voted in favour of development. The Tasmanian government will work to ensure that Tasmanians gain the maximum possible economic and employment benefits should the mill go ahead. The benefits such a development will bring to the state cannot be underestimated.

A Monash University study predicted that a mill on a slightly smaller scale than the one planned for Bell Bay would lift the state’s economy by $600 million a year and create 1,500 direct and indirect jobs. In its construction phase, the study predicts that 8,000 jobs will be created, with half of that number building the mill itself. People seem to associate the development of a pulp mill in Tasmania with the misconception that it will also mean the destruction of more forests.

To date, the waste from Tasmania’s sawlog operations or pulpwood has been reduced to woodchips that have had to be exported to be turned into pulp and then, in turn, to paper. But, if the state has its own pulp mill, that will enable this process to be completed on Tassie soil. The lesser timber from the state’s sustainably managed native forests and purpose-grown pulpwood plantations will be used to make Tasmanian pulp and Tasmanian paper. As for the concern about environmental impacts from the effluent produced by the mill, the CSIRO’s consultancy firm Ensis has found there is very little difference between the environmental impact of treated effluent from the pulp mill using pine or eucalypt.

All this will occur while creating more jobs for Tasmanian workers and boosting the economy. And, by returning Paul Lennon and the Labor government, the Tasmanian
people have shown that they support this development and they support the Tasmanian economy. The Tasmanian people have shown that they know that Labor stands for good government, that Labor stands for a focused government and that only Labor can deliver the services that people want and expect from state governments.

The Australian Labor Party is sure that this confidence in Labor will extend to the federal party at the next election. Already Australians are beginning to feel the effect of the Howard government’s unfair industrial relations changes, its contempt for the health system, and its ignorance of the problems facing those in aged care, child care, education and immigration; the list goes on and on. Tasmanians and South Australians have already shown that they know and trust Labor to stand up for them and their interests, as have other states.

The Australian public will remember the hurt that has been felt at the hands of this arrogant Howard government and it will react. Until Australian voters have that opportunity, I am confident that the Tasmanian Labor government and its counterparts around the country will continue to do the best for the people. In Tasmania, Labor has not only managed to clean up the mess that the last Liberal government left the state in but built a thriving and prosperous economy. After the next federal election, Labor will be ready to clean up the mess that the Howard government has instigated for the Australian people.

**Trade: Live Animal Exports**

**Senator BARTLETT** (Queensland) (12.39 am)—I wish to respond in part to the speech given last night by Senator McGauran and also to expand on issues that I have raised here in the past regarding the live animal export trade. A lot has been raised in the Senate and in the other place, and also in the wider Australian community, about concerns regarding the cruelty involved in the live animal export trade; indeed, it goes back more than two decades now. Yet we seem to see the same arguments raised again and again. Just last night Senator McGauran—of course newly transferred to the Liberal Party, under the guise of saying that there was no difference between the Liberals and The Nationals—perhaps trying to demonstrate his continuing commitment to rural industries, was expounding his concerns about the potential impact of public concern about animal cruelty in the live animal export trade. One of the problems we have seen in this area has been the continuing lack of commitment to the truth, and Senator McGauran’s speech last night demonstrated that once again in a whole range of areas.

My wider concerns involve not just some of the specifics about the allegations that have been raised time and time again on this issue but also some of the attacks that are made against people who raise them. Last night Senator McGauran was basically trying to say that people who are attacking the live export trade are a bunch of extremists. He mentioned specifically Animals Australia and, to use his own words, ‘the ever publicity seeking RSPCA’. Lots of people say lots of things about the RSPCA, but it is not that common to call the RSPCA an extremist group.

With regard to Animals Australia—and I openly acknowledge that I know many of the people involved in this organisation—it is grossly misleading to describe them as an extremist group. All senators, as I understand it, have received a letter in the last week or two from Animals Australia, from a person by the name of Lyn White, who is the communications director for Animals Australia. She has simply provided them with the documentary evidence about what she has discovered by making the effort and taking
the risk of going to the places where animals from Australia are exported to and filming what happens to them there.

Whilst I know all of us here in this place get many pieces of correspondence and it is possible that Senator McGauran himself might not have got this piece of correspondence, I thought it appropriate to outline some of the detail that she provides in the letter that she has given to many senators. For starters, I should say that, despite the description that Senator McGauran and many other government MPs, including other government ministers, have given, far from being an extremist, Ms White served in the South Australian police force for 20 years. It has been only in the last few years that she believed that part of her calling, if you like, was to draw more attention to the cruelty that was inflicted on animals.

Ms White first conducted an investigation in the Middle East into the treatment of Australian exported animals back in 2003 and met a shipment from Fremantle aboard the vessel *Al Kuwait*. Evidence documented from that investigation, in combination with full evidentiary briefs, was scrutinised by the Western Australian state solicitors office and the federal Attorney-General’s office. That legal complaint was determined to be well founded and has resulted in the Western Australian police lodging cruelty charges, alleging that what was a routine shipment, I might say, breached several sections of the Western Australian Animal Welfare Act. That matter is now before the courts in Western Australia, so I do not suggest that has been proven. But the fact that the evidence that Lyn White from Animals Australia gathered has been shown to be of sufficient value and substance to merit bringing charges before the courts in Western Australia, I hope would scotch once and for all any suggestion that this is some ratbag, extremist group—particularly Ms White, who is the key person who has gathered most of the evidence that has been brought to public attention.

One of the frustrations to many of us who have raised this issue over a number of years is, having done things like that—having gone to the source, having produced the evidence, having got the film documentaries, having provided it to the authorities, having had it screened in the media and having had the authorities bring charges about it—that we have basically come up against a brick wall from federal government authorities and the continual mantra that there is no real problem, that they have investigated this, that they have improved standards and that it is all better now and we should just let them keep going with it. Any time anybody raises any concern, they get called an extremist again. Having met with a response exactly like that, Animals Australia unfortunately had to go back to the Middle East and get more footage to demonstrate that not only did these things happen but also they are continuing to happen. Yet, even in the face of this clear-cut pictorial evidence, we have had just more of the same from the government and its apologists.

Not only are people flagged as extremists, but we also hear the continual mantra reinforcing the misleading statements from the past. Senator McGauran talked last night about thousands of Australian jobs being at risk, yet clearly the only jobs dependent specifically on the live animal export trade are those in exporters’ offices and in feedlots, which would number in the hundreds. I do not dismiss those people, but let us look at the related evidence. The figure of 9,000 jobs that is often used comes from a report, often called the Hassell report, commissioned back in 2002 by LiveCorp—the organisation that is involved in the live export trade. One of the people on the board of the group that produced that report was the then chairman of LiveCorp. By contrast, a report has been
produced by agri-economists that shows that a significant number of jobs are lost as a result of the live export trade. The report of Heilbron Pty Ltd concluded that the live export trade could be costing Australia around $1.5 billion in lost gross domestic product and around 10,500 lost jobs, particularly those of meat workers.

Senator McGauran also spoke about the so-called fabulous results with regard to the mortality figures in the live export trade for 2005. Actually, the mortality rates routinely experienced on live sheep export ships, which were about one per cent in 2005, are greater than the normal death rates on farm. Senator McGauran suggested that a one per cent mortality rate is great. Perhaps it is great on farm over the course of a year, but I suggest that if you were a farmer who had a mortality rate of one per cent every two to three weeks, which is the length of time that the average live export shipment takes, then you would be extremely concerned. It is this sort of misuse of figures and statistics that is part of why this continual misinformation is provided to the public. Indeed, Senator McGauran also talked about—to use his words—‘a charade on 60 Minutes’, which ‘purported to show that cattle were Australian, were being treated roughly, were having their tendons cut and were being cruelly slaughtered’. I presume and hope that Senator McGauran saw that, but I am not sure how it was purported that they were being treated cruelly, because it was quite clear-cut that that was what was happening. 

Mr Mick Farrelley

The PRESIDENT (12.49 am)—I do not know whether Mr Michael Farrelley is listening tonight—I doubt it very much at 10 minutes to one in the morning—but I would like to take this opportunity to mark his resignation from the Department of Parliamentary Services after a long and distinguished service spanning 37 years. Mick joined the then Department of the Parliamentary Library in April 1969 and moved to the Hansard section of the then Department of the Parliamentary Reporting Staff in December 1975. Mick was instrumental in establishing a dedicated Corporate Services Branch in the Department of the Parliamentary Reporting Staff in February 1990. He transferred to the Department of Parliamentary Services on its creation in February 2004, and he will retire from the parliamentary service on 7 April. His service over such a lengthy period has been diligent and dedicated. He is highly regarded by his colleagues and by senators and members, and this was recognised when he was awarded a Centenary of Federation Medal. On behalf of all senators, I thank Mick Farrelley for his dedicated service and wish him all the very best for the future.

Senate adjourned at 12.51 am

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

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

Civil Aviation Act—Civil Aviation Safety Regulations—Manual of Standards Part 172 Amendment (No. 1) 2006 [F2006L00929]*.

