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SITTING DAYS—2006

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

CANBERRA 103.9 FM
SYDNEY 630 AM
NEWCASTLE 1458 AM
GOSFORD 98.1 FM
BRISBANE 936 AM
GOLD COAST 95.7 FM
MELBOURNE 1026 AM
ADELAIDE 972 AM
PERTH 585 AM
HOBART 747 AM
NORTHERN TASMANIA 92.5 FM
DARWIN 102.5 FM
FORTY-FIRST PARLIAMENT
FIRST SESSION—SEVENTH 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 Stephen Parry
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
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(1) Chosen by the Parliament of Queensland to fill a casual vacancy vice Hon. John Joseph Herron, resigned.
(2) Chosen by the Parliament of Victoria to fill a casual vacancy vice Hon. Richard Kenneth Robert Alston, resigned.
(3) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
(4) Chosen by the Parliament of Tasmania to fill a casual vacancy vice Susan Mary Mackay, resigned.
(5) Chosen by the Parliament of South Australia to fill a casual vacancy vice Hon. Robert Murray Hill, resigned.

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

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

Prime Minister
Minister for Trade and Deputy Prime Minister
Treasurer
Minister for Transport and Regional Services
Minister for Defence
Minister for Foreign Affairs
Minister for Health and Ageing and Leader of the House
Attorney-General
Minister for Finance and Administration, Leader of the Government in the Senate and Vice-President of the Executive Council

Minister for Agriculture, Fisheries and Forestry and Deputy Leader of the House
Minister for Immigration and Multicultural Affairs
Minister for Education, Science and Training and Minister Assisting the Prime Minister for Women’s Issues
Minister for Families, Community Services and Indigenous Affairs
Minister Assisting the Prime Minister for Indigenous Affairs
Minister for Industry, Tourism and Resources
Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service
Minister for Communications, Information Technology and the Arts and Deputy Leader of the Government in the Senate
Minister for the Environment and Heritage

The Hon. John Winston Howard MP
The Hon. Mark Anthony James Vaile MP
The Hon. Peter Howard Costello MP
The Hon. Warren Errol Truss MP
The Hon. Dr Brendan John Nelson MP
The Hon. Alexander John Gosse Downer MP
The Hon. Anthony John Abbott MP

The Hon. Philip Maxwell Ruddock MP
Senator the Hon. Nicholas Hugh Minchin

The Hon. Peter John McGauran MP
Senator the Hon. Amanda Eloise Vanstone
The Hon. Julie Isabel Bishop MP

The Hon. Malcolm Thomas Brough MP

The Hon. Ian Elgin Macfarlane MP
The Hon. Kevin James Andrews MP

Senator the Hon. Helen Lloyd Coonan

Senator the Hon. Ian Gordon Campbell

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

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<td>Senator the Hon. Christopher Martin Ellison</td>
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<td>Minister for Fisheries, Forestry and Conservation</td>
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<td>Senator the Hon. Charles Roderick Kemp</td>
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<td>Minister for Human Services and Minister Assisting the Minister for Workplace Relations</td>
<td>The Hon. Joseph Benedict Hockey MP</td>
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<td>Minister for Community Affairs</td>
<td>The Hon. John Kenneth Cobb MP</td>
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<td>Minister for Revenue and Assistant Treasurer</td>
<td>The Hon. Peter Craig Dutton MP</td>
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<td>Special Minister of State</td>
<td>The Hon. Gary Roy Nairn MP</td>
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<td>Minister for Ageing</td>
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<td>Minister for Small Business and Tourism</td>
<td>The Hon. Frances Esther Bailey MP</td>
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<td>Minister for Local Government, Territories and Roads</td>
<td>The Hon. James Eric Lloyd MP</td>
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<td>Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence</td>
<td>The Hon. Bruce Frederick Billson MP</td>
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<td>Parliamentary Secretary to the Minister for Finance and Administration</td>
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<td>Parliamentary Secretary (Foreign Affairs)</td>
<td>The Hon. Teresa Gambaro MP</td>
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SHADOW MINISTRY

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

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

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

Shadow Minister for Agriculture and Fisheries, Revenue and Shadow Minister for Small Business and Competition
Gavan Michael O’Connor MP

Shadow Assistant Treasurer, Shadow Minister for Population Health and Health Regulation
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 Aviation and Transport Security
The Hon. Archibald Ronald Bevis MP

Shadow Minister for Veterans’ Affairs and 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 Ageing, 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 Minister for Citizenship and Multicultural Affairs
Senator Annette Hurley

Shadow Parliamentary Secretary for Reconciliation and the Arts
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Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Science and Water
Senator Ursula Mary Stephens

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

MINISTERIAL ARRANGEMENTS

Senator MINCHIN (South Australia—Leader of the Government in the Senate) (12.30 pm)—by leave—I wish to inform the Senate that Senator Stephen Parry has been elected as Deputy Government Whip in the Senate in succession to Senator Alan Eggleston. Senator Ferris remains as Government Whip in the Senate and Senator Scullion as National Party Whip.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Afghanistan Opium Trade

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.31 pm)—by leave—On 7 September in question time Senator Ray asked me a question which said in part:

Why are young Australian service men and women risking their lives in Afghanistan to protect a government that ignores poppy cultivation, which in turn has the effect of allowing heroin to be sent to Australia with the resultant loss of young Australian lives?

In my response I said in part that I totally rejected the proposition that ADF personnel are protecting opium growers and drug suppliers. In saying that, I believe I was quite reasonably following the assumption behind the senator’s question and on rereading Hansard I still believe that to be the case. I disagree with Senator Ray’s statement in taking note when he said, ‘My question was fairly explicit.’ I was responding to a serious question with a serious answer. I make it clear, however, that I now fully accept Senator Ray’s assurances that he did not intend his question to have the meaning it did. I also make clear that I did not intend any offence to Senator Ray and I withdraw any that was taken. However, I reiterate the point that I totally reject any connection between heroin illicitly brought into Australia and the role of the ADF in Afghanistan.

PETROLEUM RETAIL LEGISLATION REPEAL BILL 2006

Second Reading

Debate resumed from 16 August, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator O’BRIEN (Tasmania) (12.32 pm)—I rise to speak on the Petroleum Retail Legislation Repeal Bill 2006 at a time when Australians are more concerned than ever about record high petrol prices. Reform of the petrol retail industry, including the repeal of the two acts dealt with in this bill, has never been more important. The Petroleum Retail Marketing Sites Act 1980 and the Petroleum Retail Marketing Franchise Act 1980 are outdated and serve no useful purpose in today’s petrol retail industry. Well over 50 per cent of the industry by volume of sales is not covered by these acts, because of the inclusion of the supermarket chains, Coles and Woolworths. The rules for market participants are inconsistent and unfair. That is bad news for the industry and it is certainly bad news for consumers.

The Oilcode, which will be introduced as a mandatory industry code under section 51AE of the Trade Practices Act 1974, will bring the whole industry into a common regulatory regime with better protections for market participants and better protections for consumers. The Oilcode will improve the protections available to commissioned agents and independent operators, who currently do not have the protections available to franchisees. Both franchisees and commissioned agents will also have access to a low-cost dispute resolution scheme for the first time. Labor’s view is that section 46 amendments
to the Trade Practices Act are necessary to address outstanding concerns about the potential for abuse of market power, and I call on the government to bring these forward as a matter of urgency.

Nevertheless, the introduction of the Oilcode to cover the entire petrol retail sector will be an improvement over the existing situation where more than 50 per cent of the industry by volume is not regulated at all. Petrol retail reform is a good step forward to give consumers more confidence that the petrol prices they are paying are as fair and competitive as we can make them.

But reform has been a long time coming. Petrol retail reform has been government policy since 1996. In 1998 Labor said it would support petrol retail reform as long as an Oilcode was agreed. But it has taken this government another eight years to get to that point. As in so many other policy areas, reform under the Howard-Costello government has stagnated for 10 long years. This government simply cannot keep up with the changes that are necessary to encourage investment and maintain competitive markets and affordable prices in petrol, in electricity, in transport and in telecommunications.

This Howard-Costello government has failed completely to keep the reform momentum of the Hawke-Keating era going and we are starting to pay the price: in labour shortages, erosion of our skills base, choked infrastructure, inflation pressures, productivity stagnation and higher interest rates. And, most worrying of all, this government’s answer to everything is to spend, spend, spend, and that solution has hit a brick wall. The budget is no longer sustainable. The chickens are coming home to roost. Interest rates are rising. Petrol prices have been going through the roof. It is said that there will be some short-term relief for motorists because of the current reduction in petrol prices but experts are telling us not to expect that to continue. Wages for the already struggling are under pressure because of this government’s extreme industrial relations changes. Tax cuts have been more than swallowed up. Foreign debt is through the roof.

The Prime Minister and Mr Costello will not be able to spin their way out of this one. They tried cutting petrol excise back in 2001. They have used tax cuts, family payments, baby bonuses and any number of other handouts to buy off the electorate since then, but eventually the coffers will run dry. Now they have no options left on petrol prices. Petrol retail reform has taken them 10 long years. Excise cuts are no longer an option because we cannot afford them. And this government still have done nothing to address the real issue: our dependence on foreign oil from unstable parts of the world such as the Middle East.

It is obvious to everyone except this government that, if we do not have home-grown fuel industries, Australia will always be hostage to foreign oil. That is the key, not short-term fixes but a national transport fuel policy that guarantees supplies for the long term and gives Australia options to deal with global fuel supply and price emergencies—because that is what it is really about: supply and demand. When supplies are short or demand is high—or both, as is the case now—prices go up. The absolutely ironclad rule is that prices go up. It is only with home-grown fuel industries that Australia can have policy options available to it to ensure that the wheels continue to turn for Australian consumers and Australian industries to ensure that Australia can afford fuel. That is where this government has been seriously remiss.

Federal Labor has always supported the oil and gas industries and, indeed, the alter-
native fuel industry. They are strategically important to Australia, and I remind the Senate that Labor supported the proposal to extend the effective excise-free period for biofuels and LPG by three years, until 2011, and supported legislation to introduce mandatory cleaner fuels standards that should benefit environmentally friendly fuels. However, while Labor supported this approach, I must point out that the overwhelming reason for that was to provide some level of certainty for the alternative fuel industry and for the refining industry.

Historically, of course, it was the Keating government which introduced an 18c-a-litre production bounty for ethanol, in the 1993-94 budget, in addition to the zero excise rating for that product. The Howard government abolished the bounty scheme one year early, in the 1996-97 budget, and has consistently undermined the industry by changing the playing field on a regular basis over the last nine years. In the last parliament alone, the Howard government changed its mind three times on the excise regime, not only for ethanol but also for LPG. Despite the Treasurer’s May 2002 view that applying an excise to ethanol and LPG was a bad idea, he announced in the 2003 budget that he would do just that. He announced that biofuels and LPG would be subject to an excise from July 2008. In December 2003, he changed his mind again, announcing new excise regimes to apply from July 2011.

Between May and December 2003 the LPG industry was in turmoil, and many of the small business operators involved in LPG conversion and maintenance suffered serious business downturns due to the uncertainty about the excise regime. Now, when the government announces a subsidy, we are seeing that problem play out with massive shortages in the supply of fitting capacity. Of course, the biofuels industry also suffered during this period, with no certainty for new investors in the industry. It has taken some time for both of these industries to recover and it will be some time before the LPG conversion industry has the capacity to meet the rush of demand—which, the industry notes, might have been addressed had it been consulted about the government’s plans for the subsidy that was most recently announced.

We also have to have regard to the problem being exacerbated by record high petrol prices. This means that consumers are more willing to set aside their concerns about fuel tax uncertainty than they would otherwise have been and that biofuels are now more price attractive to refiners and marketers. In fact, let me say at this point that Caltex is to be commended for its announcement about discounting all E10 petrol by 3c a litre.

The history of the Howard government’s double backflips on alternative fuels is in stark contrast to the stability Labor provided throughout its 13 years in office, when it maintained the LPG excise exemption introduced in 1979 for fuel security reasons. The other stark contrast is between just how interested in fuel security the Prime Minister was before he was Prime Minister, in 1979, and his complete lack of interest today as Prime Minister when fuel security has never been so important and petrol prices have historically never been so high.

As Mr Martin Ferguson, our shadow minister for resources, has said before, this government treats tax cuts as ‘go away’ money for motorists worried about petrol prices. Let me remind the house of some other facts I have raised before and indeed that Mr Ferguson has raised before many times in the other place. The fact is that, without developing large-scale alternative fuel industries in Australia, we will increasingly be hostage to supplies from the Middle East, west Africa and Russia. I do not need to spell out the implications of that for energy security. Aus-
tralis around the kitchen table today want to know that their governments and the companies with stewardship of their resources have a plan to secure their energy supplies for the future at affordable prices. But there is no plan and they are far from ‘relaxed and comfortable’ about that.

Creating the right fiscal and regulatory regime to convert our natural gas and coal to clean diesel, as well as new industry options and a new fuel supply source for Australia, is just not on this Prime Minister’s agenda. He was thinking about energy security in 1979, but it is not on his radar in 2006, when it has never been so important. Frankly, the government’s most recent announcement was poll driven, not national interest driven. Unlike other alternative fuels, the Prime Minister has done nothing to provide any industry framework to encourage the establishment of industries in Australia to convert our vast coal and gas resources to clean diesel. The Labor Party has always been a great supporter of both gas to liquids and coal to liquids, which of course are integral to the commercialisation of clean coal technology for power generation.

I recall that former Prime Minister Paul Keating, as former resources minister, was a great advocate of gas and coal to liquids technologies more than 20 years ago. So were my colleagues, Joel Fitzgibbon, the shadow resources minister in the last parliament, and Martin Ferguson, the shadow resource minister in this parliament. Establishing new nation-building industries is not easy and, more than anything, it requires sustained leadership and focus at the national level to make it happen.

Unfortunately, the Howard government has waxed and waned on both coal to liquids and gas to liquids. Once again, let me remind the Senate that it is now almost five years since Senator Minchin, the then minister for resources, appointed a gas to liquids task force to investigate the feasibility and benefits of establishing a gas to liquids industry in Australia. Five years later, no action has been taken other than the most recent announcement to think about it again. Australia’s reliance on imported oil and fuel is increasing and, while the liquefied natural gas market is booming, it remains a tough job to get new gas projects off the ground.

My colleague the member for Hunter once said that in the Prime Minister’s Australia it is easier to get gas to Shanghai than to Sydney. The Prime Minister is happy to dig it up, ship it out and look after Japan’s, China’s and the United States’ energy security, but this government has no plan for Australia’s security—no domestic gas strategy for our future and no transport fuels strategy either. When the wells run dry, the Prime Minister will still be hoping for a miracle, still hoping that he will be able to spend his way out of trouble with the electorate. Prime Minister, you need an industry policy, a resources policy and an energy policy, and those policies have to give us large-scale options to reduce our reliance on foreign oil if the Strait of Hormuz is closed, the Alaskan pipeline has to be fully shut down, war escalates in the Middle East or civil unrest shuts down west African production.

The Prime Minister knows that gas to liquids is Australia’s best option today. His own gas to liquids task force noted that, while Australia can simply wait for the market to provide an incentive for a gas to liquids industry, once gas supply infrastructure is in place and investment is sunk into countries where taxation and infrastructure incentives are on offer today, those countries will serve as investment hubs for expansion for many
years to come—and that is exactly what is happening in Qatar.

The implication of the task force was that Australia’s remote gas fields could be left stranded from markets for even longer because, by and large, it would be cheaper to expand existing projects than build new ones here. I am sure this is a concept Australia’s LNG industry already fully understands. The task force highlighted the potential significance of a gas to liquids industry to Australia’s economy, saying it could underwrite offshore gas supply infrastructure to bring forward the possibility of major new domestic gas pipelines to connect the national market, increase domestic gas competition and energise gas exploration. The task force said: These benefits would be of national strategic significance to Australia ...

It went on to say:
The cost of any government intervention must be considered against the potential benefits.
The potential benefits go beyond unlocking new resource wealth and creating new industry, more jobs and more exports. They include the opportunity for Australia to address this most pressing of problems: our future transport fuel security.

It is also three years since CSIRO’s report, The Energy and Transport Sector Outlook to 2020, which laid out its proposed strategy for Australia’s transport future—a strategy that identified gas to liquids and coal to liquids as the keys to our future transport fuel security. The tragedy is that we can all see the potential but the reality remains just beyond our grasp. Without sustained and committed national leadership to deliver the right policy settings and right fiscal environment, it will remain beyond our grasp.

The Prime Minister should be seriously reviewing the petroleum resources rent tax regime and considering special treatment of capital investment in gas to liquids fuel projects and associated gas production infrastructure. He should be facing up to some responsibility for resource related infrastructure instead of passing the buck to the states once again. Above all, this government should be sending a clear signal to Australians that it is interested in their future fuel supply security and a clear signal to the industry that it wants gas to liquids and coal to liquids as part of Australia’s national energy strategy.

I will be moving the second reading amendment circulated in my name today, which calls on the government to immediately conduct a feasibility study into a gas to liquids plant in Australia. The Prime Minister needs to dust off his 2001 gas to liquids task force report, bring it up to date and move us closer to making that industry a reality in this country. I also call on the government to review in 2009 the proposal to introduce excise on ethanol and biodiesel and LPG and CNG in 2011, and consider whether there is a case for deferring the introduction of excise depending on industry progress at that time. I think this matter is of such public importance that the government should require the Department of Industry, Tourism and Resources to report to the parliament annually, commencing next year, on the measures taken and the progress made to wean Australia off its foreign oil dependence. Such a report would need to address progress on market uptake of alternative fuels and new investment in alternative fuels industries in this country.

If this government were serious about a plan to lower petrol prices for Australians it would embrace Labor’s fuels blueprint proposals to make alternative fuel vehicles tariff free and grant tax rebates for other measures which will improve the uptake of LPG. It would have to be committed to finding more oil and using more gas in this country by using flow-through shares and re-examining
the depreciation regime for gas production infrastructure.

Finally, the government should be criticised for its tardiness in moving on petrol retail reform; bypassing due parliamentary process in introducing a regulation to undeclare companies under the sites act; failing to introduce amendments to the Trade Practices Act to implement the 2003 Dawson and 2004 Senate recommendations for reform; and, above all, failing abjectly to take action to reduce Australia’s dependence on foreign oil and improve its transport fuel security. I move the circulated second reading amendment standing in my name:

At the end of the motion, add “but the Senate:

(a) calls on the Government to require the Department of Industry, Tourism and Resources to report to the Parliament annually, commencing in August 2007, on the measures taken and the progress made to:

(i) increase market penetration of ethanol and biodiesel, LPG and CNG, including the number and location of service stations and the names of the companies offering these products on their retail sites;

(ii) secure new investment in biofuel, LPG and CNG production and supply infrastructure in Australia; and

(iii) secure investment in new alternative transport fuel industries in Australia, including gas and coal to liquids.

(b) calls on the Government to review, in 2009, the proposal to introduce excise on ethanol and biodiesel, LPG and CNG in 2011, and consider whether or not there is a case for delaying the introduction of excise, depending on the progress made:

(i) in increasing market penetration of biofuels, LPG and CNG;

(ii) in securing new investment in biofuel, LPG and CNG production and supply infrastructure in Australia; and

(iii) towards achieving the 350 million litre biofuels target in 2010.

(c) criticises the Government for:

(i) its tardiness in moving on petrol retail reform;

(ii) bypassing due parliamentary process in introducing a regulation to “undeclare” companies under the Petroleum Retail Marketing Sites Act 1980;

(iii) failing to introduce amendments to the Trade Practices Act 1974 to implement the 2003 Dawson and 2004 Senate recommendations for reform; and

(iv) failing to act to reduce Australia’s dependence on foreign oil and improve its transport fuel security.

(d) calls on the Government to immediately conduct a feasibility study into a gas to liquids fuels plant in Australia, including:

(i) consideration of Petroleum Resources Rent tax incentives for developers of gas fields which provide resources for gas to liquid fuels projects;

(ii) examining a new infrastructure investment allowance for investment in Australian gas to liquids infrastructure; and

(iii) developing a targeted funding scheme for research and development in this area.

(e) calls on the Government to immediately embrace Labor’s Fuels Blueprint proposal to:

(i) make alternative fuel vehicles tariff free, cutting up to $2000 off the price of current hybrid cars; and

(ii) grant tax rebates for converting petrol cars to LPG.

(f) calls on the Government to immediately embrace Labor’s Fuels Blueprint to find more oil and use more gas by:
(i) re-examining the depreciation regime for gas production infrastructure; and

(ii) allowing the selective use of flow-through share schemes for smaller operators”.

Senator MURRAY (Western Australia) (12.52 pm)—I rise to speak to the Petroleum Retail Legislation Repeal Bill 2006. The petroleum industry in total—exploration, production, manufacturing, wholesaling and retailing—is an industry where there are major barriers to entry and exit. Barriers to entry range from the extraordinary investment and expertise required at the exploration, production and manufacturing end to the planning difficulties surrounding retail siting. Barriers to exit particularly apply at the retail end, where franchise contracts and a shrinking service station sector have often made a profitable exit difficult. It is an industry which has always been characterised by the dominance of the transnational majors, which have always striven to maintain their captaincy of every level of the supply chain to the customer. Consequently, until recently the petroleum industry has not seen the emergence of strong countervailing contenders for captaincy of, for instance, the wholesale channel or the retail channel. The supermarket chains in Australia have now challenged this.

It is the Australian Democrats’ view that the industry still exhibits fatal flaws which materially affect investment, profitability, pricing and competition. These flaws include the oligopolisation of supply, difficulties of access and a heavy concentration of direct and indirect market power in the majors at every level in the chain of supply. Much attention has rightly been paid by concerned groups to pricing, access, supply issues, restrictive practices and market manipulation. Market power, horizontal concentration, vertical integration, ties and so on affect pricing. Those market flaws also affect profitability and the return on capital, because those with power are able to materially influence and affect where profits are made and taken. For all of these reasons market regulation has been and remains essential. That it has only partially succeeded does not mean that it is time to give up on regulation. If we are to envisage an industry with much enhanced pricing and competition and better profitability prospects, we do need to continue to attend to the structures, behaviour and conduct of the industry at every level.

The purpose of the Petroleum Retail Legislation Repeal Bill 2006 is to repeal the Petroleum Retail Marketing Franchise Act 1980 and the Petroleum Retail Marketing Sites Act 1980, and to make a consequential amendment to the Jurisdiction of Courts (Cross-Vesting) Act 1987. The government proposes to replace the two petroleum retail acts with a mandatory industry code, to be known as the Trade Practices (Industry Codes—Oilcode) Regulations under section 51AE of the Trade Practices Act 1974. This particular bill has been floating around since the late 1990s with no success. One reason for this is that the different sectors of the industry could not agree on the content of the proposed Oilcode. For decades the Democrats have argued that a strong small business sector is essential to the economic and social health of Australia and that small business has a value of itself. Our views on the Petroleum Retail Legislation Repeal Bill 2006 are necessarily coloured by that perspective. We strongly support the workings of a free and fair market, as evidenced by our work on corporations, trade practices and tax law, but we have long been concerned that a weak Trade Practices Act does not deliver sufficiently fair competition for small business with sufficiently adequate protections from predatory pricing and the abuse of market power.
In 2004 the government’s intention to proceed with the proposed reform was announced and a bill in almost the same terms as the 1998 bill was introduced. In August 2005 a revised Oilcode was sent to stakeholders. It met with a contrary reaction, similar to past efforts, from interested groups. We agree that the new regulations are likely to offer significant improvements in transparency in the wholesale pricing of fuel and allow access for small businesses to the terminal gate price. However, differential pricing will still apply based on volumes as the market dictates. That is, a large chain such as the Coles Myer controlled Shell franchises can be expected to receive a superior price to an independent since they are likely to purchase a far greater volume. This could lead to an increase in the concentration of industry participants and a commensurate reduction in outlet choice for consumers. We are concerned that the result will be a significant reduction in the number of independent franchisees and small business operators, except perhaps in less economical or uneconomical regional and rural sites.

The Motor Trades Association of Australia, the Service Station Association and others had concerns about the impact of the legislation and the Oilcode on independent retailers. The MTAA argued that it would be important for an effective regulatory framework to be in place to deal with issues relating to the misuse of market power, and that the Trade Practices Act needs to be strengthened.

The Petroleum Retail Marketing Franchise Act 1980 and the Petroleum Retail Marketing Sites Act 1980 were passed to address an imbalance in market power at that time between the oil refiners and marketers—namely, BP, Caltex, Mobil and Shell and their commission agents. It was strongly asserted that the major companies had abused their market power. However, as the petroleum retail market has developed since that time, the consequence of these two acts has been the creation of a two-tier system, as the acts apply to only part of the industry. The acts have not prevented the growth of retailing outside the acts’ ambit—most notably through the entry of supermarket chains and independent importers and marketers into the industry—nor have they prevented the demise of thousands of independents.

The 1980 acts, contrary to their original intention, now restrain competition and limit the ability of the retail arms owned and franchised by major oil companies to compete with supermarket chain retailers operating outside of the ambit of the two acts. That is why there is again an agitation for those acts to be repealed. However, that should not occur without a recognition that this would deliver more big company competition for the four oil majors and the two big supermarket chains but leave independents and other small chains still, and perhaps more, exposed to predatory behaviour. Therefore, repeal of these acts should be accompanied by an Oilcode that supports full competition, not oligopoly, and a strengthened Trade Practices Act that better protects competition by independent small business. The problems are not new. The Australian Democrats pointed this out in their Senate Rural and Regional Affairs and Transport Legislation Committee minority report in 1999. It said:

5.1 The issues for the petroleum industry are vertical and horizontal integration, open access to terminals and protection of the rights of individual operators. The correct mix of regulation of each of these areas should result in increased competition and profitability, and better pricing practices. It would also result in a beneficial end to the market dominance of the oil majors in the wholesale and retail sectors.
The Australian Democrats agree that an appropriate access regime should be implemented and is needed. We agreed with the majority recommendation in the 1999 report that the franchise act should be retained until the completion and tabling of the Oilcode as regulation pursuant to part IVB of the Trade Practices Act. Further, we recommended that there should be a parliamentary review of the access regime after 18 months of operation of the Oilcode. That is plainly going to be necessary with respect to the new Oilcode. The petroleum industry is understandably desperate for there to be resolution of this legislative block so that it can forward plan in what is a very volatile and ever-changing market. The Democrats understand this and sympathise with that position. However, the government does not accept that the petroleum market should be assessed together with general trade practices protection.

The government presents this bill in isolation, as though the petroleum industry were not part of a bigger retailing or national picture and strengthening amendments to the Trade Practices Act were irrelevant to the matter under discussion here today. The Australian Democrats do not agree. As evidenced by the Labor Party’s attempt at amendments in the House of Representatives, they also do not agree. The Trade Practices Act deals with broad competition issues and it needs strengthening to provide a proper safe harbour for all small businesses, not just those occurring within the petroleum industry. Consumers, experts and business see the ACCC as having a pivotal role in the petrol industry regarding pricing, collusion and abuse of market power. Elsewhere I have said that the ACCC should have an enhanced capacity to get behind the corporate veil in that respect. I have been criticised in this chamber for suggesting that they might do well to have some ASIC-like powers with respect to that, but I continue to hold that position.

The Democrats have tried to persuade the government to not deal with petroleum issues in isolation from the whole question of competition law, but they have proven unwilling to listen. The government’s position is incomprehensibly stubborn. Also, when you think of all the changes to regulation that they have made in Corporations Law and with respect to financial services reform, it is extraordinary that the one area in which they have been obdurate, slow, resistant and negative in terms of change has been trade practices law. It is the one area in which they are excessively obeisant to big business.

The government’s position is that they want this bill passed first, unchanged. Separately and later, they want the Dawson bill passed, unchanged. After that, they might deign to pass a weak small business trade practices bill, unchanged. The height of hubris is to believe that all wisdom is yours. This is not macho and it is not even a sign of strong character; it is just silly. All these matters should be sensibly resolved together. Issues of dispute, like the government’s anti-union and anti-choice clause in the Dawson bill that prohibits unions from bargaining for business, should just be laid aside for another day.

Let me remind the Senate about matters relating to this bill which have occurred in the last 12 months. To his great credit as a member of the government coalition and under considerable pressure, Senator Joyce has had the gumption to vote on conscience on these matters. His opposition to schedule 1 of the Trade Practices Legislation Amendment Bill (No. 1) 2005 plus the opposition of all non-government parties to the whole bill on 11 October 2005 have meant that the amended bill has stalled in the House of Representatives. Nothing would have
stopped it being passed and dealt with long ago. Senator Joyce’s motion to disallow the Petroleum Retail Marketing Sites Amendment Regulations 2006 (No. 1) on 15 June 2006 was supported by the non-government parties but failed on a tied vote.

The Democrats opposed the Trade Practices Legislation Amendment Bill (No. 1) 2005 principally because we wanted this bill to be balanced with trade practices reforms for small business. We opposed the anti-union clause in this bill, the third-line forcing provisions and the changes to the relationship between the tribunal and the commission which would encourage forum shopping. The Democrats opposed the Petroleum Retail Marketing Sites Amendment Regulations 2006 (No. 1) because we wanted the regulations to be balanced with trade practices reforms for small business and because the enabling legislation had not even been passed.

The Democrats have a particular interest in the passage of many of the recommendations of the majority—and even the minority, which we support—Senate Economics References Committee report of March 2004 on the effectiveness of the Trade Practices Act 1974 in protecting small business. If the 17 recommendations that cover the misuse of market power, unconscionable conduct, collective bargaining, creeping acquisitions, divestiture and the powers and resources of the Australian Competition and Consumer Commission were implemented, then fair and free competition would be greatly strengthened in Australia. Further, there would be less of a case for industry-specific regulation if the general law were so strengthened. Small business strongly support those recommendations overall.

The Democrats would not oppose the Petroleum Retail Legislation Repeal Bill 2006 or the Petroleum Retail Marketing Sites Amendment Regulations 2006 (No. 1), which of course have passed, if at least those trade practices recommendations popularly described as the Brandis amendments—from Senator Brandis’s minority report of the Senate Economics References Committee on the Trade Practices Act, in March 2004—and those already accepted by the government in its response to the Senate report were passed into law.

The Democrats would not oppose the Trade Practices Legislation Amendment Bill (No. 1) 2005 if at least those recommendations by Senator Brandis’s minority report and those already accepted by the government in its response to the Senate report were passed into law. We would not oppose it if the anti-union clause in the bill were dropped. The third-line forcing provisions have already been dropped, thanks to the good work of The Nationals in pressuring the Treasurer, but we would have to consider our position on the changes to the relationship between the tribunal and the commission which will encourage forum shopping.

The anti-union clause, by the way, was not part of the Dawson recommendations. It is not about creating a more effective Trade Practices Act; it is simply a clause that was inserted to anger and upset the Labor Party. Small business owners should be able to have unions negotiate on their behalf, as should workers. This provision is simply a political stunt to try and curtail what the government believes is union power, as the underlying backbone of the Labor Party. It should be recognised by industry that it is this trade practices intransigence by the government which is stymieing passage of this petroleum legislation, not the lack of cooperation of other parties.
Schedule 1 of the Trade Practices Legislation Amendment Bill (No. 1) 2005, which Senator Joyce voted against last year, contains a voluntary form of merger clearance system that can operate in conjunction with the existing informal ACCC system. Under the current system, an unfavourable decision in the ACCC is reviewed by the Australian Competition Tribunal. The new formal system, which means that merging parties can go directly to the tribunal, could have the effect of reducing the power of the ACCC and result in forum shopping between the ACCC and the Australian Competition Tribunal. It is also relatively unnecessary, because there is no sign that the ACCC has been failing to properly police acquisitions and mergers. The real issue of course is that there are no divestiture provisions. Senator Joyce’s main concern with the schedule was that mergers would be sanctioned under a different reasoning and would impact heavily on small business. His main concern was about what constituted public benefit. If I were the government and had to deal with Senator Joyce, I would make sure I recognised that he was expressing legitimate concerns which were widely shared in both the political community and the industry community.

The Senate Economics Reference Committee report of March 2004, The effectiveness of the Trade Practices Act 1974 in protecting small business, contained 17 recommendations that cover the misuse of market power, unconscionable conduct, collective bargaining, creeping acquisitions, divestiture and the powers and resources of the ACCC. The government did not accept nine recommendations; it accepted five in full and accepted three in part. Those recommendations having been accepted, they have consulted with the states but are just sitting on their hands and not introducing those in conjunction with this bill.

The Senate Economics References Committee unanimously recommended changes to strengthen section 46 on misuse of market power. Those amendments will strengthen the courts’ powers to rule where big business is unfairly using its market power and conducting predatory pricing to eliminate a competitor. These are important issues for small business. They are important issues with respect to this legislative change that is before us. But the government has not presented those amendments to the Trade Practices Act since the committee report was tabled, even though they accepted the recommendations. In that report, the government recognised the importance of small business to the vigour of the Australian economy and the contribution that small business makes to the growth in employment and innovation. If you think that way, match your words with action!

To recap, what is holding up the Trade Practices Legislation Amendment Bill (No. 1) 2005 and the Petroleum Retail Legislation Repeal Bill 2006—and listeners will note that during my remarks I have continually linked these together—is the government implementing those Senate recommendations that are relevant to the Trade Practices Act, recommendations that they accepted in their response and which are part of the Brandis package. It is necessary that the government drop, in its entirety, the outlawing of collective bargaining in the Trade Practices Legislation Amendment Bill (No. 1) 2005. The two bills that I have referred to and the new trade practices bill, with regard to the needs of small business, need to be dealt with cognately or in the same week.

The government also needs to implement the single, unanimous trade practices recommendation in the October 2005 report of the Senate Rural and Regional Affairs and Transport References Committee, Operation of the wine-making industry, which recom-
mended that the government should give priority to amending the Trade Practices Act 1974 to add unilateral variation clauses in contracts to the list of matters which a court may have regard to in deciding whether conduct is unconscionable.

Those are amendments the government will accept. They apply to the wine industry as much as they apply to the petrol industry. But the government simply will not move. They are obdurate and difficult, and their behaviour I think is contrary to the public interest. Just by the way, in view of the current problems, in that Senate Rural and Regional Affairs and Transport References report the committee supported a mandatory code of conduct under the Trade Practices Act to regulate the sale of wine grapes.

The Democrats strongly support the workings of a free and fair market. We have long been concerned that a weak Trade Practices Act does not deliver sufficient fair competition for small business with sufficiently adequate protections from predatory pricing and the abuse of market power. Everyone needs to understand that a weak Trade Practices Act in Australia compares badly with many overseas laws. In that respect, we set great store on recommendations in the Senate Economics References Committee majority report, which we supported. We hope when Labor get into power that will be amongst the first bills they introduce to address competition needs in this country. There would be less of a case if that happened—if the general law was so strengthened—for industry-specific regulation in any industry.

Senator CROSSIN (Northern Territory) (1.12 pm)—Before I begin, I want to take this opportunity to congratulate Senator Parry on his elevation to Deputy Government Whip. I have the chance to do this while Senator Parry is in the chamber and probably in his first hour of duty in the job. I hope it does not become an onerous task and that it is an enjoyable task for him.

My job today is to talk on the Petroleum Retail Legislation Repeal Bill 2006. It forms part of the government’s downstream petroleum reform package. This package is aimed at addressing the regulatory failure resulting from the existing outdated legislation. This bill will repeal the Petroleum Retail Marketing Sites Act 1980, which restricts the number of retail sites that prescribed oil companies such as BP and Caltex can directly own and operate. It also of course repeals the Petroleum Retail Marketing Franchise Act 1980, which sets out the terms and conditions for franchise agreements.

These repeals are much needed since the old acts have failed to take account of or keep pace with changes that have come about in the oil market. The major example of this is that the large supermarket chains such as Woolworths and Coles now have their own outlets. The reforms introduced under this bill will be accompanied by the introduction of a new industry code, which will supposedly introduce greater certainty and protection for all parties, introduce a nationally consistent approach to terminal gate pricing, and improve transparency in wholesale pricing. In short, the government claim that these changes, as a package, will facilitate a more effective regulatory environment in the industry and improve the operating environment for the small operators also in the industry.

I am pretty sure that there is nobody in this chamber, let alone in a family household, who is not concerned about the state of the petrol retail industry and the way that extremely high petrol prices—together with higher mortgage repayments brought about by rising interest rates under the Howard
government—are hitting the hip pockets of nearly all Australians and families. This is especially so in my electorate of the Northern Territory. Some southerners speak in hushed voices when petrol prices reach $1.20 or $1.25 a litre. Let me tell you that most of my constituents would welcome the price dropping to $1.20 or $1.25.

I noticed in the paper today a suggestion that petrol prices are coming down, between $1.25 and $1.28, in most of the eastern seaboard states. However, in the Northern Territory they are still paying $1.39—and that is in Darwin, where we are paying 11c to 14c more a litre than anywhere else in this country. Even at Tennant Creek—which is on the main highway, the Stuart Highway—the petrol price has been over $1.60 for many months now. At more remote places such as Nhulunbuy or Numbaa, it is well above this price—$1.80 a litre is quite common in those communities.

In the Territory we not only pay more for our fuel but also pay more in government tax—in GST. As was stated very clearly by my Territory colleague in the other place, Mr Snowdon—unlike Mr Tollner, who never gets to stand up and talk on these sorts of bills—the GST is nothing but a tax on a tax in relation to petrol. The GST simply gets higher as the price of the taxed product goes up.

The Prime Minister tried to make it sound so great that the excise tax on petrol is frozen, but why should he worry when the GST rises ever upwards with the increasing price at the pump? This government is reaping a huge tax windfall while the people in remote Australia are being ripped off more and more at the bowser by the GST. The increasing price of fuel means that the GST has risen for all motorists but far more so for those living in remote areas, where the petrol price and the price of fuel is way above your average eastern seaboard suburban prices.

I want to make sure that others in this place get the message and realise that remote communities are paying the highest prices in this country—and, therefore, more tax than motorists anywhere else—yet they are getting no more benefit than anyone else. Unfortunately, we cannot tell whether this bill that is now being debated will provide relief to people from the present high prices and GST payments; however, we can hope and trust that the introduction of the Oilcode will even out the playing field with the introduction of consistent national regulatory requirements and a consistent approach to terminal gate pricing. It may have a beneficial effect on the east coast, or other major centres where there are multiple outlets, in providing some competition, but many of the Territorians that I represent have no such choice—there is only one outlet in most communities. Whether this outlet be owned by the store or the council, it is only one small outlet with very limited buying power. They cannot buy in bulk. They have to pay high freight costs before the fuel gets to the community pump. They then pay GST on top of that as it goes into their tanks. It is in these remote communities that we find the highest fuel prices—as I said, up to $1.80 a litre, and more, is common and has been for some time.

The poorest Australians in our country are paying higher fuel prices and higher GST on their fuel than any other Australians. The government then questions whether it is worth keeping smaller communities funded—whether they are viable. These communities are paying their fair share of tax to this government, so why not keep funding them?

Let us also look at another solution that was offered with much ado by the Prime
Minister to the unsuspecting public. The government has offered a $2,000 rebate to anyone who converts their car to LPG. How effective a solution is that? LPG derives from oil, so if oil supplies decline LPG will also reduce in supply and rise in cost. The consumption of LPG in a car is relatively higher than petrol. The car’s range is reduced, so you need regular and fairly frequent refuelling points. Quite simply, we do not have those in the Northern Territory. There is no LPG available in Nhulunbuy, a large mining town of 4,000 people, nor anywhere on the 700-kilometre track out of Nhulunbuy. There is no LPG outlet in Borroloola, another isolated mining town. You could not drive an LPG fuelled car into, out of or even around any of these towns, and they are not alone. Along the Stuart Highway LPG outlets are few and far between. Put simply, for most of the Territory the LPG solution is simply not an alternative fuel.

On government estimates, after four years maybe only two per cent of the adult population will take advantage of this rebate; so it will have a very low level of penetration. As written in the Sunday Canberra Times on 20 August, it is a bad idea which has no place in a well-designed energy policy. Last week’s decision to increase the subsidy for LPG is bad news for 98 per cent of the taxpayers, but let me tell you this: it is pretty bad news for almost 100 per cent of the constituents that I represent in the Northern Territory. So, once again, the Prime Minister and his government offer little hope or help to the many regional and remote Australians who remain stuck with paying the highest fuel prices, the highest GST on fuel, the highest food prices in this country as trucking companies are forced to pass on high fuel costs and the higher interest rates coming about under this government.

The Treasurer beams that oh so warm smile of his when reminding Australians of all the recent tax cuts. The problem is that, although the tax cuts started on 1 July, they were all gone—well gone—by 31 July as a result of people’s increasing bills. And, of course, some of the income tax cuts have gone back to the Treasury—courtesy of the higher GST paid every time we fill up the car in the Northern Territory. No wonder the Treasurer keeps smiling. But has he got any real reason for doing so? I think not. The Howard government have run out of steam. They have run out of ideas other than the old-hat ideological wishes of an ageing Prime Minister who wants to crush unions; disadvantage workers; reduce their wages, conditions and job security; and privatise everything as a way of increasing employment and productivity. For 10 long years they have been able to live on the coat-tails of the previous Labor government, which set the economic ball rolling towards success and prosperity and a resources boom, which has nothing to do with their economic management.

But this is a government that has now run out of puff in keeping up with relevant changes to encourage investment and to further drive productivity and prosperity. It has failed to keep up with education investment, leading to a drastic skills shortage. It has failed to invest in infrastructure, leaving our ports and roads in poor shape. It is prepared to sell off Telstra despite obvious disadvantages to rural and remote Australia. Reduced services in the bush will do nothing to help regional businesses. It has bought votes through tax cuts, which have increased spending and led to inflationary pressures and rising interest rates. It has failed to act on looming fuel problems.
While Australia has very abundant supplies of natural gas, the government have done nothing to encourage examination of the use of this as an alternative to oil. They have stuck their heads in the sand, or perhaps the coal heaps, and have done nothing to really encourage research and development in alternatives for fuel. So now the government have put up this bill we are debating. While necessary, it is really too little too late. We have a nation still reliant on oil for our transport sector—oil from the less stable parts of the globe, oil now stuck at higher prices.

The government have done nothing, despite our own resources, to encourage the establishment of a home grown, home based fuel industry. We are stuck with a heavy reliance on imported oil, the demand for which is rising rapidly, as countries such as China and India develop further. Anyone with Basic Economics 101 knows that a rising demand with a more or less fixed or reducing supply can have only one result—the price of the product will rise. That is what is happening to oil and it will continue to happen.

No matter how often the Prime Minister tries to be like King Canute and stop the rise, saying a price of $1.15 per litre or whatever is possible again, the truth is that this is simply pie in the sky; it will not happen. The Prime Minister obviously never got as far as economics 101. He tries to reject that the war in Iraq has anything to do with the price of petrol. He says the trouble is the high world price of crude oil, and indeed so it is. But why is the world price for crude oil so high? It is due in part at least to the instability of one of the major producing areas in the world, with the war in Iraq an absolutely undoubted contributing factor. So at least try and be honest for once, Prime Minister.

The price of oil goes up, the price of fuel goes up, GST paid on fuel goes up, the cost of freight goes up, prices in the shops go up and GST paid on food goes up. The Treasurer keeps smiling reassuringly, inflation starts and the Reserve Bank puts the brakes on by raising interest rates, so mortgage payments go up, leaving the average Australian struggling to keep up or spending on credit cards to dangerously high levels which cannot continue. The good times are over. This is not a sustainable situation.

So we have this bill and an offer to rebate some of the expenses of converting to LPG as this government’s reaction to the situation. In addition, there seems to be some rather shaky government support for some forms of biofuels, such as ethanol. I heard somewhere the other day, on one of those early morning radio shows, of an Aussie investor, I think from the Gold Coast, who is putting millions into several biofuels plants. The shame of it is that they are all in the USA, where he says they are really going for these alternatives, unlike our government here, where it is just not worth investing.

What an indictment of this government. It has flipped and flopped over what to do about fuel alternatives like ethanol and LPG and has kept changing the playing field and goal posts. In the last parliament alone it changed the proposed excise regime on no fewer than three occasions. Labor believe that we must do something real and positive to ensure the future of alternatives like ethanol and other biofuels. Without ensuring the security of these alternatives we will remain captive, or hostage, to oil supplies from the Middle East, Russia and west Africa and to high oil prices. These are all areas with problems of stability and continuity of supply.

We should long ago have been looking at converting our own natural gas to fuel, working on cleaner coal for power stations and converting coal to diesel as more desirable options as fuel sources. Instead, we export as
much of our gas as we can sell to look after Japan and China. How can this be in the long-term national interest? Sadly, working on alternative, cleaner and sustainable fuel has not been on the Prime Minister’s radar. He has been far too preoccupied with his extreme workplace relations legislation, ruthless changes to Welfare to Work rules or beating our Indigenous people about the head with major changes to land rights in the Northern Territory without consultation.

The time has come for urgent action, for Australia to actually have a proper energy policy, to work seriously towards developing alternatives with our own resources and to review the decision made to introduce excise on ethanol, biodiesel and LPG in 2011. The time has come to genuinely assist in the development of these alternative fuels and not muddle along like this government has done for far too long. (Quorum formed)

Senator CHAPMAN (South Australia) (1.30 pm)—I remind the Senate that we are debating the Petroleum Retail Legislation Repeal Bill 2006, because the chamber might have forgotten that, given the contributions that we have heard so far from the opposition benches. Senator O’Brien briefly referred to the bill and accused the government of stagnating reform in this area but then referred to a whole lot of measures that are quite irrelevant to this legislation. Senator Murray spoke largely about trade practices issues, which might have some peripheral relevance to the legislation, and Senator Crossin talked about high petrol prices and GST revenue. I will deal with those comments in a few moments. At the outset I want to congratulate Senator Stephen Parry on his election as Deputy Government Whip. I hope he enjoys his tenure in that office and I am sure that he will contribute very positively to the way in which this chamber operates. Congratulations to Senator Parry.

The legislation that we are debating this afternoon, the Petroleum Retail Legislation Repeal Bill 2006, opens the way for a new era in petroleum marketing because it paves the way for the introduction of the Oilcode. The introduction of this bill follows extensive consultation with the industry, industry associations and consumer groups, who all agree that the current legislation—the Petroleum Retail Marketing Franchise Act 1980 and Petroleum Retail Marketing Sites Act 1980—has become obsolete.

This 1980 legislation implemented what was known as the ‘Fife package’, after the then Fraser government minister responsible for its implementation, Wal Fife. As a then member of the House of Representatives who had previously worked in oil industry marketing management, I was involved in the consultation process that led to that legislation. It was much needed at the time to ensure a fair go for service station operators. However, to those who argue that this legislation should remain in place I say that it is well past its use-by date.

The retail petroleum market has changed substantially, and not just in recent years. The entry of Coles and Woolworths into the market during the past two decades has allowed substantial circumvention of both the intent and the letter of the 1980 Fife package. What made the Fife package obsolete was the introduction by the oil companies in the early 1990s of multisite franchising and the failure of the then Labor government to stop it—to amend the Fife legislation at that time to prevent multisite franchising, which was circumventing the intent of the Fife package. As an opposition senator at the time, I well recall calling for action on this front, but the Labor government simply sat on its hands.
So I say to those who remain advocates for the legislation that we are repealing today—and this is worth repeating—it has been obsolete and ineffectual since the last Labor government allowed the law to be compromised by multisite franchising a decade and a half ago.

