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SITTING DAYS—2006

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RADIO BROADCASTS

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- **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

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<td>Prime Minister</td>
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<tr>
<td>Minister for Trade and Deputy Prime Minister</td>
<td>The Hon. Mark Anthony James Vaile MP</td>
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<tr>
<td>Treasurer</td>
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<td>Minister for Transport and Regional Services</td>
<td>The Hon. Warren Errol Truss MP</td>
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<td>Minister for Foreign Affairs</td>
<td>The Hon. Alexander John Gosse Downer MP</td>
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<tr>
<td>Minister for Health and Ageing and Leader of the House</td>
<td>The Hon. Anthony John Abbott MP</td>
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<td>Attorney-General</td>
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<td>Minister for Finance and Administration,</td>
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<td>Leader of the Government in the Senate and Vice-President of the</td>
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<td>The Hon. Peter John McGauran MP</td>
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<tr>
<td>Minister for Education, Science and Training and Minister</td>
<td>The Hon. Julie Isabel Bishop MP</td>
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<td>The Hon. Kevin James Andrews MP</td>
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<td>Minister for the Environment and Heritage</td>
<td>Senator the Hon. Ian Gordon Campbell</td>
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(The above ministers constitute the cabinet)
HOWARD MINISTRY—continued

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

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

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

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

Shadow Minister for Agriculture and Fisheries
Gavan Michael O’Connor MP

Shadow Assistant Treasurer, Shadow Minister for
Revenue and Shadow Minister for Small
Business and Competition
Joel Andrew Fitzgibbon MP

Shadow Minister for Transport
Senator Kerry Williams Kelso O’Brien

Shadow Minister for Sport and Recreation
Senator Kate Alexandra Lundy

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

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

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

Shadow Minister for Immigration
Anthony Stephen Burke MP

Shadow Minister for 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
Peter Robert Garrett MP

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

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

Shadow Parliamentary Secretary for Education
Kirsten Fiona Livernore MP

Shadow Parliamentary Secretary for Environment
and Heritage
Jennie George MP

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

Shadow Parliamentary Secretary for Immigration
Ann Kathleen Corcoran MP

Shadow Parliamentary Secretary for Treasury
Catherine Fiona King MP

Shadow Parliamentary Secretary for Science and
Water
Senator Ursula Mary Stephens

Shadow Parliamentary Secretary for Northern
Australia and Indigenous Affairs
The Hon. Warren Edward Snowdon MP
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THURSDAY, 14 SEPTEMBER

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

PETITIONS

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

Information Technology: Internet Content

The internet is a great educational tool. However children can too easily access pictures of violent cruelty and extreme pornography on the internet. Labor wants a “clean feed” technology that can block access to these kinds of sites.

To the Honourable President and members of the Senate in Parliament assembled:
This petition of certain citizens of Australia draws to the attention of the Senate, the danger of children accessing internet pornography and other internet pages.

Your petitioners therefore ask the Senate to make laws that:

• All internet service providers be required to offer a “clean feed” internet service to all households, schools and public libraries that blocks access to websites containing child pornography, acts of extreme violence and x-rated material.

by The President (from 21 citizens).

Abortion

To the Honourable President and Members of the Senate in Parliament assembled.
We the undersigned citizens support a woman’s fundamental right to safe, affordable and legal abortion.

We oppose any moves within the Parliament to deny women this right or to restrict or to impose conditions on women’s access to termination of pregnancy.

Your petitioners request that Senators reject any legislation that comes before the Senate that would undermine a women’s right to access abortion.

by Senator Allison (from 1,035 citizens).

Health

To the Honourable the President of the Senate and Members of the Senate in Parliament assembled in Parliament:
This petition of certain citizens of Australia draws to the attention of the Senate, the crisis in the medical workforce due to the neglect of the Howard Government.

Your petitioners therefore ask the Senate to:

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

by Senator Hogg (from 333 citizens).