Customs Act—Tariff Concession Order 0516783 [F2006L00789]*.


Environment Protection and Biodiversity Conservation Act—Instrument amending list of key threatening processes under sec-
tion 183, dated 23 March 2006 [F2006L00968]*.


Fisheries Management Act—
Northern Prawn Fishery Management Plan 1995—NPF Directions Nos—
  94—Gear Requirements [F2006L00932]*.
  97—Protected Area Closures [F2006L00931]*.

Migration Act—Migration Regulations—Instruments—
IMMI06/004—Organisations that may sponsor Short Stay Business Visitors [F2006L00804]*.
IMMI06/017—Migration Occupations in Demand [F2006L00912]*.

National Health Act—
Arrangement No. PB 22 of 2006—IVF/GIFT Program [F2006L00965]*.
Determinations Nos—
  PB 15 of 2006 [F2006L00938]*.
  PB 17 of 2006 [F2006L00942]*.
  PB 18 of 2006 [F2006L00950]*.

Telecommunications (Carrier Licence Charges) Act—Determination under paragraph 15(1)(b) No. 1 of 2006 [F2006L00868]*.

Workplace Relations Act—Directions to Inspectors, dated 27 March 2006 [F2006L00983]*.

* Explanatory statement tabled with legislative instrument.

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 July to 31 December 2005—Statement of compliance—Department of Veterans’ Affairs.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Advertising Campaigns
(Question Nos 748 and 758)

Senator Chris Evans asked the Minister for Justice and Customs and the Minister representing the Attorney-General, upon notice, on 4 May 2005:

For each financial year from 2000-01 to 2002-03 can the following information relating to advertising be provided:

1. (a) What advertising campaigns were commenced; and (b) for what programs.
2. In relation to each campaign: (a) what was its total cost, including a breakdown of advertising costs for: (i) television placements, (ii) radio placements, (iii) newspaper placements, (iv) mail outs with brochures, and (v) research on advertising; and (b) what was the commencement and cessation date for each aspect of the campaign placement.
3. For each campaign: (a) on which television stations did the advertising campaign screen; (b) on which radio stations did the advertising campaign feature; and (c) in which newspapers did the advertising campaign feature.
4. Which: (a) creative agency or agencies; and (b) research agency or agencies, were engaged for the campaign.
5. (a) In the event of a mail out, what database was used to select addresses – the Australian Taxation Office database, the electoral database or other.
6. (a) What appropriations did the department use to authorise any of the payments either committed to be made or proposed to be made as part of this advertising campaign; (b) which financial year will these appropriations be made; (c) will the appropriations relate to a departmental or administered item or the Advance to the Minister for Finance and Administration; and (d) if an appropriation relates to a departmental or administered item, what is the relevant line item in the relevant Portfolio Budget Statement for that item.
7. Was a request made of the Minister for Finance and Administration to issue a drawing right to pay out moneys for any part of the advertising campaign; if so: (a) what are the details of that request; and (b) against which particular appropriation is it requested that the money be paid.
8. Did the Minister for Finance and Administration issue a drawing right as referred to in paragraph (7); if so, what are the details of that drawing right.
9. Has an official or minister made a payment of public money or debited an amount against an appropriation in accordance with a drawing right issued by the Minister for Finance and Administration for any part of the advertising campaign.

Senator Ellison—The Attorney-General has provided the following answer to the honourable senator’s question:

1. (a) I am advised that no advertising campaigns were commenced in the financial years 2000-01 to 2002-03. (b) Not applicable.
2. (a) Not applicable. (i) Not applicable. (ii) Not applicable. (iii) Not applicable. (iv) Not applicable. (v) Not applicable. (b) Not applicable.
(3) (a) Not applicable.
    (b) Not applicable.
    (c) Not applicable.
(4) (a) Not applicable.
    (b) Not applicable.
(5) (a) Not applicable.
(6) (a) Not applicable.
    (b) Not applicable.
    (c) Not applicable.
    (d) Not applicable.
(7) (a) Not applicable.
    (b) Not applicable.
(8) Not applicable.
(9) Not applicable.

Aviation
(Question No. 1030)

Senator Allison asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 19 July 2005:

With reference to the Civil Aviation Safety Authority (CASA) and the aviation industry:

(1) How does the Minister account for the fact that the number of general aviation operations, aircraft parts, manufacturers and maintenance organisations has halved since 1996.

(2) Does the Minister accept that the decline of 100 000 jobs in the sector is in any way due to:
    (a) CASA's aggressive application of aviation laws;
    (b) the increasing cost and complexity of complying with restrictive regulatory and administrative processes;
    (c) the lack of harmonisation of general aviation legislation with the United States Federation Aviation Association or the European Aviation Safety Authority;
    (d) the loss of trust and respect once held for CASA by the sector; and
    (e) the restructure of CASA into Compliance and Regulatory Services Divisions.

(3) Does the Minister agree that correcting deficiencies in maintenance regulations in recent years has not removed unnecessary and ambiguous requirements and practices.

(4) Will the Government consider the proposal by Aviation Maintenance Repair Overhaul Business Association to:
    (a) close down the ‘Safety Forum’ and other civil aviation committees recently formed and replace them with an Aviation Review Board to oversee proposed legislation, procedures and practices proposed by CASA for the sector;
    (b) staff the Board with leaders from all sectors of the industry including business associations;
    (c) provide funding for the Board for Industry/Government working groups on regulatory requirements, industry procedures and practices;
    (d) make the Board responsible for allocating the aviation safety promotion budget; and
(e) provide the Board with a permanent secretariat from within the Department of Transport and Regional Services.

(5) If not, what steps does the Minister propose to take to restore the viability of general aviation in Australia.

**Senator Ian Campbell**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

(1) I am unaware of any substantiated figures that demonstrate that the number of general aviation operations, aircraft parts, manufacturers and maintenance organisations has halved since 1996. However, there is some relevant data that can be drawn upon.

For example, figure 22 of the Australian Transport Safety Bureau’s “Aviation Safety Indicators 2005” (reproduced below) shows the total Licenced Aircraft Maintenance Engineer (LAME) ratings issued for ‘group’ aircraft types (which are the ratings generally used on GA aircraft) grew between 1995 and 2001. Since 2001, I note that there has been a decrease in the number of ‘group’ aircraft type ratings issued, but this does not equate to a halving in the GA maintenance sector. However, it should be noted that this is not a direct correlation as LAMEs may have more than one rating each.

Source: ATSB Safety Indicators 2005

Analysis of CASA’s Annual Report for the last two financial years has detailed the numbers of current and issued CoA’s for the 2003/2004 and 2004/2005 reporting periods. The table below indicates that the aircraft parts, manufacturers and maintenance organisations industry has been broadly stable over the last two years:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Issue</td>
<td>31</td>
<td>3</td>
<td>42</td>
<td>4</td>
</tr>
<tr>
<td>Subsequent Issue</td>
<td>77</td>
<td>16</td>
<td>54</td>
<td>16</td>
</tr>
<tr>
<td>Subsequent Issue with Variation</td>
<td>3</td>
<td>7</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>----------------------------</td>
<td>-----------</td>
<td>-----------</td>
<td>-----------</td>
<td>-----------</td>
</tr>
<tr>
<td>Variation</td>
<td>129</td>
<td>41</td>
<td>111</td>
<td>27</td>
</tr>
<tr>
<td>Total</td>
<td>240</td>
<td>67</td>
<td>210</td>
<td>49</td>
</tr>
<tr>
<td>Current certificates (c)</td>
<td>671</td>
<td>43</td>
<td>671</td>
<td>60</td>
</tr>
</tbody>
</table>

Note: the table includes organisations involved in one or more of aircraft and component maintenance, design (aircraft, components and materials), distribution (components and materials), aircraft maintenance engineer training and examinations.

(a) Processed by the CASA Service Centre.
(b) Processed by CASA Airline Offices.
(c) As at 30 June 2005.

(2) (a) to (e) I am not aware of any substantiated figure of such a decline in employment in the general aviation sector.

(3) On 9 February 2006, the CASA CEO announced that it was refining the framework for the development of Australia’s aviation safety regulations. The new framework is intended to make it easier for the aviation industry to comply with safety rules, as well as streamlining the process of updating regulations.

CASA is also establishing a simpler process for developing the new regulations, while maintaining a high level of consultation with the aviation industry. CASA is forming small industry/CASA teams to develop the supporting material for each set of regulations. It is intended that these teams will start with the safety outcomes that need to be achieved and work out the best and most practical ways of delivering the safety results. CASA will then review the relevant regulations to determine what changes need to be made.

Work on the maintenance suite of regulations has already commenced under this new framework and it is intended that it will be finalised during 2006.

(4) (a) to (e) The Government does not support the Aviation Maintenance Repair and Overhaul Business Association’s (AMROBA) proposal to close the ‘Safety Forum’ at this time. The Aviation Safety Forum (ASF) is a special consultative body helping the aviation community and CASA work effectively together to improve aviation safety in Australia. The ASF is made up of a group of 15 highly experienced aviation people who advise CASA on strategic issues. These people have worked in every area within aviation - including passenger transport, engineering, aerial agriculture and general aviation.