Subsequent marketing arrangements, in particular the developments with Coles and Woolworths, have simply built on that. That is why a new approach is required. That is why, after much consultation and negotiation, albeit not to everyone’s satisfaction, the Howard government is legislating the Oilcode through the Trade Practices Act. Labor sat on its hands and did nothing to give service station owners a fair go. The Howard government has acted—with the Oilcode.

I noticed, in his brief reference to the bill, that Senator O’Brien accused the government of stagnating on this matter. Over the years there have been entrenched differing positions between the retailers on the one hand and oil companies on the other on a few aspects of the Oilcode. Quite rightly, the government facilitated negotiations on those issues and allowed time for those negotiations to bear fruit. However, in the face of continuing disagreement, the government has taken the very difficult decisions on those aspects that have been in dispute and determined that it will mandate the Oilcode. That is why it has taken a considerable amount of time for this legislation to come forward—because, quite properly, the government allowed appropriate negotiations to be undertaken.

As I said at the outset, apart from that brief reference to the legislation, Senator O’Brien did not really address this legislation at all. He talked about excise issues and gas and coal to liquids, which he indicated that Labor had supported 20 years ago when they were in government, and then he accused this government of not doing anything about it. What did Labor do when they were in government to bring about some practical results as far as gas and coal to liquids were concerned?

As I said, Senator Murray referred to issues related to the Trade Practices Act, and they are certainly still under consideration. Senator Crossin, in her contribution to this second reading debate, talked about high petrol prices and then went on to talk about the increased GST revenue that was being generated as a result of that and the impact that that was having on people’s ability to cope. I remind Senator Crossin that if she is concerned about the revenue that is being generated by the GST she should talk to the Northern Territory Labor government, because they are the beneficiaries of the GST revenue. If there is some capacity for GST revenue to be used to relieve the effect of high petrol prices, which result directly from the fact that international oil prices are high, then it is within the capacity and the wit of the Northern Territory government to use some of its GST revenue to provide a rebate to petrol consumers and benefit them in that way. So, as I said, I suggest to Senator Crossin that she talk to the Northern Territory government if she is concerned about the amount of GST revenue that is being generated.

The concurrent repeal of the Fife package and the instalment of the Oilcode is undoubtedly essential to ensure greater transparency, accountability and national consistency in this radically altered market, which I referred to a few moments ago. Of course, the petroleum market is one of the most competitive in Australia. For these reasons, I strongly support this legislation. Support for the legislation was also recommended by the Senate Economics Legislation Committee, of which I am a member, in its report on the provi-
sions of this bill that was tabled in the Senate on 11 May this year.

The entry of supermarket chains Woolworths and Coles into the retail petrol market has altered significantly the structure of the industry. Under the current legislation—the two pieces of legislation that this bill repeals—they hold a competitive advantage in the industry, free from the conditions that are currently placed upon the oil majors with regard to franchising. This has affected the industry to such an extent that the supermarkets now account for 50 per cent of all metropolitan sales. This has rendered the retail petrol sites of the major oil companies a dwindling market share, as they find it increasingly difficult to compete in a market in which they are put under exceptional restrictions on their business structures and the contracts they provide to their franchisees. The Senate Economics Legislation Committee concluded that it is difficult to justify the maintenance of one set of restrictions on a retail petrol site that may be operating directly next door to another site that is able to determine the conditions of its contracts under another completely unrelated piece of legislation. Through this legislation the Oilcode will be able to simply and uniformly create laws that are the most conducive to an open market performing at its optimum.

It follows that the legislation currently in place, which was developed, as I said, some 25 years ago, is no longer appropriate. Again, the Senate Economics Legislation Committee, considering changes to the industry’s structure since the introduction of the prevailing legislation, concluded that the different regulatory requirements of different market participants were unjustified. Indeed, we found that the most difficult obstacle to reforming the retail petrol industry was in reconciling the competing interests of the major oil refiners with those of the independent retail franchisees. The Howard government has provided a piece of legislation, which we are debating today, to take the necessary next step in reform of the retail petrol industry. It will provide greater flexibility for those in the market and ensure greater simplicity and efficiency, which will balance the different interests of the two parties by providing an atmosphere of competition that is similar to that experienced in other industries throughout Australia.

The most important potential benefit from the introduction of a bill affecting the sale of petrol is that it will reduce prices for all Australians. In the Oilcode, this is to be achieved through national terminal gate pricing, whereby the wholesale price of petroleum will be transparent whilst still able to be sold below cost. This will be consistent for all petrol retailers. It should put downward pressure on the price of petrol and retain competition through allowing all market participants to negotiate the price they pay for petrol.

Moreover, this legislation will address the continued insecurity that has occurred across Australia in relation to retail petrol sites, which have declined in numbers since the early 1970s. It is believed that the introduction of terminal gate pricing will have the secondary effect of ensuring the number of petrol retailers in Australia is at an optimal level, achieved through their capacity to remain price competitive or through their ability to retain a niche benefit for their customers.

I note some in the opposition have expressed concern that the potential for below-cost sales to those with greater buying power will result in a reduction in competition, as smaller operators may be forced out of the market. However, the introduction of the
Oilcode will not undermine competition. Those sites that remain competitive will continue to be economically viable when faced with further industry rationalisation and the increased dominance of the supermarket franchises. Regardless of the introduction of this bill, the retail petrol market will continue to evolve according to market demand with regard to the sites of independent operators in opposition to larger retail franchises or the oil majors.

Indeed, it was the conclusion of the Senate Economics Legislation Committee that we risk seeing a decline in competition within this industry if reform does not occur, as Coles and Woolworths will be able to continue their ascendency within the market if left with their current competitive advantage. It was concluded by the committee that the oil majors, if faced with continued competitive disadvantage, will not have any incentive to stay in Australia. The distinct possibility arises that the majors would be forced to consider withdrawal from the market altogether. This would not only weaken competition within the industry, which would result in higher petrol prices; it would see a continuation of their interest in developing more efficient fuels and, through market withdrawal, result in a loss of refining capacity within Australia. This raises serious issues of energy security for the nation, and it is only fair that we ensure the market is free from disadvantage for any of its members by removing this outdated legislation.

The Oilcode contains appropriate safeguards to ensure all market participants are safe from their interests being compromised. Establishing disclosure statements when parties are engaged in fuel-reselling agreements will ensure that all of those in the retail petrol market are accountable. This will protect the interests of all independents and retailers by ensuring that both parties are accountable to the provisions of the agreement as specified within terminal gate pricing. This will level the playing field for petrol retailers, regardless of their relationship to the supplier, and will in turn provide an across-the-board solution to the current problems of inconsistency being experienced by our retail petrol sites, which are under different legal classifications.

Further safeguards have been put in place for all market players through the establishment of the independent, downstream petroleum dispute resolution scheme. This will provide consistency of outcomes for all retail petrol sites through the provision of an acceptable and affordable alternative to court proceedings. The dispute resolution scheme will protect the interests not only of those vulnerable independent retailers but of all retail sites equally.

The introduction of the Oilcode in an extremely competitive environment will provide an efficient mechanism to ensure all reselling agreements are honoured. The repeal of the current legislation and the introduction of the Oilcode will be a long-lasting reform for the retail petrol industry. It will provide a fair platform upon which businesses can compete and will improve competition by actively putting downward pressure on petrol prices. It will also allow the process of market rationalisation so that the industry will be able to perform at its optimal level. On this basis, I oppose the amendment that was moved by Senator O’Brien and commend the bill to the Senate.
gency in our inquiry into the bill because the government attached a degree of urgency to the legislation. So it is passing strange, to say the least, that it has taken until now to debate the legislation. The committee had two public hearings, a hearing held in Sydney in early May and a hearing held here in Canberra on 8 May, and the committee reported not long after the second hearing. As far as those of us on the economics committee are concerned, we have been ready to deal with and have had a view on this legislation since May, and we are now in September.

At the committee’s hearing in Sydney we heard from a lot of the players in the petroleum retail industry, which is hardly surprising. In discussing their views on this proposed legislation, a lot of the players referred to the Oilcode, a code that has been referred to by Senator Chapman and others who have contributed earlier to this debate. I mention this because, at the time, those of us on the committee were unaware of the totality of the package. We were unaware that this piece of legislation was to go hand in hand with an oil code and, in fact, had not been provided with a copy of that code. So the hearing where we heard from industry was a little disjointed. We probably did not give them a true sense of where we were at and we did not have the opportunity to pursue the issues with them the way we would have if we had had all the information before us.

In discussing the issue with industry representatives in Sydney, it came out that they were of the view that the Oilcode, as they were discussing it, was available on the department’s website in draft form. It was not until the committee got to have its hearings in Canberra that we were able to have a discussion about what was in the code and to have it before us and get a true understanding of the status of the code and how that was to correlate with the legislation. In fact, when we were talking to departmental people they were able to tell us that as far as they were concerned the code, as it stood on the website, was the final document and not a draft, as some in the industry still seemed to consider it to be. As has been mentioned by others, when the economics committee reported in May, although we agreed to the passage of the legislation, a number of us put in some additional comments on other measures that we thought needed to be taken to insures the petroleum retail industry.

As part of the assistance to committee members in the lead-up to our hearing in Canberra, we were provided with some briefing notes from the Minister for Industry, Tourism and Resources, the Hon. Ian Macfarlane, which I must say—and I remarked about this at the time—were most useful. Perhaps if we had had them a bit earlier it would have stopped some of the pain at the Sydney hearings. One of the things mentioned in that briefing was a discussion about the change in the environment regulating the retail petroleum industry. It said that the proposed legislation would not eliminate the rationalisation of retail sites that had been experienced by the industry over the past two decades. We were provided with the useful information that in 1970 there were over 20,000 retail petroleum sites around Australia but that, following the oil shocks of the 1970s and 1980s, the number had reduced to approximately 12,500 sites and has continued to decline to the current level of 6,500.

The briefing note went on to say—and this is one of the things that causes some concern for those who are worried about the operation of independent retailers and smaller players within the sector:

However, ... rationalisation will eventually plateau as retailers compete on the even playing field facilitated by the Oilcode and the number of retail
sites reaches an optimal level in response to the demands of the domestic market.

I presume that, by the note saying it will eventually plateau, we can still expect to see some decline in the number of sites. In a state that is as geographically large as Western Australia, and which has an industry as significant as Western Australia's but still with a fairly centralised population, the thought of any further decline in the number of retail outlets will be of real concern to the people of that state—the people of my home state. If you are from outside Perth, there are no options of public transport or other methods of getting around, so easy access to petroleum at a reasonable price is a very important part of keeping my state going.

Hand in glove with this piece of legislation, as has been highlighted by Labor members of the economics committee and by Labor in its proposed amendments, is the need to reform the Trade Practices Act. Trade Practices Act reform is something that has been discussed in this chamber. It has been highlighted in this chamber for almost as long as I have been a member; indeed, it has had a quite high profile in that time. It was only last week in question time, in response, I think, to a question from Senator Fielding—even though it is only a week old it is testing my memory—that Senator Minchin said that the government accepted the need to reform the Trade Practices Act but would do it when it had the numbers to secure it. We all know that the government has the numbers in this place, so I can only assume that any government reluctance to reform the Trade Practices Act is due to a level of dis-harmony or disagreement within its own forces; that should be the only reluctance. As I say, this is an issue that has been highlighted for quite some time.

The need to reform the Trade Practices Act was highlighted quite significantly by a now extinct body, the Senate Economic References Committee, when it reported, back in 2004, on the need to make the act more robust in protecting the rights of small business. Whilst Labor supports the legislation, we feel that hand in glove with that needs to go some further reform to the Trade Practices Act. As those of us from Labor commented in our additional remarks in the economics committee inquiry, it is well known that section 46 of the Trade Practices Act has been rendered inefficient and ineffective because of a number of Federal Court and High Court cases. For example, in the Safeway case the concept of taking fair advantage was brought into question. In the Rural Press case, the concept of abusing market power in another market was brought into question. Then, of course, there is the infamous Boral case, where the very concept of market power was also brought into question. The ACCC has effectively given up pursuing cases under section 46 of the Trade Practices Act because it now knows, in our view anyway, that it has been rendered ineffective.

At the time the Senate Economic References Committee brought down its report, there was unanimous agreement that some sort of reform of the Trade Practices Act needed to take place. The only disagreement within the committee was the full extent of that reform. Some two years later we are still waiting to see some government legislation and government response to that inquiry. It is very difficult to continually come in here to raise real questions about individual pieces of legislation and the effect they will have on small, independent operators in collaboration with a less than effective Trade Practices Act in this day and age when we are yet to see the colour of the government's proposed reforms. Every time Labor raises these issues, we are told that there is a package coming and that the government fully intends to reform the Trade Practices Act. Some two years on, considering it will be a significant
package that will affect those in small and intermediate businesses, I am surprised that a government that claims to be the champion of the small business sector is yet to come forward with a package of reforms to protect the sector in an increasingly combative and robust market.

The report of the Senate inquiry into the effectiveness of the Trade Practices Act on small business was brought down in 2004. It made a number of recommendations to strengthen the Trade Practices Act, some of which the government at the time committed to, yet we are still to see any legislation resulting from that. Particularly as the government, we all know, have the numbers in this place, it is completely unacceptable for them to say, ‘We’ll wait and see when we can get the package through.’ They have the numbers; they need to use the numbers. This is something that those of us on this side of the chamber have been told they have been working on for some two years. Surely, therefore, this is a package that should be ready to go. Labor senators at the economics committee hearing particularly noted the comments of Mr Cassidy from the ACCC when he said:

I would say that, to the extent that there are shortcomings in the current section 46—and that is obviously well-travelled ground—we think the answer to that is to amend the section.

So the ACCC wants the section amended. The Senate economics committee unanimously wanted the section amended. Those from almost every peak small business forum or locally organised forum of small business also want the section amended, yet we are still to see any form of activity from the government.

The reforms are long overdue. For those of us that are very aware of and have a lot of sympathy for the claims that were made by the independents in the petroleum retail sector, it is very difficult to continually take the government’s point of view that this piece of legislation is essential and that the Oilcode will go hand in hand. In a way the government forced our hand by removing all regulation and then said, ‘We have to pass the legislation or the entire industry will be left unregulated.’ It is very difficult for us to continue to deal with these issues industry by industry, sector by sector without having any undertaking or any indication from the government on when we can expect any reform to the Trade Practices Act and what that reform will look like. This is reform that we have been waiting some two years for. Every time the government bring in a piece of legislation like this that seeks to govern the commercial activities of one particular sector of our economy, those of us on this side of the chamber will go out of our way to remind them that they cannot adopt this piecemeal approach. In order for the small business sector of our economy to prosper in the way that it should, they must give us the legislative framework or at least the undertaking of what that legislative framework will look like so that we can see the true operation of a decent trade practices regime in our economy.

Debate interrupted.

QUESTIONS WITHOUT NOTICE

Aged Care

Senator McLUCAS (2.00 pm)—My question is to the Minister for Ageing, Senator Santoro. Is the minister aware that the latest information from his department indicates that Queensland has 86 operational aged care beds for every 1,000 people aged 70 years and over? Can the minister confirm that this is over 600 beds below the government’s own target of 88 residential aged care beds for every 1,000 people aged 70 years
and over? Aren’t over 600 frail elderly Queenslanders being denied the aged care they need because his government cannot meet its own target on operational aged care beds? Given the minister has been so keen to stand up for the health needs of Queenslanders, why hasn’t he ensured that they actually have the aged care beds they need?

Senator SANTORO—As Senator McLucas has been informed before today, there is a very real issue relating to phantom beds. The phantom beds that she refers to—

Senator McLucas—No, these are actual beds.

Senator SANTORO—The beds that Senator McLucas talks about, as she would appreciate, are some of those phantom beds that exist because unfortunately state governments, of which the Beattie Labor government is one, oversee town planning regimes which simply do not approve applications by nursing home proprietors with sufficient speed. The beds do not exist for that reason. In the same vein, I congratulate the Tasmanian government on recently participating in the signing of a tripartite agreement with a view to encouraging local government authorities to go about streamlining their planning and approval processes so that what Senator McLucas is seeking to seriously address, I would hope, can be addressed in practical terms at a ground level.

I will be more specific in my reply to Senator McLucas. As she knows, a total of 11,208 aged care places were allocated as a result of the 2005 aged care approvals round. This included 5,274 residential care places, 4,352 community aged care packages, 915 extended aged care at home packages, and 667 extended aged care at home dementia packages. On 1 May 2006, as Senator McLucas would know—or maybe she does not know—I announced that there would be an estimated 26,391 new aged care places made available through the aged care approval rounds over the years 2006, 2007 and 2008. This includes 7,678 places available to be allocated in the 2006 aged care approval round comprising 4,585 residential care places, 1,926 CACPs, 500 EACH packages and 667 EACH dementia packages. I can assure Senator McLucas that, out of that total allocation, Queensland will get more than its fair share based on demographics and population. When you consider the demographics that apply in Queensland, it will be receiving what it deserves to get under the formulas.

The Australian government has provided $468 million over four years to increase the aged care provision ratio from the existing level of 100 operational places to 108 operational places for every 1,000 people aged 70 or over, allowing even more older Australians needing care to receive aged care services. I think that is something that Senator McLucas and everybody else on the other side of this chamber should acknowledge. It is a performance that, when Senator McLucas asks me her inevitable follow-up question, I will continue to address.

Senator McLucas—Can the minister confirm that his media adviser has returned from leave where he was assisting in the Queensland election campaign? Given that the minister’s media adviser’s name was on ministerial press releases last week, can we take it that he abandoned Dr Flegg early in the campaign and returned to work in the minister’s office prior to the latest Liberal train crash in Queensland?

Senator SANTORO—I am going to continue to answer Senator McLucas’s question. Senator McLucas claimed on 4 May 2006 that the Australian government was fudging the figures, which is what she is trying to say today. A responsible politician like ACT Chief Minister, Jon Stanhope, warmly welcomed his share of new places and in fact
said that the allocation exceeded his expectation. Clearly, Senator McLucas does not understand the ACAR. She wants to talk about state politics—

**Senator George Campbell**—I raise a point of order, Mr President. The supplementary question from Senator McLucas was quite specific and related to the minister’s media adviser. The minister simply ignored the question and his answer is not relevant to the question.

**The President**—I was not going to rule on the question, because the question did sound quite different from the original question. But, Senator Santoro, do you wish to answer that call? You have 18 seconds to complete your answer.

**Senator Santoro**—I would invite senators opposite to keep on asking me questions throughout this afternoon on aged care matters. I will be more than happy to answer them. This is the first question in about three sitting weeks from Senator McLucas, who clearly has been abandoned by the leadership team in terms of questions to me—(Time expired)

**QUESTIONS WITHOUT NOTICE**

**Terrorism**

**Senator Ferguson** (2.07 pm)—My question is to the Minister for Justice and Customs, Senator Ellison. On this, the fifth anniversary of the terrorist attack on the United States of America, will the minister update the Senate on the work being done by Commonwealth law enforcement agencies to address the threat of terrorist attacks in Australia?

**Senator Ellison**—I thank Senator Ferguson for what is a very important question on this fifth anniversary of the terrorist attack on the United States. At the outset can I say that that was an attack which was not only on the United States of America. Although it occurred on the soil of the United States, it was an attack against the free world as we know it.

It is an opportune time to reflect not only on the tragic loss of life but on the war on terrorism that we have been engaged in since then. In fact, we have seen, tragically, since 11 September 2001 those attacks which have occurred in other places which have affected Australia, indeed with a loss of Australian life. Indeed in our own region we have experienced a war on terrorism and the continuing war against Jemaah Islamiah, which preaches a litany of hate and is intent on destroying not only Western civilisation but also those people who have their own religion and stand in their way.

Senator Ferguson has asked what we have done in the wake of 11 September 2001 to ensure that Australia’s security interests are served. Of course, we have seen a huge change in the way the Australian Federal Police has carried out the very good work that it does in protecting Australia’s interests. We have seen funding for the Australian Federal Police quadruple and we have seen
legislation passed which has given that organisation the strength it needs to protect Australia. We have seen an unprecedented engagement not only in the region but overseas in working with foreign law enforcement and intelligence agencies in the war against terrorism. That has been very successful, and I point to no less than the investigation which followed the first Bali bombing. That has been used as a template, I would suggest, internationally where you have two countries of vastly different cultures, such as Indonesia and Australia, coming together and working intensively to bring about the result that we have seen in the wake of that first Bali bombing. We have increased funding and resources to ASIO and to the Customs agency, which plays an essential part in protecting our borders. Of course, ASIO does an outstanding job working not only with Australian agencies but with overseas intelligence agencies in protecting Australia’s interests.

We have seen in the aviation sector unprecedented levels of security where we have air security officers flying domestically and on some international routes. We have seen airport commanders put in place, an increase in our counter-terrorism first response with the Australian Federal Police’s Protective Service and also our rapid regional response teams for aviation security in our regions. As well as that, we have seen increases in maritime security. We now have reporting requirements of vessels which intend making a first port of call to Australia. We have increased our first port of call inspections by Customs. As well as that, we have seen Customs increase its border patrols in our remote regions, because it is not only at our airports and our sea ports but also in those remote regions that we have to have increased security.

As I have always said, security is a work in progress and we cannot do it alone, and we certainly acknowledge our close allies, including the United Kingdom—and we have Lord Falconer in the chamber today. We acknowledge the great relationship we have with and the cooperation we get from the United Kingdom and also from the government of China—and I acknowledge the delegation here today and acknowledge the cooperation we have with that country as well in relation to the war on terrorism.

Aged Care

Senator MOORE (2.11 pm)—My question is to the Minister for Ageing. Can the minister confirm that in 1996 there were 95 residential beds for every 1,000 people aged over 70 in Queensland? Is he aware that if that ratio had been maintained by the Howard government there would now be an additional 3,200 aged care beds in our state? Can the minister also confirm that the South Coast and Logan River regions are both hard hit by the current 600-plus aged care bed shortage in Queensland? Aren’t 30 per cent of people in Queensland needing nursing home care waiting more than three months to find a bed? Why has the Howard government so comprehensively failed to meet the needs of Queensland’s ageing population?

Senator SANTORO—I very much appreciate this round of questioning, and I would invite honourable senators to continue to make up for the abysmal lack of questioning and interest in aged care that they have been displaying during the past two or three weeks. In terms of the very specific information that both Senator Moore and Senator McLucels have asked for on Queensland, as is usually my case, I will undertake to provide very specific information to them on the Queensland situation but I do wish to address those points that relate generally to the Australian scene in order to suggest to Senator Moore that in fact she is not accurate when she belittles the performance of the Austra-
lian government and the allocation of licences and beds.

I can inform Senator Moore and the Senate that the Australian government will meet its 2001 election commitment of having almost 200,000 operational places by June 2006. It is important to remind Senator Moore, Senator McLucas and everybody else that that was a commitment that we made in 2006—endorsed by the people of Australia—which we will meet. As at 31 December 2005, there were 197,203 operational places.

**Opposition senators interjecting**

Senator SANTORO—for the benefit of Senator McLucas—including 163,432 residential places. Of these residential places, 80,052 were high care and 83,380 places were low care. This is the important point which Senator Moore, with respect, I do not think will like. I am able to inform Senator Moore and the Senate that there are now at least 55,911 more operational aged care places than there were in June 1996. Of these, 26,581 are additional residential places.

The Australian government, as I have informed the Senate before, is also committed to achieving a ratio of 108 operational places per 1,000 persons aged 70 years or over, nationally, by 2007. As I suggested at the start of my answer, I and the Australian government are committed to reaching that target. At 31 December 2005 the operational ratio—which I know interests Senator McLucas, and it should interest everybody else who is fair dinkum about aged care—was 104.2 places. The Australian government will be releasing at least 8,771 places in 2006 with a further 19,913 indicator places planned for release in 2007 and 2008. This is the highest the operational ratio has been, and it should be good news for even the most mean-spirited person opposite.

**Opposition senators interjecting**

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

Senator SANTORO—By comparison, in 1996, when the Labor Party left the aged care mess to us to fix, the operational ratio was only 93. These are figures that I have not manufactured as Minister for Ageing and nobody in my department has manufactured. They are able to be audited by the Auditor-General and they are able to be verified by any reasonable person who looks at the performance.

**Opposition senators interjecting**

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

Senator SANTORO—of this government in comparison to the performance of those opposite. The operational ratio will increase as aged care approved providers bring online the Australian government’s rollout of aged-care places—(Time expired)

Senator MOORE—Mr President, I ask a supplementary question. Does the minister believe that the amount of effort that he and his department have made over the last three weeks to give figures and to hoe into the Queensland election was the best use of resources in his department? Given his past experience in Queensland elections—and Saturday’s emphatic result—will he now commit to focusing on the job and improving aged care in Queensland?

The PRESIDENT—Minister, I would ask you to reflect on that supplementary question and answer the parts that are relevant to your portfolio.

Senator SANTORO—I simply refer Senator Moore and other senators opposite to the substantial answers I gave to the Senate
in answer to questions relating to the health of Queensland, including questions last
Thursday relating to the health considerations of elderly Queenslanders. As long as I
am Minister for Ageing I will accept questions from either the opposition or people on
my side about health issues relating to ageing Queenslanders, which were the questions
that I was answering. Labor senators opposite do not care about the health of Queen-
slanders, particularly ageing Queenslanders. That is no business of mine but it is a sad
indictment of their capacity to represent their constituency.

Renewable Energy

Senator ADAMS (2.18 pm)—My ques-
tion is to the Minister for the Environment
and Heritage, Senator Ian Campbell. Will the
minister inform the Senate of action the gov-
ernment is taking to encourage renewable
energy in Australia? Is the minister aware of
any alternative policies?

Senator IAN CAMPBELL—I thank
Senator Adams for the question. Can I say
for the benefit of our Chinese friends in the
gallery that not only are we backing multibil-
lion-dollar efforts to support renewable en-
ergy development within Australia but,
through the Asia-Pacific Partnership, of
which China is a very important part, and
through our bilateral climate change partner-
ship, we are working to ensure that the Aus-
tralian renewables industry partners more
and more strongly with China. China is ob-
viously an economy that is growing rapidly,
as is its greenhouse gas emissions footprint,
and Australia’s renewables industry has a
phenomenal role to play in helping China
provide reliable, secure power with much
lower emissions. It is a very valuable part-
nership and it is built on a very strong re-
newables industry that has been underpinned
by the Howard government’s renewable en-
ergy policies.

We have spent billions of dollars on our
climate change response, many hundreds of
millions of dollars of which goes to the re-
newable energy industry. The wind energy
industry has seen a massive upsurge in roll-
out under the coalition government. There
were something like 20 wind turbines in
Australia under the previous Labor govern-
ment; we now have 660 wind energy instal-
lations, turbines, either installed or being
built—a phenomenal growth. Just this month
the Prime Minister announced the extension
of the Remote Renewable Power Generation
Program, which substitutes and replaces fos-
sil fuel burning facilities around the remote
parts of Australia with renewables, quite of-
ten wind.

I was told at a meeting of my roundtable
today to develop a national wind energy
code. I was told by a representative of Verve
Energy that one of those turbines, on Rott-
nest Island, has just had its first full month of
commissioning, and the results show that
they were able to use wind energy for 70 per
cent of the time during the last month. Over
a full year that will replace 450,000 litres of
diesel and mitigate about 1,200 tonnes of
carbon emission from just one facility. The
Prime Minister has extended that program
with a further $123 million. That is on top of
the recent extension of the solar homes pro-
gram, the Photovoltaic Rebate Program,
which will roll out solar cells to in excess of
11,000 homes. That will build on the Solar
Cities program, which provides $75 million
to transform entire suburbs.

Today was an important day for the re-
newables industry. I hosted a roundtable. As
we know from recent controversies around
the Bald Hills wind farm and the Dollar wind
farm, approval for which has been sitting on
Minister Hull’s desk for coming up to 500
days at the end of this month—on the eve of
the grand final the approval for the Dollar
wind farm will have been sitting on Rob
Hull’s desk for 500 days—there is total confusion in the community and in the wind energy industry about policy and planning approvals. A Labor state minister is saying they should roll over local communities and not show any interest in what local communities think.

The roundtable, I can report, has agreed on a national wind code supported by the wind industry. The president of the association, Andrew Richards, has backed it; the local communities have backed it; the local councils have backed it. The Commonwealth government is showing leadership in making sure not only that future wind farm processes are clear, transparent and create a good basis of investment for the industry but also that local communities play a part in the process. Labor opposes local governments and local communities being engaged in the siting of wind farms; the coalition will ensure that their views are part of the process. (Time expired)

Managed Investment Schemes: Tree Farms

Senator HOGG (2.22 pm)—My question is to Senator Abetz, the Minister for Fisheries, Forestry and Conservation. Does the minister recall defending the current arrangements for managed investment schemes on the basis that they revitalise rural communities, create jobs and encourage tree plantations as an alternative to logging old-growth forests? Can the minister now confirm that, despite his claims, the government plans to restrict the use of these schemes in the future? Won’t this action, on the minister’s own logic, threaten rural communities, cause job losses and stifle plantation forests as an alternative to old-growth logging? Can the minister also explain why he has not been able to counter what he described on 29 August as ‘the silly and emotive argument being used by some opposed to tree farms’? Why is the government more receptive to ‘silly and emotive’ arguments about tree farms than to the minister’s view about their benefits?

Senator ABETZ—On this occasion, and it is very rare that I get this opportunity, I would like to thank the Labor senator for his question—and in particular for the fact that he seems to hang on every word that I have spoken in recent times. I am very flattered by that. I thank the Deputy President for his extensive quoting of me in his question. As Senator Hogg would be aware, as indeed would be the Senate and the whole Australian community, there is a matter coming up for discussion within the government—that is, considering a draft proposal that was aired on budget night, which was 9 May if my memory serves me correctly. The Assistant Treasurer issued a draft suggestion, and that has been a matter for consultation in recent times. Of course, as part of that consultation process there have been certain people putting a point of view—and one of those people has been me.

One thing I am hopeful of is that we can continue to have a good plantation sector in this country to meet the need for timber products in this country. We currently have a $2 billion trade deficit in timber and timber products in this country. Over the years, rightly or wrongly, the fact remains that a substantial resource of old-growth and native forest has been taken away from the timber industry. As a result, if we are to have a sustainable and environmentally friendly timber-producing sector, we of course need to develop that sector. If we do not grow our own, the alternative is to import the timber. Where would those imports come from? Places like Papua New Guinea and the Amazon—places of that nature where clearly they
do not do forestry as well as we do. As Senator Hogg well knows, that is a matter that is coming up for discussion within the government. We are a very consultative government. There have been extensive consultations by the Assistant Treasurer, the government and I. In due course all those consultations will be thrown into the melting pot and an appropriate determination will be made by the cabinet.

Senator HOGG—Mr President, I ask a supplementary question. Can the minister explain what the cost will be to the plantation industry if Minister Dutton’s proposal to cap the tax deductions available through managed investment schemes is adopted? What will be the impact on those rural communities that the minister says are currently being revitalised through the use of these schemes?

Senator ABETZ—These are all part and parcel of the considerations and consultations that have taken place. The fact is that, as Senator Hogg has alluded to, they are appropriate factors to be considered. Of course they will be thrown into the mix as cabinet considers the matter in due course.

Communications: Television Sports Broadcasting

Senator RONALDSON (2.27 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister please inform the Senate of the measures the government is taking to ensure Australians continue to enjoy sport on free-to-air television during the move to digital television? Is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Ronaldson for his question and for his ongoing interest in the provision of quality media services to Australian consumers. I think we would all agree that the emergence of digital television is the biggest innovation to hit the box since we moved from black-and-white to colour. I do wish free-to-air TV a happy 50th birthday—which they will be celebrating later this week. Digital of course will mean new and innovative services for consumers and will provide an opportunity for the free-to-air and national broadcasters to augment their offerings with new services over digital multichannels. However, just as we were during the introduction of pay TV in Australia, the government is mindful of ensuring that sporting events of national significance are still available to Australian consumers on free-to-air TV.

The antisiphoning scheme for sports rights is an important consumer safeguard. While digital television take-up is still relatively low, around 20 per cent, the rationale for this safeguard remains. Therefore when I announced the recent package of media reforms to transition Australia to digital switchover, it contained a commitment to retaining and improving the operation of the antisiphoning scheme. When limited multichannelling is introduced in 2007 and 2009, both the free-to-air commercial broadcasters and the two national broadcasters will be prohibited from showing antisiphoning sport on their multichannels unless it has been shown on their main channel first. The government will also implement a ‘use it or lose it’ scheme which will be introduced from 1 January 2007. The scheme will ensure that the sports rules, the antisiphoning rules, do not have the perverse effect of reducing rather than increasing the total availability of sport to consumers. The government will also review the scheme’s operation and the continuing rationale for its existence in 2009, prior to the expiration of the current list at the end of 2010.

I was asked about some alternative policies and I have to say that, while this government works to ensure that Australians are
able to watch sports on free-to-air television, and as much sport as they possibly can—

Senator Conroy—What about the World Cup?

Senator COONAN—and Senator Conroy, true to form, chimes in. He likes to play politics with the list, while failing to understand its practicalities or its benefits. For example, Labor was alarmed at the recent seven-year $150 million deal struck between the Football Federation of Australia and Fox Sports to deliver on pay television all Socceroo home matches, the A-League domestic club competition, the Asian Football Confederation championships league, the 2007 and 2011 Asian Cup tournaments, the Asian Cup qualifiers and selected World Cup qualification matches in 2008-09.

These events were never even on the list. I would have thought that the deal would be welcome because it secures the long-term financial stability of the game and it will mean that a significant package of matches will be available on pay television. We will continue to work to ensure that events legitimately on the sports rights list will be available for consumers on free-to-air television.

Environment: Macquarie Marshes

Senator BOB BROWN (2.31 pm)—My question without notice is to the Minister for the Environment and Heritage. I visited the Macquarie Marshes yesterday and found that the globally important ecosystem is under extraordinary stress. I ask the minister: is it true that, given the current availability of water, 90 per cent of the Macquarie Marshes faces ultimate death? Is it true that there is widespread death of the river red gums and that the egrets, which nested in thousands, have not now nested or fledged successfully for six to eight years, even though maximum life span is 11 years? What urgent action is the government taking to rescue this Ramsar listed wetland?

Senator IAN CAMPBELL—It is true that the Macquarie Marshes are under severe stress and that is a consequence of a number of stresses. The biggest stress of course is that Australia and much of the eastern seaboard have been under an unprecedented level of drought. That of course puts massive pressure not only on the human population but also on those ecosystems. There has also been pressure created by unsustainable farming practices. But Senator Brown would know that the Australian government’s $400 million a year Natural Heritage Trust package—the biggest environmental rescue package in Australian history—is seeking to invest directly in sustainable agricultural policies, working with farmers, working through local catchment management authorities and Landcare groups to address those causes.

Funding of half a million dollars from the Natural Heritage Trust has been provided to the Central West Catchment Management Authority to promote better grazing management practices in the Macquarie Marshes region. Recently, the Australian government Water Fund, through the Water Smart Australia program—a multimillion dollar program—is looking at an investment of around $13½ million, matched with funds from the New South Wales government for a specific program for the restoration of the Macquarie Marshes and the Gwydir Wetlands. Not only are we seeking to do that but, through the National Water Initiative, we are seeking a leadership policy, led by the Prime Minister, and have sought to bring transformational and historic reform to water management in Australia.

We are bringing in market based mechanisms to ensure that there is a market to trade water, that water can go where it is needed
most, that you can purchase water for environmental flows and that you have a truly tradable water system across state boundaries. This will ensure, firstly, that water is not wasted for agricultural purposes, that it goes to the highest and best use within agriculture and, secondly, that when you achieve that, you will make savings to ensure that magnificent and Ramsar listed wetlands—such as the Macquarie Marshes that Senator Brown referred to—can be restored to full health.

It will be an enormous challenge to see the Macquarie Marshes and Gwydir Wetlands returned to the condition they were in some years ago. That will ultimately require what most of Australia needs at the moment—that is, a damn good drink of water, and that can only occur when this drought breaks. But, in the meantime, this government will continue to lead, through the Natural Heritage Trust and the National Action Plan for Salinity and Water Quality, as well as a range of other specific water related measures, such as the Water Smart Australia program, to ensure the environmental outcomes that I am sure Senator Brown and I would like to occur within that important Ramsar area.

Senator BOB BROWN—Mr President, I ask a supplementary question. Why does the minister say that the biggest problem is the drought, when every expert on the ground in ecology and farming says it is not the drought but the siphoning of water by the big overseas-owned cotton-growing combines which is destroying the wetlands? Would the minister answer the question about the impending complete destruction of the breeding of the egrets in the Macquarie Marshes? Would the minister inform us why it is that better grazing management practices are being implemented but nothing is being done to compensate the graziers who have been denied water in the Macquarie Marshes region and have lost half their income because it has been given to those big cotton combines upstream?

Senator IAN CAMPBELL—Mr President, Senator Brown clearly was not listening to the answer. I said that we are in fact addressing water allocation issues. We are addressing water allocation and overuse and unsustainable use of water resources across that entire catchment through bringing into Australia, for the first time, a comprehensive water trading scheme which will ensure that water goes to the highest and best use.

We are working with local landholders and cattle graziers; we are working through the Natural Heritage Trust and our natural resource management programs to ensure that agriculture remains sustainable and that the sort of environmental repair that Senator Brown seems to desire can be achieved. There is no doubt that in Australia you can have a viable cotton industry, a viable agricultural industry and also a restoration of environmental health. Unlike Senator Brown, we seek to have a win-win. We would like to have agriculture in this country but also a healthy environment. He would like to wipe out agricultural investment; we do not want to do that. (Time expired)

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of the Rt Hon. Sir Alan Haselhurst, MP, Deputy Speaker of the British House of Commons. On behalf of all senators, I welcome you to our Senate and, particularly, to Australia.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Workplace Relations

Senator TROETH (2.38 pm)—My question is directed to Senator Abetz, representing the Minister for Employment and Workplace Relations. How is the Howard gov-
ernment promoting and supporting flexibility and choice in Australian workplaces? Is the minister aware of any alternative policies?

Senator ABETZ—I thank Senator Troeth for her question and note her longstanding interest in the area of workplace relations and her excellent chairmanship of the Senate committee that deals with these issues. The Howard government is committed to supporting choice and flexibility and that is what WorkChoices is all about—allowing employees and their bosses to negotiate working conditions which best suit them; negotiations which, I note, have now seen the creation of over 200,000 new jobs since WorkChoices first came into being. And, might I add, if an employee wants their union, or anyone else for that matter, to assist them in the negotiations, they are entitled to that by law.

The facts show that workers who have availed themselves of this choice to negotiate provided by the Howard government are, on average, better off than those who do not. The facts show that employees who are employed under the terms of an Australian workplace agreement are, on average, 13 per cent better off than those on collective agreements. And yet, if Labor had its way, all those agreements would become illegal; they would, in fact, be ripped up. Worse than that, the Labor Party has now announced that it will make it compulsory for workers to sign up to collective agreements. If just 51 per cent of workers at a workplace want a union, or anyone else for that matter, to assist them in the negotiations, they are entitled to that by law.

So what the Australian people will have at the next election is a choice: Mr Beazley, who only wants to look after a discrete 25 per cent of the workforce, or Mr Howard, who will look after the totality of the workforce. With Mr Howard’s stewardship we have not seen one million unemployed as we did under Labor; we have instead seen a 30-year low in the unemployment rate and a real increase in wages of well over 16 per cent. There is no doubt that—(Time expired)

Australian Federal Police

Senator LUDWIG (2.43 pm)—My question is directed to Senator Ellison, Minister for Justice and Customs. Is the minister aware that the budgeted average staffing level of the Australian Federal Police this year is 95 personnel less than the average staffing level last year? Is it also true that the
AFP were supposed to have increased the number of police by 326 last year but that they fell short of the target by 421 officers? Given this record of recruitment failure, on what basis did the minister assert on the *Meet the Press* program on 27 August that ‘the AFP had no trouble in recruiting’? In view of the minister’s track record of failure in police recruitment, what confidence should anyone have that he will come close to meeting the Prime Minister’s latest promise to expand the AFP? Was the minister unaware of the extent of his failure, or is he so incompetent that he signed off on incorrect figures in both this year’s and last year’s budgets?

**Senator ELLISON**—It may have escaped Senator Ludwig’s notice but we announced the biggest increase to the Australian Federal Police, since its inception in 1979, with just under half a billion dollars for an extra 421 Australian Federal Police. That is the most significant boost to the Australian Federal Police in its history. As to the popularity of the Australian Federal Police, I say again that the Commissioner of the Australian Federal Police, Mr Mick Keelty, said that the Federal Police have had no problems in recruiting people—indeed, in excess of 2,000 people have expressed an interest in joining the Australian Federal Police—and that, when the Australian Federal Police have sought personnel, they have had no trouble whatsoever in getting quality people to sign up.

What the government have said is that we will not embark upon any poaching of the state and territory police forces—the Prime Minister has said it, I have said it, and the police commissioner has said it. Of course, people are free to apply to join the Australian Federal Police, and I would say to those listening that you could certainly have a very rewarding career in an agency such as the Australian Federal Police. The government have announced the biggest boost to the Australian Federal Police since its inception, and funding to that agency has quadrupled under the Howard government—a stark contrast with what the previous government did.

We have increased the overall numbers of the Australian Federal Police; in fact, the latest total numbers of Australian Federal Police, both sworn and unsworn, are 5,600. It is worth while remembering that since 1996 these total AFP staff numbers, excluding the Australian Protective Service, have increased by around 50 per cent. When you include the Protective Service, which has joined with the AFP, that total number rises. I totally reject any allegation that the government has in some way not been supportive of the Australian Federal Police.

**Senator Ludwig**—Mr President, I rise on a point of order of relevance. I did not ask whether the government supports the AFP. I said that recruitment fell short of the target by 421 officers and asked the minister to confirm that he was short by 421 officers on budget figures.

**The PRESIDENT**—I do not see a point of order there because, from what I could hear, the minister was quoting the numbers of police officers. I ask him to return to the question.

**Senator Chris Evans**—Have you met your recruitment targets yet or not?

**The PRESIDENT**—Order! Senator Evans, it was not your question; it was Senator Ludwig’s question.

**Senator ELLISON**—I have just referred to the biggest boost to the Australian Federal Police since its inception—dealing with a strategy that will bring in in excess of 400 new officers. That is unprecedented. We stand by our record. The Howard government has given outstanding support to the Australian Federal Police and will continue to do so.
Senator LUDWIG—Mr President, I ask a supplementary question. Given that the AFP is already 421 police short of last year’s recruitment target, doesn’t the Prime Minister’s announcement of 422 new police take the force back to where it should have already been by July this year? Why does the minister consistently fail to meet any of the targets that he has set for himself? Is this what the minister means when he keeps telling us that security is a work in progress?

Senator ELLISON—Senator Ludwig is ignoring the various initiatives we have announced which have involved staffing levels of the Australian Federal Police—for example, the Online Child Sex Exploitation Team and the sexual exploitation and trafficking team. We are totally satisfied with the work that the Australian Federal Police is doing. Senator Ludwig ought to pay recognition instead of questioning the support of the government. He should recognise that this government has given unprecedented support to the Australian Federal Police, in stark contrast with the former Labor government. They have a cheek to question our commitment to the Australian Federal Police when we have quadrupled funding since this government came to office.

Child Protection

Senator BARTLETT (2.49 pm)—My question is to the Minister representing the Minister for Family and Community Services, Senator Kemp. I remind the minister and the Senate that the Senate agreed to a resolution last Thursday, in Child Protection Week, that expressed support for child protection to be made a national priority and for all governments to urgently decide on ways to significantly reduce child abuse and neglect in Australia. Given the indication of support from government senators for child protection to be made a national priority, can the minister outline the specific actions the federal government has undertaken to ensure that the totally unacceptable levels of child abuse and neglect in Australia are reduced? Can the minister explain why the federal government has failed to act on the 2004 Senate Community Affairs References Committee report Forgotten Australians and the 2005 Senate Community Affairs References Committee report Protecting vulnerable children: a national challenge, which both recommended creating a national commissioner for children and young people?

Senator KEMP—Thank you for the question. I am aware that across a range of areas the issue of child protection has been one to which the government has paid great attention. Let me draw the Senate’s attention to the great work by Mr Mal Brough in the area of Indigenous matters, which I think all of us would agree brought very serious issues to the attention of the public and to parliamentarians. I congratulate Minister Brough on the important work that he is doing in that particular area. I am also aware of the work Senator Coonan has been doing on the internet. I am also aware that those proposals have not always been supported by the Labor side of the parliament. Those are particular issues which the government has taken a real lead in and without much help if my memory serves me correctly—and you can correct me if I am mistaken—from the Labor Party or the Australian Democrats.

In the areas of family law and child protection, there is no doubt that this government has a very fine record in looking after and protecting children. It would be quite wrong to indicate that this government has not given a very high priority to this extremely important area. I will draw your question to the attention to Minister Brough,
Senator BARTLETT—Mr President, I ask a supplementary question. I note the minister’s comments in his response regarding Indigenous communities. I ask why it is that when there are unproven allegations of child abuse in Indigenous communities we have funding cut off to communities, administrators appointed and a large number of statements made across the media nationally, yet when we have proven reports of massive child abuse at levels described as ‘sickening’ by the Queensland Chief Justice and a report in today’s West Australian of 181 deaths of children known to be at risk in WA since 2002 all we get from the federal government are general comments about how nobody else is doing anything. Why isn’t the federal government going to live up to its commitment that it will make this a national priority and actually show some leadership on this most crucial of issues?

Senator KEMP—As you know, Senator, in relation to Indigenous child abuse, the Australian government called all states and territories to a national summit on violence and child abuse on 26 June in Canberra. The outcomes of that summit were subsequently endorsed by COAG at its July meeting. That was a very important step towards reducing family violence and child abuse.

I draw the attention of the Senate to the fact that the Australian government has contributed in the order of $130 million through a package of measures. In the time available to me now I am unable to list all of them, but there will be up to $40 million to improve police infrastructure in remote areas and up to $50 million for additional drug and alcohol treatment and rehab services in regional and remote areas. So, Senator, I think it is quite wrong of you to give the impression that in this very important area which you have raised the government is not taking the strongest possible action. (Time expired)

Indigenous Communities

Senator CROSSIN (2.54 pm)—My question is to Senator Ellison, the Minister for Justice and Customs. Can the minister confirm that an application to fund a community safety initiative sponsored by the women of the Wadeye community in the Northern Territory has been rejected by the National Community Crime Prevention Program? Wasn’t this application facilitated by the Department of Families, Community Services and Indigenous Affairs in their capacity as the lead agency for the Wadeye COAG trial as a response to growing violence in the Wadeye community? Given the problems of violence that Wadeye has experienced in the past year—even in past weeks—why wasn’t the funding granted? Was the application rejected because of Minister Brough’s ban on any new Commonwealth funding for the Wadeye community? Why are the victims of violence at Wadeye now being punished by this government?