Information Technology: Internet Content

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

• Exposure to pornography is a form of sexual assault against children and should be considered, like all sexual abuse of children, as a serious matter causing lasting harm.
• It is not adequate to charge individual parents with the chief responsibility for protecting their children from Internet pornographers determined to promote their product, OR to expect parents to teach children to cope with the damaging effects of pornographic images AFTER exposure.
• It is the primary duty of community and Government to prevent children being exposed to pornography in the first place by placing restrictions on pornographers and those businesses distributing such material.

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

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

by Senator Stephens (from 90 citizens).

Petitions received.

NOTICES
Presentation
Senator Watson to move on the next day of sitting:
That the Joint Committee of Public Accounts and Audit be authorised to hold public meetings during the sitting of the Senate as follows:
(a) to take evidence for the committee’s review of Auditor-General’s reports:
   - Wednesday, 11 October 2006, from 11.30 am to 1.30 pm
   - Wednesday, 18 October 2006, from 11.30 am to 1.30 pm
   - Wednesday, 29 November 2006, from 11.30 am to 1.30 pm
   - Wednesday, 6 December 2006, from 11.30 am to 1.30 pm;
(b) to take evidence for the committee’s inquiry into financial reporting and equipment acquisition at the Department of Defence and DMO:
   - Thursday, 12 October 2006, from 10 am to 1.30 pm
   - Thursday, 19 October 2006, from 10 am to 1.30 pm
   - on Thursday, 9 November 2006, from 9.30 am to 2 pm, to take evidence for the committee’s inquiry into certain taxation matters.

Senator Bob Brown to move on Tuesday, 10 October 2006:
That the Senate calls on the Government to:
(a) commission an independent audit of the company profits of managed investment schemes in forest products and rotation plantations; and
(b) prohibit the implementation of managed investment schemes where they would have a detrimental impact on family farms, other agricultural activities or small businesses in rural communities.

Senator Nettle to move on the next day of sitting:
That the Senate notes the sad death of Ms Doris Owens, an environmental campaigner from the south coast of New South Wales and sends condolences to her family and friends.

COMMITTEES
Selection of Bills Committee
Report
Senator FERRIS (South Australia) (9.33 am)—I present the 10th report of 2006 of the Selection of Bills Committee and move:
That the report be adopted.
I seek leave to have the report incorporated in Hansard.
Leave granted.
The report read as follows—
SELECTION OF BILLS COMMITTEE
REPORT NO. 10 OF 2006
(1) The committee met in private session on Wednesday, 13 September 2006 at 4.22 pm.
(2) The committee resolved to recommend—
That—
(a) the provisions of the Customs Amendment (2007 Harmonized System
Changes) Bill 2006 and Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006 be referred immediately to the Foreign Affairs, Defence and Trade Committee for inquiry and report by 9 October 2006 (see appendices 1 and 2 for statements of reasons for referral);

(b) the Aged Care Amendment (Residential Care) Bill 2006 be referred immediately to the Community Affairs Committee for inquiry and report by 9 October 2006 (see appendices 3 and 4 for statements of reasons for referral); and

(c) the Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006 be referred immediately to the Legal and Constitutional Affairs Committee for inquiry and report by 12 October 2006 (see appendix 5 for a statement of reasons for referral).

(3) The committee resolved to recommend—
That, upon introduction—

(a) the Crimes Amendment (Bail and Sentencing) Bill 2006 be referred to the Legal and Constitutional Affairs Committee for inquiry and report by 16 October 2006 (see appendix 6 for a statement of reasons for referral);

(b) the provisions of the Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Bill 2006 and the Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006 be referred to the Legal and Constitutional Affairs Committee for inquiry and report by 9 October 2006 (see appendix 7 for a statement of reasons for referral);

(c) the Broadcasting Services Amendment (Media Ownership) Bill 2006 and the Broadcasting Legislation Amendment (Digital Television) Bill 2006, and the provisions of the Communications Legislation Amendment (Enforcement Powers) Bill 2006 and the Television Licence Fees Amendment Bill 2006 be referred to the Environment, Communications, Information Technology and the Arts Committee for inquiry and report by 5 October 2006 (see appendix 8 for a statement of reasons for referral);

(d) the provisions of the Defence Legislation Amendment Bill 2006 be referred to the Foreign Affairs, Defence and Trade Committee for inquiry and report by 10 October 2006 (see appendix 9 for a statement of reasons for referral); and

(e) the provisions of the Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Bill 2006 be referred to the Community Affairs Committee for inquiry and report by 10 October 2006 (see appendix 10 for a statement of reasons for referral).