The work of the ASF complements that of another CASA and industry consultative body - the Standards Consultative Committee. The Standards Consultative Committee is made up of aviation industry technical specialists and it provides advice to CASA on detailed proposals for change to the aviation regulations.

(5) There are many viable General Aviation (GA) businesses in Australia. The industry has been undergoing significant restructuring as described in the Bureau of Transport and Regional Economics Report 111 on General Aviation. Overall GA activity levels have remained flat. The Government is aware that while there has been a reduction in business and private flying, there has been a compensating increase in the number of sport aircraft hours flown. Sport aircraft are newer as well as being cheaper aircraft to purchase, operate and maintain.
Princess Royal Harbour
(Question No. 1333)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon notice, on 20 October 2005:

(1) With reference to the discovery of unexploded ordnance in Princess Royal Harbour, which falls within the jurisdiction of the Albany Port Authority in Western Australia: has action been taken by the department to identify the types of ordnance that are in the harbour; if not, why not.

(2) (a) What specialist advice has the department made available to the Albany Port Authority to investigate the ordnance find at Princess Royal Harbour; (b) how many specialists were made available by the department; and (c) what were their areas of expertise.

(3) (a) What on site investigations have been carried out by departmental specialists at Princess Royal Harbour; (b) which specialists attended the site; (c) when did the investigations take place; and (d) what were the findings of the investigations.

(4) What research, if any, has been conducted on the quantity and type of ordnance disposed of, and the area and route taken for its disposal.

(5) What assessment has been made of the likely condition of the ordnance.

(6) What steps have been taken by the department for the removal or disposal of ordnance from Princess Royal Harbour.

(7) Has the department prepared or commissioned any legal advice in regard to its liability for the removal of, or damage caused by, explosive ordnance in Princess royal Harbour; if so, what was the substance of that advice.

(8) Regardless of legal liability, what responsibility does the department have for such a task.

(9) (a) On how many occasions has the Government attended mediation meetings with the Albany Port Authority and or the Western Australian State Government to resolve the issue of liability for the removal or disposal of ordnance in Princess Royal Harbour; and (b) when and where did the mediation meetings take place.

(10) Was a case management Directions Status Conference held at the Supreme Court of Western Australia on 27 July 2005; if so: (a) did the Government argue against the matter proceeding to trial; and (b) what was the rationale for this decision.

(11) (a) Is the Minister aware that consideration is being given to the development of the Southdown iron ore deposit by Grange Resources Limited and that, should this project proceed, it will increase port activity at Princess Royal Harbour and necessitate further dredging at the site; (b) what time frames have been put in place for the removal or disposal of ordnance in the harbour; (c) what agency within the department will oversee the removal or disposal of ordnance in the harbour; and (d) what is the estimated cost of the removal or disposal of ordnance.

(12) What financial contributions will be made by the Government to meet the additional costs of dredging Princess Royal Harbour as a result of explosive ordnance found.

(13) (a) In the past 5 years, on how many occasions has the department considered ordnance recovery; (b) at what sites; and (c) with what outcome and cost in each instance.

(14) With reference to a letter dated 30 May 2005, in which the Federal Member for O'Connor (Mr Tuckey) states that he has made representations to the Parliamentary Secretary to the Minister for Defence requesting that the Navy Clearance Diving Team undertake clearing areas where it is anticipated further unexploded ordnance might exist in Princess Royal Harbour: has any consideration been given to this proposal; if not, why not.
Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) Apart from the unexploded ordnance found during dredging operations by the contractors for the Albany Port Authority in the period 2000 to 2002, there is no presently known unexploded ordnance in Port Albany.

(2) (a), (b) and (c) Members of the Army specialising in ordnance handling and disposal provided advice and assistance to the dredging and construction contractors engaged at Port Albany in the period 2000 to 2001.

(3) (a) None. However, at the request of the Albany Port Authority, Defence conducted two examinations of the area of the Port comprising the former site of the old deep-water jetties.
   (b) Navy Clearance Divers.
   (c) 3-7 April 2001 and 5-6 March 2002.
   (d) No ordnance was found.

(4) No research was considered necessary.

(5) All intact ordnance is regarded as potentially dangerous in respect of its handling.

(6) All ordnance found in the course of dredging operations of the Port Authority’s contractors in the period 2000 to 2002 was removed by the Army and disposed of. On two occasions during the period 2000 to 2001, Navy personnel attempted to conduct an examination of part of the bottom of Port Albany, but the prevailing condition of the bottom rendered that action dangerous and it was consequently abandoned.

(7) and (8) Information of the kind sought is subject to legal professional privilege in the Commonwealth.

(9) (a) The Commonwealth attended two mediation meetings with the Albany Port Authority. These meetings were held pursuant to the directions of the Supreme Court of Western Australia. The Government of Western Australia is not party to the proceedings.
   (b) 24 May and 18 October 2005 in Perth.

(10) Yes.
   (a) Yes.
   (b) The Commonwealth has at all times been concerned that the matter be resolved expeditiously so that all attempts at mediation should first be exhausted.

(11) (a) Yes. Issues relating to possible increases in harbour use and further dredging are matters for the Port Authority.
   (b) and (d) It has not been demonstrated that there is ordnance in the harbour.
   (c) If ordnance is found in the harbour, Defence will address the appropriate resources for its removal and disposal.

(12) This is a hypothetical issue.

(13) (a), (b) and (c) The information sought in the honourable senator’s question is not readily available. To collect and assemble such information solely for the purpose of answering the question would be a major task, and I am not prepared to authorise the expenditure and effort that would be required.

(14) Yes.
Australian Defence Force Personnel
(Question No. 1353)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon notice, on 9 November 2005:

(1) For the financial years 2003-04 and 2004-05 to the end of May 2005, how many reviews were conducted by ComSuper of former Australian Defence Force (ADF) personnel under 65 years of age and in receipt of incapacity payments as a result of medical discharge A, B and C.

(2) (a) In how many of those reviews were reductions made to incapacity payments; (b) how many were cancelled; and (c) what was the average reduction.

(3) Of those reviewed, how many former personnel were in receipt of separate benefits from the Department of Veterans’ Affairs (DVA).

(4) In reviewing and reducing incapacity payments, is consultation conducted with DVA on each DVA client affected.

(5) (a) What is the current liability for incapacity payments to former ADF personnel under 65 years of age; and (b) what reduction has been made as a result of the reviews conducted in the years indicated in (1) above.

(6) (a) How many reviews, where reduced pensions have resulted, have in turn been appealed; and (b) what number and percentage have been altered in the appellant’s favour.

(7) In reviewing incapacity payments, what assistance is provided with respect to vocational training and assistance with employment.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) In 2003-04, ComSuper conducted 379 medical reviews.

From 1 July 2004 to 31 May 2005, ComSuper conducted 239 medical reviews.

For the full 2004-05 financial year, ComSuper conducted 257 medical reviews.

Reviews are not conducted for former ADF personnel initially classified as Class C. Class C invalidity benefits do not include a pension.

(2) (a) In 2003-04, 42 reviews resulted in invalidity classifications being reduced from Class A to Class B with a corresponding reduction in pension entitlement.

From 1 July 2004 to 31 May 2005, 41 reviews resulted in invalidity classifications being reduced from Class A to Class B with a corresponding reduction in pension entitlement.

For the full 2004-05 financial year, 42 reviews resulted in invalidity classifications being reduced from Class A to Class B with a corresponding reduction in pension entitlement.

(b) In 2003-04, 200 reviews resulted in invalidity classifications being reduced from Class A or Class B to Class C with no pension entitlement.

From 1 July 2004 to 31 May 2005, 125 reviews resulted in invalidity classifications being reduced from Class A or Class B to Class C with no pension entitlement.

For the full 2004-05 financial year, 136 reviews resulted in invalidity classifications being reduced from Class A or Class B to Class C with no pension entitlement.

(c) The information sought in the honourable Senator’s question is not readily available. To collect and assemble such information solely for the purpose of answering the question would be a major task, and I am not prepared to authorise the expenditure and effort that would be required.
(3) The data matching process required to provide the information requested would compromise the privacy of the individuals concerned.

(4) No.

(5) (a) and (b) See my response to (2) (c).

(6) (a) In 2003-04, 123 reviews which had resulted in a reduced pension were appealed.
From 1 July 2004-31 May 2005, 108 reviews which had resulted in a reduced pension were appealed.
For the full 2004-05 financial year, 125 reviews which had resulted in a reduced pension were appealed.