Senator ELLISON—I preface my answer by dealing with the process that applies to the National Community Crime Prevention Program—that is, applications are submitted to the Attorney-General’s Department and are assessed by the department. They then go to an independent committee which advises the minister, which is me, and a decision is made. I am aware of the Wadeye application and I am aware of the rejection, as mentioned by Senator Crossin. I will take the question on notice and get back to Senator Crossin. I may well offer her a private briefing on the matter, which may allay her concerns. I will either give her that briefing or come back and advise the Senate. I am not in the habit of discussing the merits or otherwise of individual applications.

Opposition senators interjecting—

Senator ELLISON—I know there is some comment coming from those opposite,
but I think that in this case we should just be careful, and I plan to do that. I will take the question on notice.

Senator CROSSIN—I hear what the minister has to say but I do have a supplementary question, Mr President. It goes to whether or not the minister can confirm that the Department of Families, Community Services and Indigenous Affairs intervened to prevent the grant of funding to Wadeye under the National Community Crime Prevention Program. If the government really is concerned about violence at Wadeye, why has it not acted to support this funding and support the women of that community to do something to stop it?

Senator ELLISON—This is not underplaying the importance of the issue that Senator Crossin raises, but I think my previous remarks apply—that is, I will take this on notice and either advise the Senate after I have taken advice or look at the possibility of giving Senator Crossin a private briefing.

Private Health Insurance

Senator BARNETT (2.57 pm)—My question is to Senator Minchin, the Leader of the Government in the Senate and Minister representing the Prime Minister. Will the minister inform the Senate what the government is doing to give all Australians the opportunity to enjoy the benefits of private health insurance? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Barnett for his question. We do believe very strongly in giving Australians choice and one of the areas where we have done that I think quite comprehensively is private health insurance. We do want Australian families and older Australians to have a choice in relation to their health insurance arrangements. That is why we brought in the private health insurance rebate and we have since increased its rate for older Australians. Community rating is a very important part of private health insurance. It protects the sick and the elderly and it means that everyone pays the same premium for health insurance regardless of their health status or age.

Earlier this year when we announced our decision that Medibank Private should not remain in government hands, we announced a series of reforms to private health insurance, spanning hospital cover to cover for outpatient and out-of-hospital services, disease prevention measures, services to prevent future hospitalisation et cetera. There are some important consumer information initiatives in that package. Insurers will be required to provide standard product information to help people compare policies and that will help people not only when they shop around for cover but when they actually need to access private health insurance cover. So it is a comprehensive package to improve private health insurance as a product—together with our view that the whole industry will be better off when Medibank Private is not in government hands.

Of course, we have heard the usual opposition from the opposition. It seems that whenever we announce an initiative the knee-jerk reaction from the Labor Party is to simply oppose it. Ms Gillard, the health spokesperson for the opposition, does a doorstep every day crying crocodile tears about how the proposed sale of Medibank Private will affect Medibank Private’s customers. Well, it is our assertion that Ms Gillard—and, we assert, the Labor Party as a whole—really does not care much about Medibank Private customers. Indeed, she cares little for the whole industry of private health insurance. She has said in the last few years that it is Labor’s policy to support the rebate but it is very interesting to go back...
and read the diaries of the immediate past leader of the Australian Labor Party. We have all found them very instructive because they give you an insight into the inner workings of what could only be described as the cesspit of the Australian Labor Party. On 13 February 2004 the then leader of the Labor Party said:

A good meeting this morning with Gillard’s health experts, Stephen Duckett and Hal Swerissen. We have worked out a way of dealing with the despised private health insurance rebate. We need to kill it slowly ... dismantling it slice by slice.

This was a mere 2½ years ago, just before the last election campaign. Then during the campaign he wrote:

Medicare gold. Combine my plan for killing the private health insurance rebate with Duckett and Swerissen’s vision for extending federal responsibilities on health care. It required a lot of work to model the private health insurance implications and to secure the cooperation of the states, all handled by Gillard.

She’s up to her neck in this, of course. And it was not only Ms Gillard who was exposed in the Latham Diaries. In the year 2000, Mr Latham wrote of the private health insurance rebate:

At different times Beazley has boasted to Caucus that it—

the private health insurance rebate—

will go.

So enough of the crocodile tears from the Labor Party about the customers of Medibank Private. We know what is really going on inside the Labor Party. The Labor Party have been totally opposed to the private health insurance rebate. They have covered that up with a gloss of saying, ‘Trust us; we’ll keep it.’ Mr Latham is properly criticised now by those opposite despite the fact that they spent millions trying to get him elected as Prime Minister. The real proof lies in Mr Latham’s diaries. He has exposed the Labor Party on this issue. (Time expired)

Skilled Migration

Senator CHRIS EVANS (3.02 pm)—My question is directed to Senator Vanstone, Minister for Immigration and Multicultural Affairs. I refer the minister to her contribution in the Senate on Thursday, where she identified individual employers using 457 visas, the job classifications sought and the individual visa holder’s country of origin. Will the minister now make public that same information for all current 457 visas?

Senator VANSTONE—I thank the senator for the question and I thank the senator for reminding me that the union movement, which has taken every opportunity to criticise the use of 457 visas, is using 457 visas. The senator asks whether we will make available information on the employers who are using 457 visas and the job classifications of the people using them. We, of course, always answer the questions that are put on notice at estimates, and I think Senator Carr has an interest in this, because he has asked—

Senator Carr—I’m still waiting.

Senator VANSTONE—You will get it, Senator. Senator Carr, just as a matter of interest, has asked questions and has nominated an interest in employers, including Qantas, Austra Ship, the United Group, Teys Bros, World Workers, Austlinx International, MaxiTRANS, Pangaea, Harrington Corporation and Hanssen—if not Senator Carr, other senators have asked about that. I have indicated that those answers will be forthcoming. That is another matter that—

Senator Carr—When? Will we get them by Christmas?

The PRESIDENT—Senator Carr!

Senator VANSTONE—Thank you, Mr President. That is another matter entirely
from opening the books on everyone who is using the visa, but if there are particular concerns then of course those questions have to be answered. But the senator, in raising the question that was answered in this place on Thursday, reminds me not only that the union movement are using 457 visas but of the proposition put by some—

Senator Chris Evans—I rise on a point of order. While I am happy for the minister to be reminded of things that occurred last week, the minister has made no attempt to answer the very simple question which went to the fact: will she release the information for all the other 457 visas that she made available in addition to the ones she selected in the chamber last week? It is a very simple question that she has not yet sought to address.

The PRESIDENT—I think your point of order was on relevance, not a supplementary question. Senator Vanstone, I remind you of the question.

Senator VANSTONE—Thank you, Mr President. The point was that I have been asked about the matters that I raised in this place on Thursday in relation to the unions. I recall making the point that my office had looked in the newspapers and could not find the advertisements for one of these jobs. And I now call upon the union movement in this place to tell us whether the other jobs were advertised. Were the other jobs advertised or does the union movement just think everyone else should employ Australians but not them?

If they were advertised, we would like to know where they were advertised and how frequently they were advertised. It reminds me of a point that I think I should have made in this place. I should have made this point on Thursday, because the point was made before—I think by Senator Wong—that caravan park workers were not on the skill list. Of course, she had changed the word from ‘manager’ to ‘worker’—just a sleight of hand that quite substantially changed the content of the document that I believe she had in her hand.

Nonetheless, an industrial relations officer was what was being sought. There is not a skill shortage in Australia of industrial relations officers, apparently. So it is apparently okay for the union movement, when there are plenty of Australians who could fill the job, to advertise overseas, to not advertise here in Australia, and nonetheless fill these with 457 visa holders. The next question I want answered is: what is the union movement putting into the training of union officers? If you want to bring union officers from overseas, it implies that you are not putting in enough training here. That is the complaint that is made. So I would be very interested to know a bit more. But my answer stands the same. When we are asked questions in estimates we answer them. If we answered a wholesale question—

Senator Sterle—that is an absolute lie.

The PRESIDENT—Senator Sterle, would you withdraw that remark. Senator Vanstone, he has withdrawn, so you can continue your answer.

Senator VANSTONE—If we were asked the wholesale question to release all the information on everybody who had a 457 visa, that would plainly be a ridiculous estimates question but, where questions have been asked and we can answer them within the rules, we do. (Time expired)

Senator CHRIS EVANS—Mr President, I ask a supplementary question. I remind the minister that it is her scheme, so whether or not people have advertised is her responsibility. I ask the minister why she wants to be so selective in choosing which employers’ in-
formation will be made available to the Senate and why she refuses to make the more general information available. Will the minister now make public that same information that she supplied on Thursday for all other current 457 visas? Will she make available the principal applicants under 457 visas, as she said she would, if asked, earlier this year?

Senator VANSTONE—To the first part of the question I refer the senator to the answer that I gave him just a moment ago. I will leave it at that.

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

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Aged Care

Senator McLUCAS (Queensland) (3.08 pm)—I move:

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

In particular, I want to focus my remarks this afternoon on responses from Senator Santoro in respect of the provision of residential aged care in Queensland. We all know in this place, and anyone who reads the newspapers knows, that Senator Santoro is a major factional player in Queensland state politics.

Senator O’Brien—Or used to be.

Senator McLUCAS—I accept your interjection, Senator O’Brien: he used to be. The question I have now is: which faction? The Caltabiano faction, of which I understand Senator Santoro was a major member, has reduced its number quite significantly and there has been a split in that faction. Maybe, Senator Brandis, you could make that clearer.

Senator Brandis—Mr Deputy President, I rise on a point of order. This has nothing to do with any answer in question time or any question asked of the minister.

The DEPUTY PRESIDENT—There is no point of order. Senator McLucas, I draw you to the taking note of answers.

Senator McLUCAS—It is not surprising, then, that he and his office have spent much of their time over the last three weeks involving themselves in the state election campaign. We know, from reading the newspapers, that his press adviser, Mr Malcolm Cole, was parachuted into the campaign in the very early days of the campaign, even inasmuch as attending joint campaign committee meetings. He stressed that this was all in his own time. I gave the minister the opportunity during question time today to clarify the involvement of Mr Cole, to explain to the chamber what he had been doing as a part of his responsibilities as press secretary to the minister or what he had in fact been doing as part of his involvement in the Queensland state election campaign. It was interesting to note that Minister Santoro completely avoided that opportunity—he did not try in any way at all to explain the involvement of his press secretary in the Liberal Party’s Queensland campaign.

We also know that, over the last week or so, we have been subjected in this place to Senator Santoro’s attempts to attack the Queensland government on the state of the health system in that state. I thought it was opportune to clarify what effect that expenditure of public resources had on the state election campaign. I have to ask: did he take the opportunity to perhaps doorknock in the electorate of Gaven? Did he send his speech to the people who live in Redcliffe? Did he ask the people of Chatsworth whether they thought it was a good contribution and whether it would in fact affect their vote? I think that, if you look at the results of those three electorates in particular—in fact, the
whole state campaign—the answer is extremely clear.

I congratulate Peter Beattie and his team of ALP candidates on a strong campaign that focused on the message of fixing our health system, fixing the water supply and the other issues—but, particularly, fixing our health system. We recognise in Queensland that the problems we experience are not all of Queensland’s making. There is a doctor and nurse shortage. We know that we are dealing with changing demographics. But we also recognise the pressure that is being placed on Queensland hospitals by this government’s neglect of residential aged care in Queensland.

It is in the minister’s interest to cloud and confuse the issues surrounding the number of aged care places that are being provided, not only in Queensland but right across the nation. But the facts are these: in 1996, when Labor was last in government, for every 1,000 people in Queensland over the age of 70, there were 97 operational beds; 10 years later, in 2006, there are 86 operational residential aged care beds for every 1,000 people over 70 years old. We have lost 11 beds for the group of people who need them most—11 beds for every 1,000 people over 70 have been lost to the people of Queensland. And the government themselves lowered the target that they were attempting to achieve in 2004 from 90 beds for every 1,000 people over 70 down to 88. So they are still not even meeting their own target, even though they lowered it themselves.

The minister talked about increasing the number of places in Queensland. You basically talk in telephone numbers when you talk with Senator Santoro about the number of aged care beds, because he just lists numbers. He does not recognise that people in Australia actually understand that we are ageing in this country, as we are around the world. We are getting older. So rattling off total numbers does not actually explain anything. That is why you have to understand the application of the ratio.

The other thing we know is that there are 1,500 more Queenslanders coming into Queensland every week. A lot of those people are either requiring aged care or very close to requiring aged care. (Time expired)

Senator ADAMS (Western Australia) (3.14 pm)—I think it is very important at this stage to help Senator McLucas remember what the initiatives of the 2006-07 budget were. This budget invests in security and quality of care, which I know she is very passionate about, as am I. There was $8.6 million for increased spot checks of aged care homes by the Aged Care Standards and Accreditation Agency. I must say that, during a visit to Port Hedland some three weeks ago, I visited an aged care, low-care facility, and two spot check accreditors were at the facility. I had a very interesting talk with them and the staff who worked there. The staff were delighted that they had been visited by these surveyors and the surveyors were also very happy with what they found, so I think it was a great initiative, especially for rural and regional facilities.

There is also $4.7 million over three years for a major expansion of the Community Visitors Scheme and $1.8 million to extend police checks to all volunteers participating in the scheme. Once again, with regard to my own home town of Kojonup, I must say that the Community Visitors Scheme is very welcome, as is the fact that police checks are carried out on all the volunteers. I think that all the people involved feel very happy to have their police check and that they are able to do their community service in the way they wish to.
In July 2006 the Australian government announced an additional $90.2 million package of reforms aimed at further safeguarding older people in residential aged care homes from sexual and serious physical assault, and I know that Senator McLucas has also been very concerned about this. The budget is investing in the skills of Australia’s aged care staff with $21.6 million over four years to identify and replicate best practice clinical care in aged care homes, $13.4 million in training for the community care workforce and $66 million to continue vital training programs for nurses and aged care staff. Once again, for small rural and regional facilities this is a great incentive. The budget is also investing in aged care services in the community with $19.4 million over four years to extend the viability supplement to community aged care programs in rural areas, $24.2 million for more care services in retirement villages, $20.1 million for indexing of the aged care assessment teams program and $24.2 million over five years for improved aged care assessment arrangements.

The budget meets the special needs of older Australians with $15.1 million over four years for an additional 150 aged care places under the National Aboriginal and Torres Strait Islander Aged Care Strategy, $13.8 million for a national eye health initiative and continued funding of capital assistance to eligible aged care homes in rural and remote areas. Once again, this is a very valuable program. Most aged care facilities are not able to come up with the money or the funding for capital improvement, so that one is especially welcome for rural people.

To follow on, there is $134.2 million for psychogeriatric services, $23.7 million for the National Continence Management Strategy, $18.2 million extending the grace period for income testing to $23.8 million and $1.1 million for the National Seniors Productive Ageing Centre. All these initiatives go to helping all states, including Queensland, with their aged care issues. I am very interested in improved quality of aged care. The government brought in the Aged Care Act 1997, which provides for an accreditation based quality assurance system for aged care homes. As a result, aged care homes must now be accredited to receive Australian government subsidies. Accreditation assesses the performance of homes against 44 expected outcomes. (Time expired)

Senator LUDWIG (Queensland) (3.19 pm)—I rise to speak on health care or aged care more broadly. What I have just heard is at least an attempt by the government to defend their record. By and large it will not wash with the electorate, but at least it was an attempt. But what we saw last week was not an attempt to defend their poor policies in this area, their poor application of how they assist in fixing some of the problems at their feet—not at the feet of the Beattie government. What we saw last week was Senator Trood asking a question of Senator Santoro about recent COAG meetings to provide more doctors. The answers went more to the political content of state elections than to the issues at hand. Senator Santoro talked about ‘rivers of gold that are squandered irresponsibly by state governments such as the outgoing Beattie Labor government’. It is no defence to then say that that is not relevant to the debate, because Santo Santoro was talking about the state government, talking up the Liberals’ chances—and, let me say, they certainly needed talking up.

On another occasion last week Senator Trood went to the same point when he asked a question of the Minister representing the Minister for Health and Ageing—again, Senator Santoro—about the Queensland health system. The question was not about the issues at hand but was another attempt to
talk up the chances of the Liberals in Queensland. Not to be outdone, Senator Brandis also stooped to it as well. Not only did Senator Trood ask two questions but also Senator Brandis attempted to squeeze himself into the deal, and he directed a question to Santo Santoro, the Minister representing the Minister for Health and Ageing, on the same issues. He ended up by saying:

What is disgraceful in this place is that every time I get up to talk about the neglect of the Beattie Labor government when it comes to the health needs of Queenslanders, and today especially old Queenslanders, not one Labor senator opposite stands up for the health rights and needs of Queenslanders.

That is what he said last week. Hopefully, what we will hear from him when he stands up today is where the Howard government has failed miserably to work hand in glove with the Beattie government to fix the crisis.

Senator Brandis—A crisis of the Beattie government’s creation.

Senator Ludwig—You’ll get your turn, Senator Brandis. What the Beattie government has said is that it is back to work to fix the problems. Unlike Senator Santoro and Senator Brandis, who were preoccupied last week with attacking the Beattie government and trying to talk up the Liberals’ position, the Beattie government is now back to work on its 100-day plan to address the health and water issues in Queensland.

Senator Brandis—How many days are there in eight years?

Senator Ludwig—Senator Brandis, you will get your opportunity to defend Dr Flegg this week. You will get your opportunity to argue why you provided such a miserable turnout in the Queensland election. What I could say is, despite those objections that were run last week by Senator Santoro and Senator Trood, the Queensland public did re-elect the Beattie government for a fourth term on Saturday. I quite openly congratulate Premier Beattie on this historic achievement. It has been 65 years since a Labor government has achieved a fourth term. As a Queensland Labor senator it is truly a humbling experience to find that the state party has received such an endorsement from the voting public and to see that the Labor brand name is still out there well and good, notwithstanding the attacks by Senator Brandis and Senator Trood last week on the Beattie government. This is an important issue and they should have taken it as one last week. Hopefully they will take it as an important issue this week and deal with the issues at hand, particularly the failure of the federal government in this area. But I suspect that they will go on to defend their position from last week. (Time expired)

Senator Brandis (Queensland) (3.24 pm)—We have just heard two remarkably fatuous, graceless, inaniloquent speeches by Senator McLucas and Senator Ludwig pretending to address the issue of aged care. These two Labor senators have detained the Senate this afternoon while they pursued a political attack upon the Liberal Party in Queensland in relation to Saturday’s state election and, in Senator Ludwig’s case, a self-congratulatory spree about the historical success of Mr Beattie in winning four consecutive terms of government. We can see how interested Senator McLucas, who is meant to be the shadow minister for health, and Senator Ludwig, who is also a shadow minister in a different portfolio, are in aged care that they would waste the Senate’s time by diverting a debate about aged care into a fatuous—I am sorry, Senator Ludwig, I have succumbed to a fit of lethologica, having listened to your remarks; I cannot remember what I was about to say—tedious rant about the Liberal Party
and its internal affairs and self-congratulatory statements about the success of the Beattie government. That is all they are concerned with.

Let me put the facts on the table; let me put those facts into context. The aged care sector, as Senator McLucas as the shadow minister above all people should realise, is a sector of growing importance to all Australians, including Queenslanders. With respect to residents of aged care facilities, there are medical, psychological, behavioural, dental, hormonal, emotional and gerontological issues—the whole range of issues that afflict people as they move into the twilight years of their lives are presented for these institutions to deal with. But what have we heard from the Labor Party? No concern whatever to come to grips with that range of important issues.

Let me tell you what the Howard government has done in relation to the aged care sector. What it has done is what the sector has demanded: increased the number of places. That is what has happened. Senator McLucas implausibly, bizarrely accused Senator Santoro of, to use her words, ‘talking in telephone numbers’ because he was always talking in statistics. I would be interested to know, Senator McLucas, how it would be possible, without descending into a fit of echolalia, to convey changes in statistical aggregates without explaining those in terms of numbers. Of course Senator Santoro is talking in terms of numbers—big numbers—because he is quoting the figures, putting on the public record, the increase in the provision being made for people in aged care homes.

Let me remind you that the number of Australian government subsidised aged care places continues to increase. The ratio has been increased from 100 operational places to 108 operational places for every 1,000 people aged over 70, and double the proportion of places are offered in the community so that more older Australians can receive care in their own homes for as long as possible. While you, Senator McLucas and you, Senator Ludwig, divert this serious debate, which is of importance not only for older Australians but also for their families, into a tawdry political rant and an exercise in self-congratulation about the political success of the Australian Labor Party in Queensland, the Howard government has, in fact, been getting on with the job of increasing the aged care places. The best your shadow spokesman can do is ridicule the minister for talking in telephone numbers because the number of places is a large number.

(Time expired)

Senator MOORE (Queensland) (3.29 pm)—This whole argument has degenerated into a very shabby attack on people who have genuine concerns about aged care in this community. I challenge the senators on the other side to attend some of the Senate estimates processes where senators from this side across the board, with some support generally from some of the people from the government as well, look painstakingly at the specific issues of aged care services in our community. If any of the senators who have been involved in this discussion from the government would care to go back and look at the questions that were asked of the minister today, they would see we were asking specifically about aged care services, about the number of beds that are available. In this case we were asking about Queensland, but the figures could be extended across the whole country. In my question to the minister, I asked specifically about bed opportunities for Queenslanders and the minister got up and had a go. I am not even going to attempt to define some of the terms that Senator Brandis just used because I am not sure how you spell them, let alone how you say
them. I asked about aged care beds that were currently available under the government's proposals in the Logan River area. I also asked about the south coast area. These are people, Minister. We are not talking about numbers that can be read out. We are talking about opportunities for people to have effective aged care in their communities.

The current situation using these figures indicates that, under the ratio and formula that the government has introduced through media releases across the country over the last few months—and we celebrated the introduction of this increase in availability of beds—the numbers of beds are at a low in the Logan River Valley area. In the suburbs of Woodridge, Logan, Waterford, Albert, Springfield, Beaudesert, Gaven, Redland, Capalaba—a lot of those suburbs had the chance to vote in Queensland and made their obvious awareness of their conditions of service known at the ballot box—there was a negative result of over 300 on the government's own expected figures of ratios of beds available. But even that looks pretty good in comparison with the south coast in the areas of Currumbin, Burleigh and Robina, which we know have an ageing population, where the demand for effective aged care is very high. It is not a new demand; it is a demand that everybody has known about for many years. In that area, under the government's determined ratio of bed availability, the government is falling short by almost 600 beds.

That is not an argument just about numbers. The minister got up today and read off a whole range of figures which we have heard before when we have asked questions about what is happening with aged care. We have read the media releases that the minister puts out about budget initiatives. We have heard Senator Adams, again, talk about the range of initiatives that were brought in at the last budget. We are waiting to see them happen. We are waiting to see those services put in place. The members of the community have an expectation because they have been told by the government about the services that they are going to receive. The government have created an expectation. We are asking: where is the result? We do not want to get into some shabby discussion about election results. I think a few people have to take ownership for the way questions have been asked, and the responses made, in the weeks leading up to the state election in Queensland.

The minister today made two comments that I was particularly interested in. Amongst all the figures—and I have taken note of those as well—the minister in one response made these two statements: that Queensland has received 'more than its fair share' under the budget initiatives that he has ministerial responsibility for, and that 'Queensland has got what it deserves to get under the formulas'. I am interested to see whether we are going to get what we deserve to get under the formula or more than our fair share, but I would hope that the people, particularly in the areas of Logan River Valley and the south coast, would be able to expect that they will have access to beds for their aged relatives and for those of them who need it. We will not degenerate to the kind of shabby discussion that we have heard today and also in the process. We need direct answers to questions, not meaningless rhetoric.

Question agreed to.

Macquarie Marshes

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.34 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 Bob Brown today relating to the Macquarie Marshes, New South Wales.

I begin by saying that the first six or seven years of my life were spent in the headwaters region of the Macquarie River at Oberon and Trunkey Creek. Amongst my earliest recollections are picnicking by a crystal clear Macquarie River at Bathurst. I have heard a lot about the Macquarie Marshes—not just the explorations of John Oxley and the ancient history of the Indigenous people related to these marshes but also the importance they have globally as a waterbird breeding site.

On the weekend I had the enormous privilege to be at the Macquarie Marshes with locals, including people who have a phenomenal knowledge of the marshes going back not just decades but generations. The ineluctable fact is that the marshes are being destroyed at a prodigious rate and there is still a failure of government action at the state and federal level. That action is needed to turn around that rate of destruction and to bring about the dream that the Minister for the Environment and Heritage spoke about, in stronger terms than I could, of restoring the marshes. The fact is that over 80 per cent of the marshes are either dead or facing destruction in the coming years.

There can be no more poignant comment on that than from the expert ornithologist who gave me an account of the egrets, those fantastic white birds that all of us see which, so far as he knew, do not have a connection to the coastal egrets we see right up the coast of Victoria, New South Wales and Queensland. They are a population which has a major breeding site on the marshes. Tens of thousands have bred there for thousands of years. These birds live maybe 10 or 11 years. In the last six to seven years there has been not one successful bird breeding. An effort by the birds in one part of the marsh to breed a couple of years ago failed when the water that was percolating into the marsh was stopped just as they were fledging—that is, getting feathers to fly—and they fell out on to dry land and died. So here is a bird with a lifespan of about a decade and we are six years into a decade in which there has been zero breeding. All of us know what that means and all of us have a responsibility for the consequences.

The minister said in his answer that drought was the reason for the marshes’ misfortune. That is not the case. Not one person—not the local graziers, not the local tourism operators, not the local conservation experts—would agree with that statement. All of them agree that the Burrendong dam upstream has caused the problem and that the siphoning off of water by the major cotton combines—mostly foreign owned—is draining the marshes to death.

These are globally listed Ramsar marshes. There is a great range of ducks, swans, egrets, ibis and heron. But they are not just bird-breeding sites. As well as all the raptors, there are native fish—it is interesting that one man who caught lots of catfish as a youngster there now cannot find one—native insects, frogs and bats. All are headed for a massive crash.

This is just the start of an appeal to the Howard government to take up its responsibility—along with the Iemma government of New South Wales—to reverse this ecological tragedy at Macquarie Marshes for the benefit of the locals, New South Wales, Australia and the planet. It is a disaster zone. I would ask the Prime Minister to go and see it. The marshes’ condition has got manifestly worse over the 10 years that he has been in office. His seeing that might help turn the marshes’ fortunes around. (Time expired)

Question agreed to.
CONDOLENCES

His Majesty King Taufa’ahau Tupou IV

The PRESIDENT (3.39 pm)—I draw the Senate’s attention to the death on 10 September 2006 of His Majesty Taufa’ahau Tupou IV, King of Tonga. With the concurrence of senators, I intend to convey the Senate’s condolences to Her Majesty The Queen of Tonga. I invite senators to stand in silence in memory of His Late Majesty.

Honourable senators having stood in their places—

The PRESIDENT—I thank the Senate.

PETITIONS

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

Nuclear Waste

To the honourable President and members of the Senate assembled in Parliament:

We, the undersigned, call on the Senate to commit to keeping Western Australia free of nuclear waste. We ask that you consider the burden that we will be leaving our children, and future generations of Western Australians, who will be forced to live with the results of our actions.

by Senator Webber (from 60 citizens).

Nuclear Waste

Say NO to nuclear reactors and waste dumps in WA

Recently, Liberal Members of Parliament including the Federal Environment Minister Ian Campbell and the Liberal Members for Tangney, O’Connor, Canning, Curtin and Kalgoorlie supported the building of a nuclear reactor in Western Australia.

The Liberal MP for Moore has not come out against nuclear power.

Moore and Western Australia should be kept nuclear free. You are urged to sign the petition below so that the true feelings of West Australians are known.

The Honourable The President and Members of the Senate Assembled in Parliament.

This petition of citizens of Australia calls on the Parliament to urge Government members to:

(1) Table all environmental evidence and other studies supporting the proposal to build a nuclear reactor in Western Australia;

(2) Identify which bodies in Western Australia have been consulted over such a proposal;

(3) Advise on what consultation has taken place with the community in Western Australia over the proposal; and

(4) Identify all the sites in Western Australia under consideration for the construction of this nuclear reactor.

by Senator Webber (from 212 citizens).

Petitions received.

NOTICES

Presentation

Senator Bartlett to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) 9 September to 15 September 2006 is Australian Foster Care Week,

(ii) foster carers need specialised training, more support and better pay in order to help the growing number of highly troubled children being placed in their care,

(iii) approximately 80 per cent of the children coming into care have serious problems or disabilities, in some cases due to a reluctance to place children in foster care combined with lack of support to birth families, and

(iv) many foster care agencies in Australia are struggling to meet the demands of foster carers and children in their care, due to the serious lack of funding;

(b) urges governments to:

(i) provide better funding and support to ensure that foster carers are given the
specialised needs training they urgently require to cope with children with special needs, and to ensure that they are able to help the growing number of highly troubled children being placed in their care, and

(ii) increase the levels of remuneration for foster carers; and

(c) acknowledges the exceptional services that foster carers and their agencies provide every day to children in need.

Senators Stephens and Mason to move on the next day of sitting:

That the Senate—

(a) notes, with deep concern, the rise of anti-Semitism in Australia and the growing threat which this poses to the cohesion of Australian society;

(b) condemns all manifestations of anti-Semitism wherever they occur; and

(c) expresses its unequivocal condemnation of all forms of racial and ethnic hatred, persecution and discrimination.

Senator Parry to move on the next day of sitting:

That the Parliamentary Standing Committee on Public Works be authorised to hold a public meeting during the sitting of the Senate on Thursday, 14 September 2006, from 3.30 pm, to take evidence for the committee’s inquiry into the provision of facilities for project single LEAP.

Senator Ludwig to move on the next day of sitting:

That the following matter be referred to the Legal and Constitutional Affairs Committee for inquiry and report by 7 February 2007:

Australia’s national and international policing requirements over the medium- and long-term, with particular reference to:

(a) personnel and staffing needs of relevant Commonwealth agencies, particularly the Australian Federal Police;

(b) the adequacy of existing workforce planning arrangements in meeting those needs;

(c) the effectiveness of existing recruitment practices and training programs;

(d) the impact of Commonwealth police personnel strategies on state and territory police forces; and

(e) any other related matter.

Senator Watson (Tasmania) (3.41 pm)—On behalf of the Standing Committee on Regulations and Ordinances, I give notice that 15 sitting days after today I shall move:

No. 1 That the Environment Protection and Biodiversity Conservation Amendment Regulations 2006 (No. 1), as contained in Select Legislative Instrument 2006 No. 131 and made under the Environment Protection and Biodiversity Conservation Act 1999 be disallowed.


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

Leave granted.

The summary read as follows—

Environment Protection and Biodiversity Conservation Amendment Regulations 2006 (No. 1), Select Legislative Instrument 2006 No. 131

Great Barrier Reef Marine Park Amendment Regulations 2006 (No. 1), Select Legislative Instrument 2006 No. 132

The Environment Protection Regulations specify revised provisions concerning the regulation of persons, vessels and aircraft within the Australian Whale Sanctuary. The Great Barrier Reef Marine Park Regulations introduce similar provisions to regulate the impact on cetaceans within the Marine Park.

New subregulation 8.04(3) of the Environment Regulations creates a strict liability offence if the person operating a vessel fails to move away from a cetacean at “a constant slow speed”. The same phrase is used in paragraph 8.05(2)(a), which is
also a strict liability offence. This imposes an imprecise obligation on a person operating a vessel.

Regulation 8.09A, of these Regulations specifies certain offences concerning swimming with cetaceans. However, there is no provision for a defence, similar to that found in subregulations 8.05(6) and 8.06(4), stating that it is a defence if the cetacean has approached the person.

Similar comments apply to subregulation 117D(3), paragraph 117E(2)(a), and regulation 117J of the Great Barrier Reef Marine Park Regulations.

The Committee has written to the Minister seeking advice on these matters.

Senator WATSON (Tasmania) (3.41 pm)—Following the receipt of satisfactory responses, on behalf of the Standing Committee on Regulations and Ordinances I give notice that, at the giving of notices on the next day of sitting, I shall withdraw business of the Senate notice of motion No. 1, standing in my name for three sitting days after today, for the disallowance of the Broadcasting Services (Anti-Terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2006; and business of the Senate notice of motion No. 1, standing in my name for six sitting days after today, for the disallowance of the Broadcasting Services (Anti-Terrorism Requirements for Open Narrowcasting Television Services) Standard 2006. I seek leave to incorporate in Hansard the committee’s correspondence concerning these standards.

Leave granted.

The correspondence read as follows—


11 May 2006

Senator the Hon Helen Coonan
Minister for Communications, Information Technology and the Arts
Suite MG70
Parliament House
CANBERRA ACT 2600
Dear Minister
I refer to the following Standards made under the Broadcasting Services Act 1992.

Broadcasting Services (Anti-Terrorism Requirements for Open Narrowcasting Television Services) Standard 2006
Broadcasting Services (Anti-Terrorism Requirements for Subscription Television Narrowcasting Television Services) Standard 2006

Sections 6 and 7 in each of these two instruments prohibit a licensee from broadcasting programs that could reasonably be construed either as recruiting people to join terrorist organisations, or as soliciting funds for such organisations. A licensee will be in breach of these standards regardless of whether the licensee knows that the program could reasonably be construed in this way. The Explanatory Statement does not indicate why the element of the licensee’s knowledge has not been included in sections 6 and 7.

Further, notwithstanding sections 6 and 7, section 9 permits a licensee to broadcast a program that “merely gives information about, or promotes the beliefs or opinions of, a terrorist organisation”. If section 9 is intended to operate as a defence against an apparent breach of sections 6 or 7 it is not clear whether the licensee bears the burden of establishing that the program merely gives information or promotes certain beliefs.

The Committee would appreciate your advice on the above matters as soon as possible, but before 16 June 2006, to enable it to finalise its consideration of these Standards. Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
John Watson
Chairman

CHAMBER
Dear Senator Watson

Standards made under the Broadcasting Services Act 1992


I note that these Standards address a significant community concern by aiming to prevent the broadcast of programs that directly recruit or solicit donations for terrorist organisations and terrorist activities.

As the Australian Communications and Media Authority (ACMA) has responsibility for the determination of these Standards, I have sought its advice in relation to the matters raised by the Committee.

Sections 6 and 7—knowledge of licensees

ACMA has advised that they intentionally decided against including provisions in the Standards that would require a licensee of a narrowcasting television service to knowingly broadcast programs that could reasonably be construed as recruiting people to join terrorist organisations or to solicit funds for such organisations.

The reason for this decision was to provide a clear disincentive to a licensee of a narrowcasting television service to broadcast programs from sources that may carry a risk of breaching the Standards, without first vetting or viewing the programs and making an informed assessment about them. The licensee bears responsibility for the service and as such it is appropriate that it is obliged to be aware of its content. The strict liability approach taken by ACMA is necessary in order to ensure that an effective enforceable obligation is established.

ACMA notes the Committee’s observation that the Explanatory Statement does not indicate why the licensee’s knowledge has not been included. ACMA staff have subsequently undertaken to recommend to the Authority that the Explanatory Statements be amended to include further information about these two sections, explaining the reasons for applying strict liability to licensees that broadcast material in breach of the Standards.

Section 9—exemption for licensees providing information only

ACMA has advised that section 9 of the Standards is not a defence against breaches of sections 6 or 7. Rather, the intention of section 9 is to narrow the scope of the Standards by excluding those broadcasts that are deemed merely informative.

I note the Committee’s query in relation to whether it is the licensee who will bear the burden of establishing that a program merely gives information or promotes certain beliefs. I understand that as ACMA’s investigation process is inquisitorial, the licensee will not bear the burden of proof in any process that might involve consideration of the application of the Standards. Rather, ACMA would determine whether the standard has been breached, having regard to any conduct of a licensee, on the balance of probabilities.

I trust this information addresses the Committee’s queries about the Standards. The contact officer in the Department of Communications, Information Technology and the Arts on these matters is Mr Gordon Neil, General Manager, Licensed Broadcasting. He can be contacted on 62711712.

Yours sincerely

Helen Coonan
Minister for Communications, Information Technology and the Arts

22 June 2006
Senator the Hon Helen Coonan
Minister for Communications, Information Technology and the Arts
Suite MG70
Parliament House
CANBERRA ACT 2600
Dear Minister

In your response you advise that the Australian Communications and Media Authority (ACMA) intentionally decided against including provisions in the Standards that would require a licensee of a narrowcast television service to knowingly broadcast programs that could be reasonably construed as either recruiting people to join terrorist organisations or as soliciting funds for such organisations (sections 6 and 7). The Committee notes that these sections are intended to discourage licensees from broadcasting programs without first vetting or viewing their content and making a decision as to whether they breach the Standards.

You also advise that the intention of section 9 is to narrow the scope of the Standards by excluding those broadcasts that are deemed merely informative and that it is not a defence against breaches of sections 6 and 7.

The Committee would appreciate further advice on how sections 6, 7 and 9 are intended to interact. In particular, how may a person distinguish between a broadcast that merely promotes the beliefs or opinions of a terrorist organisation, and a broadcast that could reasonably be construed as recruiting people to join a terrorist organisation? In such instances, who would determine what is reasonable and whether a program breaches sections 6 or 7?

The Committee would appreciate your advice on the above matters as soon as possible, but before 28 July 2006, to enable it to finalise its consideration of these Standards. In the meantime, as a precautionary measure, the Committee has given a notice of motion to disallow the Broadcasting Services (Anti-Terrorism Requirements for Subscription Television Narrowcasting Television Services) Standard 2006. The Committee has agreed that it will give a further notice of disallowance on the remaining Standard in August if more time is needed to resolve its concerns with these Standards.

Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
John Watson
Chairman

9 August 2006
Senator John Watson
Chairman
Standing Committee on Regulations and Ordinances
PARLIAMENT HOUSE
CANBERRA ACT 2600

Dear Senator Watson

Standards made under the Broadcasting Services Act 1992


As the Australian Communications and Media Authority (ACMA) has responsibility for the determination of these Standards, I have sought its advice in relation to the matters raised by the Committee.

In regard to your query regarding the interaction between sections 6, 7 and 9 of the Standards, ACMA has advised that the Revised Explanatory Statements registered on the Federal Register of Legislative Instruments on 6 July 2006 provide further clarification around the operation of these sections.

Sections 6 and 7 of the Standards do not prohibit a program that merely promotes the beliefs or opinions of a terrorist organisation and may inad-
vertently encourage people to join or otherwise financially support the organisation. This exception is contained in section 9 of the Standards and ensures that freedom of expression is not unduly restricted. Section 9 does not operate as a defence; rather it limits the application of the prohibition in the first place.

In regard to your query concerning the means by which a person may distinguish between a broadcast that ‘merely promotes the beliefs or opinions of a terrorist organisation’ and a broadcast that ‘could reasonably be construed as recruiting people to join a terrorist organisation’; ACMA has advised that only programs that “directly” encourage people to join the organisation or become involved in its activities (for example, by calling for new members and giving contact information) or solicit or collect funds (for example, by giving information about where funds may be sent) are prohibited by sections 6 and 7 of the Standards. For example, as indicated in section 7(2), a program that called for viewers to make donations to a terrorist organization named in the Criminal Code and provided bank account details or other means of making payment to the organisation, could not be broadcast.

The licensee will only breach the standard if the program can ‘reasonably be construed’ as:

- directly recruiting a person to join, or participate in, the activities of a terrorist organisation; or
- soliciting or assisting in the collection or provision of funds for a terrorist organisation.

What is reasonable involves an objective assessment of what a reasonable viewer, with knowledge of the meaning of ‘terrorist organisation’ in the Criminal Code and these standards, would draw from the program. It is a question of fact to be decided in the circumstances of each case.

As advised in my letter to the Committee of 16 June 2006, ACMA’s investigation process is inquisitorial; the licensee does not bear the burden of proof in any process that might involve consideration of the application of the standard. Rather, ACMA would determine whether the standard has been breached, having regard to all relevant matters including the submissions of a licensee, on the balance of probabilities.

I trust this information is of assistance and addresses the Committee’s further queries about the Standards. The contact officer in the Department of Communications, Information Technology and the Arts on these matters is Mr Simon Cordina, General Manager, Digital Content Branch. He can be contacted on (02) 6271 1858.

You sincerely

Helen Coonan
Minister for Communications, Information Technology and the Arts

10 August 2006

Senator the Hon Helen Coonan
Minister for Communications, Information Technology and the Arts
Suite MG70
Parliament House
CANBERRA ACT 2600

Dear Minister


The Committee has found your advice on the interaction of these sections, and the revised explanatory material, very helpful. However, the Committee still remains concerned about the level of uncertainty that may arise out of the operation of these Standards. While you indicate that an objective assessment will be made as to whether a program has breached the Standards, broadcasters are faced with having to make a subjective decision about the content of that program before (or as) it goes to air.

For example, how will a broadcaster determine the point at which a program becomes one that seeks funds for or promotes terrorism if it is not immediately apparent? For instance, if a program seeks funds to aid a refugee charity which is later
found to be linked to a terrorist organisation, will it still be caught by this prohibition even though the funds were only for humanitarian aid? It appears that broadcasters are being asked to make subjective judgements about programs and hope that they do not contravene the Standards. The Committee understands that broadcasters have themselves raised this uncertainty with ACMA. Given these uncertainties, will any further guidance be provided to broadcasters to assist them in determining whether the content of a program breaches the Standards beyond the ‘reasonable person’ test?

The process for assessing whether a program breaches the Standards also raises some concerns. In your response you advise that the Standard imposes an objective test—“what is reasonable involves an objective assessment of what a reasonable viewer, with knowledge of the meaning of ‘terrorist organisation’ in the Criminal Code and these standards, would draw from the program”. The Committee notes that the definition in the Criminal Code provides that a terrorist organisation is directly or indirectly engaged in or planning a terrorist act, or is one that is specified by the regulations. A terrorist organisation may often be known by a variety of names which either change from time to time, requiring changes to the regulations, or which may not be specified in the regulations at the time a program is broadcast. It may therefore be difficult for a broadcaster, or a reasonable viewer, to have sufficient knowledge of the relevant law to determine whether a program has breached the Standards at the time it is televised.

Given these concerns, the Committee also seeks your advice as to what consequences, if any, are faced by a broadcaster if a program is subsequently found to be in breach of the Standards, and what rights of review or appeal are available where ACMA makes an adverse finding?

The Committee would appreciate your advice on the above matters as soon as possible, but before 1 September 2006, to enable it to finalise its consideration of these Standards. In the meantime, as advised in its letter of 22 June 2006, the Committee has also given a notice of motion to disallow the Broadcasting Services (Anti-Terrorism Requirements for Open Narrowcasting Television Services) Standard 2006 today to give it more time to resolve its concerns with these Standards.

Correspondence should be directed to the Chairman, Senate Standing Committee on Regulations and Ordinances, Room SG49, Parliament House, Canberra.

Yours sincerely
John Watson
Chairman

5 September 2006
Senator John Watson
Senator for Tasmania and Chairman
Standing Committee on Regulations and Ordinances
PARLIAMENT HOUSE
CANBERRA ACT 2600

Dear Senator Watson

Anti-Terror Standards made under the Broadcasting Services Act 1992


As you are aware the Australian Communications and Media Authority (ACMA) has responsibility for the determination of these Standards and I have sought advice from ACMA on the additional matters the Committee has raised.

ACMA has noted the Committee’s concerns about the nature of judgements a broadcaster may need to make to comply with the Standards as currently drafted, and considers this could be best addressed by amending the Standards to provide greater certainty in determining which individuals or organisations are deemed to be terrorist entities.

In this regard, ACMA has indicated that it intends to seek public comment on a proposal to amend
the Standards to replace the expression ‘terrorist organisation’ wherever it appears in each Standard with ‘listed terrorist’. This will confine the operation of the Standard to those organisations listed in the Criminal Code Regulations 2002, as amended from time to time, or in the consolidated list of proscribed persons and entities kept by the Department of Foreign Affairs and Trade under the Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002 (‘the DFAT consolidated list’).

The DFAT consolidated list includes a more extensive list of specified individuals and organisations, in addition to those referred to as ‘listed terrorist organisation[s]’ in the Criminal Code. This approach will provide narrowcast broadcasters with greater certainty as they will be able to determine whether any particular person or organisation is a listed terrorist at any particular time by consulting the list in the Criminal Code Regulations 2002 and the DFAT consolidated list. Subject to consideration of any public comments on the proposal, ACMA intends to amend the Standards to give effect to this proposal.

Where ACMA determines that the Standards apply (i.e. the material is not exempt under sections 8 or 9) and the program can be reasonably construed as directly recruiting or soliciting funds for a listed terrorist, ACMA may use its powers to enforce compliance with the Standards. Section 5(2) of the Broadcasting Services Act 1992 requires ACMA to use its powers in a manner commensurate with the seriousness of the breach concerned. ACMA’s current enforcement options in the event of a breach of the Standards include:

- acceptance of voluntary undertakings in appropriate circumstances;
- issuing a notice directing the broadcaster to take action to ensure that the service is provided in such a way as to comply with the requirements of the licence. It is an offence not to comply with a notice;
- referral of the matter of non-compliance with the Standard to the Director of Public Prosecutions (DPP); and
- application to the Federal Court for an order that the person providing the service cease providing that service.

The Broadcasting Services Act 1992 does not provide for internal or merits review of these enforcement mechanisms, however an action may be available under the Administrative Decisions (Judicial Review) Act 1977 in respect of the issuing of the notice to comply and each of the more serious forms of enforcement are imposed through a court.

ACMA has also advised that it will determine guidelines to assist licensees in applying the Standards. It is proposed that these guidelines will particularly focus on:

- how to determine whether a person or an organisation is a ‘listed terrorist’;
- “recruiting for a terrorist” at section 6 of the Standard and “financing terrorism” at section 7 of the Standard; and
- reminding narrowcast broadcasters that complying with the Standards does not abrogate the need to comply with other relevant laws such as the provisions of the Criminal Code.

I trust this information is of assistance and that ACMA’s proposal to amend the Standards will address the Committee’s concerns about providing greater certainty for narrowcasters in complying with their requirements. The contact officer in the Department of Communications, Information Technology and the Arts in relation to this matter is Mr Simon Cordina, General Manager, Digital Content Branch. He can be contacted on 02 6217 1858.

Yours sincerely
Helen Coonan
Minister for Communications, Information Technology and the Arts

Senator Bob Brown to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) a report of the United States of America Republican-led Senate Select Committee on Intelligence found that there is no evidence of any relationship between the Iraqi regime of Saddam Hussein and al-Qaeda, and
(ii) the Government is yet to state whether it now believes that any such link ever existed; and

(b) calls on the Government to outline when it first became aware of concerns that there was no link between the regime of Saddam Hussein and al-Qaeda.

Senator Milne to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) various global oil depletion protocols have recently been proposed, and that the basic principle underpinning each is that oil importing nations agree to reduce their imports by an agreed yearly percentage (the world oil depletion rate), while producing countries would agree to reduce their rate of exports by their national depletion rate,

(ii) such protocols seek to prevent profiteering from shortage, avoid destabilising financial flows arising from excessive oil prices, encourage the avoidance of waste and stimulate investment in alternative energies, and

(iii) the next meeting of the Group of Twenty (G-20) Finance Ministers and Central Bank Governors will take place in Melbourne in November 2006 and that the issues listed for discussion include energy security; and

(b) calls on the Government to include consideration of an oil depletion protocol on the agenda of the 2006 G-20 meeting.