(4) The committee resolved to recommend—

That the following bills not be referred to committees:

- Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006
- Housing Loans Insurance Corporation (Transfer of Pre-transfer Contracts) Bill 2006
- Migration Legislation Amendment (Complementary Protection Visas) Bill 2006
- Migration Legislation Amendment (End of Mandatory Detention) Bill 2006

The committee recommends accordingly.

(5) The committee deferred consideration of the following bills to its next meeting:

- Judiciary Legislation Amendment Bill 2006
- Law and Justice Legislation Amendment (Marking of Plastic Explosives) Bill 2006
Proposal to refer a bill to a committee
Name of bill(s):
Reasons for referral/principal issues for consideration
Examination of the bills as necessary.
Possible submissions or evidence from:
Committee to which bill is referred:
Foreign Affairs, Defence and Trade Committee
Possible hearing date:
Possible reporting date(s): 9 October 2006

Proposal to refer a bill to a committee
Name of bill(s):
Reasons for referral/principal issues for consideration
Examine the proposed changes to the harmonized system and tariff amendments
To ensure that there are no possible unintended consequences of the proposed changes.
Possible submissions or evidence from:
Committee to which bill is referred:
Foreign Affairs, Defence and Trade Committee
Possible hearing date:
Possible reporting date(s): 16 October 2006

Proposal to refer a bill to a committee
Name of bill(s):
Aged Care Amendment (Residential Care) Bill 2006
Reasons for referral/principal issues for consideration
Examination of the bills as necessary.
Possible submissions or evidence from:
Committee to which bill is referred:
Community Affairs Committee
Possible hearing date:
Possible reporting date(s): 9 October 2006

Proposal to refer a bill to a committee
Name of bill(s):
Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006
Reasons for referral/principal issues for consideration
Examination of the bills as necessary.
Possible submissions or evidence from: Legal and Constitutional Affairs Committee

Possible hearing date: 12 October 2006

Possible reporting date(s): 12 October 2006

Appendix 6
Proposal to refer a bill to a committee
Name of bill(s): Crimes Amendment (Bail and Sentencing) Bill 2006

Reasons for referral/principal issues for consideration
Examination of the bill as necessary.

Possible submissions or evidence from: Legal and Constitutional Affairs Committee

Possible hearing date: 16 October 2006

Possible reporting date(s): 16 October 2006

Appendix 7
Proposal to refer a bill to a committee
Name of bill(s): Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Bill 2006 and the Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006

Reasons for referral/principal issues for consideration
Examination of the bill as necessary.

Possible submissions or evidence from: Legal and Constitutional Affairs Committee

Possible hearing date: 3 October 2006

Possible reporting date(s): 3 October 2006

Appendix 8
Proposal to refer a bill to a committee

Reasons for referral/principal issues for consideration
Examination of the bill as necessary.

Possible submissions or evidence from: Legal and Constitutional Affairs Committee

Possible hearing date: 16 October 2006

Possible reporting date(s): 16 October 2006

Appendix 9
Proposal to refer a bill to a committee
Name of bill(s): Defence Legislation Amendment Bill 2006

Reasons for referral/principal issues for consideration
Examination of the bill as necessary.

Possible submissions or evidence from: Legal and Constitutional Affairs Committee

Possible hearing date: 3 October 2006

Possible reporting date(s): 3 October 2006

Appendix 10
Proposal to refer a bill to a committee
Name of bill(s): Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Bill 2006

Reasons for referral/principal issues for consideration
Examination of the bill as necessary.