(b) In 2003-04, 22 appealed review decisions were altered in the appellant’s favour.
From 1 July 2004-31 to May 2005, 38 appealed review decisions were altered in the appellant's favour.
For the full 2004-05 financial year, 41 appealed review decisions were altered in the appellant’s favour.
These figures include cases decided in the appellant’s favour after internal reconsideration or after subsequent appeal to the Administrative Appeals Tribunal, for members of the DFRDB, or the Superannuation Complaints Tribunal, for members of the MSBS.
It is not possible to ascribe a percentage to either figure as the decisions on reviews include appeals from pensioners whose classifications were altered in previous years.

(7) There are no provisions for vocational training and assistance with employment under the terms of the military superannuation schemes. However, where a former ADF member has an accepted claim under the Military Rehabilitation and Compensation Act 2004 the rehabilitation provisions of the Act require that all reasonable steps be taken to assist the former member to find suitable civilian work. Such assistance would usually be provided through a rehabilitation program under the Act.

**Defence Security Project JP2054**

(Question No. 1369)

Senator Mark Bishop asked the Minister representing Minister for Defence, upon notice, on 21 November 2005:
With reference to the Defence Security Project JP2054 Phase 1A:

(1) What is the status of the project; and (b) at which departmental sites has the project been implemented.

(2) Has the project progressed past Phase 1A; if so: (a) what phase is now being considered or undertaken; and (b) what is the expected outcome of this phase.

(3) To date, what is the total cost of the project.

(4) With reference to the answer to question on notice no. 2112 (Senate Hansard, 24 November 2003, p. 17748), which advised that a Business Case Review of the project had been commissioned: (a) what was the result of the review; (b) what action was taken in light of the recommendations of the review; and (c) can a copy of the review be provided; if not, why not.

(5) For each of the financial years 2000-01 to 2004-05: (a) how many in-house personnel worked on the project; and (b) how many consultants were engaged on the project and what was the total cost.

(6) When and why was the project removed from the Defence Materiel Organisation website.
Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) (a) The project was placed on hold in July 2003 to allow for a review of the business case. This was due to concerns that the original concept of using commercial off the shelf e-mail systems might not meet the full military messaging requirement. The business case and acquisition approach are still under consideration by Defence.

(b) A number of the products delivered to date under the project are accessible from all Defence sites that access the Defence Restricted and Secret networks.

(2) No.

(3) JP2054 Phase 1A has expended $53.4 million as at 22 February 2006 out of a budget of $114.6 million at January 2006 prices.

(4) (a) to (c) The review is expected to be finalised in April 2006 in preparation for presentation to the Government in mid-2006.

(5) (a)

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of in-house personnel</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-01</td>
<td>12</td>
</tr>
<tr>
<td>2001-02</td>
<td>7</td>
</tr>
<tr>
<td>2002-03</td>
<td>8</td>
</tr>
<tr>
<td>2003-04</td>
<td>8 (Reduced to 3 in late 2003)</td>
</tr>
<tr>
<td>2004-05</td>
<td>1</td>
</tr>
</tbody>
</table>

(b) No consultants were used on the project. Professional Service Providers were used on a full-time basis and these figures are provided:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Professional Service Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-01</td>
<td>5</td>
</tr>
<tr>
<td>2001-02</td>
<td>5</td>
</tr>
<tr>
<td>2002-03</td>
<td>6.5</td>
</tr>
<tr>
<td>2003-04</td>
<td>7</td>
</tr>
<tr>
<td>2004-05</td>
<td>0</td>
</tr>
</tbody>
</table>

Total cost of Professional Service Providers $2.9 million

(6) In June 2004, due to the hold on project activity.

Commonwealth State Territory Disability Agreement

(Question No. 1459)

Senator Murray asked the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 5 January 2006:

(1) Has the Minister read the Australian National Audit Office (ANAO) audit report no. 14 of 2005-06, Administration of the Commonwealth State Territory Disability Agreement.

(2) Did the Minister note that that ANAO is limited in its ability to directly audit the Commonwealth State Territory Disability Agreement (CSTDA) and that ‘there is uncertainly as to whether financial statement auditors have tested CSTDA expenditure’ (paragraph 38 of the report); if so, what will the Minister do about this weakness in accountability.

(3) Did the Minister note that the National Disability Administrators ‘are not close to developing and reporting effective measures of outcomes of CSTDA activities’ (paragraph 18) and, the ‘shortcomings in performance information’ (paragraph 19); if so: (a) what is being done about this situation; and (b) when will this situation be rectified.
(4) Did the Minister note that the CSTDA ‘does not include financial incentives or sanctions’ (para-
graph 39); why is this the case.
(5) With reference to the answer to question on notice no. 410 (Senate Hansard, 19 August 2002, p. 3289) can any further information be provided on the issues raised.
(6) With reference to the letter from Senator Murray to the Commonwealth Auditor-General, dated 26 November 2003 and copied to the Minister concerning allegations of financial and other improprie-
ties with respect to the delivery of services to persons with intellectual disability, can a detailed outline be provided of what has happened in relation to the issues raised in that letter.

Senator Kemp—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:
(1) Yes. The Australian National Audit Office (ANAO) report presents a very positive assessment of
my department’s effectiveness in its overseeing, monitoring and coordination roles in relation to
the CSTDA.
(2) Schedule 2 to the current Agreement states: ‘CSTDA financial information is to be based on au-
dited financial statements of the respective agencies’. It is the responsibility of the state and territ-
ory governments to be satisfied with the quality of their financial statements. Nevertheless, this is-
sue will be considered in the context of any future agreement.
(3) I understand that the CSTDA audit was discussed at the 24 November 2005 meeting of the Na-
tional Disability Administrators. These issues will be considered in the context of any future
agreement.
(4) The Australian Government did not require incentives or sanctions to be included as a part of the
current agreement. This issue will be considered in the context of any future agreement.
(5) No.
(6) This is a matter for the Auditor-General.

Foreign Affairs and Trade: Grants
(Question Nos 1488 and 1491)

Senator O’Brien asked the Minister representing the Minister for Foreign Affairs and the
Minister for Trade, upon notice, on 18 January 2006:
(1) What programs and/or grants administered by the department provide assistance to the people liv-
ing in the federal electorate of Bass.
(2) When did the delivery of these programs and/or grants commence.
(3) For each of the financial years 2002-03, 2003-04 and 2004-05, what funding was provided through
these programs and/or grants for the people of Bass.
(4) For the 2005-06 financial year, what funding has been appropriated for these programs and/or
grants.
(5) For the 2005-06 financial year, what funding has been approved under these programs and/or
grants to assist organisations and individuals in the electorate of Bass.

Senator Coonan—The following answer has been provided by the Minister for Foreign
Affairs and the Minister for Trade to the honourable senator’s question:
To provide the information sought would entail a significant diversion of resources and in the circum-
stances I do not consider the additional work can be justified.
Industry, Tourism and Resources: Grants
(Question No. 1499)

Senator O’Brien asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 18 January 2006:

(1) What programs and/or grants administered by the department provide assistance to the people living in the federal electorate of Bass.

(2) When did the delivery of these programs and/or grants commence.

(3) For each of the financial years 2002-03, 2003-04 and 2004-05, what funding was provided through these programs and/or grants for the people of Bass.

(4) For the 2005-06 financial year, what funding has been appropriated for these programs and/or grants.

(5) For the 2005-06 financial year, what funding has been approved under these programs and/or grants to assist organisations and individuals in the electorate of Bass.

Senator Minchin—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator’s question:

(1) The Department of Industry, Tourism and Resources administers a number of programs that are available to community organisations, businesses or individuals in the federal electorate of Bass. In some cases eligibility for applying will depend on the entity meeting specific criteria under the program. Programs currently available include:

Innovation
- Commercial Ready Program
- R&D Tax Concession (including 175% Premium R&D Tax Concession and R&D Tax Offset)
- Renewable Energy Development Fund
- Industry Cooperative Innovation Program
- Low Emissions Technology Development Fund
- National Innovation Awareness Strategy

Venture Capital
- Commercialising Emerging Technologies Program
- Innovation Investment Fund
- Pooled Development Funds Program
- Pre-Seed Fund
- Renewable Energy Equity Fund
- Venture Capital Limited Partnerships Program

Sectoral
- Automotive Competitiveness and Investment Scheme
- Australian Tourism Development Program
- Business Ready Program for Indigenous Tourism
- Ethanol Production Grants Program
- Petroleum Products Freight Subsidy Scheme
- Pharmaceutical Partnerships Program
- Textiles, Clothing and Footwear (TCF) Corporatewear Register
(2) Background information on programs administered by the Department is available on the Department’s website www.industry.gov.au, and on the AusIndustry website www.ausindustry.gov.au.

(3) to (5) Information on funding appropriated in 2005-06 for programs administered by the Department is provided in the 2005-06 Portfolio Budget Statements for the Industry, Tourism and Resources portfolio. As noted above, information on these programs (including in relation to funding) is also available on the Department’s website www.industry.gov.au and on the AusIndustry website www.ausindustry.gov.au.

Details of funding/assistance provided to organisations in the electorate of Bass from 2002-03 to 2005-06 is provided below.