LEAVE OF ABSENCE

Senator GEORGE CAMPBELL (New South Wales) (3.44 pm)—by leave—I move:

That leave of absence be granted to Senator Sherry for the period 7 September to 15 September 2006, on account of parliamentary business overseas.

Question agreed to.

NOTICES

Presentation

Senator Bob Brown to move on Wednesday, 13 September 2006:

That the Senate calls on the Government to review the threats to the Macquarie Marshes, New South Wales, as a matter of urgency and to take due action to rescue the marshes as a national environmental priority.

Postponement

The following item of business was postponed:

General business notice of motion no. 508 standing in the name of the Leader of the Australian Democrats (Senator Allison) for today, relating to Afghanistan, postponed till 13 September 2006.

VOLUNTARY STUDENT UNIONISM

Senator STOTT DESPOJA (South Australia) (3.45 pm)—I move:

That the Senate—

(a) notes that:

(i) the introduction of voluntary student unionism on 1 July 2006 has resulted in the loss of numerous jobs and the closure of vital student services,

(ii) many other student services are in jeopardy,

(iii) the Government’s ‘Voluntary Student Unionism Transition Fund’ has done little to protect essential university services such as child care, welfare, counselling, advocacy and accommodation,

(iv) the closure of these services is having a devastating effect on poorer students and those in regional and isolated areas, and

(v) the introduction of voluntary student unionism has undermined student autonomy and representation at universities; and

(b) calls on the Government to reverse voluntary student unionism.
Question put.
The Senate divided. [3.50 pm]
(The President—Senator the Hon. Paul Calvert)

Ayes………..  33
Noes………..  36
Majority……  3

AYES
Allison, L.F.
Bishop, T.M.
Brown, C.L.
Carr, K.J.
Evans, C.V.
Hogg, J.J.
Hutchins, S.P.
Ludwig, J.W.
Marshall, G.
McLucas, J.E.
Moore, C.
Nettle, K.
Polley, H.
Siewert, R.
Sterle, G.
Webber, R.
Wortley, D.

Bartlett, A.J.J.
Brown, B.J.
Campbell, G. *
Crossin, P.M.
Forshaw, M.G.
Hurley, A.
Kirk, L.
Lundy, K.A.
McEwen, A.
Milne, C.
Murray, A.J.M.
O’Brien, K.W.K.
Ray, R.F.
Stephens, U.
Stott Despoja, N.
Wong, P.

NOES
Abetz, E.
Barnett, G.
Boswell, R.L.D.
Calvert, P.H.
Chapman, H.G.P.
Cooman, H.L.
Ellison, C.M.
Ferris, J.M. *
Fierravanti-Wells, C.
Heffernan, W.
Kemp, C.R.
Macdonald, I.
Mason, B.J.
Nash, F.
Patterson, K.C.
Ronaldson, M.
Scullion, N.G.
Vanstone, A.E.

Adams, J.
Bernardi, C.
Brandis, G.H.
Campbell, I.G.
Colbeck, R.
Eggleston, A.
Ferguson, A.B.
Fielding, S.
Fifield, M.P.
Finnie, D.H.
Lightfoot, P.R.
Macdonald, J.A.L.
Minchin, N.H.
Parry, S.
Payne, M.A.
Santoro, S.
Trood, R.B.
Watson, J.O.W.

PAIRS
Conroy, S.M.
Faulkner, J.P.
Sherry, N.J.
Troeth, J.M.
Humphries, G.
McGauran, J.J.J.

* denotes teller

Question negatived.

COMMITTEES

Intelligence and Security Committee

Report

Senator FERGUSON (South Australia) (3.53 pm)—On behalf of the Parliamentary Joint Committee on Intelligence and Security, I present the annual report of the committee’s activities for 2005-06. I seek leave to move a motion in relation to the report.

Leave granted.

Senator FERGUSON—I move:

That the Senate take note of the report.

Section 31 of the Intelligence Services Act 2001 requires the Joint Parliamentary Committee on Intelligence and Security to report to the parliament annually on the committee’s activities during the previous year. I present the following report as a fulfilment of that requirement. This process is an opportunity for the committee to inform the parliament of the committee’s work in a consolidated form. It is also an opportunity for the committee to review its own work and to review the act as it affects the committee’s operations.

The Intelligence Services Act is relatively new, having been passed in 2001. The committee has been in place since March 2002. Over that time, the work of the committee has evolved and grown because of the nature of the times, something that does not need elaboration for the Senate. Each year the committee has found itself with a steady stream of legislative review, reviews of proscriptions as well as its core requirement of scrutinising the administration and expenditure of the intelligence agencies. The breadth...
of the oversight task has also grown because of the inclusion in this last year of three additional agencies into the responsibilities of the committee. The committee is still in the process of establishing its procedures and practices as far as the oversight of administration and expenditure is concerned. This report canvasses some of the complexities that the committee faces in managing its responsibilities. However, this is a work in progress and future annual reports will no doubt continue to examine the challenges faced by a committee such as this one.

Last year saw amendments to the Intelligence Services Act which changed the committee’s name from the ASIO, ASIS and DSD committee to the Intelligence and Security Committee. This reflected the fact that, on the recommendation of the Flood inquiry in 2004, the committee’s responsibilities for oversight had increased to include all six intelligence agencies: ASIO, ASIS, DSD, DIO, DIGO and ONA. The size of the committee was increased from seven to nine members with the addition of a new opposition senator and a new government member of the House. A position of deputy chair has been created. The committee now has the capacity to form subcommittees should the pressure of work dictate the need for them.

In the last year, the committee tabled six reports: four reviews of terrorist listings and two reviews of legislation—one a major review of the ASIO questioning and detention powers. In addition, the committee has conducted a review of the recruitment and training procedures of all six intelligence agencies, although this report was tabled outside the reporting period for this report. The committee also has a program of regular private briefings involving the directors of the agencies, the Inspector-General of Intelligence and Security, and visitors—overseas counterpart committees or specialists. Details of all of these activities are listed in the report. The committee has chosen to highlight three issues of procedural and practical interest in this report.

The first affected the conduct of the inquiry into ASIO’s questioning and detention powers. The committee sought clarification of its powers in relation to the calling of witnesses who might have been associated with the operation of the powers under division 3 part III of the ASIO Act. Such people are subject to strict secrecy provisions under the ASIO Act. Nevertheless, the committee had a statutory obligation under the Intelligence Services Act to review the operations of the powers. The committee sought to conduct as thorough a review as possible while not exposing individuals wishing to give evidence to any serious legal ramifications. Advice received from Mr Bret Walker SC affirmed the rights and protection of witnesses to give evidence to the inquiry so long as the provisions of the Intelligence Services Act for the taking of sensitive evidence were observed. The second issue related to the preservation of archive copies of classified documents within the committee’s own records, a matter that would require amendment of the Intelligence Services Act.

Finally, the committee remains concerned about the application of the non-disclosure provisions of sections 6 and 7 of the Intelligence Services Act. These blanket provisions, which require a series of permissions for both the taking of evidence and the clearances for reports, have been brought to prominence by the increasing role of the committee in legislative review. This is a process which does not necessarily involve national security information and more closely approximates normal parliamentary processes. The committee believes there may
be scope for a refinement of sections 6 and 7 to accommodate what are unforeseen circumstances in the work of the committee. This is a report which covers the work of this committee for the past 12 months. I commend the report to the Senate.

Senator ROBERT RAY (Victoria) (3.59 pm)—The issue raised by Senator Ferguson is a most interesting one—that is, this parliament passed an intelligence act that required secrecy in division 3 part III but also required the parliamentary committee to inquire into its operations. At first view of this issue, I would have thought that parliamentary privilege would have overcome the existing statutory provisions of this act, but it was most fortunate that we did not have to try to reconcile those two issues. The very fact that the act had a requirement for parliamentary review of the act implied that those secrecy provisions would not be necessary. The committee itself treated these areas sensitively. I do not think any information was disclosed at all that would have been of any embarrassment or in breach of the act.

I am most grateful to Mr Bret Walker SC for the very incisive advice that he gave us at a very reasonable price, and he has always done that for parliamentary committees. Too often, you do not see senior counsel giving us a good discount rate out of public service and public duty.

The second issue that has come up is the handling and retention of documents. We are obviously given documents and submissions that have various classifications. It is quite clear that, under the act, we are required to return certain documents. This creates a dilemma for the committee: how do we continue to exist with incomplete records? For the most part, the agencies have been fairly liberal in their interpretation, and we have been able to retain for committee records some of these documents. In the last year, however, ASIO has required that two complete sets of documents be returned to the agency. That, in turn, could have created a problem inasmuch as committee members may have made internal notes on these documents which would have revealed the internal deliberations of the committee and therefore would have been disclosed to ASIO officers receiving it. A compromise was drawn up and those documents are now returned to ASIO, accompanied by a committee member and destroyed within their sight—a rather sensible arrangement, I thought.

The only time that I have expressed any disappointment at the government’s response to our deliberations goes back to the sunset clause on the questioning and detention regime. We as a committee recommended a 5½-year sunset clause. We calibrated it to fit the political cycle, we agonised over it and, in the end, it was not so much a compromise as a complete agreement by the committee that that was the appropriate date for a sunset clause.

Initially, the Attorney-General’s Department, ASIO and the government opposed any sunset clause. Eventually, they compromised and gave us a 10-year sunset clause. Not many of us really regard 10 years as a sunset clause. I raise this issue again just to say that I think governments have to be sensitive to the fact that the more powers that they seek for intelligence agencies, the more they have to be balanced by more scrutiny. Scrutiny is always enhanced when a piece of legislation disappears after 5½ years and you need a proactive decision to resurrect that piece of legislation. As such, I am disappointed. But you do not win everything in politics; you do not win everything as a committee. I accept that. On the whole, the government have been quite reasonable in giving proper consideration to the views. We are, by the way, not the font of all wisdom.
We are not always right, and some of our recommendations will be wrong. We just have to accept that some will be rejected. But, in the case of the sunset clause, I still maintain that we are right.

Although this committee was set up in 2002, it had a predecessor in a committee that went back 20 years before that. In the time I have been on this committee, every report bar one has been unanimous. That is not because committee members are great compromisers. They generally approach things, as much as possible, in a bipartisan way. It is never possible to discard your prejudices or your political position. That would be asking too much. If you could find a senator here who would do that then, frankly, I would think they were worthless. If they could so discard their prejudices and their political position, I would not want them here.

The committee has worked hard at consensus. We did disagree over the government listing PKK as a terrorist organisation, although I have to say that no-one on the committee recommended disallowance. Two members recommended reassessment; seven members put in some cautions but recommended that it be continued with. I do not think it is necessarily a bad thing that we do not always produce unanimous reports; I think it is a good idea always to aim at it.

Senator Ferguson mentioned that the committee have been subject to many high-level briefings over the last year just to keep ourselves informed. That is especially valuable when new members of the committee are joining us. We have also seen delegations from the United States, the United Kingdom and, in my absence, they saw a delegation from Vietnam. Later this year, there are at least one or two more delegations coming by.

A development that I also want to commend is the attendance by committee members at the biannual oversight conference. This is a conference of inspectors-general and parliamentary intelligence scrutiny committees that meets every two years to exchange ideas. The next such meeting is in October in Cape Town and the government, I think, very kindly has consented to committee members attending that so that they can better inform themselves. I think that is an excellent development.

Historically, I think one problem we have had, but which is no longer plaguing us, is the fact that staff members of each committee member of this committee have to be positively vetted. This can be a very intrusive process and probably has put off a couple of potential staffers from wanting to go through that very tough process. However, currently, the committee secretariat is doing an excellent job, including the secretary, Ms Swieringa; the inquiry secretary, Ms Hearn; the research officer, Dr Olliff; and also the executive assistant, Mrs Quintus-Bosz. Those four people make a terrific team. It is one of the best staffed committees I have seen for a long while. All the inquiries have proper preparation and the briefing is always excellent. I would like to commend them on the work they put in for this annual report.

Almost lastly, I would like to say that I am very pleased that the issue of a deputy chair was resolved. Initially, it was the intention of the government to have a government deputy chair. They were concerned that if the chairman was absent for long lengths of time this would leave the opposition in charge of the committee. The easy compromise was to say, ‘If that circumstance happens, you have our word that a government person will be able to chair the committee but, in the meantime, let’s have an opposition deputy chair. That
means that the chair and deputy chair, when necessary, can get together, agree, conspire or do whatever else they like to be able to move issues forward without having to call a complete committee meeting.’

I am very pleased to say that Mr Anthony Byrne from the Labor Party is now deputy chair of the committee. I suppose his main qualification is that he was the only one of the four Labor members to have a political career in front of him rather than behind him. So we think he will get full value out of the deputy chair’s position.

The last thing I wanted to mention was that we lost a committee member during this period of report. That was Senator Sandy Macdonald, who twice served on this committee. The electors put him on the interchange bench for a few months, so he had to go off the committee while he made his own way in life, but then he came back to the chamber. Senator Sandy Macdonald always was engaged in the issues before the committee. He was always a contributor and always had an intense interest in the issues before us. I do hope that, after the next election, he is qualified to come back and join us—maybe even as the deputy chair. That would be a most appropriate position.

Question agreed to.

Migration Committee
Report

Senator KIRK (South Australia) (4.08 pm)—On behalf of the Joint Standing Committee on Migration I wish to present the report that was tabled in the House of Representatives earlier this morning and this afternoon in the Senate. The report is essentially about maximising the potential of overseas trained workers in a time of skills shortage.

Skilled migration is the subject of much comment in the Australian community. There is a concern that the level of skills of those coming into this country is equivalent to Australian standards and that lower-skilled workers are not used to undercut the wages of existing workers. People need to know that Australia’s skills recognition system is fair and well managed. Skilled migration is not, of course, the only solution to Australia’s skills shortage. Labor has a strong commitment to training local workers and improving the skill levels of our current workforce. However, we recognise that skilled migration is one method of addressing the immediate skills shortage facing Australia.

Australia needs overseas-trained workers such as doctors and engineers, electricians and plumbers. If we have an overly bureaucratic system that impedes the timely arrival of much-needed skilled labour, this does not in any way assist industry in providing economic growth for this country.

There are also a number of issues of concern that have been in the media in recent times. The obvious example is that of Dr Patel, sometimes known as ‘Dr Death’, who, as we know, practised surgery in Queensland without a proper assessment of his overseas qualifications. This and other matters were of great concern to our committee. It is for this reason that this was a very timely inquiry for the committee to undertake.

We recognise that the current picture is complex. A number of witnesses who came before the committee likened the task of navigating Australia’s skills recognition sys-
tem to trying to find their way through a maze. If they started in the wrong place they might find themselves lost in a bureaucratic muddle, unable to go either forward or back.

I want to highlight four areas of particular interest to the committee where the report makes comments and recommendations. The report also makes recommendations on English language skills and support for refugees seeking overseas skills recognition, and compares Australia’s arrangements with other major immigration countries.

First, I would like to make mention of some of the findings in relation to streamlined skills recognition arrangements. We found that there are numerous bodies involved in skills recognition in Australia: DEWR is responsible for skills assessment of trade qualifications through Trades Recognition Australia, otherwise known as TRA; DEST is responsible for monitoring assessing bodies for professional occupations; and state and territory authorities are responsible for the licensing of trades and professions in Australia. The committee has not recommended at present the creation of a national body to coordinate and harmonise skills recognition and licensing arrangements in Australia. However, the committee’s recommendations, along with recent COAG initiatives, do combine to create a more streamlined framework for the future.

The committee supports COAG’s initiative for the creation of national skills assessment and registration bodies for health professionals. For the non-health professions, the committee recommends the continuation of existing arrangements but recommends improved monitoring by DEST.

As for the trades, the committee strongly supports COAG’s push for more effective mutual recognition arrangements between the states and territories, and a new offshore assessment process for trades in demand. However, the committee highlights the need for an accelerated time frame for implementation of these arrangements and recommends a tripartite review of this initiative. The committee also recommends that the Tradesmen’s Rights Regulation Act 1946 be repealed and that TRA confine its activities to the international assessment of overseas qualifications, with the states and territories to take on the domestic trades assessment role.

The report also examines how Australia’s skills recognition procedures can be improved. As the committee heard over and over from a number of witnesses in the course of the inquiry, many migrants have been frustrated by a number of things, including: a lack of information on skills recognition processes; the gap between migration assessment and employment assessment; the different licensing requirements between the states and territories; the costs of obtaining a skills assessment; and the time taken to complete assessment processes, to name just a few.

The committee was particularly concerned, for example, to hear the account of an overseas-trained physiotherapist who had sought overseas skills recognition through the relevant assessment authority. The process had taken, for her, two years, including three attempts at the written exam costing $1,100 each time. It is important to recognise that it was not just this particular candidate who was facing problems, because in one particular year only 11 out of 76 candidates passed the written examination—and we were told that, when questions from the test were put to some Australian physios, they actually admitted they could not answer the questions. The committee has responded to these concerns with a series of recommenda-
tions and I encourage senators to look at those.

Another question that faced the committee was how the process of trades recognition and licensing could be fast-tracked without detriment to the skill level of trades. The ideal situation would be for skilled migrants to arrive in Australia job ready so they could enter the workforce in their occupations without further delay and for there to be a uniform licensing system across Australia. The committee therefore supports recent COAG initiatives to establish more effective mutual recognition arrangements across the states and territories and for a new offshore skills assessment process.

The committee has serious concerns about the performance of Trades Recognition Australia, particularly given the severe trade shortages facing Australia. Criticism of TRA’s performance was a strong theme in submissions to the inquiry. Comments were made about lengthy processing times—up to six months in some cases—poor access to TRA staff during processing of assessments, closure of offices in Brisbane and Perth and restricted telephone contact hours. It was said to us in the course of the inquiry that TRA had lifted its game during the time that the committee was inquiring. The committee certainly hopes that TRA continues to improve its performance.

Another issue facing the committee was what could be done to make sure that the qualifications of overseas trained doctors were properly assessed. As we know, there are increasing workforce shortages across a number of health professions, particularly in rural and remote areas, and therefore an increasing dependence on overseas trained health workers. The Australian Medical Council’s comments to the committee about overseas trained doctors were therefore of particular concern. The AMC stated that, while Australia has a rigorous assessment process for overseas trained doctors: 

... a large cohort of those people ... are coming through the system and are being registered ... without anybody having assessed their skills at all.

It is important to emphasise that large numbers of overseas trained doctors have been properly assessed and are equivalent to Australian doctors, and they form an important part of Australia’s health workforce. However, as we emphasise in the report, there is an urgent need for authorities to ensure that all overseas trained doctors practising in Australia go through the appropriate assessment pathways. We can never be too careful when we are talking about the health of Australians. The committee therefore recommends that the Department of Health and Ageing ensure that the COAG initiative to establish a national process for the assessment of overseas trained doctors be implemented by December 2006. The committee further recommends that there is an urgent need for the provision of support services to assist overseas trained doctors, particularly those in rural and remote areas.

To conclude, I thank those who provided the committee with submissions and gave evidence at public hearings. They assisted the work of the committee enormously. I thank the chair of the committee, Mr Don Randall MP, and all the other members of the committee—in particular, Senator Stephen Parry—for their strong interest and contribution to the inquiry. Last but not least, I very much thank the committee secretariat for their assistance—particularly Dr Kate Sullivan, who came in very late in the piece but managed to produce what I think is an outstanding report for the committee. I commend the report to the Senate.

Senator BARTLETT (Queensland) (4.18 pm)—I would like to speak to this very im-
important report, which is a unanimous one that received support from Labor and Liberal and from me as the Democrat member on the Joint Standing Committee on Migration. As the title of the report Negotiating the maze indicates, the system of skills recognition, upgrading and licensing for people coming into Australia is a bit of a mess. This report provides a valuable set of recommendations and a comprehensive amount of very useful information about ways we can improve the situation.

I think it is important to make the point at the start that, whilst it is a bit of a mess and some chronic problems have remained unresolved for some time, we should still recognise how difficult an area this is to get right and that Australia does reasonably well in our administration and regulation of the migration area in general. That might sound a bit strange coming from someone who is usually very vociferous in criticising the Migration Act, and this government and often the opposition for the problems in the Migration Act. There are some significant problems in areas outside of the skilled migration program, but we should also recognise it is an area in which it is quite difficult to balance all the different competing factors.

Having said that, that does not mean that we should just say, ‘It’s pretty hard, so near enough is good enough.’ Near enough is not good enough. It is not good enough for the people who get caught in the maze and get tripped up. It can cause immense disruption—far more than just mild inconvenience—to people’s lives when they get tripped up unnecessarily by the complexity of the Migration Act, particularly when you combine that with the very hard to follow, inconsistent and not necessarily terribly well-administered components of the skills recognition area.

The Migration Act in itself is complex enough. I encourage people to look at some of the basic statistics in this report to get a sense of that. Appendix D lists all the visa classes and subclasses. There are 137 different visa classes and subclasses in the Migration Act. It is wider than the skills area but it is across all the different visa categories that can be used to give the person a right to be in Australia, whether permanently, temporarily, with work rights, without work rights or with only limited work rights for a certain number of hours a week or for a certain period of time. I believe it is unnecessarily complex. When you add to that all of the different recognition components for different professions, which range from state based bodies to professional associations, to assess skills through a different department at federal level—through the Department of Employment and Workplace Relations or the Department of Immigration and Multicultural Affairs, which has problems enough in itself—and you then bring the states into it, you can get a sense of how difficult it can be to get all the balances right.

You do not want skills recognition being used as a form of protectionism or as a closed shop mentality to keep people out of the country so that those who are already here with the requisite skills can improve their market value, but you also do not want a shoddy open door system where people without adequate skills can get through. It is hard to balance. The health area is one of those where you can almost see both happening at the same time. In our desperation to get health workers and doctors, there is a fear that we are letting some in who are not having their skills properly assessed but, at the same time, components of the medical profession—and there are examples in this report—can clearly be seen to be taking what looks like a closed shop approach.
It is always going to be hard when you try to balance those tensions. What makes it even more difficult is that in the last few years we have seen a massive increase in the number of people coming in on skilled visas. There is a lot of good information on that in this report. It gives an indication of how it was always going to be difficult to administer effectively when we have had such a massive leap in the skilled intake in the last couple of years. I recall that when our skilled intake was down below 50,000 a year the then immigration minister, Mr Ruddock, said that we would not be able to manage a dramatically increased skilled intake because of the difficulty, basically, of administering it. Yet in just a few short years we have dramatically increased the number. In the last financial year we have allocated almost 100,000 places for skilled migrants in the permanent migration program. That is the largest number ever allocated. In the space of just a few short years the number has more than doubled. On top of that, a huge number of extra temporary visas are being issued for people in a range of categories that also require skills and these are specifically focused at skilled migration. When you get a sense of just how large the number of people coming in is, you realise how difficult it is to ensure that all of them are properly and promptly assessed.

Looking at the other temporary visa categories and visas granted in 2004-05, there were nearly 50,000 business long-stay visas and an extra 6,300 medical practitioner visas, 200 or so educational visas and 25,500 social and cultural visas. In addition, there were over 100,000 working holiday-makers, some of whom were skilled, and 175,000 overseas students. Again, many of them were able to work up to 20 hours a week if they were able to get their skills recognised. As this report noted, it is not just skilled migrants who have skills. We have heard many reports about the difficulties faced by people who come in under the humanitarian stream when they are not able to make use of the skills they have. That is an area in which we need to do a lot better. Similarly, people who come in under the skilled migration program and who are family—spouses or children, even parents—also have skills but have difficulty getting them recognised. These are all people that Australia can make use of. It is in our interests as a country to do better at making use of the skills that people have and maximising the contribution that people can make.

The report notes areas in which we can do better. It also notes the importance of English language in ensuring that we make maximum use of people’s skills. There are arguments about whether we should have a slightly stronger requirement for English language proficiency in particular areas. Again, you have to look at the areas that require higher standards of English for people to be able to perform a job safely and efficiently. All of these things are balancing acts. My concern is that we have so dramatically increased the number of people we are bringing in that we are not able to manage what is a lot of finetuning to keep all the different competing balances at the right level.

In addition—and this is where we get the real problems with the culture of the immigration department, which has been widely acknowledged and spoken about in this place—when you have a culture in the immigration department that starts looking for faults and has an overblown compliance mentality, which looks for the tiniest error as an excuse to reject a visa, as opposed to looking for a way to assist people in getting a visa, those hurdles and those mazes can become twice as difficult. That is an area that we still particularly need to address.

There are many areas relating to skills recognition that are often outside the control

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of the person applying for a visa. If there is more recognition of that and more flexibility in the way the law is applied, we can get around those problems. We have seen some of the changes with that shift in culture in administering the law in the humanitarian and family areas following some of the damning reports that have been brought down. That culture can flow across the board. We have to realise that in the big problem areas like temporary protection visas, where we do not assist people in improving their English, we are doing things in different areas of the migration program that are counterproductive to our national interest. We need a more holistic approach. We need one that is less compliance focused and one which recognises that migration of all types brings social as well as economic benefits to Australia. We can always improve the way we do that. My time has expired and I seek leave to continue my remarks.

Leave granted; debate adjourned.

Membership

The ACTING DEPUTY PRESIDENT (Senator Barnett)—The President has received a letter from a party leader seeking variations to the membership of committees.

Senator SANTORO (Queensland—Minister for Ageing) (4.30 pm)—by leave—I move:

That Senator Fielding be appointed as a participating member of all legislative and general purpose standing committees.

Question agreed to.

AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION AMENDMENT BILL 2006

First Reading

Bill received from the House of Representatives.

Senator SANTORO (Queensland—Minister for Ageing) (4.30 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) (4.30 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—

AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION AMENDMENT BILL 2006

The purpose of this bill is to amend the Australian Nuclear Science and Technology Organisation Act 1987 to allow Australia’s pre-eminent nuclear science and research agency, the Australian Nuclear Science and Technology Organisation, or ANSTO, to have a fully effective and practical role in managing radioactive materials in Australia.

The existing functions of ANSTO in relation to radioactive waste management set out in Section 5 of the Australian Nuclear Science and Technology Organisation Act 1987 give ANSTO the authority to condition, manage or store only radioactive materials associated with the organisation’s activities, unless specified by regulation.

As it currently stands, the Act unnecessarily restricts ANSTO in making its expertise and facilities available to assist other Commonwealth agencies who hold and produce radioactive waste. With the establishment of the Commonwealth Radioactive Waste Management Facility in the Northern Territory, it will be important for ANSTO’s capabilities to be available for conditioning and repackaging waste from other Commonwealth agencies prior to transport to the Facility.

ANSTO may also be charged with the management and operation of the facility: in that case, it
will obviously be necessary for them to have the authority to manage radioactive waste from other Commonwealth agencies.

In its current form, the ANSTO Act also prevents ANSTO from applying its expertise and facilities to assist in the aftermath of a terrorism incident involving radioactive material. After such an incident, it might be necessary for ANSTO to store radioactive material from a radiation dispersal device, or radioactive samples collected for evidentiary purposes by State or Federal law enforcement agencies. Such a need was not contemplated when the Organisation was established or when the ANSTO Act was amended in 1992, restricting ANSTO’s capacity to manage radioactive materials not produced by the Organisation.

It is sensible and desirable that, as the agency most experienced in dealing with radioactive materials, ANSTO can participate fully as part of Australia’s counter-terrorism response to assist State and Federal law enforcement and emergency response organisations. The amendments will also bring Australia into line with standards set out in the United Nations Convention for the Suppression of Acts of Nuclear Terrorism. The changes will assist in Australia’s consideration of its position in relation to ratification of the Convention.

The amendments will also permit ANSTO to assist in managing radioactive materials that come into the possession of law enforcement agencies. These include any undeclared radioactive materials intercepted by the Australia Customs Service. Some of these amendments are precautionary in nature. The Australian Government, as well as State and Territory jurisdictions, have strong measures in place to deal with potential terrorist or criminal uses of radiological materials, and strong and effective regulatory regimes to ensure the highest standards of public health and safety when dealing with radiological materials. But this does not remove the Commonwealth’s obligation to the Australian people to be prepared in the event of an unforeseen incident. ANSTO, with the best facilities and qualified staff in Australia for managing radiological material, should have the legal power to assist quickly and effectively if its facilities or expertise are required in such an incident.

Given that radioactive wastes are produced and/or stored at around 30 Commonwealth sites apart from Lucas Heights, it is impracticable and unnecessary to move a regulation for each shipment of radioactive waste proceeding to Lucas Heights for conditioning and repackaging. It also makes little sense to address restrictions in the Act by duplicating the extensive facilities already available at Lucas Heights at the Commonwealth Radioactive Waste Management Facility in the Northern Territory.

The proposed amendments provide ANSTO with the authority to also condition, manage and store radioactive waste produced by other Commonwealth agencies and to fully participate in establishment and operation of the Commonwealth Radioactive Waste Management Facility in the Northern Territory.

By providing the authority to ANSTO to manage and store waste produced by other Commonwealth agencies does not mean that Lucas Heights will become the Commonwealth’s radioactive waste store. In fact the Commonwealth has absolutely no intention of establishing the ANSTO Lucas Heights premises as the main radioactive waste storage or disposal facility for the Commonwealth. The Commonwealth’s resolve to establish the Commonwealth Radioactive Waste Management Facility in the Northern Territory for this purpose was made abundantly clear by the enactment of the Commonwealth Radioactive Waste Management Act in 2005.

Amendment of the ANSTO Act is also necessary to put beyond doubt ANSTO’s authority to accept and manage radioactive waste arising from overseas reprocessing of spent nuclear fuel from ANSTO’s research reactor. These wastes will return to Australia from 2011, when the Commonwealth Radioactive Waste Management Facility is scheduled to commence operation.

Spent fuel from ANSTO’s HIFAR reactor has been sent overseas for reprocessing to convert it into a stable intermediate level waste form suitable for long-term storage and eventual disposal in Australia. This material has been sent to reprocessing plants in Scotland and France operated by AEA Technology and COGEMA respectively. Contracts with AEA Technology and COGEMA set out the basis on which radioactive waste resi-
dues are attributed to Australia and the terms of return of these residues to Australia.

As anti-nuclear organisations in this country and overseas have signalled their intent to mount legal challenges to prevent and delay reprocessing of ANSTO spent nuclear fuel, it is important that ANSTO’s authority to receive and manage the resultant radioactive waste is put beyond doubt.

Amendments to the ANSTO Act in 1992 to restrict ANSTO’s powers to hold radioactive waste and radioactive materials addressed concerns that Lucas Heights might become the site of a national nuclear waste repository. Of course, at that time, these concerns had some substance in view of the then Labor Government’s illegal storage of 10,000 drums of low level radioactive waste at the site. There are no longer any grounds for such concern. This is because the Government has clearly stated its position in the July 2004 announcement by the Prime Minister and backed it up with legislation in 2005.

As I stated earlier, the Commonwealth will establish a new facility for the responsible management of all Commonwealth radioactive wastes. State and Territory Governments are expected to establish facilities to manage their own radioactive waste, consistent with Australia’s international obligations. In accordance with the Commonwealth Radioactive Waste Management Act 2005, the Commonwealth Government is proceeding to establish its own radioactive waste management facility in the Northern Territory. The radioactive waste currently stored at ANSTO, including the legacy waste stored at ANSTO since the 1960’s, will be transferred to the Commonwealth Radioactive Waste Facility in the Northern Territory once it is operational.

The measures in this bill will ensure that the Commonwealth has access to ANSTO expertise and facilities required for efficient and responsible management of the wastes that may arise from use of radioactive materials in medicine, industry and research, and from unforeseen incidents. Passage of the bill is essential if Australians are to continue to realise the benefits of the use of a wide range of radioactive materials in our daily lives.

Full details of the measures in the bill are contained in the explanatory memorandum that has been circulated to honourable Senators. I commend the bill to the Senate.

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

MIGRATION AMENDMENT (VISA INTEGRITY) BILL 2006

Report of Legal and Constitutional Affairs Committee

Senator PARRY (Tasmania) (4.31 pm)—On behalf of the chair of the Legal and Constitutional Affairs Committee, Senator Payne, I present the report of the committee on the provisions of the Migration Amendment (Visa Integrity) Bill 2006 together with documents presented to the committee.

Ordered that the report be printed.

PETROLEUM RETAIL LEGISLATION REPEAL BILL 2006

Second Reading

Debate resumed.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (4.32 pm)—I rise to speak in this second reading debate on the Petroleum Retail Legislation Repeal Bill 2006. I do not want to go over all of the arguments made by my colleague Senator Murray, who has principal carriage of this bill. We think it makes some sense to reform the Petroleum Retail Sites Act and even to replace it with the mandatory Oilcode but as he has said, and I have said, this should not be done before the Trade Practices Act is amended—and it should be amended to protected small business from large business. I do not think there has ever been such a good example of how, in the past, Australia has protected small business in the oil sector and in the retail sector, from the major oil com-
panies who, as we know, would readily take up that sector.

The government needs to implement the Senate recommendations on the Trade Practices Act that were in the report of the Senate Economics References Committee of March 2003 entitled *The effectiveness of the Trade Practices Act 1974 in protecting small business*. We say that the government should, at the very least, implement those recommendations in that report with which it agreed. As I understand it, it accepted in full five of the recommendations and it accepted three in part. We would sooner see all of the recommendations picked up, but at the very least we argue that the Trade Practices Act must be changed before the Oilcode is introduced and replaces the Petroleum Retail Sites Act.

We would also like to see the collective bargaining provision in the Trade Practices Legislation Amendment Bill (No. 1) 2005 dropped in its entirety. We do not support that legislation, and we say that the two bills, and a new trade practices bill, should be cog-nately dealt with. But obviously we are now dealing just with the one bill before us.

My main interest in speaking today is to draw attention to a related issue, and that is the failure of this government to put in place measures which would see a place for alternative fuels in petrol retailing. I am referring to biofuels—ethanol and biodiesel—and gaseous fuels, including LPG and compressed natural gas in particular but also liq-uefied natural gas. This government, despite an agreement being reached under the Biofuels Action Plan just a little over six months ago, has failed to get the industry to meet even the modest voluntary targets that were set for the first 12 months of that agreement. We have a biofuels target of 350 megalitres, which is hopelessly inadequate in the scheme of things. That is a tiny percentage of what could be used by the transport industry by way of fuel replacement.

We have seen almost no growth—in fact I think it is fair to say we have seen no growth—in the use of compressed natural gas. Compressed natural gas has great advantages, but I think it is correct to say that there are no metropolitan stations which sell compressed natural gas. This is puzzling because compressed natural gas comes in a pipe to most people’s households. It goes into their stoves and ovens and sometimes it heats their hot water, and yet this valuable and very low emissions fuel has been ignored by this gov-ernment.

The Democrats did negotiate a conversion grant scheme back at the time of the GST and diesel changes in 1998. That conversion scheme runs out next year. After that, there will be nothing being done by this govern-ment to encourage compressed natural gas into the transport sector. The conversions have not been taken up because there are very few retail opportunities. I once had a car that was converted to run on compressed natural gas. It was a dual fuel car but there was only one location in Melbourne for refu-elling. It was certainly a long way out of the way for me; it was in a dark industrial sort of space that was quite unsuitable.

Until we get the full range of fuels avail-able in each of our petrol stations, Australia is not going to move very far away from its dependence on fossil fuels and on oil that is largely now imported into this country. We will not use up our existing resources and we will certainly not be moving much to renew-able fuels until the government takes a big stick, quite frankly, if I can put it that way. With minimal targets, like 350 megalitres, where there is no requirement and nothing is mandated and it is all up to the sector to do or not do, with respect to either the produc-
tion or the selling of alternative fuels, it is not going to happen.

In fact, the government, as we understand it, is sitting on a report of the first six months of the Biofuels Action Plan. It knows that the industry has not been able to meet the target and is not likely to meet its first 12-month target. But it is not going to tell us that, of course, having sold to the Australian community the idea that it was working very hard to keep petrol prices down and to welcome onto the market alternative fuels. It is a pathetic situation that we currently find ourselves in. For this reason, I foreshadow that I will be moving a second reading amendment from the Democrats that notes that Australia has the capacity, with production facilities that are already on the ground—these are not ones that are planned or that we might be going to see the bank about; these are production facilities that are already churning out ethanol—to produce 110 million litres of ethanol a year. But of course we know that the major oil companies are holding the cards. They have only purchased less than a quarter of that amount. So it is the oil companies that are reluctant to sell alternative fuels, including ethanol blends. As I said, they have failed to meet the voluntary targets that were set for selling biofuels, as required under the Biofuels Action Plan.

The government’s reluctance to do any sort of mandating has triggered some action in other states. In Queensland, which is very much ahead of the pack on ethanol blends because of its sugar industry, at least the Queensland government has taken steps to encourage the take-up of ethanol blends. And now the New South Wales government is looking at methods to mandate ethanol.

We will be calling on the government to introduce a mandatory target in the order of 90 per cent of all retail outlets to have available E10—that is, 10 per cent ethanol, 90 per cent petrol—and biodiesel blends by 2012. It is not possible for us to amend the bill to do this, although we have examined that; we would have liked to put up amendments, and I think it would have been very interesting to see what the National Party would do, given their previous commitment to mandated targets. We think that is a modest kind of target. We are not even talking here about the total amount that would need to be sold; we are simply saying that motorists should have the choice. This government talks a lot about choice, about the need for families to have choice and so on, but virtually no-one has the choice in my home state of Victoria. I think there is one outlet close-ish to me in south Melbourne, but for the rest of the motoring population in Melbourne it is largely unavailable.

So we would like to see incremental increases each year; we think 20 per cent would be reasonable. So from 1 January 2007 the industry would be on notice that it has to make E10 available to motorists at their service stations, and each year those increases would be 20 per cent from the previous year so that by 2012 most people would have access to both biodiesel blends and ethanol blends.

I think it is interesting to consider that just the other day there was a press report that Saab is introducing a new vehicle into the Australian market that runs on 85 per cent ethanol. Senators here will recall that it was not that long ago that the government introduced fuel standards that in fact prohibit anything more than 10 per cent ethanol blends. It will be interesting to hear what the minister has to say about that. Will this car not get off the ground, as it were, in this country, because it is against the law to sell a blend of petrol and ethanol that is higher than 10 per
We pointed out at the time the absurdity of this ban. It is presumably going to be tested with this new vehicle. It is a great pity that senators and members in this place are not able to purchase such a vehicle so that we could be leaders, trendsetters, and get these vehicles on the road as part of our electorate provision of a car.

We also say that, if the government is not amenable to that, we would like to see all fuel contain a percentage of ethanol or a renewable fuel by 1 January 2007, with percentage increases according to a published schedule—so we would ramp it up. Obviously, we cannot put 10 per cent into every litre of petrol that is sold today—you cannot ramp up production overnight. There is some indication that, if we were to produce as much ethanol or even biodiesel as that, we would be taking away from food production vast tracts of land. So we recognise that this is not the answer to everything, but it does at least help keep the price of petrol down to a modest level and make us less reliant on fossil fuels and on imported oil.

Another option is to establish a mandatory target of 30 per cent of all retail outlets to have available compressed natural gas—again, a very modest target. It is a chicken and egg situation in that people will not have their vehicles converted to compressed natural gas if there are no retailers who sell it. Quite frankly, that is a pretty straightforward observation. As I understand it, it is possible to have a very small compressor at home, where you can hook it up to your garage and have it pump away during the night, compressing gas into your vehicle. That would be very cheap and, at the present time, not taxed. It seems to me that the home option and the option of having compressed natural gas available from your local petrol retailer would make a lot of sense.

That is the thrust of the amendment I am foreshadowing and will move, and I notice that the ALP have moved a not dissimilar second reading amendment. It is good to see the ALP finally recognising that alternative fuels have a place in the future of our transport sector, and this is welcome. For a long time the ALP joined with the government and voted in excise regimes which were inappropriate and which caused some of the major problems in confidence in biofuels. They thought that was a useful thing to do in this country, but it was not. It is good to see that the ALP have finally seen the light and recognise that the future in this country will, at least partly, be about alternative fuels.

I also recognise that there are some in this place who will want to see excise reduced on fuel. They will see that as an option, a way in which people can better afford petrol, but we do not see that as the answer. The government froze excise on petrol many years ago, and a great deal of revenue has been forgone as a result of that, so now Australia’s petrol is some of the cheapest in the world. The problem with that is that it has encouraged us to keep on purchasing big vehicles—four-wheel drives, V8s and V6s—so we are still consuming petrol at a terrific rate in this country when other countries have recognised the need to scale down to smaller cars and to have more fuel efficient vehicles in our mix.

It is interesting to note that in the last week I received a letter—no doubt many of us did—from Minister Abbott’s department offering the new range of vehicles for our electorate cars. We do not have, for instance, a rating on the list of cars that are available, and that list includes V8s and V6s—huge fuel-consuming vehicles. We do not have the green car rating, from which senators and members might be able to make an informed decision about what they are signing off on. We do not have any indication of the other
cars which have been previously approved as non-standard vehicles, such as my Toyota Prius. I have now had three Toyota Priuses, and I use this opportunity to say how good they are and how little fuel they consume, but there is nothing in the list of cars available to us which suggests that the Prius is available. I may have to send a memo around to everybody explaining to them that it will be okayed if they put their hand up for it. I can recommend it as a beautiful car to drive, one which makes hardly any noise and uses less than one-third the fuel of a car of a similar size and a great deal less than some of the V8s and V6s that are on the list.

It is disappointing that we have a government that is interested in reform of a certain sort—改革 that benefits the big oil companies—and does not care much about consumers. It does not care much about the environment, it does not care much about oil security and it is not interested in the long-term future of this country with regard to where our energy is going to come from for transport. I have also said many times in this place that this government does not care about alternatives, even to the private car.

We still have a situation in which this government—and it is one of very few in history—does not put any energy, time or money into the question of public transport. After the oil prices skyrocketed just a few weeks ago we heard people starting to say, ‘Now it’s almost cheaper for us to travel by public transport.’ I hope people do move across to public transport, particularly for commuting long distances, so that they do not sit in traffic jams on freeways for hours on end. I am sure it must be better to be reading the paper on a tram or a train and going to work in a less stressful environment. But, quite frankly, our public transport system is not up to meeting the needs of the vast majority of commuters. That is why they opt for a comfortable vehicle with air conditioning and a radio which takes them from point A to point B, instead of opting for transport where they might have to stand around waiting for lengthy periods of time and which will not connect with another transport mode to get them to their place of work or wherever they want to go.

So my message to the government through this legislation is that the government needs to look beyond this microscale, this micro kind of reform which sees to it that the major oil companies will own more petrol stations and which will move independents out of the sector even more than has been the case in the past. The government appears not to care very much about the future of our transport needs, our oil needs and the cost of transporting ourselves around.

Senator FIELDING (Victoria—Leader of the Family First Party) (4.51 pm)—Family First believes the Petroleum Retail Legislation Repeal Bill 2006 will not ensure the lowest possible petrol prices for families and small businesses. That is why Family First will be moving amendments to the bill to ensure that no company selling petrol can own or operate more than 25 per cent of petrol retail sites. Family First wants to try to level the playing field for small businesses competing with the oil giants because that will lead to the lowest possible petrol prices for families and small businesses.

It is generally agreed that the Petroleum Retail Marketing Sites Act 1980 and the Petroleum Retail Marketing Franchise Act 1980 are outdated, no longer serving their intended purpose and should be removed. Apart from anything else, these acts were written before the petrol retail market was transformed by the entry of the supermarkets Coles and Woolworths. Family First believes the pro-
posed Oilcode fails to adequately address this reality and is concerned the Oilcode would allow even greater market dominance by the major players. This would threaten independent service stations, which are vital for a competitive petrol market and to ensure the lowest possible petrol prices. Let me be clear: Family First wants the lowest possible petrol prices for families and small businesses. There is a tendency in small markets such as Australia’s for large companies to keep getting bigger until there are only a handful of players controlling the sector.

Family First is convinced there will be fewer and fewer petrol retailers and less and less competition unless we have adequate regulations to ensure a genuinely competitive market. The current Trade Practices Act is not up to the job. Woolworths and Coles already have a stranglehold over Australia’s supermarkets and are now seeking dominance in service stations. It is estimated that Shell and Coles and Caltex and Woolworths may already control up to 70 per cent of the retail petrol market. Family First’s amendment will restrict the number of sites that a company or partnership can own or operate to 25 per cent of all service stations. That would mean the alliance between Caltex and Woolworths could only own or control 25 per cent of sites and the Shell and Coles Myer alliance could also only own 25 per cent of sites. Companies or alliances that already operate or control more than 25 per cent of petrol retail sites will not be allowed any more.

Family First’s amendment will put a lid on market dominance, to benefit families and small businesses. Family First’s action strikes a good balance between two extremes. No regulation means the law of the jungle, where only the biggest survive. Too much regulation chokes the market and is a burden on all business, particularly small business. Putting a lid on market dominance is fair and reasonable regulation. It makes sense. It allows the big end of town to survive as well as the independents.

Family First is also concerned that service stations cannot buy at the best price as they are small players without bargaining power. That is why Family First will move an amendment to give service stations automatic exemption to collectively bargain with the oil giants to buy fuel. Everyone accepts small businesses need bargaining power when negotiating with big business. So why should service stations be burdened with an application process and be forced to get permission to collectively bargain? It does not make sense. This is time consuming and there is no guarantee of receiving permission either under the current system or under the government’s proposed changes.

The Senate approved simpler collective bargaining notification procedures last year, but the government has stubbornly refused to implement them and is trying to blackmail the Senate to also pass merger changes to help the big end of town. It does not make sense. Family First believes small business should not have to suffer and wait around while the government engages in such power plays. The Minister for Industry, Tourism and Resources has said the Oilcode will introduce a nationally consistent approach to terminal gate pricing which will:

... improve transparency in wholesale pricing and allow access for all customers, including small businesses, to petroleum products at a published terminal gate price.

Family First’s amendment would achieve greater transparency, by making clear the breakdown in prices, including discounts, as well as how the service stations qualify for those different prices. Family First’s changes will not stop discounting but do address the concerns of independent service stations and other small businesses that the criteria to
Family First’s amendment also addresses a concern raised in the Senate committee which examined this bill about anticompetitive behaviour. Understanding how prices are set can help reduce anticompetitive behaviour. While small businesses may not have the buying power to qualify for bigger volume discounts, at least they will know how to make the most of their buying power. It is important to state that petrol is an essential resource and there are no ready alternatives for most consumers.

The four oil giants, due to their control of the market, can use their power to discriminate between service stations. Family First believes it should do everything it can to ensure that the risk of anticompetitive behaviour is reduced. One way to remove competition, such as that by independent service stations, is to refuse to supply them with petrol. The Oilcode states that suppliers must not unreasonably refuse supply, unless they do not have supplies themselves or they think the customer cannot pay or cannot transport the fuel safely.