Possible submissions or evidence from: Legal and Constitutional Affairs Committee

Possible hearing date: 3 October 2006

Possible reporting date(s): 3 October 2006
Possible submissions or evidence from:
Committee to which bill is referred:
Community Affairs Committee
Possible hearing date:
Possible reporting date(s): 10 October 2006

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (9.33 am)—I move the following amendment:

At the end of the motion, add “and, in respect of the reference to the Broadcasting Services Amendment (Media Ownership) Bill 2006 and related bills, a background paper by the Minister for Communications, Information Technology and the Arts (Senator Coonan) on new services on digital spectrum also be referred to the committee”.

I table the document.

Question agreed to.

Original question, as amended, agreed to.

BUSINESS

Rearrangement

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (9.34 am)—I move:

That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:

No. 5 National Health Amendment (Immunisation) Bill 2006.
No. 7 Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Bill 2006.
No. 8 Crimes Act Amendment (Forensic Procedures) Bill (No. 1) 2006.
No. 9 Protection of the Sea (Harmful Anti-fouling Systems) Bill 2006.

Question agreed to.

Rearrangement

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (9.35 am)—I move:

That the order of general business for consideration today be as follows:

(a) general business order of the day no. 55 (Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006); and

(b) consideration of government documents.

Question agreed to.

COMMITTEES

Community Affairs Committee

Reference

Senator PATTERSON (Victoria) (9.35 am)—I ask that business of the Senate notice of motion No. 2, proposing the reference of a matter to a committee, be taken as formal.

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

Senator Chris Evans—Mr President, I seek leave to make a very short statement in relation to Senator Patterson’s request.

Leave granted.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (9.36 am)—I have spoken to Senator Minchin this morning about this. Previously when we have dealt with very complex issues that are the subject of conscience votes by the major parties there has been strong consultation and involvement to deal with process so that we end up arguing about the issue, not the process. Labor has been at pains to ensure that all senators have the opportunity to participate in the debate, that they are happy with the process, that they have their views heard and tested and that the views of those members of the public who are interested in the debate are aired and tested. As Labor leader in the Senate, I was
unaware until this morning that two motions were to be brought forward—one from Senator Humphries and one from Senator Patterson—seeking to refer bills not yet introduced into the chamber to a committee that was required to report by 27 October. Both came as a surprise to me. I understand they were discussed by the whips last night. This obviously implies there is some agreement on the government side about how the government is handling these matters.

I think that, out of respect to the chamber, all the senators ought to know what has been determined by the government for the handling of the process. While some senators may have been consulted by the proponents of the various resolutions—and some of them may come from various sides of the chamber—those responsible for the management of the chamber need to be in the process. For instance, in terms of the motions moved today, Labor senators may want to amend one or more of them—I do not know. I do not know whether they were all aware this was coming on today, other than having the opportunity to see it on the Notice Paper.

The point I made to Senator Minchin this morning—and I accept that he accepts that this is not meant as a shot against anybody—is that the reason the Senate has in the past handled these matters with a great deal of dignity and respect for different views, and has allowed really well-formed and polite, civil debates about really difficult issues, is that we have agreed on the process and all senators have felt that they have had the opportunity to contribute and participate. Of great credit to the parliament is the way in which we have dealt with the RU486 debate, the euthanasia debate and the original stem cell debate.

My statement is a plea for us to consult and agree on the process before this occurs. I was unaware until this morning that the government had agreed on a timetable for considering the bill. Whether or not the government has agreed, I do not know, so why are we reporting on 27 October? As an individual senator, I might prefer to make it the middle of November, but I would do that on the basis of knowing when the government was prepared to allow the debate. Without that information I cannot make a sensible decision on Senator Patterson’s motion. I understand why it may not be appropriate to delay this resolution today, because it seems that there is some urgency now. The only reason there would be urgency is if there is an agreement that the bill will come on at some stage.

Anyway, these are all issues I am not privy to, but the important point I want to make is that all the Senate ought to be aware of the processes that are to occur. We all ought to be consulted about that and have the opportunity to express a view about it so that, when we debate the issue, we are debating only the issue and not, as with some recent government legislation, the process about whether the Senate has been allowed enough time and whether we have heard from the appropriate witnesses. So I think it is important that we agree on a better process. This morning Senator Minchin has agreed to hold a leaders’ and whips’ meeting, and I think that is a useful way forward.