### Commercialising Emerging Technologies Program

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Benefits Provided (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advanced Information Management Solutions Pty Ltd</td>
<td>2002-03</td>
<td>$32,000</td>
</tr>
<tr>
<td>Agent Technology Pty Ltd</td>
<td>2002-03</td>
<td>$47,000</td>
</tr>
<tr>
<td></td>
<td>2003-04</td>
<td>$1,000</td>
</tr>
<tr>
<td>Edupuzzles Pty Ltd</td>
<td>2003-04</td>
<td>$37,000</td>
</tr>
<tr>
<td></td>
<td>2004-05</td>
<td>$5,000</td>
</tr>
<tr>
<td>Eqals Pty Ltd</td>
<td>2003-04</td>
<td>$30,000</td>
</tr>
</tbody>
</table>

### Commercial Ready Program

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Benefits Provided (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEA Timber Pty Ltd</td>
<td>2004-05</td>
<td>$200,000</td>
</tr>
<tr>
<td>Aprin Pty Ltd</td>
<td>2005-06</td>
<td>$266,000</td>
</tr>
<tr>
<td>SVP Industries Pty Ltd</td>
<td>2005-06</td>
<td>$89,000</td>
</tr>
</tbody>
</table>

### National Innovation Awareness Strategy

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Benefits Provided (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Maritime College</td>
<td>2002-03</td>
<td>$4,000</td>
</tr>
</tbody>
</table>
## QUESTIONS ON NOTICE

### R&D Start Program (replaced by Commercial Ready Program)

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Benefits Provided (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acacia Consulting Pty Ltd</td>
<td>2002-03</td>
<td>$69,000</td>
</tr>
<tr>
<td>Advanced Information Management Solutions Pty Ltd</td>
<td>2002-03</td>
<td>$29,000</td>
</tr>
<tr>
<td>IT2000 Pty Ltd</td>
<td>2002-03</td>
<td>$6,000</td>
</tr>
<tr>
<td>Tasmanian Kiln Dried Timbers Pty Ltd</td>
<td>2002-03</td>
<td>$19,000</td>
</tr>
<tr>
<td>University of Tasmania</td>
<td>2002-03</td>
<td>$4,000</td>
</tr>
<tr>
<td>Tasmanian Aquaculture and Fisheries Institute (University of Tasmania)</td>
<td>2004-05</td>
<td>$5,000</td>
</tr>
<tr>
<td></td>
<td>2005-06</td>
<td>$8,000</td>
</tr>
</tbody>
</table>

### R&D Tax Concession

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Total R&amp;D Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggregate information provided</td>
<td>2002-03</td>
<td>$4,982,000</td>
</tr>
<tr>
<td>Aggregate information provided</td>
<td>2003-04</td>
<td>$3,630,000</td>
</tr>
<tr>
<td>Aggregate information provided</td>
<td>2004-05</td>
<td>$3,345,000</td>
</tr>
</tbody>
</table>

Note 1. Aggregate information for the program has been provided rather than individual details for particular customers. Confidentiality restrictions prevent disclosure of detailed information.

Note 2. ‘Total R&D Expenditure’ is not the value of assistance provided. This figure represents the total level of R&D expenditure reported by companies that have registered for that financial year.

### Small Business Bushfire Relief Program

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Benefits Provided (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggregate information provided</td>
<td>2002-03</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

### Small Business Enterprise Culture Program (replaced by Small Business Entrepreneurship Program)

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Benefits Provided (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Esset Consulting Pty Ltd</td>
<td>2003-04</td>
<td>$80,000</td>
</tr>
<tr>
<td></td>
<td>2005-06</td>
<td>$19,000</td>
</tr>
</tbody>
</table>

### Small Business Incubators Program (replaced by Small Business Entrepreneurship Program)

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Benefits Provided (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasmanian Music Industry Association Inc</td>
<td>2004-05</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

### Tradex Scheme

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Benefits Provided (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggregate information provided</td>
<td>2003-04</td>
<td>$6,000</td>
</tr>
<tr>
<td>Aggregate information provided</td>
<td>2004-05</td>
<td>$50,000</td>
</tr>
<tr>
<td>Aggregate information provided</td>
<td>2005-06</td>
<td>$4,000</td>
</tr>
</tbody>
</table>

Note 1. Aggregate information for the program has been provided rather than individual details for particular customers. Confidentiality restrictions prevent disclosure of detailed information.

Note 2. ‘Benefits Provided’ represents the estimated value of import duty forgone during the financial year.
### Industry, Tourism and Resources: Grants

**Industry, Tourism and Resources: Grants**  
*(Question No. 1511)*

Senator O’Brien asked the Minister representing the Minister for Small Business and Tourism, upon notice, on 18 January 2006:

1. What programs and/or grants administered by the department provide assistance to the people living in the federal electorate of Bass.
2. When did the delivery of these programs and/or grants commence.
3. For each of the financial years 2002-03, 2003-04 and 2004-05, what funding was provided through these programs and/or grants for the people of Bass.
4. For the 2005-06 financial year, what funding has been appropriated for these programs and/or grants.
5. For the 2005-06 financial year, what funding has been approved under these programs and/or grants to assist organisations and individuals in the electorate of Bass.

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

This question was also asked of the Minister for Industry, Tourism and Resources (Question No. 1499). The Minister for Industry, Tourism and Resources will provide a portfolio response to this question.

### Defence: Grants

**Defence: Grants**  
*(Question No. 1520)*

Senator O’Brien asked the Minister representing the Minister for Defence, upon notice, on 18 January 2006:

For each financial year since 2001-02, what grants or payments has the Minister’s department, or have agencies for which the Minister is responsible, made to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania.

**Senator Ian Campbell**—The Minister for Defence has provided the following answer to the honourable senator’s question:

None.

### Transport and Regional Services: Grants

**Transport and Regional Services: Grants**  
*(Question No. 1522)*

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 18 January 2006:

---

**Other Grants (Election commitments from the 2001 election)**

<table>
<thead>
<tr>
<th>Company</th>
<th>Financial Year</th>
<th>Benefits Provided (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridport 2000 Plus Inc (Visitor Centres)</td>
<td>2003-04</td>
<td>$150,000</td>
</tr>
<tr>
<td>Launceston Council (Cataract Gorge)</td>
<td>2003-04</td>
<td>$850,000</td>
</tr>
<tr>
<td></td>
<td>2004-05</td>
<td>(paid over two years)</td>
</tr>
<tr>
<td>Ringarooma Community Cultural Heritage</td>
<td>2003-04</td>
<td>$95,000</td>
</tr>
<tr>
<td>Association Inc (Ringarooma Church)</td>
<td>2004-05</td>
<td>(paid over two years)</td>
</tr>
</tbody>
</table>
For each financial year since 2001-02, what grants or payments has the Minister’s department, or have agencies for which the Minister is responsible, made to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

Department of Transport and Regional Services:
The department’s records show nil payments were made to City View Christian Church Inc., or to Crusade Centre Inc. for each financial year since 2001-02.

Australian Maritime Safety Authority:
Nil.

Civil Aviation Safety Authority:
Nil.

Airservices Australia:
Nil.

National Capital Authority:
Nil.

Families, Community Services and Indigenous Affairs: Grants
(Question No. 1528)

Senator O’Brien asked the Minister representing the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 7 February 2006:
For each financial year since 2001-02, what grants or payments has the Minister’s department, or have agencies for which the Minister is responsible, made to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania.

Senator Kemp—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator’s question:
The Department of Families, Community Services and Indigenous Affairs, Tasmania State Office has not provided any grants or payments to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania since 2001-02.

Industry, Tourism and Resources: Grants
(Question No. 1529)

Senator O’Brien asked the Minister representing the Minister for Industry, Tourism and Resources, upon notice, on 18 January 2006:
For each financial year since 2001-02, what grants or payments has the Minister’s department, or have agencies for which the Minister is responsible, made to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania.

Senator Minchin—The Minister for Industry, Tourism and Resources has provided the following answer to the honourable senator’s question:
Records held indicate that no grants or payments have been made to the City View Christian Church Inc. or to the Crusade Centre Inc. by my Department or by any agency within the Industry, Tourism and Resources portfolio since 2001-02.
Industry, Tourism and Resources: Grants
(Question No. 1541)

Senator O’Brien asked the Minister representing the Minister for Small Business and Tourism, upon notice, on 18 January 2006:
For each financial year since 2001-02, what grants or payments has the Minister’s department, or have agencies for which the Minister is responsible, made to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania.

Senator Minchin—The Minister for Small Business and Tourism has provided the following answer to the honourable senator’s question:
This question was also asked of the Minister for Industry, Tourism and Resources (Question No. 1529). The Minister for Industry, Tourism and Resources will provide a portfolio response to this question.

Transport and Regional Services: Grants
(Question No. 1542)

Senator O’Brien asked the Minister representing the Minister for Local Government, Territories and Roads, upon notice, on 18 January 2006:
For each financial year since 2001-02, what grants or payments has the Minister’s department, or have agencies for which the Minister is responsible, made to City View Christian Church Inc. (formerly known as Crusade Centre Inc.) based in Launceston, Tasmania.