Family First acknowledges there is a dispute resolution process, but what do service stations do about getting supplies while a complaint is being investigated? In this situation the oil giants have all the power. They could delay resolving disputes and threaten the viability of small businesses at the same time. The Family First amendment switches the balance to the small business so that oil giants are not allowed to refuse supply except for health and safety reasons. That makes sense. When there is a dispute about supply—a dispute that could take a long time to resolve—Family First’s amendment requires the oil giants to supply on a most favoured customer basis so the small business does not suffer. Family First is seeking other senators’ support for this common-sense amendment.

Senator STEPHENS (New South Wales) (5.00 pm)—I also rise to contribute to the debate on the Petroleum Retail Legislation Repeal Bill 2006. I listened with great interest to the comments by Senator Fielding about the relationship between the Trade Practices Act and this bill, and the bills that are repealed through this bill. This bill repeals two pieces of legislation that were enacted more than 25 years ago—the Petroleum Retail Marketing Franchising Act 1980, otherwise known as the franchise act, and the Petroleum Retail Marketing Sites Act 1980, otherwise known as the sites act. The truth of the matter is that over that 25-year period there have been such profound changes in the petroleum marketing industry that the two pieces of legislation enacted all those years ago now cover less than 50 per cent of the industry by volume. So it is timely that the government reviews this legislation and removes it from the statute book, conditional upon the implementation of an Oilcode. Labor supports the repeal of this very old legislation and the implementation
of an Oilcode. The sites act is so old that it restricts the number of retail sites that prescribed oil companies—namely BP, Caltex, Mobil and Shell—can directly own and operate in Australia. The franchise act sets out the minimum conditions and terms for franchise agreements between the oil majors and the franchisees. One of the profound changes that has occurred over that 25-year period is the market entry of the large independent retailers chains that we saw in the 1980s and 1990s and, much more recently, the supermarket retailers. We have had many discussions in this place over recent months about the role of supermarket retailers and the relationships that they have with their petrol partners with the debate about the fuel excise legislation and now this legislation.

The Oilcode that has been brokered introduces, amongst other things, a nationally consistent approach to terminal gate pricing. I know that we have had much discussion in this chamber about just what terminal gate pricing is and who pays that amount. It provides for greater transparency in the wholesaling of petrol to independents and other players by the major oil companies. It also establishes a more efficient dispute resolution system to provide the industry with a more cost-effective alternative to taking disputes to court. There were some concerns raised during the inquiry of the Senate Economics Legislation Committee into this bill about that whole dispute resolution process. Some concerns were raised this morning in this debate by Senator Murray, who recounted the evidence that was received by the committee from some of the independents. They were again referred to by Senator Fielding when he was talking about the time constraints between lodging a complaint with the disputes process and having it heard.

This bill is very timely. People all over Australia are struggling with soaring petrol prices, interest rate increases and greater uncertainty in their workplaces. People are now spending a higher proportion of their income on mortgage payments than ever before. We saw in the Sydney papers on the weekend that there are now almost 5,000 mortgage-in-possession sales going on in New South Wales as people relinquish their mortgages because they simply cannot afford them. At the last election, the Prime Minister promised to keep interest rates low, but people are now realising the hollowness of that promise. People now spend about 11 per cent of their household disposable income on mortgages compared to less than 10 per cent when interest rates peaked in 1989. So these families in my state—and your state, Mr Acting Deputy President Hutchins—of New South Wales who are paying off a mortgage are hurting much more than they did in the past.

This bill shows us that the government is capable of taking corrective action in the retail petrol market. The question begs to be asked of why it has taken so long. Why has a 25-year-old regulatory regime been allowed to fester until today? Rather than take the initiative to resolve the issues raised by this bill, we have had discussions about the Trade Practices Act. The recommendations of the Dawson inquiry into the Trade Practices Act have been sitting here and have been the subject of debate in this place and in the House of Representatives for years as we have waited for the government to take some action on those recommendations. In fact, the Senate Economics Legislation Committee in 2004 reported on the Trade Practices Act amendments, investigated how the Trade Practices Act was protecting small businesses and made significant recommendations on the legislation, which again we are still waiting to see and which would strengthen the conditions of the Oilcode that are part of the whole package of this petroleum reform.
It was very interesting listening to the Senate Economics Legislation Committee inquiry into this bill. The evidence suggested that the government did not proceed with the bill in 1998 because the affected parties could not agree on the Oilcode proposal. It has taken six years for the government to broker a compromise on this particular legislation and, on the evidence, there are still some parties—particularly the independents—that are very worried about some parts of the Oilcode.

However, there can be no doubt that vigorous marketplace competition is one step to holding petrol prices as low as possible; so we have waited to see this legislation come into the Senate, hoping that it has been drafted in a way that can mitigate the impact of petrol prices on ordinary Australians. We have had significant representations from both the ACCC and the Australian Institute of Petroleum about the importance of repealing the two acts and about the impacts that might have on petrol prices. Let us hope we do see the impacts that are anticipated from the repeal of these pieces of legislation. The committee actually recognised that neither act is effective and that neither act keeps pace with the structural changes that have taken place in the petroleum industry. The acts expose different parts of the industry to different regulatory requirements that are now very difficult to justify.

The entry into the market of the supermarket chains, with their market strength, means that it is necessary to ensure that all participants can compete on equal terms. Failure to do this is likely to lead to a lessening of competition if the refiners withdraw from the market altogether, which was something that was discussed during the hearings and was considered to be a possibility. That is possible if their competitive disadvantage is not addressed. The committee was also very concerned that failure to address these issues might lead to a continuing loss of refining capacity. We now know that we have lost more than half of Australia’s refining capacity over recent decades. As we have heard from several speakers’ contributions to this debate, that raises serious issues for Australia on energy security.

So, on the whole, the committee supported the repeal of the acts and considered that the proposed Oilcode would significantly improve the situation of many industry participants, particularly the commissioned agents who do not currently enjoy any of the protections afforded by the franchising act. These groups will also have access to a low-cost dispute resolution scheme for the first time. The committee also noted the concerns of some industry participants about aspects of the Oilcode, particularly in relation to tenure and the potential for abuse of market power. The committee did not believe that the concerns about tenure were very well founded, although they were passionately argued throughout the hearings, but we did suggest that the government revisit the issue of the $20,000 threshold for extended tenure under the Oilcode and we did express our concerns about the government’s need to bring forward amendments to section 46 of the Trade Practices Act, which we believed was a much more appropriate way to address these concerns.

The Labor senators argued the importance of section 46 of the Trade Practices Act and added some comments to the report which reflected our concerns about the fact that, in the Rural Press case that had been brought to the Federal Court and the High Court, the concept of abusing market power in another market had been brought into question. In the Boral case the very concept of market
power was brought into question. The ACCC gave evidence that they had effectively given up taking cases under section 46 of the Trade Practices Act because they now knew that it had been rendered ineffective.

We made several recommendations in the report of the Senate inquiry on the effectiveness of the Trade Practices Act on small business. These recommendations involved strengthening the Trade Practices Act, some of which the government has committed to. But much more needs to be done. The measures in this legislation do not achieve the objectives of encouraging competition in this sector in isolation from the section 46 reforms that the Senate has previously called for—and Senator Fielding made those points in his contribution to the debate. We on this side of the chamber believe that the most effective market outcome will not be achieved unless section 46 reforms are implemented concurrently. We note the comments of Mr Cassidy from the ACCC in evidence to the Senate inquiry:

I would say that, to the extent that there are shortcomings in the current section 46—and that is obviously well-travelled ground—we think the answer to that is to amend the section.

So the ACCC clearly supports the strengthening of section 46 to support competition in this and other markets—and I suspect Senator Joyce does too. Ideally, the government should commit to immediately legislating the recommendations of the Senate committee in relation to section 46 of the Trade Practices Act.

I note the first, second, third, fourth, fifth and sixth recommendations of the Labor senators’ report. The first is that the legislation be amended to state that the threshold of a substantial degree of power in a market is lower than the former threshold of substantial control—a subtle difference but an important one—and to include a declaratory provision ‘outlining matters to be considered by the courts for the purpose of determining whether a company has a substantial degree of power in a market’. It says these matters should be based upon the suggestions outlined by the ACCC.

Recommendation 2 says:

The Committee recommends that the Act be amended to include a declaratory provision outlining the elements of ‘take advantage’ for the purposes of s.46(1). This provision should be based upon the suggestions outlined in ... this report.

We recommended:

... the Act be amended ... without limiting the generality of s.46, in determining whether a corporation has breached s.46, the courts may have regard to: the capacity of the corporation to sell a good or service below its variable cost.

Even in the current inquiry that is taking place into the supply and cost of petrol in Australia, we are hearing serious concerns about the way in which the independents in particular are feeling very vulnerable without the provisions of section 46 of the Trade Practices Act being amended by this government. We understand that the government will bring forward a bill that includes a small set of the recommendations but that it has been held up, as I said earlier, by the apparent linkage with the other trade practices bill—the Dawson report bill, which contained merger changes that were deleted from the bill in the Senate. So our recommendations, presented as an amendment by Senator O’Brien, relate to section 46, which constrains abuse of market power. They seek to toughen section 46, to allow the ACCC to crack down on the abuse of market power, and we know that this is an important concern of senators on both sides of the chamber. We believe that there should be no ducking and weaving on the other side in relation to this amendment, which will ensure only
that huge corporations operate properly and fairly towards small businesses.

While one aim of this bill is to increase competition, we cannot forget that the main objective of competitors within a market is to eliminate competition. The increasing oligopolisation in this and many other industries pays testimony to this fact. The government should not half-complete its job of promoting competition in the petroleum industry by ignoring the vulnerability of small businesses to the blatant abuse of market power. High Court cases dealing with this issue do not bode well for the ACCC securing prosecutions for the misuse of market power under current provisions in the future. Again, we should not allow dysfunctional legal provisions to fester while market share is increasingly being concentrated in the hands of a few rather than in the hands of many.

In the past the government believed the best approach for controlling the power of the major oil companies was to specify the number of retail sites the companies could operate. As I have said, Labor believes the focus should be on reforming the Trade Practices Act. We need to ensure that the ACCC has the power to ensure that oil companies are not abusing their market power. Labor’s amendments to this bill reflect the recommendations of the Senate report into the effectiveness of the Trade Practices Act for small business. We want to toughen section 46 of the act to allow the ACCC to crack down on the abuse of market power.

While Labor accepts that the Petroleum Retail Marketing Sites Act and the Petroleum Retail Marketing Franchise Act represent an outdated model for regulation of the petrol retail sector—as they exclude major supermarket chains engaged in petroleum retailing and have been circumvented by major oil companies in some circumstances—I am also of the view that the principal issue in encouraging competition in this sector, and indeed across all markets, is the strengthening of the provisions of the Trade Practices Act against misuses of market power. That can only occur if the section 46 reforms are implemented concurrently. Even the ACCC has shown its clear support for strengthening section 46 to support competition in this and other markets—and I have quoted comments made by Mr Brian Cassidy to the original inquiry.

There are enormous challenges ahead for Australia as supplies of fossil fuels come under increasing pressure from the rapid pace of development in countries like India and China, but there are also opportunities for us as we develop our own resources. With vision and leadership there is the real prospect of major new industries opening up in areas such as natural gas and the conversion of coal to diesel. As a representative of a regional and rural electorate, I am very interested in the potential for large-scale ethanol and biofuels industries in Australia. What I do not want to see, though, for the people of Australia is ever-rising fuel prices and an increasing reliance on overseas oil, with our future prosperity and security held to ransom as a result of the government’s lack of initiative.

I commend the bill to the Senate. I look forward to seeing those long-awaited changes to the Trade Practices Act which need to be part of the Oilcode as soon as possible.

Senator McGauran (Victoria) (5.18 pm)—I too want to join in the debate on the Petroleum Retail Legislation Repeal Bill 2006. As other speakers have said, the purpose of the bill is to introduce major reforms to the petroleum industry. The bill will facili-
tate greater transparency in the wholesale and retail fuel markets. The changes in this bill will lead to greater competition amongst the major players, which must ultimately have a positive effect on fuel prices at the pump. Senator Stephens, from the Labor Party Right, said vigorous market competition is one way to hold down petrol prices. That quote was worthy of my jotting down and quoting here in the chamber. That is a quote you would only ever hear from the Labor Party right wing, which has remnants of sense in regard to economics. You would certainly never hear it from the Labor Party Left, epitomised by Senator Carr.

The bill will abolish the Petroleum Retail Marketing Sites Act 1980 and the Petroleum Retail Marketing Franchise Act 1980. These are important dates to remember. The two acts, which once served a purpose, have now become outdated and ineffective. Frankly, the acts are a hindrance to industry competition and efficiency. Moreover, the acts have become a hindrance to many of the small operators whom they once sought to protect. The sites act sets a quota on ownership of petrol stations by the oil majors. The policy was to prevent the oil majors from dominating the market to the extent that competition would be severely reduced. That was a good intention back in 1980. The policy was introduced to protect and encourage an industry that was predominantly made up of small service stations. But that can no longer be said; today the structure has changed.

The Senate Economics Legislation Committee report on this bill tells us that in 1980 there were some 20,000 service stations and that by 2004 the figure had fallen to 6,649. There has been an enormous shift and change in the industry whilst the sites act and the franchise act have been in place. The structure of the industry has completely changed, and the sites act, for one, is now hardly relevant to its original good intentions. With the adoption of multisite franchising arrangements, whereby a single operator or company will legally circumvent the act with franchise agreements to operate several sites, the sites act has, frankly, become a farce.

The two major supermarkets, Woolworths and Coles, own hundreds of service stations. Unless you are the chosen petrol brand of Coles, which is Shell, or the chosen brand of Woolworths, which is Caltex, you are locked out. What about the other two majors: BP and Mobil? Even they are finding it tough. Talk about catering to the big end of town; it just got bigger with both Shell and Caltex linking up with the two major supermarket chains. I want to refer to the economic legislation committee report on this bill. I will quote from what a Mobil representative said about this. He said:

... Mobil’s ability to respond effectively and in a timely manner to the rapid changes in the retail fuels market has been limited by the constraints placed on us under the sites and franchise acts.

The President of BP was also a witness before the committee. He said:

Reform is important to us largely because we do not have the freedom to operate the sites as efficiently as we can and thus to compete as best we can.

The point here is that these two majors have been locked out by the two major supermarkets. They are at a disadvantage, and that is unfair, in that they are uncompetitive against the other two majors. In the long run you may well get the absurd situation where those two, Mobil and BP, merge or just leave town. If they are unable to establish relationships like the other two majors have, it will have a long-term effect. Talk about catering to the big end of town; it just got bigger.

In regard to the franchise act, as with the sites act it has been superseded by the events in the market since its introduction in 1980.
It is a fault of the act that it narrows the definition of what represents a franchise agreement. The act does not extend to small business operators or service station owners who have to deal with the petrol companies; nor does it cover the massive number of supermarket sites, independent operators or commissioned agents—all of whose presence has grown in the market since 1980. Certainly the big changes have come about in the past decade. Given these developments in the industry over the past 25 years, it is crucial that the industry adapts. It would be foolish to stand still and maintain the old structures. This is an industry vital to Australia’s economic wealth and its health and efficiency directly affects fuel prices at the pump. To this end, the government will be introducing the mandatory Oilcode code of conduct to replace the franchise and sites acts. I am very interested in that mandatory oil code of conduct given that at the moment the government is debating whether or not to have a mandatory horticultural code of conduct. That is definitely an aside. So to replace these two acts the government will be introducing a mandatory Oilcode code of conduct so as not to create an ethical void with the abolition of the two acts. To quote Minister Macfarlane’s second reading speech:

The package will recognise the power imbalance inherent in the substantial interdependency between some small businesses operating under the franchise and commission agency agreements and their wholesale fuel suppliers, whether those suppliers are oil majors or independent retail chains.

The components of the Oilcode will be a national terminal gate pricing regime; minimum standards for new fuel reselling arrangements; greater coverage for different forms of agreements, such as commissioned agencies; and a dispute resolution service. I would like to further quote from the minister’s second reading speech to give greater clarity and a surety to the other side in regard to the introduction of the Oilcode. The minister said:

The oilcode regulations will achieve this outcome through three key policy initiatives. It will establish minimum industry standards for fuel reselling agreements between wholesale fuel suppliers and fuel retailers to provide a baseline for negotiations on those agreements. These minimum standards build upon and strengthen relevant provisions in both the franchise act and the more general franchising code of conduct and will provide greater certainty and protection for all parties to fuel re-selling agreements.

The oilcode will also introduce a nationally consistent approach to terminal gate pricing arrangements to improve transparency in wholesale pricing and allow access for all customers, including small businesses, to petroleum products at a published terminal gate price.

That is something we already have in Victoria, I might add. The minister continues:

This approach will not negate the ability of parties to negotiate individual supply agreements nor will it prevent the offering of discounts by wholesalers.

Finally, the oilcode will establish an independent downstream petroleum dispute resolution scheme to provide the industry with an ongoing, cost-effective dispute resolution mechanism as an alternative to taking action in the courts.

So any changes the government can facilitate—with the cooperation of the industry, of course—that support the industry to operate more efficiently are welcome, particularly in these times of high petrol prices. I can say that there are very few more consistently hot button issues in politics than the price of petrol, and for good reason because petrol prices go directly and swiftly to household budgets. It is worthy of note that Australia has the fourth lowest tax regime on petrol of the OECD countries, surpassed only by Canada—just—the USA and Mexico. Neverthe-
less, I recall that in 2001, when the price of petrol shot up to 85c a litre, a price which seems pretty reasonable now, there was an enormous public backlash against the government in regard to its indexation policy—ironically, a policy initiated by a Labor government.

However, we listened to the public in 2001 and abolished indexation. It is worthy to note that, if indexation were still in place today, the excise tax would be 54c, not the current 38c. I should also add that in 2000, with the introduction of the GST, the federal government implemented further measures to cap and reduce—or suppress—the price of petrol. When the GST was introduced in 2000, the level of excise on petrol and diesel was reduced by 6.7c per litre. Again, in 2001 the government reduced fuel excise by a further 1.5c per litre and, as I said before, in the same year abolished indexation.

In the time available, it is worthy to note that the existing excise tax is 38 cents. Whether it is 80c, 85c or $1.40, the federal tax is static. It is important to say that the federal government receives no windfall from higher petrol prices. In fact, the higher petrol prices are, the more the market reacts and consumes less. Therefore, at the federal level the tax take is less. It is the state governments that receive the big windfall out of this because of the 10 per cent GST on the petrol prices at the pump. You never see them making any commitment to reduce the taxes—not in the last decade—as this government has.

It was a Labor government which refused to sacrifice its budgets and reduce the petrol tax take, but the truth of the matter—as it is known by this chamber and is also generally known and accepted by the public—is that petrol prices are affected by world prices. Though, if you listen to the opposition, you would really think it was this government which dictated the price of a barrel of oil. What I have just said with regard to the tax regime being the fourth lowest in the OECD and the measures the government has taken over the past decade to reduce its take of petrol taxes puts a lie to the Labor Party claim.

The current high petrol prices yet again highlight the energy challenges facing Australia and our need to reduce reliance on oil and develop an alternative fuel market. To this end, only last month the Prime Minister brought down in parliament the government’s energy initiative statement, announcing new measures to further accelerate investment in alternative fuels and to provide Australian motorists with cheaper fuel options. The headline announcement was that the government would ‘bring forward the previously announced rebate for the purchase of new LPG vehicles for private use’. The statement further said that the government will:

… contribute $1,000 to the purchase cost of a new factory-fitted LPG powered vehicle.

In addition, the Government will provide a grant of $2,000 to the cost of converting vehicles to LPG for private use.

The energy statement further states:

While savings will depend on fuel consumption and driving habits, the Australian LPG Association estimates that, on average, the fuel bill for a six cylinder vehicle travelling 15,000 kilometres a year would be cut by $27 a week, or more than $1,400 a year ...

Ethanol blends—which have so often been debated in this chamber—can also make an important contribution to meeting Australia’s transport fuel needs. The Australian government has spent over $55 million to date in production grants to effectively offset the excise on ethanol production in Australia. We have already implemented a range of measures to help companies achieve a target of at least 350 megalitres of biofuels production in
Australia by 2010. This government has worked hard to restore confidence in ethanol after the disgraceful campaign waged by the Labor Party 18 months ago or thereabouts.

In question time in the House of Representatives and in the Senate, Labor asked question after question, discrediting and slurring the ethanol industry just for base political purposes to the point that the public really did react against the ethanol industry and the possibility of it ever starting up in this country. They really did scare the public, and we have spent an enormous amount of time and resources to restore public confidence in that industry. And what do you know: Labor are now on board with the ethanol industry. They have done the complete circle. Suddenly, they now think the ethanol industry is worth supporting. They would be right in that respect—of course, they are. At least they see a winner in the ethanol industry. In June this year, Minister Macfarlane held a roundtable conference in Canberra of all the ethanol players. The news coming out of that conference was extremely encouraging indeed for the future of this industry. I will read from part of the minister’s statement:

A national roundtable on ethanol has heard that production of transport ethanol in Australia will have jumped by more than 50 per cent in the last 12 months, from almost 23 million litres in 2004-05 to an expected 36 million litres by June 2005-06.

That is very encouraging to this government, which has been steadily building up the confidence of people in accepting ethanol in their cars, after the disgraceful Labor Party campaign against ethanol.

The reports from the ethanol sector at the roundtable meeting included: BP plans for a hundredfold increase in ethanol sites over the next two years; United Petroleum will increase ethanol retail sites from 67 to 130 by the end of 2006; Woolworths proposes to enter the ethanol market, with 50 sites by 2007; Caltex is to double the number of ethanol retail sites by the end of 2006; and Australian Farmers Fuel has 52 stations selling ethanol and biodiesel blends. So, as you can see, the ethanol industry is getting on its feet and production is increasing.

As I mentioned before, the recent government support for the ethanol industry has been not only through capital grants and research and development grants. We have also given it a honeymoon on excise till the middle of 2011, scaling up to 2015, after which this fuel will be on a competitive footing with other fuels. In short, the news is good in the alternative fuel market, if for no other reason than that petrol prices are so high, thus making alternative fuels even more competitive. (Time expired)

Senator MILNE (Tasmania) (5.38 pm)—I rise today to make some comments on the Petroleum Retail Legislation Repeal Bill 2006. I remain unconvinced by the government’s argument here. It seems to me that it is really quite simple. We have a situation where the Petroleum Retail Marketing Franchise Act and the Petroleum Retail Marketing Sites Act do need revisiting. Everybody, I think, agrees with that. They have allowed the rise of retailing outside the acts’ ambit, most notably through the entry of supermarkets and the independent importers-marketers into the industry. And, although they were intended to ensure competition, the acts have also restrained competition by limiting the ability of the majors to compete with retailers operating outside the acts’ coverage. But the Greens do not believe that the Oilcode in its current form is sufficient to maintain the competitiveness of the independent retailers, because it does not prevent either below-cost selling or the provision of
discounts to large-volume customers in the wholesale market.

It is obvious—as Senator Murray has argued, and as others in this chamber, notably Senator Joyce, have argued previously—that section 46 of the Trade Practices Act needs to be dealt with and strengthened before we move on any of these others, because people need some surety; they need some security about what is going on here. I am glad that Senator Murray for the Democrats has brought in a number of amendments which would strengthen the capacity of the parliament to support small business.

I am always interested to hear the government say it supports small business. From where I sit, time after time the actions that are taken do nothing to support small business—in fact, they undercut them and, really, drive them out of the industry. That is what is going to happen with regard to small independent outlets as a result of this legislation. Nobody has been able to explain how, when you are allowing the majors to move in and sell below cost and access the discounts to large-volume customers in the wholesale market, the independents are going to compete with that. How could they? Can somebody in the government explain to me how the four majors operating in that way are going to leave any space for the small players? It just beggars belief, because that simply will not happen. The major players will reduce their prices, drive the small independent retailers out, take more market share themselves and then put up their prices, as is consistent with what they have done time and time again in the past.

Senator Murray’s amendments, I believe, are very important ones, because they, at least, move on the following principles. They look at this issue of some organisations having ‘a substantial degree of power in a market’. They look at a whole range of issues which would strengthen section 46, and I think that that is something that the government needs to look at. It is no use the government saying that they will deal with section 46 later. That does not give comfort to anyone because we do not know exactly how it is going to be dealt with. And, whilst this is a mandatory Oilcode, it does not go to those issues that I have just spoken about in relation to the Trade Practices Act.

Obviously, it does seek to prohibit the misuse of market power by organisations with a substantial degree of power in the market, but I think that if we move on that in the way Senator Murray has suggested it will be a very good thing. I note that some in the government are arguing that this view is absolutely wrong and that the mandatory Oilcode has satisfied the concerns of the small retailers. But, in fact, the Motor Trades Association of Australia—and it represents service station operators—has said it believes that the proposed code is defective because it will not ensure a level playing field that would allow small service station operators to compete fairly in the market with the large supermarkets and oil companies. And these are the people representing the small players. They go on to say that the outcome of the government’s changes will be the closure of more small franchised and independent retail outlets, meaning, in rural and regional areas in particular, that motorists will have to drive longer distances to obtain fuel.

We will see increased dominance of the retail petroleum market by the two supermarket chains. We will see loss of competition in the retail and wholesale markets as independent importers struggle to find sufficient retail outlets to sustain a viable import business. There will be detrimental impacts on motorists in the longer term as small competitors exit the market and the larger chains gain a greater share of the retail petrol market, leading to less price competition.
And service station operators wonder where the benefits to motorists and the government are in these proposed reforms. The only winners here would seem to be the oil majors and the two supermarket chains. From my point of view, in the absence of the changes to section 46, that is the only conclusion that I can draw. The only winners here are, in fact, BP and Mobil, who will be able to get themselves into the market in a way that they have not been able to because of the dominance of Shell and Caltex.

To suggest, as members of the government have, that if BP and Mobil do not get their own way they might leave the country beggars belief. I do not know of any country in the world where those petrol majors have just up and left. So I would like to be enlightened by the government—by any member speaking for the government—explaining to me on what basis those companies would leave the country when their businesses are in fact extremely profitable, as we know from their annual reports.

We know that the chief executive officer of the Service Station Association, Mr Ron Bowden, predicted that between 1,000 and 1,500 service stations will close and another 200 franchisees will leave the industry in the next two years. So in fact the government’s proposals would increase concentration in the industry and market power would be in the hands of a few large companies, which would ultimately lead to higher prices. There is no doubt that, after discounting or selling below cost in order to drive out the independent operators, the minute they have driven them out they will then up the prices to recoup whatever discount they had put in there in the first place. The Oilcode is not going to prevent them from doing that.

I have some very great concerns about this. The government has been aware of the need to deal with section 46 of the Trade Practices Act for a long time, and it has not done it. I think it is totally irresponsible to come in here with legislation that repeals existing legislation without letting the parliament know and without having introduced the changes to the Trade Practices Act that would supposedly give protection to the small operators in the way that the government says that it has an interest in doing.

In terms of the issue of alternative fuels—and this certainly comes to the point of the majors having control of petrol retailing—we have been trying for a long time to have the rollout of alternative fuels in Australia. The reason that has not happened to the degree that we would like is that the majors have no great interest in doing it. I acknowledge that some of them are moving on this at the moment and may continue to do so, but the fact that they will have control of the majority of the outlets means that that will be something that they are able to control much more readily than anybody else.

We have an oil crisis that is converging with a climate change crisis. We need to reduce our dependence on petroleum. We need to get into the alternative fuels in a big way, and compressed natural gas, particularly in the heavy transport industry, is something that the transport industry itself says it would be interested in. But of course you need a distribution network, a refuelling network, up and down the east coast and on the major transport routes if you are going to get that kind of change from the heavy transport industry. So we come back to the same conundrum about rolling out adequate networks for distribution.

As some senators would be aware, we already have this problem in Tasmania. There is no other outlet for LPG after Sorell, which is just outside Hobart, for the entire east
coast of Tasmania. So if you wanted to have 100 per cent LPG, as some councils would like to do for their car fleets, you cannot, because there is not one distribution outlet. Tasmania has an appalling distribution network for LPG. Once again, it is no use putting up conversion to LPG and subsidising conversion if you do not have a distribution network that will actually provide for that to occur. So we have some real issues about not only funding research and development in alternative fuels but actually making sure that you get an appropriate distribution network throughout the country.

But the other issue that I want to speak on for a moment is the Labor Party’s second reading amendment. There are a number of issues in that that of course the Greens are interested in: increasing the market penetration of ethanol and biodiesel, LPG and compressed natural gas; and securing new investment in biofuels. But we do not support investment in coal to liquids. I think this shows the internal lack of cohesion of Labor’s policies. On the one hand they say they want us to reduce greenhouse gas emissions, and on the other hand they want to invest large amounts of money in coal to liquids when the Centre for Low Emission Technology has said quite clearly that, even if you could get into carbon capture and storage and it was a 100 per cent success—and at a price where you would do that—the emissions from the tailpipe of a vehicle running on liquid coal are the same as from conventional oil.

So there is no point in it. What is the point in a greenhouse gas world, in a world that is heating up? Why would you go down the path of spending millions on research into something that you cannot use at the end of the day, whereas if you put the same amount of money into lignocellulose research, which will generate ethanol from waste plant material, then you get a win-win for climate change and for new fuels?

So there are lots of ways of actually addressing the crisis that we have globally. The report brought down by the Senate Rural and Regional Affairs and Transport Legislation Committee is reading that I would recommend to everybody in the chamber. But I think that the internal inconsistency of putting in coal to liquids actually demonstrates that Labor wants to have it both ways on transport fuels and climate change. It is an unacceptable way to go. So I move an amendment to the Labor Party’s second reading amendment:

Paragraph (a)(iii), omit “and coal”.

So gas to liquid stays but coal to liquids goes from the Labor Party’s amendment through the amendment I am moving here.

I am also concerned that Labor is advocating finding more oil and spending more on finding more oil. Yes, of course that is going to be an option. But what we know from the latest information coming to us from all of the exploration companies and academics and so on is that going into deep water becomes extremely costly. So when it comes to any oil that you might find, particularly around Australia, where we are not known for major finds, you might be investing more in trying to extract the oil from the deep ocean than you are ever going to get from the oil.

I would remind senators that the expectation is that, if oil stays at $50 a barrel, by 2015 imports will exceed the value of exports by $25 billion. What is that going to do to the current account deficit? What is it going to do to inflation if we allow that to occur? We are talking about less than 10 years time; we are not talking about a long time away. So the sooner we can get into alternative fuels, the sooner we can improve our own self-sufficiency, the sooner we can re-
duce our dependence on imported oil, the better it is for the country in terms of energy security and the better it is for the world in terms of greenhouse gases.

In this move away from oil, we should not just be looking at this issue of how we distribute petrol and the issues around pricing. I suggest that at the big picture level we should be pushing for an oil protocol globally. Such an international multilateral protocol would organise a way of gradually reducing in an orderly manner each country’s dependence on oil by a certain per cent, and the same with supply, so that we gradually get there—instead of being confronted by what I believe will be social and economic chaos as this situation with oil depletion plays out over time, especially in convergence with climate change. Quite a lot of work has been done on the notion of a multilateral oil protocol, a protocol that would have no country producing oil above its present depletion rate, no country importing oil above the world depletion rate, and so on and so forth. There is a great deal of detail in relation to these protocols. I float that idea. Whilst we need to look at the day-to-day issues and whilst politics is dominated by petrol prices in the here and now, we know that petrol prices now are nothing compared with what they are going to be in the future. We know that, if we have to suffer $25 billion in imports exceeding exports by 2015, we will be in real trouble.

My view is that at the national legislative level we should be protecting as much as we can the independent and small operators, because they are our best hope for rolling out, particularly in rural and regional Australia, opportunities for taking up alternative fuels. The only way we are going to get real competition is to maintain those independent and small operators in the marketplace. The only way we are going to do that is by amending the Trade Practices Act right now, and not waiting—giving this power to the majors now, going with an Oilcode we know is flawed, and then waiting for some changes to the Trade Practices Act which may never eventuate. I say that because the government said previously it was going to go with a mandatory code for the primary producers of Australia in terms of retail groceries and it totally reneged on that after it had said that was going to happen within 100 days of the 2004 federal election.

We have had the government not act on the country of origin labelling; we have had the government walk away from alternative fuels in rural communities, which has been a big slap in the face for them; and now we have had the government renego on a very clear promise that if the coalition was returned that mandatory code would be in place 100 days after the 2004 election. It is not, and it is not going to be. Saying that there will be an announcement this Thursday about more or less starting the process again is an absolute slap in the face. If those rural communities continue to support the coalition when it has done them in on small business—from the individual fruit and vegetable growers through to the small businesses in the towns such as these independent franchisees and other small business operators—if they continue to vote for a government that is not acting on climate change or oil depletion, then they are only going to see more of their own kind driven off the land. The South Australian Farmers Federation put out a release recently saying that at least 15,000 families have been driven off the land already.

Let us not see rural communities suffer any more in this way. Let us address these issues with the Trade Practices Act. I implore
the Senate to support Senator Murray’s amendment and to heed what those people who represent the industry are actually saying—that by repealing these acts without the safety net that is necessary with the changes to the Trade Practices Act what is going to happen is that all these small businesses will be closed. I am not in support of handing over retail petrol sales in Australia to the four majors, and that is what this legislation is about. This is about the government acting on behalf of BP and Mobil so that they can get in on the act because they have been outmanoeuvred by Shell and Caltex. But in giving BP and Mobil what they want and setting up perhaps greater competition between the four initially, what we will see, once those four majors get rid of the people they are in real competition with, is no below-cost selling; and we will see them back to their old tricks.

Senator STERLE (Western Australia) (5.57 pm)—I rise to speak in support of Labor’s second reading amendments to the Petroleum Retail Legislation Repeal Bill 2006. Australians who do not have the luxury of getting fuel cards, like we all do, have been doing it very tough since the last election. When the Howard government was re-elected in October 2004, the average petrol price in the Perth metropolitan area was 104.7c a litre and to fill the tank of a Holden Commodore would have cost $78.52. As at June 2006, the average petrol price in the metropolitan area of Perth had risen to 134.5c per litre and to fill the petrol tank in that same Commodore in June this year would have cost $100.87. That means that, since the Howard government was re-elected in October 2004, the cost of filling that tank in the Holden Commodore has increased by $22.35. The average family in High Wycombe, a suburb of Perth in the marginal government-held seat of Hasluck, would easily go through a tank of petrol a week going to and from work, dropping their kids off at sporting events and training, or going to the shops. Four tanks of petrol a month—and I am sure many families use more than this—adds up to an extra $88 a month that a family has to find just to get around.

I have probably burnt through more diesel than anyone else in this parliament. In my 11 years as an owner-driver, carting freight to and from the northern sectors of Australia, including Darwin and the Kimberley region, I have filled the tank on my rig more times than I care to remember. When I fill it, I put in 1,500 litres of diesel at a time. The average cost of diesel in the Perth metropolitan area has risen from 112.9c per litre at the time of the last election to 143.9c a litre in June this year. It now costs $465 more to fill my truck with fuel than it did at the time of the last election.

Mr Acting Deputy President Hutchins, you are probably the last person I need to explain this to, because you would fully appreciate—as I am sure many senators on the other side of the House do as well, although sometimes they have a habit of forgetting—that goods do not just appear on the shelves in shops. Clothes do not accidentally fall onto the racks in the shopping centres. These goods are all carted on the backs of trucks. Unfortunately, when the price of fuel goes up so too does the cost of goods to consumers.

If we consider the needs of people in rural and remote Western Australia, we should realise that most of their food gets to them on the backs of trucks. These trucks are travelling all the way from Perth. If we also consider that the industry standard for heavy-freight fuel consumption is around one litre for every kilometre travelled, then we know that a round trip, for example, from Perth to Kununurra and back again—a distance of about 6,200 kilometres—would use approximately 6,200 litres of diesel. As a rough
estimate it means that, since the last election, an extra $1,900 in fuel costs has been added to the cost of one roadtrain of freight to Kununurra. Thankfully, there are signs at the moment that fuel prices are going down; but, as we have all seen in recent years, it takes only a cyclone or a maintenance shutdown on a major pipeline to send the price skyrocketing once again. Sadly, this bill will do little to address these problems.

The main purpose of the Petroleum Retail Legislation Repeal Bill 2006 is to repeal the Petroleum Retail Marketing Sites Act and the Petroleum Retail Marketing Franchise Act. Labor supports the repeal of these acts for two reasons. The first reason is that the minister has already put forward a regulation that undeclares the four major oil companies from the operation of the Petroleum Retail Marketing Sites Act, so it applies to no-one. The second reason is that, even if the act applied to the four major oil companies, the Petroleum Retail Marketing Sites Act 1980 and the Petroleum Retail Marketing Franchise Act 1980 are outdated acts and serve no useful purpose in today’s petrol retail industry. Even if the minister had not undeclared the four major oil companies from the operation of the act, well over half the industry by volume of sales is not covered by current legislation— and that includes the retail stores Coles and Woolworths.

Over the years, the major oil companies have effectively been able to circumvent the act, particularly by way of creative multisite franchise arrangements. We have also seen in the market the emergence of partnership arrangements between Coles and Shell, and Caltex and Woolworths. The Petroleum Retail Marketing Sites Act, which was designed to limit the number of service stations the oil companies could run directly, does not cover Coles or Woolworths. The rules for participants are inconsistent and unfair. That is bad for industry and, far more importantly, it is bad for Australian consumers, who are doing it tough at the moment.

The repeal of these outdated acts is only the start of putting in place a regulatory regime needed to protect operators in the fuel retail sector, to prevent the abuse of market power by the refiners and to promote competition in the industry. The next step for the government is to introduce the Oilcode as a mandatory industry code under section 51AE of the Trade Practices Act. In 1998, the opposition said that they would support petrol reform as long as the Oilcode was agreed to, and it has taken the government another eight long years to get around to it. Labor have said all along that we should support the government in its efforts to repeal these acts and to reform the fuel industry, as long as the government implemented the Oilcode to address the gaps in the existing regulatory regime to protect smaller operators and consumers. Because of the Howard government’s incompetence and failure to show leadership, it has taken eight long years to secure agreement from industry and consumer representatives for an oilcode that was acceptable to all involved.

The Oilcode’s dispute resolution scheme will provide a low-cost and rapid means of addressing disputes as an alternative to legal action. These changes are likely to lead to increased competition in the sector, with the potential for positive impacts on fuel prices, particularly in rural and regional areas. Unfortunately, the Oilcode does not go far enough. Although the mandatory Oilcode, pursuant to section 51AE of the Trade Practices Act 1974, will place industry under a common regulatory regime with some protections, reform should also include amendments to section 46 of the Trade Practices...
Act in order to prevent the potential for abuse of market power.

It is to the continuing detriment of small businesses in the petrol retail industry that the Howard government continues to stuff around with delivering on the recommendations of the 2003 Dawson report and of the 2004 Senate inquiry. Australia needs a national transport fuel policy that guarantees supply for the long term and that gives us options to deal with global fuel supply and price emergencies. We need to reduce our dependence on fuel from unstable regions in the world. We cannot rely on foreign oil if the Strait of Hormuz is closed, if the Alaskan pipeline has to be fully shut down, if war escalates in the Middle East or if civil unrest shuts down West African production. We are running out of oil. On the basis of the law of supply and demand, demand for fuel is going up and supply is coming down, so the price is naturally going to go up. When the price of crude oil is high, it is all the more urgent that governments act. We have to wean ourselves off Middle Eastern oil. In fact, we have to wean ourselves off all traditional fuels. Unfortunately, the Howard government is asleep at the wheel. If it has taken the government eight years just to develop an Oilcode, I have no faith that it will be able to develop an industry plan to wean Australia off foreign oil.

The Howard government is all over the shop on its policy towards alternative fuels. In the last parliament alone, the Howard government changed its mind not once, not twice, but on three occasions with respect to the excise regime not only for ethanol but also for the LPG industry. Despite his May 2002 view that applying an excise to ethanol and LPG was a bad idea, the Treasurer announced in the 2003 budget that he would do just that. He announced that biofuels and LPG would be subject to an excise from July 2008. In December 2003, guess what? He changed his mind again, announcing a new excise regime to apply from July 2011.

Senators will be aware that there is a Senate inquiry currently underway into Australia’s future oil supplies by the Rural and Regional Affairs and Transport References Committee—which I know has now changed its name. The committee, of which I am a member, along with Senator Milne and Senator Joyce, has taken evidence on a range of matters, including on the question of whether the world oil supply has hit peak oil. Briefly put, peak oil is the point at which world oil supply peaks before beginning to fall. With the Senate’s indulgence, I would like to share some statistics that show that Australia at least seems to have reached peak oil in domestic production.

In 1998-99, the Australian production of crude oil, condensate and LPG came in at 32,265 megalitres. This figure rose steadily to 42,279 megalitres by 2000-01. Since then, Australia’s production of crude oil, condensate and LPG has fallen steadily to 29,995 megalitres in 2004-05. Unless there are more major finds and capital investment in the very near future, it appears that Australian production hit peak oil in 2001-02.

As a consequence of our reducing domestic production of crude oil, condensate and LPG, we have become increasingly reliant on
imported fuels to meet our consumption. A consequence of this is that the value of petroleum imports as a percentage of the value of total imports has increased from 3½ per cent in 1998-99 to around 10 per cent in 2005-06. No wonder Australia’s trade deficit is looking so crook.

Australia’s capacity to fulfil its petroleum consumption needs from its own petroleum resources has fallen markedly in recent years, at the same time as there has been an escalation in the world demand for crude oil. From 2001-05, world oil consumption increased by approximately eight per cent. In the previous five years, world consumption of oil grew by only 4.3 per cent. Furthermore, from 2001 to 2005 the average price of a barrel of crude oil increased by approximately 150 per cent. In the five years previous, the world price increased by only approximately 3.5 per cent.

In the face of all this, the entirety of the Prime Minister’s response has been to repeal two acts and give a handful of Australian motorists a couple of thousand dollars to change over to LPG—that is, if they can find someone with the skills to do the conversion. The point is that the Howard government has let Australia down badly. Labor, on the other hand, has a plan to reduce our dependence on imported oil and to put in place new policies that can encourage alternative energy use. The solution is home-grown fuel industries in Australia. That requires that we accept that there are policy options available to ensure that the wheels continue to turn for Australian consumers and Australian industries to ensure that Australians can afford fuel and to ensure that Australian industry can afford energy.

I am advised that there are currently seven refineries in Australia with a combined capacity of around 800,000 barrels a day. This is more than sufficient to meet the entire Australian demand, currently about 750,000 barrels a day. But I am also advised that, at present, alternative fuels make up less than two per cent of the overall market for petroleum products. The two most common types of biofuels that are being developed and used are ethanol and biodiesel.

Contrary to Senator McGauran’s rantings about the Australian Labor Party, the Labor Party started the ethanol industry in this country with capital assistance grants back in 1993. We have supported pushing out further the application of tax on ethanol. We did not oppose the government’s total removal of import competition. We have supported all the later rounds of capital assistance grants for new plants. We have done all the ethanol industry has asked of us, short of supporting mandating.

Ethanol is good for regional jobs, it is good for the environment and it is good for the agricultural sector. It helps the competitiveness of independent service stations because they can blend the product—having no tax makes them more competitive. But we make only 37 million litres of it in this country at the moment. If we mandated it at 10 per cent, we would need at least two billion litres.

Even Senator Boswell—yes, Senator Joyce: Senator Boswell, the cultural attaché from the Queensland National Party—said on 14 August 2006 that the Howard government needs to do more to promote ethanol fuel. According to Senator Boswell, the Howard government said:

... really have to get fair dinkum about ethanol and bio-fuels because we’re only playing at the edges at the moment.

I could not agree more with Senator Boswell. I suspect Senator Boswell knows that only the Labor Party is serious about reducing
Australia’s reliance on foreign fuel. Senator Boswell knows he is part of a government that got elected in 1996 promising to keep Labor’s ethanol bounty but scrapping it in their first budget. He knows he is part of a government that attacked the ethanol industry and then rearranged the support so that it helped only one person. The Prime Minister needs to understand that the ethanol industry is about more than just helping out his mate Dick Honan.

The other main biofuel is biodiesel. Biodiesel can be made from several types of oils such as soybean, rapeseed and vegetable or animal fats. Biodiesel fuel is biodegradable, requires minimal engine modification when used either as a blending component or as is, and is cleaner burning than the diesel it replaces.

I would like to take the opportunity to congratulate Gull Petroleum in Western Australia, which in a number of its service stations is offering biodiesel to consumers as a fuel additive in 20 per cent blends with petroleum diesel. They have set a fine example to other retailers, and I hope their product is well received by the market. The Labor Party has always been a great supporter of both gas to liquids and coal to liquids, which are integral to the commercialisation of clean coal technology for power generation in Australia and which are part of the environmental debate.

Although the technology to produce GTL diesel has been available since the 1920s, it has been too costly to be commercially viable. Over the last decade, however, costs have reduced by 50 per cent, and there is reason to believe there will be further progress in cost minimisation and process optimisation. The advantage of GTL diesel is that it contains almost no sulfur or aromatics and is well suited to meet current and proposed cleaner fuel requirements of developed economies.

It is now almost five years since Senator Minchin, the then minister for resources, appointed a GTL task force to investigate the feasibility and benefits of establishing a GTL industry in Australia. Five years later, no action has been taken. It is just not good enough.

Another policy initiative the Labor party has announced is Labor’s green car challenge. Around 18 per cent of new cars in Australia are bought by federal, state or local governments. Labor has said that, if the Australian car industry could build a competitive, value-for-money green car, a federal Labor government would put it into the Commonwealth fleet. As Mr Kim Beazley, the Leader of the Opposition, put it, ‘You build it; we’ll drive it.’ Labor will use industry policy and procurement policy that is available to the Commonwealth to make sure that we restructure the Australian car industry in a way that ensures not only good outcomes for the environment and lower fuel bills for Australian families but also good outcomes for the Australian economy and Australian jobs.

This policy has the support of the Australian Manufacturing Workers Union, which does an excellent job representing and protecting the workforce in the motor vehicle industry. Like Labor, the AMWU knows that, if we stand still while the rest of the world is moving forward, we will get left behind. Fuel prices are hurting Australian families and adding inflationary pressures to the economy. The Howard government has been asleep at the wheel when it comes to developing alternative fuels to reduce Australia’s reliance on oil. Labor has a vision for an Australian economy that does not buckle under the weight of a global oil shock. That is why Labor released a blueprint in October
last year that outlined plans to develop existing alternatives, for example, LPG, ethanol and biodiesel; to develop emerging alternatives, for example, gas to liquids; and to develop future fuels, for example, hydrogen. Labor’s plan stands ready to be put into action. If all the Howard government is going to do is tinker around the edges, then it should call an early election so Australians can get the kind of leadership they deserve.

Senator JOYCE (Queensland) (6.17 pm)—We just heard a fascinating speech from Senator Sterle—in fact, I felt like checking what we were talking on; it sounded like we were about to move a mandate on ethanol, for which he would have had my support. But he was not. Although he gave a fascinating speech, we are actually talking here today about the Petroleum Retail Legislation Repeal Bill 2006.