I indicate that I am speaking only on behalf of the Labor Party about the process; we all have different views about the issues. But I think we do need to get this right, as we have in the past, and not be confronted with sudden resolutions about references et cetera, particularly about bills I have not seen. I presume this is an assurance that both Senator Patterson’s and Stott Despoja’s bills will be ready, available and open to discussion well before 27 October, but I have no reassurance or information on that. I think these are important issues in that the Senate and all sena-
tors ought to be treated with greater respect. I am not accusing anyone of poor intent, but I think this highlights the problem. On a personal level, I would much prefer one bill to come forward, not two. It has been suggested to me that government senators might prefer a bill produced by a government senator. Bully for them; this is an issue for all the Senate, and I would prefer—and this is not the Labor Party’s position; it is a personal view—that we dealt with one bill. As I say, I think we have to get the process right so that we end up discussing the very important issues that are at stake here, not the process.

**Senator FERRIS** (South Australia) (9.41 am)—by leave—I am somewhat puzzled by some of the detail of what Senator Evans has raised this morning. This has been a matter of consultation between the two whips and, as I understand it, in the committee. There have been meetings within the committee and all members of the committee have been present. Certainly at the whips’ meeting last night and yesterday, when Senator Patterson was giving notice of motion, there was an outline of this process, and I am somewhat puzzled that members of the committee and the opposition whip have not kept their leader informed. It is certainly not from the government’s position that there has not been consultation on this matter.

**Senator GEORGE CAMPBELL** (New South Wales) (9.41 am)—by leave—I am a bit bemused by the statement just made by the Government Whip, because the only discussions that occurred at the whips’ meeting last night was the fact that there were two proposals from different government senators and an indication, which I gave at the meeting, based on information from our shadow minister, that we would be supporting No. 2, not No. 1, which is the normal process. There was no discussion in respect of the detail of either of the proposals or how the debate would be handled. As Senator Evans has correctly indicated, we have known nothing; we have been told nothing about what the government intends to do in respect of this bill from this point onwards.

**Senator MINCHIN** (South Australia—Minister for Finance and Administration) (9.42 am)—by leave—I hope we do not make a mountain out of a molehill here. I accept in good faith what Senator Evans has said. I accept that it is very important that on the significant conscience issues the Senate debates from time to time we get as much goodwill and consensus about how they are handled—that is important. There is a point at which matters are dealt with on a government-opposition basis and they then become fully conscience issues. For my part, I want to seek to avoid any dispute about how the matters are handled but, with great respect, it is a little difficult, because they are private members’ bills dealing with conscience matters. The bills have not actually been presented, so we are feeling our way forward on this, but I accept that we do need to get clarity on the process as soon as possible. That is why I have suggested that we have a leaders’ and whips’ meeting today straight after question time to ensure that there is no confusion or misunderstanding about how we should deal with this and that we get some consensus. Perhaps we can proceed on that basis. Accept our apologies if there has been any misunderstanding. Hopefully we can start from a clean sheet from today and deal with this as best we can. It is not going to be easy for any of us.

**Senator STOTT DESPOJA** (South Australia) (9.44 am)—by leave—The Democrats are happy to support the motion before us. Our understanding as of last night was that it may be an amended motion as part of a compromise. Whether or not that is the case, we are still happy to support this inquiry. In relation to the matter of a bill, Senator Evans, I
will be happy to oblige and get you something by close of business today.

Senator Patterson (Victoria) (9.44 am)—by leave—As Senator Minchin has said, this is a difficult situation because it is a private member’s bill. I had actually mentioned in the first meeting of the Community Affairs Committee that the government had a timetable and would like to get it through. It is, as I said, difficult because I am not the whip; I am presenting the private member’s bill. I did indicate that it was the government’s wish to have it through and that we would need to try and integrate the days. I have set the date for the 27th on the basis of all the other things that the committee has to do. It has a huge load. I would like to know with whom I can consult on the other side. It is difficult to consult with the whole of the Senate. I did consult with Senator Stott Despoja and I thought I had indicated the government’s wish to the committee. As Senator Minchin said, if anybody has felt that they have misunderstood or not been informed, I apologise for that and I hope we can find a mechanism for dealing with it. It is a private member’s bill and quite a long and difficult bill.