Senator Ian Campbell—The Minister for Local Government, Territories and Roads has provided the following answer to the honourable senator’s question:
Department of Transport and Regional Services:
The department’s records show nil payments were made to City View Christian Church Inc., or to Crusade Centre Inc. for each financial year since 2001-02.

Australian Maritime Safety Authority:
Nil.

Civil Aviation Safety Authority:
Nil.

Airservices Australia:
Nil.

National Capital Authority:
Nil.

Transport and Regional Services: Credit Cards
(Question No. 1553)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 19 January 2006:
(1) When did the department or agencies for which the Minister is responsible introduce credit cards for ‘travel’ purposes and ‘purchasing’ purposes.
(2) How is the credit card provider selected by the department and each agency.
(3) For each of the financial years 2002-03, 2003-04, 2004-05 and 2005-06 to date, disaggregated to show the number of cards issued by the department and each agency, how many travel cards have been issued to staff.

QUESTIONS ON NOTICE
(4) For each of the financial years 2002-03, 2003-04, 2004-05 and 2005-06 to date, disaggregated to show the value of expenditure on cards issued by the department and each agency, what is the total value of purchases using travel cards.

(5) Can a copy of the relevant chief executive’s instructions in relation to travel cards be provided; if not, why not.

(6) For each of the financial years 2002-03, 2003-04, 2004-05 and 2005-06 to date, disaggregated to show the number of cards issued by the department and each agency, how many purchase cards have been issued to staff.

(7) For each of the financial years 2002-03, 2003-04, 2004-05 and 2005-06 to date, disaggregated to show the value of expenditure on cards issued by the department and each agency, what is the total value of purchases made using purchase cards.

(8) Can a copy of the relevant chief executive’s instructions in relation to purchase cards be provided; if not, why not.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

(1) **Department of Transport and Regional Services (DOTARS):**
The Department has used Australian Government Credit Cards for a number of years. In September 2002, the use of credit cards was widened to include travel-related expenses.

**Australian Maritime Safety Authority (AMSA):**
Introduced credit cards generally to staff in 2000.

**Civil Aviation Safety Authority (CASA):**
CASA introduced credit cards for travel and purchasing purposes at the time of its inception in 1995.

**Airservices Australia (Airservices):**
Has used credit cards since its establishment in 1995.

**National Capital Authority (NCA):**
The NCA has used credit cards for purchasing only for many years and holds records of credit card use since 1999.

(2) **DOTARS:**
The Department’s current credit card provider was selected through an open tender process in 2002.

**AMSA:**
The credit card provider is the same as its banking services provider.

**CASA:**
The Authority has used the same credit card provider since 1995. However, a search of CASA’s files has been unable to locate any specific documentation in relation to the selection process for a credit card provider.

**Airservices:**
The current credit card provider, ANZ, was selected as the outcome of a public request for tender.

**NCA:**
The current credit card provider was selected as part of an overall banking services selection process.
(3) **DOTARS:**  
As at 1 February 2006, the Department has a total of 1105 credit cards on issue, for travel and purchasing. The Department is unable to provide card numbers for previous years as records are only kept for current credit cards on issue.  

**AMSA:**  
Not applicable. AMSA does not issue separate travel cards.  

**CASA:**  
As at 1 January 2006, 546 travel cards and 27 contract manager credit cards are issued to CASA staff. CASA is unable to provide details for preceding years as information on the number of travel cards is only retained for current cards.  

**Airservices:**  
2002-03 462; 2003-04 491; 2004-05 520; 2005-06 to date 925 (Note: this financial year Airservices has moved to one Corporate Card that covers both travel and purchasing.)  

**NCA:**  
No travel cards issued.  

(4) **DOTARS:**  
The net value of credit card purchases is; 2002-03 $6.485m; 2003-04 $8.302m; 2004-05 $13.950m; 2005-06 (Jul - Dec 05) $8.592m. As many cards are authorised for both travel and other procurement it is not possible to separate out travel costs without significant administrative effort.  

**AMSA:**  
Not applicable.  

**CASA:**  
Totals provided include all charges on contract manager credit cards of which 95% of charges are related to travel. 2002-03 $4.400m; 2003-04 $5.106m; 2004-05 $5.319m; 2005-06 (Jul to Dec 05) $2.640m.  

**Airservices:**  
2002-03 $2.284m; 2003-04 $2.822m; 2004-05 $3.331m; 2005-06 to date $3.613m.  

**NCA:**  
Nil response – no travel cards issued.  

(5) **DOTARS:**  
Refer Attachment A.  

**AMSA:**  
Refer Attachment B.  

**CASA:**  
Refer Attachment C.  

**Airservices:**  
Refer Attachment D and E.  

**NCA:**  
Refer Attachment F.  

(6) **DOTARS:**  
See (3)
QUESTIONS ON NOTICE

AMSA:
Currently has issued 177 credit cards for purchasing and travel. A similar number were on issue in preceding financial years.

CASA:
As at 1 January 2006, 58 purchase cards are issued to CASA staff. CASA is unable to provide details for preceding years as information on the number of purchase cards is only retained for current cards.

Airservices:
2002-03 489; 2003-04 35; 2004-05 143; 2005-06 to date 62.

NCA:
2002-03 7; 2003-04 9; 2004-05 8; 2005-06 11.

(7) DOTARS:
See (4).

AMSA:
Total value of purchases in 2004-05 was $1.261m, which would be representative of the value in current and preceding financial years.

CASA:
2002-03 $2.083m; 2003-04 $1.960m; 2004-05 $2.241m; 2005-06 (Jul to Dec 05) $0.949m.

Airservices:
2002-03 $12.574m; 2003-04 $11.039m; 2004-05 $11.929m; 2005-06 to date $5.179m.

NCA:
2002-03 $49,229; 2003-04 $60,841; 2004-05 $110,559; 2005-06 to date $55,652.

(8) DOTARS:
Refer Attachment A.

AMSA:
Refer Attachment B.

CASA:
Refer Attachment C.

Airservices:
Refer Attachment D.

NCA:
Refer Attachment F.

Attachment A
Chief Executive Instructions
CEI Home Page
8. CREDIT CARDS
8.1 Credit Cards for Travel and Purchasing
Issued:
This Chief Executive’s Instruction (CEI) shall be read in conjunction with the CEIs in relation to advances, procurement and travel (CEI’s 1.4, 5.2, 7.2).
The Department has two forms of credit cards:

- Travel Cards - to be used for travel-related expenditure only.
- Corporate Cards - issued to officers for purchasing goods and services under $5,000 as well as for travel expenditure.

Only one Card per staff member will be issued.

DOTARS Travel Card or Corporate Card cardholders must

- comply with the conditions applying to the use of the card as set out in the Cardholder Undertaking they sign upon receipt of the card
- not use the card unless trained and/or briefed in its use
- not lend the card or Personal Identification Number (PIN) to anyone nor ask anyone to use either card on their behalf
- keep the card/s and PIN in a secure place
- ensure proposed payments are in accordance with limits as specified in the Cardholder Undertakings
- use the card for Department of Transport and Regional Services Departmental accounts purposes only
- not use the card to pay Administered accounts
- except for DOTARS staff employed on the Indian Ocean Territories (IOTs), who may purchase goods and services of an administrative nature for IOT use, and the card has been authorised jointly by the Chief Financial Officer (CFO) and General Manager, Territories Branch
- not use the card/s to obtain cash except as agreed in the Cash Withdrawal Facility Undertaking
- ensure that monthly purchases/payments do not exceed the monthly credit limit set in the Cardholder Undertakings
- create an individual official registry file and maintain and record on that file all documentation (including signed statements and receipts) associated with the procurement and payment of goods and services from either card to support payment of the monthly account, including approval to travel
- reconcile and assign costing codes in the credit card statements in Spendvision, and complete the reconciliation process by month end for the statement period (when proceeding on approved leave refer to the relevant clause in the Practical Guides)
- ensure that all purchases of portable and attractive items are promptly brought to account in the Departmental assets register
- report lost cards immediately to the National Australia Bank (1800 033 103) and to the Credit Card Team on x7555 or email the Credit Card Helpdesk – credit.card@dotars.gov.au
- not accept a cash or cheque refund when goods purchased using the card are returned
- ensure card usage is in accordance with the APS Values and APS Code of Conduct

Supervisors must

- on a monthly basis check cardholders’ statements and supporting documentation to verify all purchases are work related
- ensure cardholders retain all credit card documentation on an individual official registry file
- ensure cardholders reconcile statements at the close of each month and only verify statements when they are submitted on the individual’s official registry file
• verify correctness of transaction codings
• review card usage to ensure transaction limits are not exceeded

Executive Directors or General Managers must
• only approve a request for the issue of a Travel Card or Corporate Card when the official has a demonstrated need for the card
• only approve a request for a Travel Card for a non-ongoing employee where there is a demonstrated need for that employee to have a card
• ensure supervisors check the individual cardholders’ monthly statements and supporting documentation of their staff
• ensure that the card/s are being used properly and that there is a continuing need for the card/s
• where there is a need to increase card limits, approve and confirm in writing stating the increased amount, justification for the increase, and the period of time required for the increase. The approval must be provided to the Credit Card Team

Finance Branch must
• not issue a Travel Card or Corporate Card unless an Executive Director or General Manager has approved the issue.
• ensure that cardholders are appropriately trained in using the card prior to issue
• ensure that whenever a new card is issued cardholders sign the relevant undertakings form accepting the terms set out in the Card Company’s Conditions of Use and these CEIs
• keep proper records of cards issued and relevant details of cardholders such as financial limits and access to cash advances
• ensure a review of credit limits, transaction limits and card usage for all cardholders is carried out annually to affirm the ongoing requirement for cards and that the appropriate level of credit and transaction limits is maintained
• ensure that sufficient funds are in the Settlement Account on the due date as per the monthly statement
• carry out any post-reconciliation adjustments as necessary.