I want to pick up on a couple of points of Senator Sterle’s before we go much further. He talked about his overwhelming support for the biodiesel industry—no doubt in Western Australia there is a lot of support for the biodiesel industry. I remember Labor frantically knocking down our doors a few months ago asking for support for the biodiesel industry. However, what surprised me then, after Senator Sterle’s comments, was the way the vote went in the chamber. The only people who actually supported a move to assist the biodiesel producers of Western Australia were me and a senator from the Democrats. Senator Sterle actually voted to get rid of the biodiesel industry in Western Australia. We should put that back on the record, because he seems to be getting a bit shifty. He has been here for a little while, and he is getting a bit shifty now. He wants to ride both sides of the fence.

Senator Sterle interjecting—

Senator JOYCE—you were not in the chamber?

Senator Sterle—I was in the chamber; you weren’t.

Senator JOYCE—I was in the chamber. It is on the record—as is your vote against biodiesel, Senator Sterle. He also came in and gave a great hoorah about where we are at with ethanol. I can assure you that a mandate on ethanol is National Party policy. If you are about to join us in that push, I welcome you. You will have a lot of support on that day. That would really check your colours on the other side of the chamber. We would see whether they are going to walk the walk or whether they are talkers. They look like talkers over there—they are not really serious about it—but I would welcome them. If they want to come out of their burrows and be fair dinkum about supporting the ethanol industry, I challenge them. You must be getting up through the ranks of the Labor Party right now, Senator Sterle. I challenge you to go to your caucus and say, ‘Let’s get fair dinkum about this. Let’s move a mandate,’ because they will not. They have not quite got the ticker for that. They have the ticker to talk, but they do not have the ticker to walk. That is the difference.

But it is encouraging. It was a marvellous little excursion into the facts. I agree with much of what Senator Sterle said about the trade deficit, the benefits of getting an alternative fuel and the problems we could have on the Strait of Hormuz, and no doubt other parts of the world as you so choose. I have no problems with that—you are probably telling the truth on all of those issues—it is just that you do not want to do anything about it. The option is there for the Labor Party—if they want to do something about it—to come out and say they are going to
mandate ethanol. I will support them, but they will not do it.

But let us go back to what we are actually talking about. We are talking about the Petroleum Retail Legislation Repeal Bill 2006. It looks like the Labor Party will support it, so we can basically say from that that the legislation will go through. A key issue here is that, in 1980, when this act was brought about, they passed it because they had a belief in the participation in the retail of fuel by a wider section of the community. That sentiment was true in 1980, and it is true now. There should be a wider participation in the wealth that is generated from the retail of fuel.

It is true that Coles and Woolworths have circumvented that over a period of time, and that issue does need to be dealt with, but we are not dealing with it through this legislation in this form. There has to be an amendment brought into this legislation that protects independents in the market. Independents must be protected. Why is it that, with this piece of legislation going forward, we have said that Coles and Woolworths have circumvented the intent of the 1980 act, but instead of dealing with the problem, which is the circumvention by Coles and Woolworths, we are going to bring about a piece of legislation that is going to put the independents out of business? Why is that? How did that come about? Surely, if it was true in 1980 that it is good to have mum and dad businesses, a wide participation in the retailing of fuel, it would be as just and as good now to have a wide participation in the retailing of fuel. Why aren’t we amending this in such a form as to allow a remnant participation by independents in the market? We have heard from Senator Sterle, from the Greens and from a whole range of people how the independents are instrumental in bringing about price discounting in fuel and how the independents are instrumental in bringing about fair competition in the market, in keeping the others honest. But there is nothing in this legislation that actually protects them, and that is a concern for me.

I will be moving an amendment that will quarantine a section of the market for independents. It is as simple as that. Why? Because it is inherently good for Australia. It is inherently good for the market. It stands to an ethos that I have believed in since I gave my maiden speech—that is, an overcentralisation of any market is bad policy. It is bad for the freedom of this nation. It is ultimately bad for the consumers. When you have an oligopoly relationship, as we obviously have in the oil industry, the government has to step into the fray and promote legislation to protect them. The issue is basically how we go about it.

We have heard from the Labor Party. They have talked about the Dawson recommendations, and everybody is in furious agreement. Everybody agrees that we have to go somewhere with the Trade Practices Act. I hear that, but what are we going to do with this piece of legislation, right now, that is going to protect the independents in the market? It is one of the fundamental things when you drive up the road when you are campaigning in Queensland. You stop at a service station, you walk in and you ask: ‘How are you going? What can I do to help you?’ They almost knock you over by saying: ‘What you can do to help me is allow me to buy fuel at the price that that service station is selling it at. That’s what you can do for me. If you can help me buy fuel at the price that that service station is selling it at, you’re going to allow me to stay in business.’ When people say that, it hits a chord with you, and you think: ‘Well, I should go about trying to assist those people to stay in the market.’ In going forward during our Senate campaign some two years ago now, it was a fundamental driver to try and make sure that we keep the wide par-
ticipation of Australian people in the retail market. Whether it is retailing fuel, retailing clothes or retailing groceries, there has to be a wider participation in that market.

How are we going to do that? We are going to have to do that by basically bending the rules to move away from this so-called free market, because there is no free market. There is no free market in anything in this world. If there truly was a free market, I would be able to go out the front door of my house, set up a bowser and start selling fuel, no matter what it was, without any controls, checks or balances whatsoever. But you cannot do that. So what we really have in Australia is a partially regulated market that we call a free market. Because it is a partially regulated market, it works in favour of the incumbents. The incumbents are the two major retailers and the four major oil companies.

The mantra that I have kept saying is that the purpose of the economy is not to produce the lowest priced product for the end consumer—because we hear that all the time: ‘This is going to bring lower prices.’ So it will, but the purpose of the economy is not purely to produce lowest priced products for the end consumer. That may be a consequence of a good economy, but it is not the purpose. The purpose of the economy is to create the greatest connection between the wealth of a nation and its people, and to do that it is vitally important that you have a small business sector. Where do you see the small business sector reflected in the fuel market? It is reflected in the independents.

It is going to be interesting to see how the pennies fall on this one. I will make a prediction. I predict that the Labor Party will be supporting this. Why? Because the major oil companies have got to them, that is why, and they are going to fall in line just to show that they too can put families out of business when required. It would be brave to stand up and say that we are going in to bat for families, that we are going to quarantine a section of the market to be exclusively the domain of independents, because we agree with the intent of the 1980 act—it was true in 1980; it is true now. All through this chamber, somewhere between 1980 and now, the belief in independents and a wide participation in the retail market has gone, for political convenience. Why has that happened? Where are we drawing it from?

I heard Senator Sterle talk about being an owner-driver. It must be a wonderful thing being an owner-driver, being your own boss. It must be a wonderful thing to determine your own future. It must be a wonderful thing to be in business for yourself. But it seems a shame: I believe that, today, you are not going to protect the right of other people to stay in business—that, for whatever reasons, you are going to justify to yourself why you have to let these people go. You are going to do it because the hierarchy in the Labor Party have told you to do it, and you follow orders. You do exactly what you are told. That is what is going to happen today. It is going to frustrate you because once more, just like you did over the biodiesel producers of Western Australia when you voted for that piece of legislation, today you are going to do over the families—families very similar to those of your owner-drivers. I do not know whether it is worth it. You can do something really worth while here by going in to protect some of these people.

So I am going to move an amendment to the Petroleum Retail Legislation Repeal Bill. I do not know how it will go. The amendment will talk about basically putting in some sorts of controls, getting 25 per cent of the market and keeping it aside for the small
business operator, for the mum and dad operator. That will give them an ability to breathe, an ability to live. That will not allow them to go down this path where they are going, where they have to be driven into the ground and have every inch of commercial blood squeezed out of them by the four major oil companies and the major retailers. It will say that we will allow a section of the market for these people to survive in. We will say to them that Australia is a market that you can participate in, that we in Australia will protect your fundamental right to go into business—your fundamental right to exist in Australia in a manner that goes beyond just working for one of these companies—and that you can actually own and have further control over your own destiny, because that is the philosophical issue here.

Sitting suspended from 6.30 pm to 7.30 pm

Senator JOYCE—One of the other issues that we have been talking about in respect of the Petroleum Retail Legislation Repeal Bill is the so-called transparency of the terminal gate price. Unfortunately, I do not believe it is going to be transparent. What we would no doubt have would be a documented price. If you were mad enough, you could buy fuel at that price, but it would not be the price that everybody else would be getting it at and it certainly would not be transparent.

Transparency will be guided by commercial-in-confidence matters. You can bet your life that if it is transparent—if it is on the internet, if everybody can see it—it is not the price that it is being purchased at. That is one thing I can assure you of, yet tonight we hear both sides of the chamber talking about how good this transparency factor is going to be. I wish it were truly transparent. I wish we had an ombudsman to monitor it and tell people what the actual margin is that they are getting. We in this chamber need to work towards getting greater transparency because greater transparency will provide fairness and keep those independents in the market.

We have talked about independents: we have talked about why they are good for keeping the price down—because they promote competition—and we have talked about how independents are fundamentally a good reflection of a freedom in Australian society, the freedom to go and buy produce and make a profit out of it. Hopefully all of us on the conservative side of the chamber believe in the freedom to go into business. It is a part of what we are.

We have heard Senator Sterle talking about how he was an owner-driver. He talked about that with some gusto as if he believed in it—and I believe he does. Obviously, his freedom was to be in business and to shape his own destiny. That is one of the reasons why we support independents, whether they are in the fuel industry or whether they are in the retail industry. Whatever industry it is, the freedom to go into business should be manifest in what being an Australian is and be part of what we are ever-vigilant about protecting.

There is another good thing about independents. We believe—Senator Sterle believes and, having heard Senator McGauran, I know he believes it; everybody seems to be in raging agreement—in biorenewable fuels. We have heard from Mr Beattie that he is going to bring them in in Queensland. It sounds like the Labor Party might be getting close to talking about a mandate—great day when that happens; let us hope. We hear that everybody is in raging agreement that they all believe in biorenewable fuels. The fact is that the best mechanism for getting biorenewables out into the market is the independents. You get no better reflection of that than in this town—a town of 320,000 people and our nation’s capital—where, of the four
fuel stations that are selling the E10 ethanol, three of them are independent and one of them is a major. That in itself goes to show you yet another relevant factor as to why we need independents in the market.

Why would the independents want to sell E10? I am going to hazard a guess here: because it gives them the competitive advantage that they know they cannot possibly get it at the terminal gate price. With the passage of this legislation without protection for independents, we are going to have the independents having as their supplier an unencumbered major competitor and, given the way that markets work, that will bring about the demise of the independents. That is crazy. Imagine your supplier, the person who supplies you with the product, being also your major competitor—and there is no control whatsoever on how you deal with them, because, since the Boral case, section 46 laws are lacking; they do need to be strengthened. This is why we need a section of the market that is specifically quarantined for independents, and we should not be ashamed to say we are manipulating the market to protect a basic freedom of the Australian people: the freedom to be in business. So that is going to be what we have to deal with.

This amendment will be moved in such a way that we protect independents to promote biorenewable fuels and we protect that manifest absolute freedom to be in business. We protect independents to keep competition in the market so we have price leaders and price discounting. That is one of the reasons why this bill in its current form—unamended—is lacking.

I have seen some other amendments. There is an amendment that was bandied around by Senator Fielding. The intent was good but it talked about no major having more than 25 per cent of the market. Unfortunately, four 25 per cents equal 100 per cent, which means that they would have the whole market, and if you include Coles and Woolworths that is 150 per cent of the market. I applaud his attention to it, but we need to go a bit further than that because we are not actually protecting independents; we are still leaving them out on a limb.

What this amendment does is say: ‘Let us look at this in another way; let us look at 25 per cent of the fuel being quarantined for those who have been determined to be independents.’ What is an independent? I cannot name everyone that it is but I can tell you who it is not. It is not Caltex, it is not BP, it is not Mobil, it is not Shell, it is not Coles and it is not Woolworths. That is who it is not.

That 25 per cent of the market should be quarantined for those people who are not in that group to go out and still have a corner of the market to participate in. The day that we lose independents is the day that we have an oligopolical relationship in the fuel market. When you attain a position of strength, you exploit it and the best way to commercially exploit your position is to put up prices; in fact, it is what you have a duty to your shareholders to do. When you get into that position, you exploit it by putting up prices—and I tell you what: four oil majors and two major retailers are obviously exploiting the price of fuel.

I will leave you with one final thing. The price of diesel in Iran at the moment, with all its problems—I am not suggesting that we go there; this is just to give you an idea of the margin in this product—is about 3c a litre. So the difference between 3c a litre and what we are paying for it is either government taxes, production costs or profit. I think there is a lot more to it than the terminal gate
price. I suggest that a vast amount of the profits are made offshore and do not see their way into our country. If we lose the mechanism of the independence to protect our position then, as a nation, we will lose in the long run.

Senator CAROL BROWN (Tasmania) (7.37 pm)—I rise to contribute to the debate on the Petroleum Retail Legislation Repeal Bill 2006. I do so with petrol prices soaring and Australian families battling to pay their petrol bills. Australians are more concerned than ever about record high petrol prices as we have seen global oil prices triple over the past three years. Reform of the petrol retail industry, including the repeal of the two acts dealt with in this bill, has never been more important.

Last year higher petrol prices meant Australians spent approximately $2.3 billion extra on petrol. To further demonstrate this point, I draw the Senate’s attention to an article published on 9 August in the Examiner newspaper in my home state of Tasmania which detailed the cost of living for families. Using Bureau of Statistics data, the article recreated an average family to illustrate family spending and pressures on the household budget. It said that an average family is made up of two parents and two children, aged nine and 12, has a combined take-home salary of $3,828 a month and is paying off a loan on an average family car. After meeting their mortgage expenses and paying for food, fuel, insurance and education, there is little money left over for this average family to spend on life’s luxuries. The article referred to, amongst other things, the impact of yet another interest rates rise and rising petrol prices. It said:

The biggest shock to families has been the rising price of petrol. The price of standard unleaded petrol has jumped from $1.18 to $1.45 in just a year, adding $59 a month to the budget.

This represents a massive change of 22.6 per cent in the household petrol budget from August 2005 to August 2006. This is on top of the average Tasmanian family paying at least $176 more a month for goods and services than they were paying in August last year. Tasmanians are paying 4.1 per cent more at the checkout, 5.8 per cent more on education costs and up to 5.8 per cent more on health costs, and the price of standard unleaded petrol has jumped from $1.18 to $1.45 in less than a year. These figures do not take into account the cost of child care—the latest available figures show that high-quality child care costs $260 a week in Tasmania—nor the impact on family-work balance of the government’s extreme Work Choices legislation.

I support Senator O’Brien’s comment that it is most worrying that the Howard-Costello government’s answer to everything, as reflected in the recent budget, is simply to spend, spend, spend. Unfortunately for average Tasmanians they are now forced to spend more on interest rate hikes, petrol and groceries. It has become blatantly obvious that the government has only two policies: sell and spend. The government wants to sell Telstra and Medibank Private, regardless of the cost to the community, and to spend its way out of trouble using taxpayers’ money.

The Petroleum Retail Legislation Repeal Bill 2006 repeals the outdated Petroleum Retail Marketing Franchise Act 1980 and the Petroleum Retail Sites Act 1980. These acts cover only part of the petrol retail industry; well over 50 per cent of the industry, by volume of sales, is not covered, including the supermarket chains Coles and Woolworths. The acts discriminate between large and small business, and the rules are inconsistent and unfair. More than 50 per cent of the industry, by volume, is not regulated at all. Petrol retail reform is a good step forward to give consumers more confidence, but reform, we also accept, has been a long time coming.
As has been stated by my colleagues, petrol reform has been on the Howard government’s policy agenda since 1996. In 1998 the opposition appropriately said that it would support petrol reform as long as the Oilcode was agreed to, but it has taken this government another eight years to get to that point. The Oilcode, which will be introduced as a mandatory industry code under section 51AE of the Trade Practices Act 1974, will finally and appropriately bring the industry into a common regulatory regime with better protections for market participants and consumers. The Oilcode will improve the protections available to commissioned agents and independent operators, who currently do not have the protections available to franchisees. Both franchisees and commissioned agents will also appropriately have access to a low-cost dispute resolution system for the first time.

I think we have to accept that there is no longer a capacity for short-term fixes. We need a national transport fuel policy that guarantees supplies for the long term and gives Australia options to deal with global fuel supply and price emergencies. That is the debate in Europe, that is the debate in North America, that is the debate in Asia; but unfortunately it is not the debate the Prime Minister wants in Australia, because it requires tough decisions and leadership.

Labor’s blueprint will provide a leading role in emerging energy sectors to boost our export performance and take advantage of opportunities in world markets. Labor wants to quash this threat of reliance and make Australia more self-sufficient in developing fuels that will become cheaper in the future. In October last year Kim Beazley launched Labor’s blueprint ‘Developing the Australian transport fuel industry’. I would like to quote from Kim Beazley’s address at the launch of the blueprint. He said:

If Australia is to grow, to prosper and be secure—we must be able to stand on our own two feet in the world—whether that be militarily, in counter terrorism, in educating our people, in providing decent health care, decent infrastructure or in keeping our economy strong.

… … …

My aim, the aim of the Australian Labor Party is to develop a diversified Australian fuel industry. A diversified Australian fuel industry making Australia a more self sufficient country.

We must increase the use of Australian transport fuels and reduce our reliance on foreign oil. We must develop and use those fuels that will become cheaper in the future. More fuel-more types of fuel. Cleaner fuels—cheaper fuels—Australian fuels.

We need national leadership to develop:

• existing alternatives like liquid petroleum gas, ethanol and
• emerging alternatives such as compressed natural gas, liquid gas and stored electricity; and
• future fuels, such as hydrogen.

We also need to develop the technologies to make it happen. We do this because our transport fuel markets need a fresh blast of competition.

We must make Australia less vulnerable to external shocks.

We must make Australia less reliant on the foreign oil affecting our trade deficit and foreign debt.

We must play a leading role in emerging energy sectors to boost our export performance and take advantage of opportunities in world markets. We must invest in preserving our environment by diversifying our fuel base beyond petrol to biofuels and gas and hydrogen.

I am pleased to support the bill, which repeals, as I have said, two outdated pieces of legislation. I endorse the Labor amendments that seek to, and I echo the words of my colleagues in the House, Mr Martin Ferguson and Mr Fitzgibbon: (1) strengthen the
ACCC’s powers to investigate petrol prices by removing the requirement that the ACCC needs the Treasurer’s consent; (2) strengthen the Trade Practices Act to provide greater scope for dealing with abuse of market power; (3) find more oil and use more gas in Australia by re-examining the depreciation regime for gas production infrastructure, allowing the selective use of flow-through share schemes for smaller operators, and conduct a feasibility study into converting gas into clean diesel in Australia; and (4) protect and promote the growth of ethanol, biodiesel, LPG and CNG by a 2009 review of the government’s plans to levy an excise on these fuels. The review will consider whether the excise should be deferred. I call on government senators to support Australian families and support Labor’s amendments aimed at strengthening the Trades Practices Act to protect against the abuse of market power and to address the rising cost of petrol. I commend the amendments to the Senate.

Senator HUTCHINS (New South Wales) (7.47 pm)—Thank you, Mr Acting Deputy President, for giving me the opportunity this evening to speak on the Petroleum Retail Legislation Repeal Bill 2006 which has now seen the light of day. This piece of legislation is a bit of a catch-up, as has been outlined not only in the House of Representatives but also in the Senate this afternoon by opposition and other non-government speakers. The issue dealt with in the legislation is how to approach the misuse of market power and get compliance. It has taken a long time for this piece of legislation to get to the parliament. This issue was raised some years ago and it has taken—as my colleagues both in the House of Representatives and here have outlined—a long time for this legislation to get here. It seems that the government has only just discovered that there might be a misuse of market power not only by the oil companies but also by the major retailers and the suppliers.

When you and I were growing up, Mr Acting Deputy President Marshall, there were seven oil companies which used to retail in this country. I was trying to remember the other three as I got to my feet. They were: Esso, Ampol and Golden Fleece. Together they used to make up the ‘seven deadly sisters’ that used to manipulate the petroleum and oil market in this country. Now we are down to four and both Coles and Woolworths are using their market share to manipulate and control the market. If people do not think—when they see that 4c a litre discount when they drive into Caltex or Shell—that Coles and Woolies have not in some way or another made them pay that difference in another area while they have been shopping there then they are a bit foolish. Other speakers have questioned the continued relevance of what the government is putting forward here this evening. Nevertheless, it does recognise that there has been a change in the nature of retail, the marketing and the supply of this vital energy source.

I take note of Senator O’Brien’s comments this afternoon and his foreshadowed amendments. It seems to me that there are few parties in this parliament that have recognised that there is a looming crisis and that we need to do something about it. I welcome the fact that the rural and regional references committee gave an interim report in which it in essence begged that we start preparing for our falling and failing oil suppliers. The government has not done that. If you observed the government, particularly in the passage of what has been proposed in this bill, you would see that the government’s inactivity and inertia seeps through the ranks. It seems to be a case of ‘it’ll be alright mate; it’ll be alright Jack’—a case that these problems are not here to be addressed. It is almost a case of ‘Let them eat cake.’ That is what it seems
like to me. There is no outline or plan to deal with the possibility that within three years we will be paying $2 a litre for fuel.

What are we going to do then? Are we going to continue to pay the price for 10 years of neglect by the Howard government? What are we going to do when it appears that our energy supplies will be the whims and fancies of undemocratic regimes in either Africa or the Middle East? How is the government proposing to guarantee our oil supplies and our standard of living for the future? What are the initiatives of the government in this field? Clearly, I cannot see any. Maybe government speakers or the minister, when speaking in reply, may outline some. But it appears to me, and to a growing number of Australians, that there is an inertia amongst the government, a lack of attention to this, and that this inactivity will make us pay in the future, particularly as we start to pay $2 a litre for fuel. That is what potentially could happen within the next few years. As we pay more to fill up our vehicles, we will reduce our lifestyle and that will place enormous pressure on the home. I am sure that the government does not particularly wish to see that—nor do we—but there is no answer.

For 10 years now the government has been in power. It is no longer going to be relevant for ministers or backbench government MPs to get up and say that under the Keating-Hawke governments this, that or the other thing happened. At least in the Hawke and Keating governments there was initiative for reform. Some of it was painful for not only the government but the Labor Party itself. Nevertheless, over those 13 years they did grasp the nettle and did act in accordance with what they thought was in the best long-term interests of this country. But, in this particular area, there is no evidence that that is occurring. In fact, the consequences of this lack of initiative by the government are these: we have labour shortages, we have an erosion of our skills base, our infrastructure is choking and we have inflationary pressures—all as a result of a lack of initiative by the Commonwealth government under John Howard.

What has been the government’s answer to this looming energy crisis? Only recently the Prime Minister made an energy statement in which the emphasis was on LPG. One of the problems, as outlined by previous speakers, is that, for a start, not many places are available to convert vehicles to LPG or repair those vehicles. In fact, there are hardly any places in regional or rural Australia—and it is good to see some National Party senators in here this evening who may be able to reply to that.

As I said, there are no outlets. In fact, there is not a skilled workforce available out there, particularly in regional and rural Australia, for these conversions or the repair to those vehicles to occur. It has been highlighted that, in some cases, if one wishes to take up the option that has been provided by the government, one may wait up to two years for this to occur. This initiative was in response to the growing fuel crisis. One would have thought that the spin doctors, who are so well paid—there are so many of them—within the Howard government would have checked what may have been the situation before they put the Prime Minister in the spot he has been put in. But that did not occur. The fanfare was announced and, of course, once the details were exposed to the Australian community, it was seen to be the farce that it was and is.

Over the past few years Labor have put forward alternatives to the current fuel situation. As outlined in our amendments, we do not want to have our country held ransom to
these undemocratic regimes in Africa or the Middle East. We do not want to be blackmailed by people who do not share the same values as us. In the 1993 budget, Paul Keating introduced 18c a litre production assistance for ethanol. John Howard, in his government’s first budget, withdrew that assistance. Since that time, the Howard government has changed the excise regime for LPG and other biofuels at least on three occasions. In May 2002, Peter Costello said that applying an excise on ethanol and LPG was a bad idea, and he did just that in the 2003 budget. In that period, between May and December of that year, it left the LPG industry in turmoil.

Our amendments offer a road map: they offer a vision of what needs to be done. That is not outlined either in the legislation to fix up a piecemeal bit of operation that is now before us or in any of the Prime Minister’s statements on our energy needs in the future. We in the Labor Party know the urgency of this matter. We know that it needs to be addressed, and we cannot put it under the carpet and hope that it will be dealt with by the next government. We know that we have to come up with solutions so that we can prevent blackmail of our country in the future. That is what is in our amendments.

If we are deprived of energy security in the future, as Martin Ferguson, our shadow minister, has said, it could be the commencement of a Cold War where, in a figu- rative sense, we are denied or deprived of food and fresh water or a safe and comfortable hearth, and where the certainty for trade and commerce will be removed because of the growing difficulties within the international situation. This will be the commencement of that difficulty. It will be a threat to our lifestyle and our standard of living. That is what is at stake, and we are calling on the Commonwealth to be far more broad and far reaching in its grasp of what the future energy needs of this country are. That is why, as I said, the government needs to understand this looming crisis. It needs to address it—and it can be addressed, in a small way, by the support of our amendments that are before the chair.

Senator HOGG (Queensland) (8.00 pm)—I must declare at the outset of my participation in the debate this evening a vested interest in the outcome of the Petroleum Retail Legislation Repeal Bill 2006 and related matters. That is brought on by the fact that, sitting in front of my house, there are generally four vehicles, one of which is mine and the other three of which are driven by my adult children. The price of petrol, the consumption of petrol and the alternative fuels that might be available to them, not only now but in the longer term, are therefore very much of interest to me.

But, having said that, I am genuinely concerned for people of lower and fixed incomes who have access to motor vehicles who need them for their day-to-day lives, to either get themselves to work or for basic family needs, and find themselves challenged by the price of fuel, fluctuating almost on an ad hoc basis, in the various parts of Australia. Strangely enough it seems to be that, around weekends, the price magically jumps. No-one seems to know why; no-one can give a logical explanation. Sometimes we have not just daily but hourly fluctuations in petrol prices. That comes as a grave concern indeed. And last but not least is the old public holiday trick.

So, whilst we see in this instance a particular bill being repealed, what might follow in the wake of this bill comes as a grave concern. I know there is talk of oilcodes and other things such as that. But the legislation that is being repealed has been circumvented. The information I have says it has been eroded over time through both High Court
and Federal Court decisions. Labor therefore supports the repeal of this legislation. But, as Mr Fitzgibbon said in speaking to this bill in the other place, that was contingent upon changes being made to the Trade Practices Act, particularly in respect of section 46, to ensure that there was no use of the market power that clearly rests with the fuel distributors in this country.

It was only a couple of years ago that I had the pleasure of being briefed by Exxon in the United States. My recollection of the briefing I had from them is that motor vehicle use and petrol use in the United States would continue at an exponential rate. It seems to me that, in spite of the changes in petrol prices in this country, there is no slackening off of the use of cars or fuel. One only has to go on the roads in any of our major cities, as I do from time to time when I visit them. The use of the market power of the oil companies is therefore of great concern. Also of concern, as my colleague Senator Hutchins said, is access to fuel supplies themselves and the alternatives to petrol or petrol substitutes that might be available over a period of time.

The minister, I understand, moved a regulation that undeclares the major oil companies under the existing legislation—which, of course, therefore renders the current legislation fairly useless. It covers no-one in particular and no-one in general. So the legislation needs to be sensibly repealed. Central to this, though, is not just the repeal of this act but the need, we on the Labor side claim, for changes to the Trade Practices Act such that an attempt can be made to give proper protection to motorists at large.

This was spelt out by the Labor senators in their additional remarks to the report of the Senate Economics Legislation Committee which looked into the details of this piece of legislation. That report was tabled in May 2006. I want to quote from the ‘Additional remarks from Labor Senators’ because I think that they are clearly pertinent in this matter. They will, of course, be known to those who were involved in the inquiry that was conducted by the economics committee. They acknowledged that the Petroleum Retail Marketing Sites Act and the Petroleum Retail Marketing Franchise Act 1980 and associated regulations represented, as they said:

... an outdated model for regulation of the petrol retail sector.

There is no doubt that we have conceded that. That is not in question. But they go on to say, in the second paragraph of those remarks:

Labor Senators however, are of the view that the principle issue in encouraging competition in this sector, and indeed across all markets, is strengthening provisions in the Trade Practices Act against misuse of market power.

And that, of course, is the real nub; that is the real key. They go on to say:

It is well known that section 46 of the Trade Practices Act has been rendered inefficient and ineffective because of a number of Federal Court and High Court cases.

They go on then to give some examples. At the conclusion of that paragraph, they say:

The ACCC has effectively given up taking cases under section 46 of the Trade Practices Act because it knows it has now been rendered ineffective.

Not surprisingly, their conclusion arising out of that is:

Therefore, Labor Senators believe that the most efficient market outcome will not be achieved unless s46 reforms are implemented concurrently. So, after acknowledging that it is appropriate for this legislation to be repealed, the Labor senators then clearly outlined a process with
a series of recommendations to strengthen section 46, which would see that protections were put in place against the misuse of market power by oil companies. I think that is very important indeed.

At the outset of my speech, I declared an interest. I said that four cars sit on the front driveway of my home—and a lot of people around here probably cannot relate to that. As I said, three of those cars I never get to drive and are driven in rotation. Of course, every time the price of petrol spikes or changes, my children invariably let me know.

Senator Minchin—Yes, it is like that.

Senator HOGG—I hear that Senator Minchin suffers from the same indignation as me. However, clearly, this is of real concern for people out there and it must be addressed. We as an opposition have put forward, in a sensible manner, the issue that we see as the key in this: the misuse of market power by the wholesale and retail sides of the petrol industry. However, we will not be satisfied with that alone.

Labor has dealt with this bill in a fairly positive manner by putting up a second reading amendment that sets out a constructive approach that we believe needs to be adopted post the repeal of this legislation. I will refer just briefly, therefore, to the second reading amendment. I do not know how many of my colleagues have referred to this amendment already, but it seems to me that some of its points are quite logical and sensible indeed. It calls on the government:

... increase market penetration of ethanol and biodiesel, LPG and CNG ...

and we all know the role they will play in the future. The amendment also states:

(b) secure new investment in biofuel, LPG and CNG production and supply infrastructure in Australia; and

(c) secure investment in new alternative transport fuel industries in Australia, including gas and coal to liquids.

So it is not a carping second reading amendment; it is an amendment that brings a positive sense to this debate, because everyone realises just how important this debate is to the future of Australia and, of course, to Australians. The second part of the second reading amendment calls on the government to:

... review, in 2009, the proposal to introduce excise on ethanol and biodiesel, LPG and CNG in 2011—

So it calls for a review and to—

... consider whether or not there is a case for delaying the introduction of excise, depending on the progress made ...

The second reading amendment then lists a number of important areas, which include:

(a) in increasing market penetration of biofuels, LPG and CNG;

(b) in securing new investment in biofuel, LPG and CNG production and supply infrastructure in Australia; and

(c) towards achieving the 350 million litre biofuels target in 2010.

So, again, that is not an unreasonable expectation to put down and it can be met reasonably by government.

However, the third part of the amendment does have a bit of a sting in its tail. It rightly criticises the government for its tardiness in moving on petrol retail reform—and I think that would be supported by the vast majority of Australians. The government has been very tardy. The government has not re-
responded in a positive way and its tardiness has been shown by the response that has been received right across Australia on this issue.

That particular paragraph in the second reading amendment then criticises the government for:

... bypassing due parliamentary process in introducing a regulation to “undeclare” companies under the Sites Act ...

There is no reason why it could not have been done in other ways, but again that seems to me to be valid commentary on the way that this government from time to time chooses to do its business. It would have been much better to do it in other ways. The next point in criticism of the government is for:

... failing to introduce amendments to the TPA to implement the 2003 Dawson and 2004 Senate recommendations for reform ...

Again, this is very much warranted, because the government has to remember that the broad community out there are very price sensitive to what happens with petrol.

As I said in my earlier statement, the buying public can be faced with not just a daily change but an hourly change—and not just an hourly swing of 1c or 2c. I have driven by the same station not far from my office in Brisbane and I have seen swings in the order of 10c to 15c on some occasions. People wonder why the public at large get upset, but it is very easy to understand. If there were some commensurate changes to the Trade Practices Act, the public may start to get some confidence that there is a Trade Practices Act which has teeth. This is not going to the issue of price fixing—no-one is asking that—because that is going to the issue of justifying the behaviour of these oil companies in certain circumstances.

One cannot fail to remember the occasion when the petrol price spiked because it was a public holiday in the eastern states but in Western Australia, where there was no public holiday on the Monday, for some reason absolutely beyond anyone’s imagination the price did not spike at all. One can understand why there is no lack of cynicism out there amongst the public. Some reference to clear guidelines under the Trade Practices Act would be helpful indeed.

The third part of Senator O’Brien’s amendment criticises the government for ‘failing to act to reduce Australia’s dependence on foreign oil and improve its transport fuel security’. Again, our dependence on foreign fuel is well and truly on the public record, as has been canvassed by a number of my colleagues here. That is the sting in the tail of the second reading amendment, if one wants to call it such, but it is delivered in a positive vein. This government needs to wake up to the fact that there is a need to look at this issue critically. The repeal of this act of itself is insufficient. There is a need to make changes, as suggested by my colleagues, to section 46 of the Trade Practices Act. This would build some confidence out there in the public that in Australia we are not going to see yoyo oil prices reflected in petrol prices on an ongoing basis.

On a recent visit to the United States I was told by a number of politicians that the pressure point in the United States was going to $US3 a gallon. If $US3 a gallon is the pressure point for motorists in the United States becoming extremely irate, we have well and truly broken through that barrier given that that equates roughly to about 75c a litre. It depends where you buy here in Australia—I saw $1.14 on the weekend in my state but it has been as high as $1.35 and $1.40, and that is per litre. As Senator Hutchins was men-
to the timely passage of this legislation.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—The question is that the amendment moved by Senator Milne on behalf of the Australian Greens to the second reading amendment moved by Senator O’Brien on behalf of the opposition be agreed to.

Question negatived.

The ACTING DEPUTY PRESIDENT—The question now is that the second reading amendment moved by Senator O’Brien on behalf of the opposition be agreed to.

Question negatived.

Original question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is that the bill stand as printed.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (8.22 pm)—I missed putting my second reading amendment. Were there any other amendments put?

The TEMPORARY CHAIRMAN—There was an amendment to an amendment which was defeated and another amendment which was also defeated. As we are now in the committee stage, you will have an opportunity to move an appropriate amendment. We are looking at Democrat amendment (1).

Senator ALLISON—This amendment was put forward by my colleague Senator Murray, and I invite him to speak to it.

Senator MURRAY (Western Australia) (8.24 pm)—I move Democrat amendment on sheet 5038 revised:

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due—of great benefit both to the industry itself and to consumers of petroleum products. I thank everybody involved and look forward to the timely passage of this legislation.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Can I conclude this second reading debate by thanking all those involved. While much of what was said did not have a lot to do with the Petroleum Retail Legislation Repeal Bill 2006, we have noted with interest the remarks made on all sides. I believe there is majority support for the intent of the government in relation to this legislation. I note that we have been talking about this package of reform going back to when I was industry minister more than five years ago, so I am pleased to see we are at a point now where we can hopefully proceed to bring about this much-needed reform of petrol retailing in this country. This is very important legislation—timely and long overdue—of great benefit both to the industry itself and to consumers of petroleum products. I thank everybody involved and look forward to the timely passage of this legislation.

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There are other parts of the second reading amendment moved by Senator O’Brien that, again, are positive statements. Point (4):

Calls on the Government to immediately conduct a feasibility study into a gas to liquids fuels plant in Australia, including—

and he again lists positive things—

(a) consideration of Petroleum Resources Rent tax incentives for developers of gas fields which provide resources for gas to liquid fuels projects—

and so on. Again, the positive element comes out in the second reading amendment of my colleague. In conclusion, I believe that the bill—as my colleagues have said—is rightly being supported. However, there needs to be a counterbalancing protection for the consumers in our community because many of them can least afford the charges that are coming about at the petrol pump in this day and age.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (8.20 pm)—Can I conclude this second reading debate by thanking all those involved. While much of what was said did not have a lot to do with the Petroleum Retail Legislation Repeal Bill 2006, we have noted with interest the remarks made on all sides. I believe there is majority support for the intent of the government in relation to this legislation. I note that we have been talking about this package of reform going back to when I was industry minister more than five years ago, so I am pleased to see we are at a point now where we can hopefully proceed to bring about this much-needed reform of petrol retailing in this country. This is very important legislation—timely and long overdue—of great benefit both to the industry itself and to consumers of petroleum products. I thank everybody involved and look forward to the timely passage of this legislation.

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Original question agreed to.

Bill read a second time.

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Bill—by leave—taken as a whole.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is that the bill stand as printed.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (8.22 pm)—I missed putting my second reading amendment. Were there any other amendments put?

The TEMPORARY CHAIRMAN—There was an amendment to an amendment which was defeated and another amendment which was also defeated. As we are now in the committee stage, you will have an opportunity to move an appropriate amendment. We are looking at Democrat amendment (1).

Senator ALLISON—This amendment was put forward by my colleague Senator Murray, and I invite him to speak to it.

Senator MURRAY (Western Australia) (8.24 pm)—I move Democrat amendment on sheet 5038 revised:
(1) Page 3 (after line 9), after Schedule 1, insert:

Schedule 1A—Amendments to deal with abuse of market power, unconscionable conduct and price monitoring in relation to petroleum marketing and to amend the Oilcode to provide for review

Trade Practices Act 1974

1 Subsection 46(1)

After “power” (second occurring), insert “, in that or any other market.”.

2 After subsection 46(1A)

Insert:

(1B) In determining for the purposes of this section whether a corporation has a substantial degree of power in a market, the Court will at least take into account the following principles:

(a) the threshold of ‘a substantial degree of power in a market’ is lower than the former threshold of substantial control; and

(b) the substantial degree of power in a market threshold does not require a corporation to have an absolute freedom from constraint, it is sufficient if the corporation is not constrained to a significant extent by competitors or suppliers; and

(c) more than one corporation can have a substantial degree of power in a market; and

(d) evidence of a corporation’s behaviour in the market is relevant to a determination of a substantial degree of power in a market.

3 After subsection 46(2)

Insert:

(2A) In determining for the purpose of this section whether a corporation has a substantial degree of power in a market, the Court may consider the corporation’s degree of power in a market to include any market power arising from any contracts, arrangements, understandings or covenants, whether formal or informal, which the corporation has entered into with other entities.

4 After subsection 46(3)

Insert:

(3A) In determining for the purposes of this section whether a corporation:

(a) has a substantial degree of power in a market; or

(b) has taken advantage of that power for the purpose described in paragraph (1)(a), (b) or (c);

the Court may have regard to the capacity of the corporation, relative to other corporations in that or any other market, to sell in that or any other market a good or service at a price below the cost to the corporation of producing or acquiring the good or supplying the service.

5 Before paragraph 51AC(3)(a)

Insert:

(aa) whether the supplier imposed or utilised contract terms allowing the unilateral variation of any contracts between the supplier and the business consumer; and

6 Before paragraph 51AC(4)(a)

Insert:

(aa) whether the acquirer imposed or utilised contract terms allowing the unilateral variation of any contract between the acquirer and the small business supplier; and

The contents of this amendment should have been moved as separate items, but the chamber will note that I have moved them as a batch. I have done so because I think the amendments to section 46 and 51 of the Trade Practices Act hang together on three grounds: firstly, they have been put before in this chamber in two other bills; secondly, they emerge from the Senate Economics References Committee report of March 2004.
entitled *The effectiveness of the Trade Practices Act 1974 in protecting small business*; and, thirdly, they represent those amendments either which the government have accepted in full or in part in their government response or which reflect the unanimous views of members, including coalition members, of the committee.

Before I go briefly through these items, I note that they reflect a view that Labor have supported. It is also a view that other non-government members as well as government members of this chamber have supported. The items in the amendment that I have moved in a block refer to those elements of section 46 that require improvement as a result of the various court cases which have diminished and weakened the effectiveness of section 46 and the ability of the ACCC to carry out its regulatory duties. To some extent, these are clarifying amendments, and, in other matters, they in fact enhance the law. For instance, the first item, ‘Subsection 46(1)’, states:

After “power” (second occurring), insert “, in that or any other market.”.

In the Rural Press case, the exercise of financial power in one market was not regarded as simultaneously being a matter that should be disadvantaged from having power in a market in which the action did not take place. The effect of that is that, where a corporation used market power in one market to engage in prescribed conduct in a second market, the court stated that misuse of market power in the second market was not a breach of the act. So the committee recommended that section 46 be amended to state that a corporation which has a substantial degree of power in a market shall not take advantage of that power in that or any other market for any prescribed purpose in relation to that or any other market.

This proposal was accepted by the government back in 2004. It is a proposal that has been discussed with the states, so the consultation routine has been undertaken. It is a proposal which is the development of a shifting view of how a market should be assessed. Members of the chamber who are familiar with the Trade Practices Act will recall that at one time a market was considered national. As a result of an inquiry by a joint select committee, a recommendation was made that markets can be other than national.

I am spending some time in this first instance to indicate that we are all in blazing agreement—except that the government, for some extraordinary reason, will not amend the law in a way which would assist competition in Australia in a way which has been unanimously agreed to by everyone. So I think it is my job to keep prodding the government in this area. What I have found extraordinary is that, for some human reason that I cannot fathom—because it does not seem to have any logic attached to it; it seems to be to do with personality, character or some trait that I cannot identify with when you are dealing with matters like this in a professional manner—the government minister responsible for these matters will not bring them forward. Why are we concerned about it? We are concerned about it because we do not think you can loosen regulation in one sector without strengthening the Trade Practices Act. I have heard that same message delivered by numerous Labor speakers. I have heard that same message delivered by Senator Fielding. I have heard that same message delivered by coalition senators—for example, Senator Joyce. I have heard that same message delivered by the Greens senators. So it strikes me as extraordinary.

The second item in that block that I have moved—item 1 on the two pages of 5038 revised—again comes back directly to two
recommendations which were put in the Senate Economic References Committee report *The effectiveness of the Trade Practices Act 1974 in protecting small business.* In that report they recommended that section 46 should be enhanced:

The Committee considers that the amendments suggested by the ACCC are consistent with the intention of Parliament in 1986, and that their inclusion in the Act would clarify the intentions of Parliament.

Recommendation 1 says:

The Committee recommends that the Act be amended to state that the threshold of ‘a substantial degree of power in a market’ is lower than the former threshold of substantial control; and to include a declaratory provision outlining matters to be considered by the courts for the purposes of determining whether a company has a substantial degree of power in a market. Those matters should be based upon the suggestions outlined by the ACCC in paragraph 2.16 of this report.

Again I find everyone in blazing agreement that this should occur; however, we are shov- ing it at the government again because they wilfully will not assist small business by strengthening the Trade Practices Act, which is the other side of the coin to loosening up market regulation with respect to the sites act and the franchise act. Section 46(3) follows on in that same theme.

The different approach outlined in my block of amendments is with respect to paragraphs 51AC(3) and 51AC(4). That section attempts to deal with the issues of the unilateral variation of contracts. Section 51AC(3) and 51AC(4) are in the ‘unconscionable conduct’ section. The Senate committee recommended that subsections 51AC(3) and 51AC(4) of the act be amended to include whether the supplier or acquirer imposed or utilised contract terms allowing the unilateral variation of any contract between the supplier and business consumer or the small business supplier and acquirer. Again it was unanimous. It was agreed to by the government and repeated unanimously in another committee’s recommendation—in the Rural and Regional Affairs References Committee’s report *Operation of the wine-making industry*—because the unilateral variation of contracts is an issue which, if adversely expressed, detrimentally affects anyone in a contractual relationship. These two amendments seek to carry out the effective rendition of something which was universally agreed to be desirable by the people who consider policy in the Senate and which was accepted by the government.

Once again, it is not an issue that the government is prepared to bring forward cognately, simultaneously or near the time that this legislation, which gives greater power to large businesses, is being considered. We keep saying to you, Minister: we Democrats—and in this respect I think I can speak for all the non-government parties as well as many government senators—support the continuing evolution of a free, fair and flexible marketplace in Australia, but you have to accompany it with the appropriate mechanisms to ensure that people who are being hurt, or who could be hurt, by deficiencies in the law are properly protected and that a proper safety net applies.

In this brief discussion I have not sought to outline that block of changes in detail or in great technical or legal motivation, because that is available to you from the various reports. I put them in this block because I expect, yet again, the government to turn these down contrary to the views of its own backbenchers, contrary to the expressed views of the official government response to the reports of the Senate, contrary to the needs, desires and wishes of small business and contrary to good policy.
Senator MINCHIN (South Australia—Minister for Finance and Administration) (8.37 pm)—For the record may I state what I think most senators understand clearly to be the government’s position, and that is that the amendments that the Democrats have moved—and I think others have similar proposals on the table—really have nothing to do with the legislation before us. We are discussing the Petroleum Retail Legislation Repeal Bill 2006, not the Trade Practices Act per se. It is a bill to repeal two antiquated, out-of-date, specific pieces of legislation that were introduced many years ago to deal with petrol retailing in particular. They have been shown by industry practice to be totally out of date and not to deal with the realities of this particular industry. The amendments that are being proposed are quite inappropriate with regard to the bill before us. The government’s position is clear. The government’s proposed amendments to sections 46 and 51AC of the Trade Practices Act are well known. They have been clearly stated publicly by the Treasurer on many occasions, as has the Treasurer’s position with regard to their progress, and that is that once the Dawson package of amendments has been passed by this parliament then the government will move to amend sections 46 and 51AC in the fashion outlined publicly, which I think meets many of the desires of the Democrats and others in this place.

Senator O’BRIEN (Tasmania) (8.39 pm)—The opposition finds itself in circumstances where the amendments moved by Senator Murray, except for part 7 of our amendments on sheet 5028, are identical—that is, we are proposing the same changes to subsections 46(1), 46(1A), 46(2) and 46(3) of the Trade Practices Act 1974 and to section 51AC, with the insertion of a new 51AC(3)(aa) and a new 51AC(4)(aa). An additional opposition amendment on sheet 5028 proposes to insert a new clause entitled ‘Directions by Parliament to monitor prices, costs and profits of an industry’. So we are obviously thinking in the same way.

Senator Murray—You’ve got the same source document.

Senator O’BRIEN—Either that or telepathic communication or drafting by the same person with very similar instructions.

Senator Murray—The Stephens committee.

Senator O’BRIEN—I am appreciative of the acknowledgement that Senator Stephens has done such good work, and I am sure she will appreciate it as well. The reason that we support the amendment by the Democrats to the extent that it goes is that previous approaches to control the power of major oil companies have involved specifying the number of retail sites oil companies can operate and Labor’s approach is to focus on reform to the Trade Practices Act instead.

In the context of the petrol market, the issue is to ensure that the ACCC has the power to ensure that oil companies are not abusing their market power. The petrol retail market is therefore an excellent candidate for these new pro small business reforms to the Trade Practices Act. These reforms have been stated since 2004 in the Senate report The effectiveness of the Trade Practices Act 1974 in protecting small business. Labor supports all of these recommendations.

We will be introducing our amendment on sheet 5028, with the additional item entitled ‘Directions by Parliament to monitor prices, costs and profits of an industry’, unless I am advised by the chair that we are unable to move it if the amendment before us is defeated. I am advised that that is not the case, so we will proceed to support this amendment and we will move our amendment, or those items that have not been carried—if the government changes its mind about these, of
course. We will be pursuing this matter in the way that Senator Murray has pursued it.

The government have agreed to bring forward a bill that includes a small set of these recommendations. This has been held up in the Senate due to an apparent linkage with other major Trade Practices Act amendments—the Dawson bill, which contained merger changes that were deleted from the bill in the Senate. The major changes relate to section 46, which constrains abuse of market power. They seek to toughen section 46 to allow the ACCC to crack down on the abuse of market power.

The amendment to subsection 46(1) to insert the words 'in that or any other market' has regard to the Rural Press decision which limits section 46 to the primary market not secondary markets. However, market power, in our view, can be exerted in secondary markets, and this amendment is necessary to ensure that this aspect of the Rural Press case is overturned—in other words, that this chamber expresses a view that the findings in the Rural Press case not apply and that the court have regard to taking advantage in more than a particular market with regard to subsection 46(1).

In relation to adding, after subsection 46(1A), the provisions which I think are best described as the key recommendation of the Senate committee report—and, in fact, amendments which the ACCC has asked for—we have regard to the key outcome of the Boral case, which effectively imposed the old, pre-1986 threshold for anticompetitive conduct: substantial control. This amendment ensures that the lower threshold intended to apply in the current law is preserved. It overrides this aspect of the Boral decision. In other words, by the passage of this amendment we are seeking to give effect to what was understood to be the intent of the law in the first place before that decision. It clarifies the meaning of 'take advantage' to ensure that interpretations applied in case law, and especially this in the Boral case, are overridden. The effect of these would be to ensure that an abuse of market power can occur if there is no strong evidence of purposeful intention. So we say that that is an important change that is necessary to this legislation.

Inserting a new subclause (2A) to section 46, in our view, clarifies the uncertainty that may exist after the Boral case in relation to coordinated market actions—that is, cooperating in a price war. It would ensure that undertakings to coordinate market activity can be evidence of an abuse of market power. Again, we say that this is necessary because of the interpretations of the courts. In our view, those interpretations would undermine the original intent of the legislation, and this amendment would restore it.

We regard inserting the new subclause (3A) in section 46 as a recoupment issue. The issue is whether or not predatory pricing—that is, forcing a player out of the market by price wars, such as is believed to have occurred with Compass Airlines—requires that price cutters’ losses need to be recouped. Labor’s amendment ensures that this is just a factor that the courts may have regard to. It is not an obligation, but it empowers the court to use its discretion to decide whether these factors can be considered in the interpretation of an action under these provisions.

The insertion of a new subclause 51AC(3)(aa) would seek to stop unilateral variations of contracts by one party, the more dominant market player, which would have the effect of driving up costs and enhancing the profits of one party. We think that that is an important variation to the law that should
take place. Similarly, the insertion of 51AC(4)(aa) would have the same effect.

To that point our amendments are identical, and I will deal with the proposed new section 95ZEA when dealing with the opposition’s amendment. We think it is important not that the Senate wait for as yet uncertain legislative prescriptions that might flow from whatever action the government is considering but that the Senate now has an opportunity, concurrent with dealing with the petroleum retail legislation, to remove barriers to the implementation of the competition intent, if I can put it that way, that the parliament had when the original trade practices legislation was passed and subsequently amended—but subsequently, of course, given a different effect or interpreted differently by the courts. In our view, that would have the effect of strengthening competition in the market and of ensuring that dominant players in the market have less opportunity to impose their presence in the market and to compete unfairly against smaller players.

This is a small business amendment. This is an amendment which, if the government really did support small business, it would easily assent to. From what the minister has said, it is not going to assent to this. We have to wonder what the motivation of this government is—of course, given a different effect or interpreted differently by the courts. That is the test that this government will have to pass considering its position on this legislation. We will support this amendment on the basis that it is identical to the majority of our amendment on sheet 5028. We think it ought to be carried. If it is not carried, we will continue to press our own amendment with that additional amendment about parliamentary monitoring powers, if I can put it that way. But we think it is important that this matter be tested, and we will be keen to see the position of all parties in relation to this amendment.

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

The committee divided. [8.55 pm]
(The Chairman—Senator JJ Hogg)

Ayes........... 33
N oes........... 33

Majority......... 0

AYES

Allison, L.F.
Bishop, T.M.
Carr, K.J.
Crossin, P.M.
Faulkner, J.P.
Forshaw, M.G.
Hurley, A.
Joyce, B.
Ludwig, J.W.
Marshall, G.
McLucas, J.E.
Moore, C.
O’Brien, K.W.K.
Ray, R.F.
Stephens, U.
Webber, R. *
Wortley, D.

Bartlett, A.J.J.
Brown, B.J.
Conroy, S.M.
Evans, C.V.
Fielding, S.
Hogg, J.J.
Hutchins, S.P.
Kirk, L.
Lundy, K.A.
McEwen, A.
Milne, C.
Murray, A.J.M.
Polley, H.
Siewert, R.
Stott Despoja, N.
Wong, P.

NOES

Adams, J.
Bernardi, C.
Brandis, G.H.
Campbell, I.G.
Colbeck, R.
Ellison, C.M.

Barnett, G.
Boswell, R.L.D.
Calvert, P.H.
Chapman, H.G.P.
Eggleston, A.
Ferguson, A.B.
Question negatived.

Senator O’BRIEN (Tasmania) (8.59 pm)—I formally move the amendment on sheet 5028 circulated in my name:

(1) Page 3 (after line 9), after Schedule 1, insert:

Schedule 1A—Amendments to deal with abuse of market power, unconscionable conduct and price monitoring in relation to petroleum marketing

Trade Practices Act 1974

1 Subsection 46(1)

After “power” (second occurring), insert “, in that or any other market,”.

2 After subsection 46(1A)

Insert:

(1B) In determining whether a corporation has a substantial degree of market power in a market, the Court must take into account the following principles:

(a) the threshold of ‘a substantial degree of power in a market’ is lower than the former threshold of substantial control; and

(b) the substantial degree of power in a market threshold does not require a corporation to have an absolute freedom from constraint— it is sufficient if the corporation is not constrained to a significant extent by competitors or suppliers; and

(c) more than one corporation can have a substantial degree of power in a market; and

(d) evidence of a corporation’s behaviour in the market is relevant to a determination of a substantial degree of power in a market.

3 After subsection 46(2)

Insert:

(2A) In determining for the purpose of this section whether a corporation has a substantial degree of power in a market, the Court may consider the corporation’s degree of power in a market to include any market power arising from any contracts, arrangements, understandings or covenants, whether formal or informal, which the corporation has entered into with other entities.

4 After subsection 46(3)

Insert:

(3A) In determining for the purposes of this section whether a corporation:

(a) has a substantial degree of power in a market; or

(b) has taken advantage of that power for a purpose described in paragraph (1)(a), (b) or (c);

the Court may have regard to the capacity of the corporation, relative to other corporations in that or any other market, to sell in that or any other market a good or service at a price below the cost to the corporation of producing or acquiring the good or supplying the service.

5 Before paragraph 51AC(3)(a)

Insert:

(aa) whether the supplier imposed or utilised a contract term allowing the unilateral variation of any contract
between the supplier and the business consumer; and

6 Before paragraph 51AC(4)(a)
Insert:

(aa) whether the acquirer imposed or utilised contract terms allowing the unilateral variation of any contract between the acquirer and the small business supplier; and

7 After section 95ZE
Insert:

95ZEA Directions by Parliament to monitor prices, costs and profits of an industry

(1) A House of the Parliament, a committee of a House, or a committee of both Houses of the Parliament may give the Commission a written direction:

(a) to monitor prices, costs and profits relating to the supply of goods or services by persons in a specified industry; and

(b) to provide to the Parliament a report on the monitoring at a specified time or at specified intervals within a specified period.

Commercial confidentiality

(2) The Commission must, in preparing such a report, have regard to the need for commercial confidentiality.

Public inspection

(3) The Commission must make copies of the report available for public inspection as soon as practicable after it provides Parliament with the report.

Frankly, we have heard all sorts of excuses from the current Treasurer about why he did not authorise the ACCC to conduct a proper investigation into the structure of petrol pricing in this country—all sorts of excuses but no action. This is a new amendment. It was not referred to in the Senate committee report that was referred to in relation to the previous amendment, which was indeed relevant to parts 1 to 6 of the amendment proposed by the opposition.

It is based on section 29(3) of the Trade Practices Act in that it allows either house or a committee of either house to give a direction to the ACCC to engage in formal price monitoring, something which the Treasurer could have done but has chosen not to in the entirety of his stint as Treasurer—so much for being the world’s greatest Treasurer! In an environment where we are seeing horrific petrol prices hurting the Australian public, the Treasurer has chosen to do nothing. Currently the ACCC engages only in informal price monitoring. It just looks at the published bowser—I should say ‘pump’ as bowser is actually a brand of an old pump—
prices. It is a sort of computer based or Google price monitoring where the ACCC gets computerised services from price-monitoring organisations and relies upon those.

Without an authorisation, a direction from the Treasurer, the ACCC does not have powers to require the oil companies to open up their books and to allow the ACCC to look behind the petrol prices to look at the components of the petrol prices, to look at the relationship of terminal gate pricing to the other factors: the margins in the industry, the prices at which the petrol is being supplied to the service stations, for example, and the variety of prices in that context, as the petrol might be being supplied in different sections of the market. It does not have the power to require the oil companies to open up their books, but this amendment will give the ACCC that power, a power which the ACCC could have if the Treasurer had agreed to formally give that price-monitoring authority under the legislation—that is, under section 29(3) of the legislation—to the ACCC. Why are we asking that it be referred to either house of the parliament or a committee of the parliament? It is because we think this is important. We think that the issue of the way that petrol is priced in this country and the effect that has on various communities and various businesses is important and that there should be power which is not controlled by the executive government—power within this or the other chamber or within the committees of either of these chambers—to require the production of that material.

I have already debated our earlier amendments. I do not propose to touch upon them again other than to say that we have just seen the government take a decision which flies in the face of their claimed affinity with the interests of small business. We have seen the government vote down, albeit by the narrowest of margins—that is, a tied vote—amendments which would have given the ACCC the powers that it has been asking for to deal with anticompetitive behaviour in the market: a deliberate action by the government and they stand condemned for that action. They ought to be ashamed of the action that they have taken in denying the ACCC the powers to deal with anticompetitive behaviour in the petrol market or indeed in any market. They have chosen not to support those amendments.

But we are giving them a second chance here. What we are giving the government is a chance to reflect on that decision and also to reflect on the fact that their Treasurer, supposedly the world’s greatest Treasurer, has failed for a decade to give the ACCC the power to investigate properly the pricing of petrol, the performance of the oil companies and the relationship between the various markets from the terminal gate on in the petrol industry and to report to the public, as well as to the parliament, so that they can understand what is going on. Here is a Treasurer that has been lying down on the job, ignoring the interests of Australians while pretending to care. We are giving the government a chance to show that they care by supporting these amendments.

If they do not, frankly, the charge which can justifiably be levelled against the government is that they are all talk but that, when it comes to action—when it actually comes to giving effect to legislative change which can have an impact on a market that is punishing many Australians—they are found wanting and run away from the task. The only conclusion—which Senator Murray invited me to draw earlier and which I must say I totally agree with—is that, because the government really do not have any concern
about ordinary Australians and the effect on them of the petrol market and really do not have any concern about the dominance in the market of the big players, and therefore are quite happy with that circumstance, they are happy with the status quo.

Here is a chance for government senators to stand up for what they claim they believe. Otherwise, if you stand up in a debate after this and claim to support small business, we will know and we will be able to say quite clearly: ‘But you voted down legislative amendments which had the best interests of small business at heart, indeed in many respects amendments which the ACCC has been asking for so that it can enforce the Trade Practices Act and give effect to the intention of the parliament.’ So I urge senators to support this block of amendments. We will be seeking to display to the Australian public how individual senators have voted on this.

Senator MURRAY (Western Australia) (9.08 pm)—I need to restate an essential position that I think needs to be repeated and clearly articulated. Before us is an amendment to which the government is opposed not in policy terms but in timing terms. What worries me is that the rejection of this amendment by the government at this time seems to be founded not on strategy or good policy considerations but on some kind of spite. I find that unacceptable. I know that the concerns of Senator Joyce and others in the areas of trade practices law and the deregulation of the petroleum market have upset many of his coalition colleagues, but those opinions are honestly held and honestly presented and I cannot condemn any senator for such an approach. But to say to small business that, because there has been that sort of disagreement within the coalition ranks, you cannot have the amendments to strengthen the Trade Practices Act—which the government actually agrees with—is, I think, rather spiteful. If the government is determined that what are known as the Dawson amendments—which, by the way, include an amendment which is absolutely not Dawson, which tries to get rid of the unions’ ability to bargain on behalf of business; but do not let me get started on that anti-choice thing—should be part of a package, why aren’t we debating Dawson, the petrol bill and the small business bill altogether? Then we could be done with it and it could pass.

It is unusual for me to use language like this, but it upsets me. The chamber is probably aware that I have been campaigning on this for a long time and I feel strongly about it. It upsets me because it does not seem to be the right way to handle parliamentary matters that affect the community at large. Because of the disagreement within the coalition ranks, because the Dawson bill was not passed in toto—by the way, it was passed: only schedule 1 was in limbo; the rest could have passed—we are not in a situation where the government is prepared to deal with small business, trade practices strengthening amendments now. Yet it is prepared to deregulate the market now. It is a very odd circumstance.

The minister at the table, the Minister for Finance and Administration, Senator Minchin, is not responsible for this strategy—he is not the portfolio minister—but, through him, I say to the minister that I am really disappointed that the cabinet did not see fit to bring forward the retail petroleum bills, the Dawson bill and the small business bills together so that we could review these as a package and resolve what we all regard as seriously interconnected issues. Having restated my aggravation on this matter, which I should not go on about any more, we Democrats think the opposition amendments are worthy of consideration and support.
Through the chair, I say to the shadow minister that we did not include your section 95ZEA amendments in our amendment batch, because they did not come from Senator Stephens’s majority report. We were focussed on making sure those amendments came through. We are not sure that what you have proposed will fit the bill completely, but we are sure that you are going in the right direction. I have been criticised in the Senate for arguing that the ACCC is not being allowed, both by law and by direction, to get behind the corporate veil of those who control the petroleum supply in this country. Of course, if the ACCC got behind the corporate veil they might not find anything because there might not be anything to find. But they do not have equivalent powers to ASIC and ASX, and there are not circumstances that apply with ASIC and ASX such as continuous disclosure, the requirement to report in certain ways and the requirement to investigate in the area of prices, costs and profits.

This is a matter which concerns the Australian community, so the Democrats think the opposition is going in the right direction with this amendment. I am not certain that it is phrased perfectly; I would not know that. I would encourage the government, even though it is bound to be rejecting this as well, to think more about what it could do to ensure that the ACCC is able to do as good a regulatory job with respect to this area of concern as ASIC is allowed to do in other fields.

Senator MILNE (Tasmania) (9.15 pm)—I rise to support the opposition’s amendment. I supported Senator Murray’s amendment and am aware of the change that the Labor Party have made to their amendments. I think that they are worthy of consideration. I too wish to express my frustration that the government has decided not to act on the trade practices amendments—whether that is because of internal dispute in the government or sheer bloody-mindedness, I do not know. But clearly there will be enormous disappointment in the small business community around Australia that the government has decided to move in this way and repeal these bills without having at the same time the complementary measures which would have meant that we could have done something in a holistic way in this parliament. We could have looked at a number of things as one package—that is done frequently. It has not been done on this occasion and as a result the small business community is missing out. It has been given a lick and a promise about what might come through and what the government may move in the future. I do not think that is good enough.

I think the small business community is already under enough pressure and there would not have been any difficulty for the government to bring through a package. The fact that it has chosen not to and has no good reason to cite to the Senate for not doing so is a matter of concern. The Australian community expects this parliament to act in the best interests of the nation, not to conduct their internal disputes in a legislative framework. That is the only assumption that I can draw from the government’s actions in this regard. It knows full well the changes that need to be made to the Trade Practices Act to make sure that we do get appropriate protection for small business. It has chosen not to do that and small business will draw its own conclusions as to which section of the business community the government actually supports. On this occasion it is advancing the cause of the major oil companies at the expense of small business. This is not accidental. It has made a deliberate decision to do so. I urge the government to get over its in-
ternal divisions and to support a holistic package. I support the opposition amendment.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.17 pm)—I do not really have much to add to what I said before in relation to the Democrats’ amendments, which were very similar. I note and record my understanding of Senator Murray’s frustrations. I am sorry that I am not able to assist him but I do treat with respect his motivation and his concern. He does understand well that the government do not think it at all appropriate to be amending this bill in the way that is proposed by either the opposition or the Democrats. We have legislative proposals in relation to both the Dawson package and section 46 which will be proceeded with in due course, but they are not appropriate in relation to this particular bill.

I reject Senator Milne’s description of this legislation as some sort of proposal by the government to assist the major oil companies at the expense of the minor or independent retailers. That is absolutely and utterly incorrect. It shows a complete misunderstanding of what is being proposed here. We are dealing with two quite redundant and irrelevant pieces of legislation, introduced I think in 1980, which no longer reflect the structure of the petrol retail industry. The advent of retailing by Coles and Woolworths has demonstrated the complete redundancy of the sites act and the franchise act. What we are doing in repealing those redundant acts is to bring in a specific Oilcode which is of considerable importance and benefit to the smaller retailers in this significant industry. So I reject out of hand that comment upon this legislation and place on record that the government oppose the opposition amendment.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.19 pm)—I was listening to this debate and I just realised that there has not been a direct response to the opposition’s additional item 95ZEA ‘Directions by parliament to monitor prices, costs and profits of an industry’. We are talking about something here that is an essential resource that Australian families and small businesses cannot do without. We cannot do without petrol. If you ask people about this, you will find that a lot of them are concerned about the price, the cost and the profits of this essential resource. I would be interested to hear the minister’s explanation as to why he will not support such a thing knowing that most people out there are very concerned about this industry—the costs and the profits. I do not think we have really had an adequate response from the minister in regard to the proposal from the opposition. I will be interested to hear the response from him on this particular area.

Senator O’BRIEN (Tasmania) (9.20 pm)—I am happy for the minister to respond to that. I was concerned that the debate would end without that response. I am afraid that the minister’s reasons for not supporting this amendment do not cut much ice with the opposition. We recall the Ralph committee report and all of the worthy recommendations on tax reform. The government passed legislation on some of it and then found the rest too hard. The opposition is concerned that this is yet another opportunity the government are taking to have the parts of the measures which they propose which are supported by the opposition and others passed but then to say: ‘Hang on. We’ll bring some legislation in here to deal with these other problem, but you’ll have to wait and see that some time down the track. We’ll let you know what it is. Trust us.’ That does not cut much ice with the opposition, and that is the reason we are moving these amendments.

Let me say to Senator Fielding that the reason we have moved the amendment that
he referred to is that the Treasurer has had the power to require the ACCC to conduct the sorts of inquiries that our amendment talks about, but he has chosen not to use it in the face of a number of circumstances in the community over the last four or five years where there have been serious concerns about the way petrol is priced. I am a member of a Senate committee inquiring into petrol prices. It is very interesting to see how prices zigzag in the various markets. It is very interesting to hear evidence about the impact of the major players on those markets. It is very interesting to talk to some of the witnesses who will say things when they are not on the record that they know they cannot afford to say when they are on the record because they have to maintain a commercial relationship with an oil company.

The best way to get behind that is to empower some organisation, such as the ACCC, to go behind these commercial arrangements and find out exactly what is going on and to report that to the public. Clearly, the Treasurer has squibbed the opportunity to use section 29(3) of the Trade Practices Act on numerous occasions. So we are going to hold the government to the mark. The reason we have moved this amendment is that the Treasurer has chosen not to exercise the power that he has had all of the time he has been Treasurer. He has had every opportunity to use this power and he has declined. I am really interested to know how the government defends the inaction of the Treasurer and how the government justifies, in the face of that inaction, that the parliament ought not to have the power that the Treasurer is clearly too frightened to exercise.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.24 pm)—The government does not believe it appropriate that a house of the parliament or a committee of the parliament should have the authority to give the ACCC written directions. That is not at all appropriate. Apart from that, we do not think that anything will be gained by this particular exercise. This is all about petrol pricing. On the one hand, we supported having yet another inquiry by a Senate committee into the whole issue but, as I noted at the time, I think that makes 47 inquiries of one kind or another into petrol pricing in the last 20-odd years. It is probably the most inquired-into industry. I think Graeme Samuel himself, on behalf of the ACCC, has said that there have been any number of inquiries into this matter which have not revealed any proof of the wild accusations which are often made about this industry. We all look forward to seeing what the Senate economics committee comes up with, whether it finds anything different from the other 46 inquiries, but we doubt it very much. In any event, we cannot support a proposal that empowers committees of the parliament to direct the commission in the exercise of its authority.

Senator O’BRIEN (Tasmania) (9.25 pm)—Of course, I can understand why the government would say that. They would not want to seek the executive power that is held over the ACCC. Let me say that the Senate committee is severely limited in the way that it can inquire into this matter. But, of course, no matter how many inquiries we have, the fact is that the Treasurer has refused to use the ACCC to use section 29(3) of the Trade Practices Act, then the inquiry would have been much more effective, I would have to concede, than a Senate inquiry. But, of course, no matter how many inquiries we have, the fact is that the Treasurer has refused to use the power that he has to empower the ACCC. The minister is saying: ‘But it’s only appropriate for the executive of government to have that power, not the parliament, because we can choose
not to use it. The Treasurer has chosen not to use it and, for that reason, we are opposing the parliament having this power so that the Treasurer can refuse to use section 29(3) of the act to investigate matters that the Senate committee cannot get behind.’ But the Senate does not have the power to require the production of the detailed material that goes into the pricing of petrol that the ACCC would have.

I think the government were quite pleased to agree to a Senate inquiry, as cover for the fact that they were doing nothing. Their justification to the public was: ‘We’ve agreed to a Senate inquiry into petrol pricing.’ But the shame of the matter is that the government could have taken action—the Treasurer could have taken action—by writing and signing a letter to the ACCC, saying, ‘Under section 29(3) of the Trade Practices Act, I want you to conduct an inquiry into petrol pricing.’ Did the Treasurer do that? No, he did not. He sat in his office, hiding behind the door, pretending that it was not a problem that he could do anything about, when we all know it is. The government say that it is not appropriate for the parliament to have these powers. Let us hear from the government why it is appropriate for the Treasurer not to have exercised the powers that he had. If it is not appropriate for the parliament to have the powers that the Treasurer has, why hasn’t the Treasurer used them? What justification can the government give for the Treasurer not using the powers? That might be a cogent argument for why the parliament should not have the powers. If the Treasurer clearly is not prepared to use the powers, and the ACCC is there willing to take up the challenge, then what is the justification for the government opposing the parliament having the powers? That is what I would like to hear.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.28 pm)—I do not want to prolong the debate any longer than it needs to go on but, as I said, as a matter of principle, firstly, we do not believe the parliament should be giving orders to an executive arm of government. Secondly, the government’s position on this is well known. As I said, petrol pricing is without doubt the area of commercial activity most subject to inquiry in all of Australia’s commercial activities. There have been some 46—now 47—inquiries. The commissioner himself has made it clear that he is not aware of any prima facie evidence to substantiate the wild allegations that are made about petrol pricing in this country. It is well on the record that, as a matter of fact, we have the fourth lowest petrol prices in the OECD. Margins in this industry are extremely thin. It is a highly competitive industry, as evidenced by the fluctuations in prices, so we see absolutely nothing to be gained by a make-work scheme of the kind suggested by Senator O’Brien.

Senator MURRAY (Western Australia) (9.29 pm)—Through you, Chairman, to the minister: I wish to raise two things. One is that I think we should not discount the great power and impact of Senate committees, because, as soon as it started meeting, the price started falling. Perhaps Senator Brandis has more influence than we think! But the other is that I did hear you say, Minister—and I was a bit taken aback by it, but maybe you would explain what you meant—that it is not appropriate for the parliament to give an instruction to the executive arm of the government. I always thought of the commission as an independent statutory authority. I find it difficult to see it in the same way as an agency or a department of the government. But perhaps that was not what you meant?

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.30 pm)—Through you, Chairman: it is—
in the general sense of having the legislature, the judiciary and the executive—part of the executive structure of the system of government and therefore, ultimately, it is part of the executive. Its framework for operation is set by the parliament but it is part of the executive and, at the end of the day, the executive is the one accountable for its actions every three years. But for a body which is part of the executive to be subject to written directions from a committee of the legislature I do not think is appropriate.

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

The committee divided. [9.35 pm]
(The Temporary Chairman—Senator JOW Watson)

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AYES

Allison, L.F. 
Bishop, T.M. 
Carr, K.J. 
Evans, C.V. 
Fielding, S. 
Hogg, J.J. 
Hutchins, S.P. 
Ludwig, J.W. 
Marshall, G. 
McLucas, J.E. 
Moore, C. 
O’Brien, K.W.K. 
Ray, R.F. 
Stephens, U. 
Stott Despoja, N. 
Wong, P.

NOES

Adams, J. 
Bernardi, C. 
Brandis, G.H. 
Campbell, I.G. 
Colbeck, R.

Ellison, C.M. 
Ferris, J.M. 
Fifield, M.P. 
Humphries, G. 
Kemp, C.R. 
Macdonald, I. 
Mason, B.J. 
Minchin, N.H. 
Parry, S.* 
Ronaldson, M. 
Scullion, N.G. 
Trood, R.B.

Ferguson, A.B. 
Fierravanti-Wells, C. 
Heffernan, W. 
Johnston, D. 
Lightfoot, P.R. 
Macdonald, J.A.L. 
McGauran, J.J.J. 
Nash, F. 
Patterson, K.C. 
Santoro, S. 
Troeth, J.M. 
Watson, J.O.W.

PAIRS

Brown, C.L. 
Campbell, G. 
Conroy, S.M. 
Nettle, K. 
Sherry, N.J.

Vanstone, A.E. 
Payne, M.A. 
Joyce, B. 
Abetz, E. 
Coonan, H.L.

* denotes teller

Question negatived.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.38 pm) —by leave—Family First moves together:

(1) Schedule 2, page 4 (line 2), omit “amendment”, substitute “amendments”.

(2) Schedule 2, page 4 (after line 13), at the end of the Schedule, add:

Trade Practices Act 1974

3 At the end of subsection 51(1) Add:

; (f) any collective bargaining arrangement including a collective boycott arrangement entered into by independent fuel retailers for the purpose of negotiating for the supply or possible supply of fuel products with a prescribed oil company;

(g) for the purposes of paragraph (f), the Oilcode and subsection 95Z(1A), an independent fuel retailer means any supplier of fuel products to a consumer, but excludes a prescribed oil company or a prescribed company involved in either wholesaling or retailing of fuel products;
(h) for the purposes of paragraph (f) and (g), the Oilcode and subsection 95Z(1A), a prescribed oil company includes Australian Petroleum Pty Ltd (Caltex), BP Australia Holdings Limited, Mobil Oil Australia Limited and Shell Australia Limited however described;

(i) for the purposes of paragraph (g) and the Oilcode, a prescribed company involved in either wholesaling or retailing of fuel products includes Coles Myer Limited and Woolworths Limited however described.

In themselves, items (1) and (2) form one package, which relates to collective bargaining for independent fuel retailers. It is important for independents to be able to get together and bargain collectively. They can apply to bargain collectively at the moment, but we are talking here about streamlining the process.

Just recently the Senate broadly debated the issue of bargaining collectively for all industries. For some reason, the Senate agreed that collective bargaining for individual small businesses was important but knocked back an issue tied to mergers and acquisitions. Recently, the Senate considered a trade practices bill that looked at collective bargaining and agreed that it was important for small business. This bill, the Petroleum Retail Legislation Repeal Bill 2006, if it goes through tonight, will make it even harder for independents, as the big players will take an increasingly greater market share. One of the ways that small businesses and independents can get better pricing is through collectively bargaining, and Family First is proposing what the Senate has already agreed to previously regarding changes to the Trade Practices Act. I ask here that the Senate agree that, if this bill goes ahead, it also, at the same time, strengthens and makes it easier for small business, the independents, to get together to collectively bargain.

The issue here is that it is very time consuming for independents to get together at the moment and there is no guarantee that they will receive permission to get together to collectively bargain. Realistically, this is an important issue, especially with this bill that will remove any restrictions on the big end of town. Chair, could I just ask a question here? The sort of behaviour that is occurring on the right-hand side of the chamber is appalling.

Senator Boswell—Don’t be a goose.

Senator FIELDING—No, I have to say that it is absolutely appalling.

The TEMPORARY CHAIRMAN (Senator Kirk)—I might ask senators to have their discussion outside, if they wish to laugh and do other such things.

Senator FIELDING—This issue should be extremely important to National senators. This is about supporting small business, independent retailers. It is about allowing them to collectively bargain in an easier and faster way. The Senate agreed to this. I appeal to senators tonight to support once again this amendment—this time for the petroleum companies or independents to be able to bargain together.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.43 pm)—I place on the record the government’s acknowledgement of Senator Fielding’s genuine concern for the role of independents and small business in this industry. We believe that these reforms will enhance the position of independents and small retailers in this industry and believe that the Oilcode, which has been worked up over many years and in full cooperation with the Motor Trades Association and others involved in this industry, is specifically aimed at ensuring they are able to continue to participate in this important industry. We have outlined our position with respect to the col-
lective bargaining issue. That is part of our package of proposals, under the so-called Dawson reforms, which we have prepared and are looking forward to debating in this place.

However, as I have said before in relation to this matter, those amendments are more appropriately dealt with holistically in relation to the Trade Practices Act as a whole and not in relation to the repeal of these two antiquated and now redundant pieces of legislation. We believe that the parliament should be supporting the repeal of those two acts and the introduction of this Oilcode; it should be dealing with that matter and that matter alone. In due course, we will give the parliament the opportunity to have its say on the issue, generally speaking, of collective bargaining within the Trade Practices Act.

Senator FIELDING (Victoria—Leader of the Family First Party) (9.44 pm)—Can the minister explain further—given that we all agree that small business needs to be able to collectively bargain together—other than saying there is a whole realm of changes with the Trade Practices Act and a lot of other bits and pieces? The Senate debated this issue recently, and for some reason the government seems to want to pass collective bargaining only on the basis that we make it easier for big business to merge. That is what was discussed here previously. I am trying to work out why the government would not want to support this amendment given that the last time this issue came up in the Senate it was only tying it to allow mergers to make it easier for big business to merge, and that was knocked back. Would it not seem rational or reasonable to expect that, if this bill goes ahead, it will basically take away any restrictions on the big end of town, and the small independents will need to be able to collectively bargain together?

This amendment makes it easier for small businesses to get together. It takes away the time and a lot of the effort and the burden that they have with that application process. Clearly, it would make it lot easier for small business. I do not understand how the minister could tie it to something else, because it stands on its own. We are talking about small businesses being able to collectively bargain, and you are tying it to a lot of other stuff. It does not make sense to me. I wonder if you can explain it so that it does.

Senator MINCHIN (South Australia—Minister for Finance and Administration) (9.46 pm)—I reject the proposition that this bill ‘takes away any restrictions on the big end of town’, as it was characterised. As I have said ad nauseam, and as we have been saying for many years, the sites act and the franchise act that were brought in in 1980 no longer have any relevance to this industry. It is a fact that the discount petroleum retailing initiatives of both Coles and Woolworths have now captured some 50 per cent of the market, because these acts are so redundant and irrelevant that they have been—to use a common parlance—‘got around’ by Coles and Woolworths. Of course, consumers have been very significant beneficiaries of the entry of Coles and Woolworths into petrol retailing. That is why they have captured such a large market share: because of their capacity to bring lower prices to consumers. If there is one thing we should all believe in it is ensuring that consumers get the lowest possible prices, so, to that extent, the entry of Coles and Woolworths has brought that about in a very significant way.

They have demonstrated in quite a dramatic fashion how utterly redundant these two pieces of legislation are: an old-fashioned act trying to restrict the number of sites which can be operated directly, which
clearly does not work; and a franchise act which governs only one form of relationship between an oil major and a retailer. This proposition is to remove those two old acts, which do not affect Coles and Woolies one way or the other, and bring in an Oilcode which very properly and clearly sets out the appropriate relationships that should exist under the Trade Practices Act for retailers and wholesalers. These are very important and timely measures. But to use this vehicle for a piecemeal amendment of the Trade Practices Act generally is not appropriate.

We have said repeatedly that amendments to the Trade Practices Act should be holistic; they should be comprehensive; they should be made in the light of the very significant and considered report by the former Mr Justice Dawson; they should be balanced; and they should take account of the needs of medium to larger businesses in this country so that they can operate profitably to the benefit of all of us as well as the needs of small business. That is what the package does, and we look forward to the opportunity to pass it. But we are not going to debate it in a piecemeal fashion or tack it on to the end of a very specific initiative to improve petrol retailing in this country.

Senator FieLDING (Victoria—Leader of the Family First Party) (9.49 pm)—It is probably worth going back and trying to look at what we are explaining here. I do not think anyone disagrees that the current restrictions are no longer serving their originally intended purpose. The issue here is that the government is proposing to have no restrictions moving forward.

Progress reported.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Kirk)—Order! It being 9.50 pm, I propose the question:

That the Senate do now adjourn.

Soccer World Cup

Senator WATSON (Tasmania) (9.50 pm)—This year we have witnessed much excitement in Australian soccer. We have had the recent success of the national side in the FIFA World Cup finals, where the Socceroos advanced to the knock-out stages only to fall to the final winners, Italy; the A-League has just started its second season; and Australia has recently qualified for the Asian Cup finals, to be held in September. Indeed, the recent move to the Asian federation from Oceania means that our national side will be regularly playing nations such as Korea, China and Saudi Arabia, which is certainly a step up from playing the Solomon Islands. This is a fantastic move, and one that will be historically regarded as a defining moment in the history of Australian soccer.

Local support for the game is high. Socceroos games, such as the recent home game against Kuwait, have been selling out within 48 hours. We have had record turnouts at A-League games throughout the pre-season, seeing, for example, nearly 7,000 people turn out on a fine Sunday afternoon at the Aurora Stadium, in Launceston, where Melbourne Victory played Adelaide United.

Another key factor behind the newfound success of soccer in Australia has been the shrewd management displayed by the Chairman of Football Federation Australia, Mr Frank Lowy, and by FFA CEO, Mr John O’Neill. These two men have ensured that a sport that was once a byword for administrative incompetence has the best possible framework to build on.

Only the week before last, John O’Neill announced that he would not be renewing his contract, which expires in March, with the FFA. We acknowledge that soccer in Australia is bigger than any one individual, but the sport will miss his expertise and business acumen. I have every confidence that the
FFA board will be able to find a good replacement for him and that the quality of administration will continue to rise.

Research conducted for the 2005-06 summer edition of the Sweeney sports report shows that 50 per cent of the adult population is interested in soccer—the sport’s highest level of interest since the report was first published 20 years ago. Soccer’s interest rating is only four points behind Australian Rules football and is eight and 10 points clear of rugby league and union. I note that the research was conducted between October last year and March this year, before the recent FIFA World Cup Finals in which the Socceroos advanced to the second stage. No doubt the coverage and attention paid to the Socceroos’ valiant efforts would have raised interest in the sport even further since that report. Perhaps it is more important that the report surveyed the level of participation in the various sports by adults living in the capital cities. Of those adults surveyed, 11 per cent played soccer—easily the highest-rating winter team sport; six per cent played Australian Rules football; and four per cent and three per cent played rugby league and union respectively.

At the 14 July, 2006 Council of Australian Governments meeting between federal, state and territory leaders, it was decided that all the state governments and the federal government would strongly support a bid for the 2018 FIFA World Cup. I would like to speak for a moment about what this bid will require. FIFA regulations state that the host nation needs a minimum of 10 stadia, with at least 40,000-seat capacity. Currently, we can meet that requirement at the Melbourne Cricket Ground, the Telstra Dome, Telstra Stadium, Suncorp Stadium, AAMI Stadium, ANZ Stadium, the Sydney Cricket Ground, Subiaco Oval, the Gabba and Aussie Stadium. However, some venues will need a lot of work before they meet FIFA’s other standards, such as pitch condition. Another issue to be considered is that most of these venues are ovals, and while some can be converted to a rectangular configuration most cannot.

The regulations also state that only one city in the country can have more than one stadium used in the World Cup finals. This is a major hurdle for the bid. Currently, of our 10 stadia with a capacity of 40,000 seats or greater, two are in Melbourne, three are in Sydney and three are in Brisbane. If Australia is to host the World Cup finals, this rule will have to be changed or suspended, or stadia such as Canberra Stadium and Aurora Stadium in Launceston will need to nearly double their capacity.

Another major issue is the FIFA regulation that requires grounds to be unused for eight weeks prior to the finals. Given that all the stadia are currently used by the AFL or the NRL and that the World Cup finals would take place right in the middle of their respective seasons, the number of available stadia drops again. The only solution I can think of is that a major stadium in each city be reserved for AFL or rugby and that the others be rested for the World Cup. Even this compromise would require a tremendous amount of cooperation from the AFL and NRL. But even if that were the case, we would still need to find two more stadia.

A decision will be made by FIFA in 2010 as to who will host the 2018 World Cup finals. It is likely that we will be competing against England and China to host the finals. Neither of these nations will give up easily, and both will make winning the bid a national priority.

If we are being honest in our support to win such a bid, we have to realise that Australia has a lot of work to do. This will re-
quire a great deal of money, and much of it will have to come from the Commonwealth. Also, this is something we need to be addressing sooner rather than later. We have fewer than four years to get ourselves into a position where we can convince FIFA that we should host the finals. I hope we will be successful.

Afghanistan Opium Trade

Senator FAULKNER (New South Wales) (9.56 pm)—Today, on September 11, many members of the Senate will again have their thoughts turned to the causes and effects of terrorism. A key to terrorism being able to flourish has been nation state sponsorship or inaction to prevent terrorist training occurring within their territory. It is pleasing that the number of nation states who are willing to tolerate terrorist preparation within their boundaries has declined in the last few years.

There is no doubt that Afghanistan was the worst of the rogue states and that the military action taken to oust the Taliban was justified. The job, however, is not yet done. In some ways the conflict in Iraq lessened the efforts in Afghanistan. The task ahead is complex as Afghanistan has proved as difficult to control and administer as at any time in its history.

One massive disappointment has been the explosion in opium cultivation in the last two years. In 2006, Afghanistan will supply 92 per cent of the world’s opium. According to a United Nations report, poppy cultivation will increase by 59 per cent in 2006. This means that in the last two years the total area under poppy cultivation in Afghanistan has risen by 162 per cent. This production will exceed global consumption by 30 per cent.

All this increases the long-term threat to Australia being used as a dumping ground for the excess heroin that will be produced from that opium crop. What is the Australian government’s reaction to this? Judging from Senator Ellison’s response to Senator Ray’s question last Thursday, it seems that it is callous indifference. Firstly, Senator Ellison indicated that overwhelming importation of heroin to Australia is derived from the Golden Triangle, so there is no immediate threat to Australia. What about the rest of the world? It is estimated that over 100,000 people die each year from overdoses from narcotics derived from Afghanistan. Senator Ellison was further asked what action the Australian government had taken to prevent this explosion of opium growing in Afghanistan, and that part of the question was ignored.

It is inconceivable that Australia is not helping in some way along with the rest of the international community. But, of course, if we were helping, the minister would then have to explain why such help was ineffective. It is clear that the drug threat can best be dealt with by interdiction, domestic law enforcement, education and rehabilitation, but nothing beats cutting it off at the source.

At the moment, the United States, many NATO countries, Australia and other nations have troops on the ground fighting for a democratic and terrorist-free Afghanistan, yet at the same time there has been an explosion in poppy cultivation. Of course, the minister’s indifference can be explained—there are no votes in it. All that proselytising and propaganda from the minister about drug busts are meant to garner votes. Time after time we hear criticism of the federal opposition or of state governments—it is a real example of the blame game—but when drug hauls and arrests are made Senator Ellison is in the front line, claiming the credit. However, he is nowhere to be found when stories of rampant drug use are exposed. It would be nice if, just for once, the minister put the national interest ahead of his political interest. He glibly mouths platitudes about bipar-
Let us look at Senator Ellison’s record in question time. In the last 12 months he has answered six questions from the government side all on the same subject and all worded virtually identically. In September 2005, Senator Payne asked in part:
Will the minister update the Senate on the Austra-
lian government’s strong commitment to the fight
against drugs?
In November 2005, Senator Humphries asked:
Will the minister update the Senate on the role of Commonwealthe law enforcement agencies in the fight against drugs?
In February 2006, in a variation on a theme, Senator Ferris asked in part about:
... the success of our law enforcement and border protection agencies in keeping dangerous illicit drugs off our streets.
In March 2006, Senator Fierravanti-Wells asked:
Will the minister update the Senate on the Austra-
lian government’s commitment to the fight
against illicit drugs?
In June 2006, Senator Payne again asked in part:
Will the minister update the Senate on the Austra-
lian government’s commitment to the fight
against illicit drugs?
Finally, in August 2006, Senator Trood asked in part:
Will the minister update the Senate on the Austra-
lian government’s commitment to the fight
against illicit drugs?
So we can expect on a monthly basis to hear the Minister for Justice and Customs boasting about his efforts in fighting illicit drugs and to hear about the complicity of everyone else in failing to do so. The question is: which government backbench senator will be the next patsy to ask exactly the same question to exactly the same minister?
Another clear pattern in Senator Ellison’s answers are the attacks on the opposition and Mr Beazley. His last four answers fitted that mould. It is true to say that drugs are an emotive issue and are clearly perceived by Senator Ellison as a vote winner. So, if you see an opportunity to distort the views of your political opponents, go for it! What a quintessential, Western Australian Liberal Party tactic that is! Senator Ellison, though, has far less confidence and far less capacity when he is asked a question that he is not aware of, that he has not been given notice of and for which he has not been provided with a prepared answer. Having struggled to answer Senator Ray’s question last Thursday, he opted to go the political route again. In his supplementary answer, he said that the question:
... implied that the Australian defence forces were propping up a government which was behind the trafficking and production of illicit drugs.
Mr President, not even the most aberrant redneck could have interpreted Senator Ray’s question as implying that, but this was just to cover up an even more grotesque allegation Senator Ellison made in his response to the primary question. He said:
... I totally reject that the men and women of the Australian Defence Force are protecting opium growers and that they are protecting the drug suppliers out of Afghanistan.
A serious question was raised, and what did we get in response from Senator Ellison? A grievous smear. The opposition nevertheless appreciates that Senator Ellison gave a qualified withdrawal of his statements at the commencement of the sitting of the Senate earlier today. This would have been best done last Thursday, but it has been done after due reflection.
September 11

Senator BARTLETT (Queensland) (10.06 pm)—Today is the fifth anniversary of the attacks in the United States on 11 September 2001, and it means a lot of things to different people. There have been many other events in many parts of the world, before and since, where greater numbers of people have been killed. Terrorism existed prior to 11 September 2001 and will no doubt exist for quite some time into the future. However, that does not negate the fact that September 11 will stick out in many people’s minds in many parts of the world for a range of reasons. It is appropriate to mark and acknowledge the event. It is particularly appropriate to acknowledge the thousands of people killed and the ongoing mourning and suffering of their families and to acknowledge the Australians who were amongst those killed in that tragedy.

It is understandable that there is a lot of discussion, no doubt all around the world and certainly in the mainstream media, on the internet and in the general community, about what has happened, what has changed and what has not changed in the five years since September 11, particularly that overarching question of whether we feel that the world is a safer place and that our own country is a safer place. I think that is an ongoing and appropriate debate to have, but I do think we need to re-examine the approaches that we are taking with the current circumstances we face.

I was reminded of that tonight in watching some of the different retrospectives and examinations on television and a repeat of that some might call ‘famous’ and some might call ‘infamous’ statement by the United States President in addressing congress that you were either with him or with the terrorists. From my point of view, I am certainly not with the United States President in the approach that he has taken towards many of these issues over the last five years.

Of course it should go without saying, but unfortunately the way the debate goes it sometimes has to be said, that I am not with the terrorists. But I am very concerned that, in the midst of that false dilemma that is put forward in that question of whether being with the US administration or with the terrorists, the two of them are going together down a very dangerous and destructive path for the world and certainly for our country.

We do need to continue to look for other paths. Some of the neoconservatives in the United States who have recognised in recent times the mistakes that have been made and the dangerous path that we are now going down also recognise that we need to take a different approach. One phrase that is used that I think does combine some of the different rhetorical approaches that people are taking, if people insist on suggesting that we are in a war on terror and we are waging a war on terror, is that we need to ‘demilitarise’ that war.

One of the very alarming aspects that I have found in recent years when discussing how best to make the world a safer place is that the whole notion of disarmament seems to have gone out the window. Quite how it makes the world a safer place to increase the number of weapons of mass destruction and to encourage and support other countries to further develop nuclear and other weaponry is beyond me. Surely we have learned enough of the continual shifting alliances amongst nation states to recognise that continually adding to the range of weaponry and the distribution of weaponry around the globe is just going to increase the prospects of more of it being used in more destructive ways down the track.

September 11 is also a date that is often referred to by many Australians as the time...
when they started feeling less safe and less welcome in their own country. I refer specifically to Muslim Australians. I have spoken with many Muslim Australians, particularly in my own state of Queensland, in the last couple of years. Many of them were born in this country or have lived in this country for decades. They felt welcome, involved and integrated, but within the last couple of years they have felt less secure, less welcome and less safe in their own country, Australia.

I do believe it is important that the rest of us recognise those feelings. It is not just a matter of taking a ‘them and us’ approach. That, in itself, actually forces people to take sides when what we need is to have all of us on the one side. We need to support Muslim Australians and to work with them, because in many ways they are much more in the firing line in between those two sides of that false dilemma that I referred to earlier. A lot of the focus of the extremist radical terrorist minority in other parts of the world is actually aimed at so-called moderate Muslims or so-called moderate or mainstream Islam. In many ways they are coping it from both sides and need to be supported rather than singled out and attacked.

It is quite possible that the Prime Minister and many others in the government genuinely think that they are being supportive, but I can assure them—and there are hundreds of thousands of Muslims in Australia, of course, and I do not in any way suggest that I have spoken to all of them—that a very large proportion of the Muslims I have spoken with and heard from certainly do not feel supported. They feel more isolated, singled out and victimised and less welcome and secure in their own country.

Not only is this unfair and unreasonable for those people who in many ways are in a more difficult position, as I have just mentioned, but it is against the interests of our entire country. It increases division across the board. If the rhetoric from community leaders and political leaders continues to insist on presenting a false divide between either supporting terrorists or supporting the rhetoric that actually insults you and insults your beliefs then you almost force people to make an impossible choice, and I think that is a very dangerous approach to take.