The official nominated to verify the identity of new DOTARS Travel Card and Corporate Card applicants and the official(s) authorised to approve applications for the issue of a DOTARS Travel Card or Corporate Card (Authorised Signatory) must not be the same person.

The Australian Delegation to International Civil Aviation Organisation (ICAO):
• Representatives of the Australian Delegation to ICAO in Montreal may use Canadian Bank issued credit cards upon approval from the General Manager, Aviation Operations. Holders of Canadian issued cards must comply with the conditions applying to the use of the card as set out in the DOTARS Undertaking by the Cardholder (Canada), and provide copies of monthly reconciled card statements to the CFO.

The Section Head, Internal Audit must institute a program of random checking of DOTARS Purchasing and Travel Card operations, including supporting documentation for all transactions relating to either card.

Staff who become aware of an apparent misuse of the DOTARS Travel Card or Corporate Card must report the matter immediately to the Section Head, Internal Audit and by email to the Deputy Chief Financial Officer.

Further information is available
• by email from the Credit Card Helpdesk - credit.card@dotars.gov.au
on the intranet
in the FMA Act section 60
in FMA Regulations 13, 21 and
in FMA Order 2.5
Penalties for breaches of this instruction exist under the FMA Act sections 60 and 61.

Practical Guide

Click here to view the practical guide

Attachment B

AUSTRALIAN MARITIME SAFETY AUTHORITY
Policy and Guidelines
Purchasing Credit Cards

1. Scope
This document sets out the policy and guidelines in relation to the use of AMSA Purchasing credit cards.

2. Definitions

Purchasing Credit Card: A Westpac VISA card issued to an AMSA employee to purchase goods and/or services on behalf of the Authority or to pay for travel expenses.

Undertaking by Cardholder: A signed declaration by cardholder certifying that he/she will comply with AMSA's policy and procedures on credit cards.

Authorised Signatory: Officer authorised by AMSA to liaise with Westpac HVC Commercial Cards to arrange card issues/amendments/cancellations.

3. References
• AMSA general procurement policy and procedures
• Financial and contractual authorisations
• Westpac Visa - Conditions of Use
• Corporate Credit Card Month End Procedures – Refer Finance Section Procedures

4. Policy
An AMSA credit card should be issued to officers who travel on a regular basis and those who purchase goods and services that cannot be supplied on credit. Credit cards are to be used only for official purposes.

Finance will arrange with Westpac for all credit card issues, amendments and cancellations.

Generally, AMSA purchases goods & services on credit, that is, an invoice is sent after receipt of goods and paid within a defined period, generally 30 days.

If this is not practicable, then an AMSA credit card can be used for the following types of business/transactions:
• Goods and services under $500 that require immediate payment prior to despatch of goods.
• Official hospitality - use by members of the Executive Management Group - Refer to the policy on Official hospitality;
• emergency situations - including unavailability of Finance One for raising an urgent purchase order
• overseas payments – e.g books, publications and subscriptions purchased from overseas. Payment via credit card is cost effective compared to use of telegraphic transfers and bank drafts.
 QUESTIONS ON NOTICE

• travel expenses - as specified by AMSA’s travel policy. e.g. are accommodation and meals and taxi fares. Refer to the policy on Domestic Travel;

• airfares – AMSA’s travel provider, FCm Travel Solutions, allows for bookings to be charged to an account. The only exception is Jetstar. When booking Jetstar flights online/email with FCm, the traveller will need to ensure their AMSA purchasing credit card is identified in their traveller profile. Jetstar bookings are the only airfares to be charged to a purchasing credit card. Refer to the policy on Domestic Travel.

An AMSA credit card is NOT to be used for the following:

• To pay invoices for goods previously received. All tax invoices should be submitted to Finance for payment through Finance One.

• To add a “tip” to a transaction e.g. restaurant meal

• To pay for personal acquisitions

• To obtain cash from ATM’s or branches.

Cardholders should be aware that the use of credit cards is a privilege, and not a right. Any persistent non-compliance with these policies and procedures may result in the automatic cancellation of the cardholder’s credit card.

Further disciplinary action may also be taken against these cardholders. Proceedings may be instigated against any cardholder for fraudulent misuse of the credit card under Commonwealth law and if found guilty, a fine, imprisonment or both may be imposed, as a result of due legal process.

5. AMSA purchasing cards are not be used for personal expenses. However, in the event that personal expenses are charged in error, Finance must be advised prior to acquittal of the transaction.

The cardholder is to pay the amount owing to Finance by cash or credit card. Finance will create a debtor account to record the payment and offset the transaction from the AMSA acquittal when received. The cardholder must identify the charge on the acquittal as a “personal transaction”.

Under no circumstances is the cardholder to pay the money of the credit card directly at the bank.

6. New credit card applications

A completed undertaking by cardholder authorised by the RC Manager should be forwarded to Finance, Canberra. Officers outside Canberra will also need to fill in their Westpac branch name in the Card Delivery Instructions section.

Finance must be advised if the card is not collected for any reason. The cardholder must sign the back of the card immediately on receipt and must keep the card in a secure place (eg in their wallet or in secure lockable storage such as a safe).

7. Credit limits

Standard policy regarding credit limits is $10,000 for General Managers and $5,000 for other staff. Temporary credit limit increases can be obtained at short notice by contacting Finance with details of the required extension time and the amount required. Authority by the RC Manager is required and an email will be sufficient to process the request.

The balance payable on each AMSA credit card is cleared by Westpac on or around the 2nd of each month. If you need to find out the balance of available credit on your card, ring Westpac on 1300 650 107 or contact Finance.

8. Cancellation of a credit card

An AMSA card should be cancelled when:
• an officer ceases employment with AMSA. It is the RC manager’s responsibility to ensure that cards are recovered from departing employees before they leave AMSA and the card cut up and forwarded to Finance

• a card is lost or stolen – the credit card should be reported to Westpac on 1300 650 107 and Finance. A replacement card can be issued by request to Finance.

• Extended absences by an officer, e.g. maternity leave. Periods of over 4 months require cancellation of the credit card.

• An officer changes position/responsibility and no longer requires access to a credit card.

• When an officer changes Responsibility Centre (RC) but still requires their credit card, Finance must be advised to update Finance One records.

9. Requirements for using a credit card

Cardholders should obtain a receipt or equivalent evidence of purchase for all transactions. Please note, the actual EFTPOS machine receipt is not a tax invoice.

For transactions of $50 or more proof of purchase must be in the form of a tax invoice. If you do not get a tax invoice then AMSA cannot claim back the GST. The GST will therefore be charged to the relevant Business Units expenses.

Your proof of purchase qualifies as a tax invoice if it has the following information:

• The words “Tax Invoice”

• Supplier’s ABN and name

• Price of the goods (must either identify the GST separately or state that the price is GST inclusive)

• Date of issue of the invoice

• Description and quantity of goods supplied

Most suppliers should be able to satisfy the requirements for a tax invoice with their normal proof of purchase, eg a cash register receipt may be produced that includes all the required information.

If the credit card payment is made over the telephone, a tax invoice must be requested at the time of payment. When received, ensure this is added to your acquittal paperwork.

Legally, if you ask for a tax invoice for a purchase that is subject to GST, then the supplier must provide you with one within 28 days. If necessary, you should ask for a replacement invoice/receipt to support your credit card statement.

10. Credit card refunds

Where goods, which were originally purchased with a credit card are returned to the supplier, the cardholder should obtain a refund against the credit card from the supplier. If this is not possible then a refund cheque is acceptable. Under no circumstances is a cash refund to be accepted for returned purchases.

11. Acquittal of credit card transactions

Cardholders must perform a monthly acquittal of their purchases.

The Credit Card Listing - Unaquitted Purchases Report will be emailed in the first week of the month to each cardholders designated email address. This spreadsheet has the transaction date, supplier and amount of purchase. The cardholder is required to enter the relevant ledger codes for processing and a description of the transaction, e.g. accommodation in London.