I do think it is an appropriate time to reflect on some of those difficult choices we face and the difficult times in front of us. But whilst there are challenges, I also think we do not want to overdramatise it to the extent of spooking ourselves out of just tasking a common-sense approach. Whilst there are always particular threats and challenges that we have to face and we always need to look at how those evolve and change, we also need to recognise that what has worked in the past from the point of view of democracy and the rule of law actually has a pretty good track record of success, and undermining that will reduce the prospects of success.

Using the platform of any system of government or of any system of leadership to actually single out, isolate and alienate a section of the community is always fraught with danger no matter which country you are in, so I do urge everyone to take the opportunity to rethink the nature of the rhetoric we use in Australia and to rethink our approach to make sure that we are more encompassing and more embracing of Muslim Australians rather than continuing to add to the divide that is quite genuinely growing in some parts of our community.

The PRESIDENT—Senator Stott Despoja, you have one minute and 16 seconds.
September 11

Senator STOTT DESPOJA (South Australia) (10.15 pm)—I thank my colleague for yielding that time. I did not realise the subject matter of his speech; otherwise he could have done this for me. I just thought it was appropriate that in this place, like any other place, we acknowledge the fifth anniversary of September 11—and I do not mean in the form of a discussion of the policy matter or Dorothy Dix questions.

Among those thousands killed in America five years ago there were 10 Australians. They were Alberto Dominguez, Yvonne Kennedy, Craig Neil Gibson, Steve Tompsett, Elisa Ferraina, Lesley Anne Thomas, Leanne Whiteside, Kevin Dennis, Peter Gyulavary and, of course, Andrew Knox, who was known to some of us in this place and was a dear friend. I just wanted to make sure that their lives were acknowledged today and that we did not just talk about the politics and the policy, important as that may be.

Drugs in Sport

Senator BERNARDI (South Australia) (10.15 pm)—I rise tonight to talk about drugs, specifically the use of illicit drugs by our sporting professionals. I want to talk about the code of silence that protects illicit drug users and often defends their behaviour.

A common goal of sports administrators in this country is to stamp out the insidious use of drugs in sport and to ensure a clean playing field. I am sure the CEO of the AFL, Andrew Demetriou, reflected all sporting administrators when he recently stated:

Our strong view is that the fight against illicit drugs is not a fight that should be restricted to match-day.

We believe that if we are to take the toughest possible stance against drugs then we need to fight the use of illicit drugs out of competition and out of season. It is not a part-time fight. It is a full-time fight.

Elite sport in Australia is required to comply with the World Anti-Doping Agency in relation to competition testing for performance-enhancing and illicit substances. I am proud to say that this government has led the charge in ensuring that our sport system is in full compliance with WADA policy. I compliment this government and specifically Minister Kemp for pursuing this course of action. But it now begs the question: why are many of our sports administrators too frightened to tackle the use of illegal drugs outside competition?

We know that athletes who use illegal drugs and performance-enhancing substances on match day are guilty of a major offence. They are liable for hefty fines and an automatic two-year suspension from the game. We know that those who use performance-enhancing drugs outside competition are also guilty of a major offence, and they face fines and an automatic two-year suspension from the game. But why is it the case that sports professionals can use illegal drugs during the week and face no or minimal recriminations from their sport’s governing bodies?

In recent days, the AFL have been much maligned for their three-strikes policy for out-of-competition illegal drug use. Let me make it clear: the AFL are WADA compliant, but the additional testing they do—and this should be commended—needs to be improved. It is the case, in my view, that the AFL’s penalties for illegal drug use outside competition are completely out of step with the legislative and policy framework under which illegal drugs are considered in this country.

The penalties adopted by the AFL in relation to out-of-competition testing for illicit drugs are lenient, to say the least. Under the AFL’s Illicit Drug Policy, it takes three positive tests for illegal drugs used outside competition before the player is deemed to have
been involved in conduct unbecoming and eventually faces a tribunal. This involves the player being named, with a possible match suspension—I say ‘a possible match suspension’—imposed. Even after they have given a third positive drug test, if a player tests positive again, they only face a minimum 12-match suspension. The AFL’s Illicit Drug Policy clearly states:

Illicit Drugs are dangerous and AFL players have the opportunity to set an example to the wider community by collectively making a statement that they do not condone the use of any illicit substances.

It is now time for the AFL and other sporting bodies to back their rhetoric with action.

Outside sport, where illicit drugs are concerned, our community has a zero tolerance policy. Whereas, under the AFL rules, a player could take ecstasy, he could turn up to training, he could be tested and he would only receive counselling and a guarantee of anonymity. However, if that same player then hopped in a car and drove home, if he were pulled over by the police and subjected to a random ecstasy test—as they now have in South Australia—he would face, in South Australia, a fine and a loss of demerit points on his licence. There might be criminal penalties, and this would be a matter on the public record.

The law does not condone the use of illicit drugs at any time. So why should we condone the use of illegal drugs by AFL players at any time? Even the Brisbane Lions captain, Michael Voss, said earlier this year:

The AFL’s code is very soft and the message to players must be tougher.

The AFL’s Illicit Drug Policy allows players to maintain a mask of anonymity that is completely at odds with community expectations and standards that befit players who are highly remunerated, very well-advised and in receipt of an opportunity that many Australians would love to have.

Our sportspeople are public role models whether they like it or not. They inspire the champions of tomorrow, and they encourage our children and young adults to reach their highest potential. It is a matter of public importance that these role models completely reject the notion that it is okay to break the law and take illegal and dangerous substances in pursuit of a good time. Over many years, our society has quite rightly decried the abuse of alcohol by sporting personalities, but why should the use of illegal drugs be now covered up?

However, rather than maligning the AFL unfairly, I believe they need to be further encouraged to be leaders against illicit drug use. Their code of football has much to gain in terms of public support by adopting a zero-tolerance policy towards illicit drugs. And I have to say that at least the AFL does have a policy in place, albeit one that is inconsistent with community standards. But what about our other professional codes? Where does the NRL or the ARU stand in relation to illegal out-of-competition drug use? They have both signed up to the WADA code, which mandates competition testing for all performance-enhancing and illicit drugs.

However, out-of-competition testing for illicit drugs is not specified in the WADA code. This means that a player could use cocaine on non-match days and, as long as he is not caught by law enforcement authorities, he is effectively immune to NRL official sanctions because there is no mandatory testing for illicit substances.

Even more curiously, under the NRL code—or lack of code, I should say—individual clubs are actually allowed to come up with their own policy to tackle the issue.
Therefore a player who tests positive for illicit drugs while playing for, say, the Cowboys, will be kicked out of the club and their contract torn up—but this same player is then allowed to sign up for a second club, who may or may not conduct out-of-competition illicit drug testing. This is simply not on.

I believe we must break the nexus between drugs and sport full stop. There is no safe level of illicit drug use. We need leaders in our sporting community who are prepared to address this issue across all levels and all codes of sport. According to senior sports administrators there is no culture of illicit drug abuse in professional sporting codes. If this is true then the players, and the sports, have nothing to fear. In fact, by being tough on drugs they have more to gain as they will win the support, the respect and the applause of the wider public. Most especially, they will win the support of parents who want their children to be involved in a sporting code that is drug free.

Senate adjourned at 10.25 pm

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

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

- Australian Capital Territory (Planning and Land Management) Act—National Capital Plan—Amendment 55—Block 16 Section 28 City (Australian National University) [F2006L03008]*.
- Old Series—IT 2056, IT 2058, IT 2125, IT 2136, IT 2139, IT 2171, IT 2209, IT 2212, IT 2241, IT 2322 and IT 2570.

* Explanatory statement tabled with legislative instrument.

Indexed Lists of Files

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended:

- Indexed lists of departmental and agency files for the period 1 January to 30 June 2006—Statements of compliance—Human Services portfolio agencies, Immigration and Multicultural Affairs portfolio agencies.

Departmental and Agency Contracts

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

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Agriculture, Fisheries and Forestry: Grants

(Question No. 1000)

Senator O’Brien asked the Minister for Fisheries, Forestry and Conservation, upon notice, on 24 June 2005:

For each of the financial years 2001-02, 2002-03, 2003-04 and 2004-05, has the Minister, the department or any agency or statutory authority for which the Minister is responsible, made grants or other payments to business organisations and/or associations, including but not necessarily limited to peak employer groups; if so, can information be provided for each grant or other payment including:

(a) the name and address of the recipient organisation
(b) the quantum and purpose of the payment
(c) the name of the program under which the grant or other payment was funded
(d) who approved the grant or other payment; and
(e) whether the grant or payment was successfully acquitted; if so, when; if not, can details be provided, including action taken to recover the grant or other payment.

Senator Ian Macdonald—The answer to the honourable senator’s question is as follows:
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<th>NAME OF RECIPIENT</th>
<th>(a) Address of recipient</th>
<th>Amount ($)</th>
<th>(b) Purpose</th>
<th>(c) Program</th>
<th>(d) Approved by</th>
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Senator Allison asked the Minister for Communications, Information Technology and the Arts, upon notice, on 7 September 2005:

(1) Can the Minister clarify a recent statement that the Government will ensure services to customers in areas of ‘market failure’ after full privatisation of Telstra.

(2) Are ‘areas of market failure’ determined by the Government to be in: (a) rural; (b) remote; or (c) metropolitan, areas.

(3) What is the Government’s definition of ‘market failure’.

(4) To what extent and how does the Government consider that the privatisation of the Telstra environment will facilitate competition in areas of ‘market failure’.

(5) Has the Government accepted that areas of ‘market failure’, however defined, are never likely to attract competition.

(6) Does the Government agree that the commitment to ensure services to customers in areas of ‘market failure’ provides a perverse incentive for Telstra to: (a) withhold or diminish services in these areas; and (b) impede efforts by competitors to set up service provision in these areas.

(7) What is the extent of ‘market failure’ that has been caused by Telstra’s prevention of other businesses from setting up services

(8) How will the Government deal with the well-documented cases of Telstra pushing small competitors out of business when they try to establish competing businesses, particularly in regional areas in, for example, Crookwell, Bungendore and Albury-Wodonga.

(9) How will the Government deal with excessive regulatory gaming by Telstra, whereby it effectively delays or prevents access by competitors to declared services.

(10) What is the Government’s estimation of the effect of the proposed additional regulation on: (a) Telstra’s annual profits; and (b) Telstra’s share price.

(11) Does the Government have a conflict of interest in protecting the shareholders from the cost of additional regulation and ensuring consumers receive the benefits of modern telecommunications infrastructure and services; if so, to what extent.

(12) How will the Government reconcile the mutually exclusive objective of providing for effective regulation of telecommunications and maximising Telstra’s share price.

(13) How will the Government ensure that the operational separation model for Telstra creates an incentive for Telstra to treat its retail arm and its competitors equitably.

(14) How will the Government ensure that Telstra does not operate its retail arm at a loss by charging high wholesale prices to itself and competitors.

(15) Will the Government give the Australian Competition and Consumer Commission (ACCC) divestiture powers in case operational separation fails.

(16) What were the reasons for structural separation of Telstra not being considered in the package.

(17) Does the Government agree that the fact that Telstra is vertically integrated is the single most important factor in Australia being ranked 21st in broadband penetration in the Organisation for Economic Co-operation and Development (OECD) Communications Outlook, 2005.

(18) How does Australia compare with other OECD countries in terms of the rate of penetration of broadband, as opposed to the current rate of uptake.

(19) Does the Government acknowledge that Australia’s rate of uptake is relatively high because it starts from a very low base compared with other OECD countries.
(20) How does the Government’s definition of ‘broadband’ differ from other countries in the OECD?

(21) What will the Government do about the obvious weakness [of the] anti-competitive conduct regime in the Trade Practices Act as demonstrated by the ACCC’s experience with the Telstra broadband pricing competition notice.

(22) What will the Government do to make it easier for Telstra’s competitors to get access to reasonably-priced backhaul.

(23) How will the Government ensure that people in regional areas where there is no competition receive better broadband services as standards improve in metropolitan areas.

(24) What will the Government do to make it easier for Telstra’s competitors to get access to reasonably-priced backhaul.

Senator Coonan—The answer to the honourable senator’s question is as follows:

(1) Yes. The Government’s policy is to target assistance, in the form of funding programs, to those areas where the competitive market alone does not meet consumers’ needs for a timely, quality service at reasonable cost.

(2) and (3) Market failure may occur anywhere where commercial incentives do not exist to provide key services to consumers at a reasonable cost and in a timely manner.

(4) Telstra’s shareholding structure has no direct effect on the existence or otherwise of market failures.

(5) In the long term, technological and market developments have the ability to increase functionality and reduce costs for the provision of services. This can make previously unsustainable business cases commercially sustainable. Hence, the number of instances of market failure are likely to diminish over time.

While market failures continue to exist, they will continue to be addressed by the measures previously mentioned.

(6) (a) No. (b) No.

(7) Should this conduct occur, the Government has established competition laws that are able to deal with it.

The ACCC as the competition regulator has extensive powers under the Trade Practices Act to investigate and, where appropriate, prosecute anti-competitive conduct. Under Part XIB of the Trade Practices Act the ACCC can issue a competition notice to carriers and carriage service providers with significant market power that it has reason to believe are engaging in anti-competitive conduct. Competition notices are designed to stop the conduct and open the way to substantial penalties and damages.

(8) See the answer to question 7. The investigation of instances of anti-competitive conduct is the responsibility of the ACCC.

(9) The Government has established a telecommunications access regime in Part XIC of the Trade Practices Act which confers rights on access seekers to obtain access to bottleneck services. The Government has regularly made legislative amendments to close off opportunities for regulatory gaming.

The Telecommunications Legislation Amendments (Competition and Consumer Issues) Act 2005 conferred a wide discretion on the ACCC to set procedural rules for access applications under Part XIC of the Trade Practices Act, with a view to speeding up the resolution of those applications. It also removed the ACCC’s obligation to consult before making an interim determination, in certain circumstances, which again removed a source of delay.
The Telecommunications Competition Act 2002 made many procedural changes to facilitate timely access determinations under Part XIC, including removing merits review of the ACCC’s final access determinations, introducing time limits for decisions by the ACCC and the Australian Communications Tribunal on access and undertakings, limiting parties’ rights to introduce new evidence on the review of the ACCC’s decisions on access and undertakings, and introducing a requirement for the ACCC to promulgate model access conditions for access to core telecommunications services which will streamline access determinations relating to those services.

Earlier, the Trade Practices Amendment (Telecommunications) Act 2001 made streamlining changes to the Part XIC access regime which, among other things: required the ACCC to develop pricing principles to be applied in access determinations; introduced the option of alternative dispute resolution to quickly resolve disputes about access terms; removed access seekers’ rights to object to interim access determinations; enabled the holding of joint arbitration hearings to resolve common disputes; enabled the use of documents and information from one arbitration in another arbitration; and prevented certain decisions of the Australian Competition Tribunal from being stayed.

While taking robust action to foreclose opportunities for unjustified delaying tactics, the Government also recognises the need to ensure that parties to access proceedings are afforded a reasonable opportunity to argue their case and present evidence. This affords them procedural fairness and also facilitates the making of properly informed access decisions.

(10) The Government designs regulation to achieve the intended policy outcome in the most efficient way and without imposing any unnecessary costs or constraints on business. Regulatory action has to be accompanied by a Regulation Impact Statement (RIS) and to go through a consultation and cost-benefit analysis process.

The Government’s measures do not target Telstra’s annual profits or its share price. The measures seek to create a regulatory environment which serves the interests of consumers of telecommunications services and the Australian economy as a whole. Telecommunications businesses, including Telstra, have to operate in that environment.

(11) Yes. There is a latent conflict of interest whenever a government both sets regulations for an industry sector and has an interest in a commercial enterprise which operates in that sector. This is one of the reasons why the Government has decided to sell its remaining equity in Telstra.

(12) By selling its remaining shareholding in Telstra.

(13) In providing for the operational separation of Telstra’s wholesale, retail and network services business units with regard to the provision of designated services, the operational separation plan will have to ensure that:
- there is effective organisational and operational separation between Telstra’s wholesale and retail units, as well as between those units and its key network services unit;
- the wholesale unit is not able to be controlled or influenced by the retail unit;
- the key network services unit provides high quality and equivalent services to the retail unit and Telstra’s other wholesale customers;
- the wholesale unit maintains equivalence between the prices it charges the retail unit and the prices it charges Telstra’s other wholesale customers, and also equivalence regarding the non-price terms of supply;
- Telstra establishes an internal compliance function to supervise compliance with the operational separation plan; and
- Telstra meets extensive reporting requirements relating to its activities covered by the operational separation plan (which involve reporting to both the Minister and the ACCC).
Thus, the operational separation plan will work through a combination of creating incentives, mandating specific actions, and providing for ongoing monitoring.

(14) Telstra’s freedom to charge its wholesale customers high wholesale prices for declared services is already constrained by the ACCC’s access price determinations applying to those services under Part XIC of the Trade Practices Act. The price benchmarking requirement in the operational separation plan will provide transparency to the ACCC that Telstra is not favouring its own retail activities over those of its wholesale customers.

(15) Access by Telstra’s competitors to Telstra’s declared wholesale services ultimately does not depend on operational separation. It is already guaranteed by Part XIC of the Trade Practices Act. Appropriate enforcement mechanisms are included in the Telecommunications Act. If Telstra contravenes the operational separation plan, the Minister can impose a rectification plan on Telstra. If Telstra fails to comply with the rectification plan, the ACCC can direct it to take specified remedial action. Compliance with the rectification plan is a condition of Telstra’s carrier licence. The Act gives the Minister the power to vary the operational separation plan from time to time. This will enable the plan to be modified if it is considered not to be working in the way that was envisaged.

Section 61A of the Telecommunications Act requires the Minister to order a comprehensive review of operational separation before 1 July 2009 and to publish and table a report of the review. The review will provide an opportunity to assess how operational separation has worked.

(16) Given the high costs and risks associated with forced structural separation of Telstra, as compared to its uncertain benefits, the Government has concluded that operational separation is to be preferred. Operational separation will provide similar benefits to structural separation, in terms of greater transparency and diminished incentives and opportunities for discriminatory treatment of non-Telstra wholesale customers, without the costs and risks associated with structural separation.

(17) No.

(18) According to the latest OECD statistics (December 2005), Australia’s broadband penetration rose from 7.7 subscribers per 100 inhabitants in 2004, to 13.8 in 2005. This compares to OECD averages of 10.2 and 13.6 subscribers per 100 inhabitants for those years. In terms of the net increase (growth) over the 2004-2005 period, Australia ranks 5th out of 30 OECD economies.

(19) Australia’s high growth rate of broadband uptake in recent times is due to a wide range of factors. On the supply side, improved availability of Asymmetric Digital Subscriber Line (ADSL) infrastructure has underpinned strong uptake. On the demand side, changing consumer preferences and decreases in the price of broadband service packages have also fuelled strong growth, with many consumers switching to broadband from dial-up internet.


The Government’s guidelines for the Broadband Connect and Metro Broadband Connect programs specify that service providers offer customers a minimum speed of 256 kilobits per second.

(21) The issuing of the broadband pricing competition notice by the ACCC was followed by a progression of price reductions by Telstra for its wholesale broadband services and culminated in the withdrawal of the notice by the ACCC in February 2005 after it was satisfied that the anti-competitive conduct had ceased. As part of the resolution of the notice, safeguard mechanisms were agreed to by Telstra, under which Telstra will give prior notice to the ACCC of retail price changes and spe-
cial offers, so that the ACCC can carry out a preliminary assessment of their likely effect on com-
petition and raise any concerns with Telstra. Various other steps were agreed to between the ACCC
and Telstra to prevent a recurrence, including using independent expert advice to identify appropri-
ate price relativities between retail and wholesale broadband prices. Telstra also offered its affected
wholesale customers reduced wholesale prices and rebates amounting to $6.5 million.
The competition notice was thus effective in producing a satisfactory outcome. Telstra reduced all
of its wholesale broadband prices by at least 30%, and now provides wholesale DSL services in re-
gional areas at metropolitan rates. The ACCC has stated that it believes this will increase competi-
tion between broadband providers in regional areas.
Competition notices are a powerful aid to enforcement. They constitute prima facie evidence of the
anti-competitive conduct specified in the notice, and thus facilitate the taking of enforcement action
by the ACCC. The available enforcement actions for anti-competitive conduct (contained in Divi-
sion 7 of Part XIB) include the following:
- the ACCC can seek pecuniary penalties and an injunction from the Federal Court;
- the Federal Court can award damages to any individual or company that has suffered loss or dam-
age as a result of the anti-competitive conduct; and
- any individual or company that has suffered such loss or damage can itself commence civil pro-
ceedings for damages against the perpetrator.
There are no specific procedural requirements in the legislation which pose an obstacle to the
ACCC taking appropriate and timely action to enforce a competition notice.
(22) The telecommunications access regime under Part XIC of the Trade Practices Act which the Gov-
ernment has established ensures that there is fair access to services such as backhaul. The regime
enables the ACCC to declare that for certain services Telstra must provide access to its network on
fair and reasonable terms.
The ACCC has declared the domestic transmission capacity service, which can be used by regional
broadband providers to access backhaul transmission capacity. Hence, this service is now subject to
the access regime.
The ACCC has recently indicated that it has started considering both the suitability of the existing
transmission capacity declaration and its approach to pricing the transmission capacity service. The
ACCC is making inquiries of Telstra and other broadband service providers to gain a better under-
standing of the market conditions that currently exist for transmission capacity in regional Austra-
lia. The ACCC is also examining whether further pricing guidance from the ACCC would promote
more reasonable access to transmission capacity and what form any further guidance should take.
I have designated transmission as a designated service for the purposes of the Telstra operational
separation plan. Subjecting the transmission service to operational separation will help to ensure
transparency and equitable treatment of other service providers as regards the terms on which Tel-
stra gives them access to the service.
(23) The Government is implementing a comprehensive communications package called Connect Aus-
tralia – the major component of which is the $878 million Broadband Connect program which
commenced on 1 January 2006. Broadband Connect provides subsidies to internet service provid-
ers to connect homes, small businesses and not-for-profit organisations to fast, reliable and afford-
able broadband services.
(24) The Government’s targeted assistance funding is available to all telecommunications providers, including Telstra. There are currently more than 45 registered Broadband Connect providers. The Connect Australia programs are targeted towards under-served areas.

**Health and Social Services Access Card**

*(Question No. 1796)*

Senator Allison asked the Minister representing the Minister for Health and Ageing, upon notice, on 15 May 2006:

With reference to the proposed new access card for health and welfare services:

(1) (a) What proportion of the estimated savings of up to $3 billion over 10 years is estimated to be due to fraud; and (b) can a breakdown of the figures relating to fraud be provided.

(2) (a) What data is available on the number of fraud incidences per year for each of the 17 health and social services programs within the Human Services portfolio that will be covered by the new access card; and (b) can this information be provided broken down by the type of fraud and program for the past 5 years.

(3) For the past 5 years, what is the estimate of annual funds illegally obtained through fraud for each of the 17 health and social services programs within the Human Services portfolio that will be covered by the new access card (can this information be provided broken down by the type of fraud and program).

(4) What proportion of funds is illegally obtained through fraud by: (a) service providers and their employees; (b) service users; and (c) other members of the public intent on defrauding the government.

Senator Kemp—The Minister for Human Services has provided the following answer to the honourable senator’s question:

(1) The health and social services access card was not introduced as a savings measure. The savings estimate of up to $3 billion over 10 years was developed by KPMG on the basis of high level estimates of fraud and leakage, particularly in Centrelink and Medicare Australia.

(2) (a) and (b) and (3)

**Medicare Australia**

The available data relating to the number of fraud incidences for Medicare Australia is shown in Table 1 below. This data is not available for 2001-02 and has thus not been provided.

Medicare Australia investigates over two hundred new cases of suspected fraud each year. Where fraud can be proven, the matter is referred to the Commonwealth Director for Public Prosecution. Proven incidences of fraud are categorised only by provider, pharmacist or patient. Further categorisation by type of fraud would require close examination of case files and would be a significant project for which Medicare Australia has no assigned resources.

**Table 1: Number of incidences of fraud investigated by Medicare Australia**

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QUESTIONS ON NOTICE
Other includes referrals that were not specifically categorised at the time and would require analysis of old cases to ascertain the relevant category – a project for which Medicare Australia has no assigned resources.

Medicare Australia is unable to provide an estimate of the funds illegally obtained through fraud.

**Centrelink**

Information regarding the number of convictions recorded for welfare fraud is available only for the entitlement to payments. The available information is shown below in Tables 2 to 6.

*Table 2:* Centrelink prosecution activity 2000-01. A total of 2,788 convictions were recorded for welfare fraud involving $26.4 million for the 2000-01 financial year. Of those cases prosecuted, 98.8 per cent were convicted.

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Notes:

[1] 98.8% of cases prosecuted resulted in a conviction.

[2] Non-customers prosecuted for failure to provide information and for being knowingly concerned in customers’ offences.

*Table 3:* Centrelink prosecution activity 2001-02. A total of 2,856 convictions were recorded for welfare fraud involving $27.9 million for the 2001-02 financial year. Of those cases prosecuted, 98.7 per cent were convicted.

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Convictions</td>
<td>Amount Involved</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No. [1]</td>
<td>$’000</td>
</tr>
<tr>
<td>1.1</td>
<td>Family Assistance</td>
<td>19</td>
<td>330</td>
</tr>
<tr>
<td>1.2</td>
<td>Youth and Student Support</td>
<td>161</td>
<td>1,170</td>
</tr>
<tr>
<td>2.1</td>
<td>Housing Support</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td>3.1</td>
<td>Labour Market Assistance</td>
<td>2,448</td>
<td>22,849</td>
</tr>
<tr>
<td>3.2</td>
<td>Support for People with a Disability</td>
<td>145</td>
<td>2,295</td>
</tr>
<tr>
<td>3.3</td>
<td>Support for Carers</td>
<td>24</td>
<td>238</td>
</tr>
<tr>
<td>3.4</td>
<td>Support for the Aged</td>
<td>40</td>
<td>984</td>
</tr>
<tr>
<td></td>
<td>Special Circumstances [2]</td>
<td>18</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>2,856</td>
<td>27,880</td>
</tr>
</tbody>
</table>
Notes:
[1] 98.7% of cases prosecuted resulted in a conviction.
[2] Non-customers prosecuted for failure to provide information and for being knowingly concerned in customers’ offences.

Table 4: Centrelink prosecution activity 2002-03. A total of 2,829 convictions were recorded for welfare fraud involving $30.9 million for the 2002-03 financial year. Of those cases prosecuted, 98 per cent were convicted.

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td>Convictions</td>
<td>Amount Involved</td>
</tr>
<tr>
<td>No. [1]</td>
<td>$’000</td>
<td></td>
</tr>
<tr>
<td>1.1 Family Assistance</td>
<td>26</td>
<td>875</td>
</tr>
<tr>
<td>1.2 Youth and Student Support</td>
<td>235</td>
<td>1,816</td>
</tr>
<tr>
<td>3.1 Labour Market Assistance</td>
<td>2,193</td>
<td>21,200</td>
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<tr>
<td>3.2 Support for People with a Disability</td>
<td>242</td>
<td>4,556</td>
</tr>
<tr>
<td>3.3 Support for Carers</td>
<td>38</td>
<td>427</td>
</tr>
<tr>
<td>3.4 Support for the Aged</td>
<td>60</td>
<td>1,931</td>
</tr>
<tr>
<td>Special Circumstances [2]</td>
<td>35</td>
<td>13</td>
</tr>
<tr>
<td>Total</td>
<td>2,829</td>
<td>30,943</td>
</tr>
</tbody>
</table>

Notes:
[1] 98% of cases prosecuted resulted in a conviction.
[2] Non-customers prosecuted for failure to provide information and for being knowingly concerned in customers’ offences.

Table 5: Centrelink prosecution activity 2003-04. A total of 2,977 convictions were recorded for welfare fraud involving $36.6 million for the 2003-04 financial year. Of those cases prosecuted, 98 per cent were convicted.

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td>Convictions</td>
<td>Amount Involved</td>
</tr>
<tr>
<td>No. [1]</td>
<td>$’000</td>
<td></td>
</tr>
<tr>
<td>1.1 Family Assistance</td>
<td>17</td>
<td>622</td>
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<tr>
<td>1.2 Youth and Student Support</td>
<td>404</td>
<td>3,276</td>
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<tr>
<td>3.1 Labour Market Assistance</td>
<td>2,100</td>
<td>23,798</td>
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<tr>
<td>3.2 Support for People with a Disability</td>
<td>331</td>
<td>6,032</td>
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<td>3.3 Support for Carers</td>
<td>32</td>
<td>534</td>
</tr>
<tr>
<td>3.4 Support for the Aged</td>
<td>73</td>
<td>2,331</td>
</tr>
<tr>
<td>Special Circumstances [2]</td>
<td>20</td>
<td>29</td>
</tr>
<tr>
<td>Total</td>
<td>2,977</td>
<td>36,622</td>
</tr>
</tbody>
</table>

Notes:
[1] 98% of cases prosecuted resulted in a conviction.
[2] Non-customers prosecuted for failure to provide information and for being knowingly concerned in customers’ offences.
Table 6: Centrelink prosecution activity 2004-05. A total of 3,446 convictions were recorded for welfare fraud involving $41.1 million for the 2004-05 financial year. Of those cases prosecuted, 98 per cent were convicted.

<table>
<thead>
<tr>
<th>Payment</th>
<th>Student Assistance/Social Security/Family Assistance Acts</th>
<th>Crimes and Criminal Code Acts</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Convictions</td>
<td>Amount Involved</td>
</tr>
<tr>
<td>Age Pension [2]</td>
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<td>2,508,114</td>
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<tr>
<td>Austudy Payment</td>
<td>108</td>
<td>1,185,713</td>
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<td>Carer Payment</td>
<td>37</td>
<td>628,959</td>
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<tr>
<td>Newstart Allowance [4]</td>
<td>1,608</td>
<td>14,050,518</td>
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<td>Parenting Payment Partnered</td>
<td>80</td>
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<tr>
<td>Parenting Payment Single</td>
<td>740</td>
<td>11,202,412</td>
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<tr>
<td>Widow Allowance</td>
<td>19</td>
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<tr>
<td>Youth Allowance</td>
<td>379</td>
<td>3,223,657</td>
</tr>
<tr>
<td>Other [5]</td>
<td>83</td>
<td>1,185,466</td>
</tr>
<tr>
<td>Total</td>
<td>3,446</td>
<td>41,150,735</td>
</tr>
</tbody>
</table>

[1] 98% of cases prosecuted resulted in a conviction.
[2] Age Pension includes Wife’s Pension (Age) and Widow B Pension.

(4) This information is not available from either Centrelink or Medicare Australia.

Post-Budget Function
(Question No. 1887)

Senator Milne asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 June 2006:

Did the Minister host a post-budget function after the release of the 2006-2007 Commonwealth Budget on 9 May 2006; if so:

(a) where was the function held;
(b) who was invited to the function;
(c) who attended the function;
(d) what was the cost of hosting the function;
(e) was the cost charged to the Commonwealth; if not, to whom was it charged;
(f) was a ticket price charged; if so, what was the ticket price;
(g) if no ticket price was charged, was a donation requested;
(h) how much revenue was collected by way of tickets charged or donations received; and
(i) to whom was the revenue paid.

Senator Ian Campbell—the Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

Yes.
(a) The function was held in the Minister for Transport and Regional Services’ suite in Parliament House.
(b) Representatives from companies and organisations associated with the Minister’s portfolio and staff from the Minister’s department.
(c) Representatives from companies and associations associated with the Minister’s portfolio, staff from the Minister’s department and Ministerial staff.
(d) $1,655.10
(e) Yes
(f) No
(g) No
(h) Nil
(i) Not applicable

**Post-Budget Function**
(Question No. 1905)

**Senator Milne** asked the Minister representing the Minister for Local Government, Territories and Roads, upon notice, on 6 June 2006:
Did the Minister host a post-budget function after the release of the 2006-2007 Commonwealth Budget on 9 May 2006; if so:
(a) where was the function held;
(b) who was invited to the function;
(c) who attended the function;
(d) what was the cost of hosting the function;
(e) was the cost charged to the Commonwealth; if not, to whom was it charged;
(f) was a ticket price charged; if so, what was the ticket price;
(g) if no ticket price was charged, was a donation requested;
(h) how much revenue was collected by way of tickets charged or donations received; and
(i) to whom was the revenue paid.

**Senator Ian Campbell**—The Minister for Local Government, Territories and Roads has provided the following answer to the honourable senator’s question:
No.
(a) to (i) Not applicable.

**Estimates Training Sessions**
(Question No. 2167)

**Senator O’Brien** asked the Minister representing the Minister for Defence, upon notice, on 14 July 2006:
(1) What Senate estimates training sessions have officers of the Minister’s departments and agencies attended in the past 3 financial years, by year.
(2) For each of the past 3 financial years: (a) how many officers participated in; and (b) what was the total cost of, training for Senate estimates, by department and agency and by financial year.
(3) Where training has been provided by a private provider, what was the name of the provider and the associated cost.
Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) Financial Year | Course
--- | ---
2003-04 | Australian Parliament House: The Budget and the Senate Estimates Process
2004-05 | Australian Parliament House: The Budget and the Senate Estimates Process
2005-06 | Australian Parliament House: The Budget and the Senate Estimates Process

(2)

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>(a)</th>
<th>(b)$</th>
</tr>
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<tbody>
<tr>
<td>2003-04</td>
<td>13</td>
<td>2,470</td>
</tr>
<tr>
<td>2004-05</td>
<td>23</td>
<td>4,370</td>
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<tr>
<td>2005-06</td>
<td>12</td>
<td>2,360</td>
</tr>
</tbody>
</table>

(3) The Senate Estimates training for Defence officials is undertaken as part of the Australian Parliament House Scheduled Seminar Series and is, therefore, not facilitated by a private provider.

Australian Defence Force: Military Training

(Question No. 2253)

Senator Faulkner asked the Minister representing the Minister for Defence upon notice, on 26 July 2006:

With reference to military training for Australian Defence Force (ADF) personnel before deployment to Iraq and to Afghanistan:

(1) What compulsory training courses did ADF personnel undertake prior to deployment to Iraq and to Afghanistan.

(2) What refresher training is undertaken for ADF personnel prior to deployment to Iraq and to Afghanistan.

(3) Of the pre-deployment training, how much time is allocated to: (a) dissimilar cultures, in particular the history and culture of Iraq and Afghanistan, their peoples and religions; and (b) Australian obligations under international and Geneva Conventions.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) Australian Defence Force personnel undertake a compulsory Force Preparation Course prior to deployment to Iraq or Afghanistan. The training is valid for 12 months.

(2) If personnel are deployed with a formed group (as a ship’s company or an infantry company), they undertake a training package that is mission and skill specific, and culminates in a formal mission rehearsal exercise. If personnel are deployed as individual reinforcements or specialist teams, they are selected and deployed because they already possess the necessary skills and training.

(3) (a) Depending on whether personnel are deployed with a formed group or deployed as individual reinforcements or specialist teams, they receive the following culture briefs:

(i) Formed groups deploying to Iraq receive a 2.5 to 3 hour brief. In addition, these groups undertake weeks of mission specific training that immerses personnel in the cultures to be encountered during their deployment.

(ii) Individual reinforcements or specialist teams deploying to Iraq receive a 2.5 to 3 hour brief. Individual reinforcements or specialist teams deploying to Afghanistan receive a 1 to 2
hour brief. In addition, all personnel receive ‘take-away’ packs containing written handouts and basic phraseology sheets.

(b) All Australian Defence Force personnel receive routine single-Service training in Law of Armed Conflict and the Geneva Convention. Prior to deployment, all personnel receive a legal brief that provides additional training on Law of Armed Conflict, the Geneva Convention and the Rules of Engagement applicable to the relevant operation. This lesson is conducted by trained legal officers over a 1.5 to 2 hour period.

Small Business
(Question No. 2260)

Senator Conroy asked the Minister representing the Minister for Small Business and Tourism, upon notice, on 27 July 2006:

(1) Since 1996, how many inquiries have been established by the Government into the impact of ‘red tape’ on the small business sector.

(2) What recommendations have been made to the Government following each of the above inquiries, by inquiry process and date.

(3) In each case, was the recommendation accepted or rejected by the Government.

(4) If the recommendation was rejected, what was the basis for its rejection.

(5) If the recommendation was accepted and implemented: (a) when and how was it implemented; and (b) what outcomes can be attributed to its implementation.

(6) If the recommendation was accepted and not implemented can the Minister explain why it was not implemented.

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

(1) There have been 3 inquiries established by the Government into the impact of red tape on the small business sector.


(3) In the case of the Time for Business report, the Government responded via the statement More Time for Business on 24 March 1997. The More Time for Business statement is available at www.industry.gov.au and details those recommendations which were accepted or rejected by the Government.

In relation to the Banks Report, an initial Government response was released on 7 April 2006 and a final response on 15 August 2006. Both responses can be found at www.regulationtaskforce.gov.au and outline the recommendations which were accepted or rejected by Government.

In the case of the Under the Microscope report, the Government did not formally respond. However, many of the recommendations contained in the report were taken into account when formulating future policies affecting small business.

(4) For recommendations that were rejected as part of the Time for Business and Banks Reports, the basis for their rejection was documented as part of the Government’s response to each of these reports.
The recommendations contained in the Under the Microscope report, were neither formerly accepted nor rejected by the Government and as such, there are no recommendations that fall into the category of being rejected.

(5) (a) For Time for Business, the recommendations agreed by Government were implemented during the period between the Government’s response (24 March 1997) and the introduction of a 10 year sunset clause in the Legislative Instruments Act 2003. Recommendations were implemented through cooperation between responsible Australian Government departments and agencies, state and territory governments, various ministerial councils, as well as consultation with business and industry stakeholders.

In the case of the Banks report, the recommendations accepted by Government are in the process, or have been, implemented. For example, on 31 January 2006, the Attorney-General announced that the Australian Law Reform Commission (ALRC) would review the Privacy Act 1988 and report by 31 March 2008 (recommendation 4.48); the Australian Government on 1 July 2006 has halved the incorporation fee from $800 to $400 (recommendation 5.22). Recommendations are being implemented through cooperation between responsible Australian Government departments and agencies, state and territory governments, various ministerial councils, as well as consultation with business and industry stakeholders. Some of the recommendations may require work through the Council of Australian Governments (COAG) framework.

The recommendations contained in the Under the Microscope report, were neither formerly accepted nor rejected by the Government, and as such there are no recommendations that fall into the category of being accepted and implemented. However all of the recommendations were taken into account in subsequent policy development.

The recommendations which have been adopted from the Time for Business, Banks and the policy decisions influenced by the Under the Microscope inquiry have contributed significantly to improving the operating environment, including reducing the regulatory burden, of the small business sector. Some examples of initiatives and benefits derived by small business from implemented recommendations include:

- introduction of www.business.gov.au (formerly Business Entry Point) providing businesses with a one-stop-shop to government information and transactions;
- introduction of the Australian Business Number (ABN) as a single identifier to assist business dealings with the Australian Taxation Office (ATO);
- reduction in the Australian Bureau of Statistics (ABS) reporting load on business by more than 40%;
- tabling of Regulatory Impact Statements in Parliament outlining the regulatory impact to small business;
- introduction of a 10 year sunset clause in the Legislative Instruments Act 2003 to protect business from endless continuation of regulations;
- introduction of the ABS Statistical Clearing House to clear all surveys affecting 50 or more businesses, reducing the impost on business and improving the quality of requests for information;
- introduction of a simplified GST accounting method for small restaurants, café and caterers streamlining GST obligations and compliance costs from 1 October 2006;
- halving of the incorporation fee from $800 to $400 effective from 1 July 2006;
- development of a simple, easy-to-read guide for the Workplace Relations Act 1996 – A guide for Micro Businesses in 1998; and
(6) In the case of Time for Business, there were a number of reasons that influenced a decision not to implement a recommendation even if agreed by Government, including, but not limited to:

- the recommendation was overtaken by other initiatives or policy developments;
- the Australian Government had limited influence in a particular area, for example, implementation fell within the jurisdiction of State and Territory Governments;
- that the recommendation could not be implemented in a revenue neutral way; or
- the recommendation compromised the effectiveness of an existing policy in a priority Government area.

The final Government response to the Banks report was released on 15 August 2006. To date, all recommendations that have been accepted are to be implemented as announced in the Government’s response.

The recommendations contained in the Under the Microscope report, were neither formerly accepted nor rejected by the Government, and as such there are no recommendations that fall into the category of being accepted and not implemented.

**Fuel Consumption Labelling for Light Vehicles**

(Question No. 2376)

Senator O’Brien asked the Minister representing the Minister for Local Government, Territories and Roads, upon notice, on 15 August 2006:

With reference to Australian Design Rule (ADR) 81/01—Fuel Consumption Labelling for Light Vehicles:

(1) As part of the testing process, are the fuel consumption figures as displayed on new car fuel consumption labels achieved in normal driving at any time.

(2) Is there a built in tolerance between the listed consumption figure and the actual consumption that could be experienced by an average driver; if so, what is that tolerance.

(3) Has the department received complaints from consumers, car manufacturers and/or motoring organisations about the accuracy of the fuel consumption labelling; if so: (a) how many complaints were received in the financial years 2004-05 and 2005-06; and (b) what, if any, action has been taken as a result of the complaints.

(4) If ADR 81/01 has been in harmony with the regulation of United Nations Economic Commission for Europe, how does the ADR reflect Australia’s unique and diverse road conditions and environment.

(5) When is ADR 81/01 scheduled to be reviewed.

Senator Ian Campbell—The Minister for Local Government, Territories and Roads has provided the following answer to the honourable senator’s question:

(1) The fuel consumption and CO2 figures listed on the fuel consumption label are the results of standardised tests carried out in accordance with United Nations Economic Commission for Europe Regulation 101 (UN ECE R 101) which is adopted in ADR 81/01 Fuel Consumption Labelling for Light Vehicles.

The UN ECE test process involves two main elements, an urban cycle and “extra-urban” cycle. The figures on the label represent the combined results from these two elements. The urban cycle is a slow speed, stop-start cycle, with considerable periods of idling – the sort of traffic conditions likely to be experienced in large cities. The extra-urban cycle is designed to assess a vehicle’s per-
formance under high speed and high acceleration as might be experienced whilst operating on major arterial roads or freeways. By combining the results of the two cycles, the test aims to cover the range of a vehicle engine’s operation during key elements of normal driving.

However, no single test can simulate all possible combinations of conditions experienced on the road. The objective in providing the ADR 81/01 data is to enable consumers to compare vehicles on a common basis. ‘Real world’ fuel consumption may vary from the results provided on the fuel consumption label depending upon a number of factors including driving and road conditions, driver behaviour, vehicle load and vehicle condition.

(2) There is no built in tolerance between the listed fuel consumption figure and the actual fuel consumption that could be experienced by an “average” driver.

(3) (a) My Department has not received any formal written complaints during the financial years 2004-05 and 2005-06 on the accuracy of fuel consumption labelling. I recently received a letter from a consumer in Western Australia expressing dissatisfaction with the accuracy of the fuel consumption label. My Department has received a small amount of correspondence regarding the merits of reporting separate fuel consumption values for urban and highway use (in addition to the current combined result).

(b) The Government is considering whether it can further assist consumers to understand the relationship between the test data on the label and what they might expect to achieve in a range of “real world” conditions. However, ADR 81/01 test data will remain the only comparable and consistent data available for all light vehicles.

(4) As mentioned above, the fuel consumption figures listed on the fuel consumption label are the results of standardised tests carried out in accordance with UN ECE Regulations. This reflects the Government’s policy of harmonising its vehicle standards (the ADRs) with international vehicle standards wherever possible.

The data from testing to the UN ECE regulations (under ADR 81/01) provides a common basis for comparing individual vehicle models, and placing this data on the fuel consumption label is designed to assist vehicle purchasers in making such comparisons.

The Government does not see a case to impose its own unique test standards for determining fuel consumption. No single test, even if developed in Australia, can possibly cover all driving styles and mixes of road and traffic conditions.

(5) The ADR is scheduled for review in light of changes to ECE Regulation 101. The review would consider the application of the revised ECE Regulation in Australia and involve consultation with our stakeholders. This review will commence before the end of 2006.

Canberra International Airport

(Question No. 2381)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 15 August 2006:

With reference to the open day at Canberra International Airport in 2006:

(1) What approval procedures are necessary to conduct an open day at an international airport.

(2) What involvement, if any, did the department or any of its agencies have in the open day.

(3) Given that more than 7,500 people attending the open day had access to the runway extension, what arrangements were made to ensure: (a) the security of the airport and aircraft on the tarmac; and (b) the safety of the public attending the open day.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:
(1) The public area was excised from the security zone by Gazettal Notice (of 16 March 2006). This followed approval, on 10 March 2006, by the Secretary of the Department of Transport and Regional Services to make the works area and the area accessible to the public, a landside area (i.e. outside the security zone). Details of the open day were communicated to the Office of Transport Security, within the Department of Transport and Regional Services, the Police Commander at Canberra International Airport, the Civil Aviation Safety Authority and AirServices Australia.

(2) The Office of Transport Security, the Police Commander at Canberra International Airport, Civil Aviation Safety Authority and Airservices Australia were advised of the security measures associated with the open day.

(3) It is noted that 7 500 people attended throughout the day, and there were not this number of people in attendance at any one time.

(a) Security of the airport and aircraft on the tarmac was maintained by a secure perimeter fence, separating the landside and airside areas. Uniformed security guards patrolled the perimeter security fence throughout the Open Day. The Civil Aviation Safety Authority and Airservices Australia Air Traffic Control were briefed on the open day.

(b) The Airport Rescue and Fire Fighting unit (first response first aid) and St Johns Ambulance were on-site during the event. In addition, airport staff, operations officers and uniformed security guards supervised the public during the open day.

**Australian Workplace Agreements**

(Question No. 2429)

Senator Nettle asked the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 24 August 2006:

For each month since the inception of Australian Workplace Agreements (AWAs), can details be provided of the number of AWAs certified in each Australian and New Zealand Standard Industrial Classification by state and territory.

Senator Abetz—The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator’s question:

Table A sets out the number of Australian Workplace Agreements (AWAs) approved/lodged in each Australian and New Zealand Standard Industrial Classification (ANZSIC) from January 1998 to July 2006.

Table B sets out the number of Australian Workplace Agreements (AWAs) approved/lodged in each state and territory from January 1998 to July 2006.

The monthly total AWA figures from April 2006 to July 2006 include both WorkChoices AWAs, and pre-WorkChoices AWAs approved after 27 March 2006 under the pre-reform Workplace Relations Act 1996.

No monthly data are available prior to January 1998.
### TABLE A

Monthly Australian workplace agreement statistics by ANZSIC

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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation, Cafes and Restaurants</td>
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<td>94</td>
<td>80</td>
<td>183</td>
<td>29</td>
<td>176</td>
<td>184</td>
<td>208</td>
<td>30</td>
<td>63</td>
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<td>11</td>
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Source: OEA Monthly data are only available from 1998 onwards.
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Source: OEA Monthly data are only available from 1998 onwards.
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Source: OEA Monthly data are only available from 1998 onwards.
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Source: OEA Monthly data are only available from 1998 onwards.

TABLE B

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Source: OEA Monthly data are only available from 1998 onwards