The spreadsheet should be signed by the cardholder as evidence the purchases were made and by the manager to approve the purchases and to accept the GST charge for those not supported by invoices. The supporting receipts/invoices should be attached to the spreadsheet and the paperwork returned to Finance for processing. It is the RC manager’s responsibility to ensure that staff acquits their purchases.
promptly and to review and authorise transactions. Note that a cardholder cannot authorise his own pur-
chases.

12. Disputing credit card transactions
Transactions must be disputed with Westpac within 90 days of the transaction taking place. Please no-
tify Finance in Canberra immediately if you dispute any transactions on your statement and complete
the disputed transactions form.

All contact for disputed transactions with Westpac must be initiated and followed up by the Finance
sections authorised signatory only.

Before disputing a transaction check the following:
• The actual transaction date on the acquittal form can be different to the docket the cardholder has
due to processing delays through the bank.
• The supplier name can have a different location on the acquittal due to a head office merchant fa-
cility.
• Taxi fares incur an 11% service fee. The printed receipt from a taxi machine allows for this, how-
ever a manual receipt does not. For manual receipts add 11% to the written amount to verify charge
is correct.

13. Emergency increase of credit limits
AMSA has a number of officers who are required to attend oil spills and other pollution incidents. To
cover emergency purchases, arrangements have been made with Westpac to have a facility whereby a
number of selected cardholder’s monthly credit limits can be immediately increased to a maximum of
$100,000 by telephone, on a 7 days a week, 24 hours a day basis.

The General Managers of Maritime Operations, Maritime Safety and Emergency Response have been
authorised to give telephone instructions to Westpac on 1300 650 107 to increase credit limits for the
relevant cardholders outside core business hours. Any telephone authorisation must be notified to Fi-
nance in Canberra the next working day. Finance in Canberra will then confirm the emergency increase
to Westpac in writing.

Once the incident is under control and the increased credit limits are no longer required, Finance in
Canberra is to be advised so that the credit card limits can be reduced to their normal levels.

Attachment C
Available from the Senate Table Office.

Attachment D
Available from the Senate Table Office.

Attachment E
Available from the Senate Table Office.

Attachment F
Available from the Senate Table Office.

Australian Defence Force: Summernats
(Question No. 1575)

Senator Mark Bishop asked the Minister representing the Minister for Defence, upon no-
tice, on 6 February 2006:
(1) Is the Minister aware of an article in the Daily Telegraph of 6 January 2006, which reported on the
debut at Canberra Summernats Car Festival of a purpose-built army vehicle dubbed Armygeddon.
QUESTIONS ON NOTICE

(2) (a) What was the total cost of the production of the vehicle built by army trainees; and (b) what was the cost and type of the original vehicle.

(3) Does the Armygeddon vehicle have any military application.

(4) What particular aspects of its development are considered important in vehicle maintenance.

(5) Are other similar styled vehicles planned for construction; if so: (a) how many; and (b) at what training sites will construction take place.

(6) (a) What Australian Defence Force personnel attended the Summernats Car Festival for the purposes of providing recruitment advice for spectators; (b) how many inquiries were dealt with over the festival period; and (c) how many recruitment applications were issued.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question.

(1) Yes.

(2) (a) $356,000.

(b) Armygeddon used a chassis and cabin from an interim Infantry Mobility Vehicle Landrover 6 x 6. The parts used were from a vehicle that had been severely damaged as a result of its use in operations overseas and was to have been scrapped.

(3) The vehicle is used as a training aid and recruiting tool.

(4) The particular aspects of its development that have been important in its use as a supplement to trainees’ formal training are:

(a) providing experience of working in a time-critical team environment which will assist them in meeting the operational demands of maintenance requirements when they are posted to Army units;

(b) increasing their knowledge of the various systems that exist within a vehicle and how they interact;

(c) reinforcing their knowledge of workshop safety and occupational health and safety procedures through working on detachment in a civilian workshop and also conducting maintenance ‘in the field’ at public events;

(d) the unique nature of the vehicle has tested their fault finding and diagnostic skills;

(e) the cabin fit-out required design skills as well as traditional trade skills in implementing the design; and

(f) the project has required initiative and teamwork. All trainees involved in the project have had to be adaptive as the vehicle grew from paper concept to the final product and innovative solutions had to be found for numerous difficulties in the development. The experience has contributed positively to the esprit de corps of the team involved.

(5) No.

(6) (a) Three Defence Force Recruiting staff.

(b) It is estimated that up to 20,000 people passed through the Army display over the four days it was open to the public.

(c) 335 people registered for follow-up recruitment interviews or further information.

Guantanamo Bay

(Question No. 1607)

Senator Allison asked the Minister representing the Minister for Foreign Affairs, upon notice, on 28 February 2006:
(1) Does the Government agree with the United Nations report on Guantanamo Bay that calls for the immediate closure of this illegal detention centre where prisoners are 'systematically tortured through sleep deprivation, temperature extremes, and static positions designed to produce prolonged pain and discomfort'; if not, why not.

(2) Will the Government now join the British Government in declaring that it does not recognise the military tribunal that David Hicks faces.

(3) Will the Government make representation to the United States Government to have David Hicks returned to Australia; if so, what form will that representation take.

(4) Does the Government consider that the detention at Guantanamo Bay of 500 Muslims, many of whom were fighting to defend their country during an invasion, should be classified under the Geneva Convention as prisoners of war and should have been either released or charged and tried for war crimes; if not, why not.

(5) Does the Government agree with Amnesty International’s assessment that there are two levels of justice operating in which David Hicks’ detention is based on his activity in terrorist training camps at a time when this activity was not illegal yet no such retrospective action appears likely be applied to Australian Wheat Board management and government officials who bribed the terrorist regime of Saddam Hussein; if not, why not.

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

(1) Issues involving Guantanamo Bay policy, such as closure of the detention facility, are a matter for the United States Government. The Government has focused its efforts on ensuring the welfare of Australian nationals detained in Guantanamo Bay, including by requesting investigations into allegations of abuse of these nationals. Following these requests, two thorough investigations were subsequently launched by the United States Government. Both the US Department of Defense and the US Naval Criminal Investigative Service (NCIS) found no evidence of mistreatment or abuse while in the US Department of Defense custody, and no information to substantiate or corroborate the allegations of abuse. The findings of these investigations are consistent with reports by Australian officials who have regularly visited Australian nationals detained at Guantanamo Bay that they have been treated humanely.

(2) No.

(3) The Australian Government has consistently made representations to US authorities that Australians detained in Guantanamo Bay should be prosecuted or released. Mr Hicks has been charged by US authorities with three offences: conspiracy to commit war crimes, attempted murder by an unprivileged belligerent, and aiding the enemy. The Government continues to make representations to the United States Government to ensure that Mr Hicks’ case is resolved as expeditiously as possible, consistent with the interests of justice.

(4) Under international law, it is the responsibility of the United States, as the detaining power, to determine the legal status of detainees in accordance with its international obligations.

(5) I assume the honourable senator’s question is based on an email sent to Members of Parliament by Candice Trevor on 17 February 2006. Amnesty International Australia has subsequently sent an email to Members of Parliament advising that the views expressed in the email sent by Candice Trevor were not those of Amnesty International or Amnesty International Australia.
Tasmania: Foxes
(Question No. 1608)

Senator Bob Brown asked the Minister for the Environment and Heritage, upon notice, on 2 March 2006:

(1) Has the Government done an assessment of the potential impact on Tasmania of introduced foxes; if not, why not; if so, what would be the economic and environmental impacts.

(2) What measures is the Government considering to prevent foxes becoming established in Tasmania and what other measures have been, or are being, considered.

Senator Ian Campbell—The answer to the honourable senator’s question is as follows:

(1) No. While the Australian Government has not undertaken a formal assessment of the potential impact on Tasmania of introduced foxes, there is sufficient evidence from a range of sources to indicate that, should foxes become established in Tasmania, they would pose significant economic and environmental risks.

(2) The Australian Government has provided two grants of $400,000 to the Tasmanian Government in the 2003-04 and 2004-05 financial years to support activities under the Fox Free Tasmania Programme. Further funds are available for this kind of work through the regional component of the Natural Heritage Trust.

Tasmania: Giant Freshwater Crayfish
(Question No. 1610)

Senator Bob Brown asked the Minister for the Environment and Heritage, upon notice, on 3 March 2006: With reference to Tasmania’s giant freshwater crayfish:

(1) Will the management plan protect catchments in which this creature survives; if not, why not.

(2) If catchments are not to be protected, for example, from logging which causes siltation, will the headwaters of catchments be protected; if not, why not.

(3) Will the management plan lead to an increase in the species number; if so, how is this projected increase calculated.

Senator Ian Campbell—The answer to the honourable senator’s question is as follows:

(1) The plan is in draft form at present. The Threatened Species Scientific Committee will provide me with advice on the plan’s content in due course.

(2) See above.

(3) See above.