The President—Is there any objection to the motion moved by Senator Patterson being taken as formal? There being no objection, I call Senator Patterson.

Senator Patterson (Victoria) (9.46 am)—I move:

(1) That the following matter be referred to the Community Affairs Committee for inquiry and report by 27 October 2006:

(2) That in undertaking this inquiry the committee may consider any relevant bill or draft bill based on the Lockhart review introduced or tabled in the Senate or presented to the President by a senator when the Senate is not sitting.

Question agreed to.

Withdrawal

Senator Humphries (Australian Capital Territory) (9.46 am)—I withdraw general business notice of motion No. 1 standing in my name.

Broadcasting Legislation Amendment (Digital Television) Bill 2006

Broadcasting Services Amendment (Media Ownership) Bill 2006

Crimes Amendment (Bail and Sentencing) Bill 2006

Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Bill 2006

First Reading

Senator Sandy Macdonald (New South Wales—Parliamentary Secretary to the Minister for Defence) (9.47 am)—At the request of Senator Coonan, I move:

That the following bills be introduced:

A Bill for an Act to amend the law relating to broadcasting, and for other purposes.

A Bill for an Act to amend the Broadcasting Services Act 1992, and for other purposes.

A Bill for an Act to amend the Crimes Act 1914, and for related purposes.

A Bill for an Act to amend the law relating to prudential regulation for the purpose of facilitating trans-Tasman cooperation, and for related purposes.

Question agreed to.

Senator Sandy Macdonald (New South Wales—Parliamentary Secretary to the Minister for Defence) (9.47 am)—I move:
That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (9.48 am)—I table the explanatory memoranda relating to the bills and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

BROADCASTING LEGISLATION AMENDMENT (DIGITAL TELEVISION) BILL 2006

Conversion to digital is the most fundamental change in broadcasting since the introduction of television itself 50 years ago.

In 1998 the foundations were laid for Australia to enter the digital television era when the Parliament passed legislation to establish the basic framework for conversion to digital television. Further legislation followed in 2000 setting out the operating rules for digital television services. Since that time, technology has continued to evolve, consumers’ media consumption habits have continued to change and grow more sophisticated and internationally, the move towards digital has continued unabated.

The Broadcasting Legislation Amendment (Digital Television) Bill 2006 represents the next major step in the digital television conversion process for Australia.

The bill amends the Broadcasting Services Act 1992 and other legislation to implement the Government’s decisions relating to the regulation of digital television, the broadcasting of sports on the anti-siphoning list on new digital channels, and procedures for the allocation of new commercial television licences.

This bill contains several measures aimed at driving the uptake of digital television which will bring significant benefits to consumers and Australian society. These measures include the removal of the genre restrictions on national broadcaster multichannels and the phasing in of multichannelling for commercial television broadcasters.

The removal of the High Definition simulcast requirement will enable commercial television broadcasters to provide a High Definition television multichannel from 2007 if they wish. From 2009 they will also be able to provide a Standard Definition television multichannel. Broadcasters will not be legally restricted as to the number of multichannels they can provide within their allocated channel of spectrum from the time of switchover, which is intended to commence in the period 2010 to 2012.

This approach balances concerns about the impact of multichannelling on broadcasters’ business models and technical spectrum capacity limits with the need to provide additional digital content to viewers and to drive digital uptake.

The High Definition television programming quota of 1040 hours per year will be maintained during the simulcast period and then removed. Maintaining the quota during the simulcast period will provide a consistent framework for industry and viewers who have invested in HD equipment. However, its removal thereafter will provide increased flexibility for broadcasters in the services they offer their audiences.

All broadcasters will be prevented from premiering the whole or part of an event on the anti-siphoning list on a digital multichannel. This will ensure that listed events remain available to the widest possible audience. This requirement, along with the operation of, and ongoing rationale for, the anti-siphoning scheme, will be reviewed in 2009 prior to the expiry of the current list and in the context of approaching digital switchover.

This bill also contains measures relating to the allocation of new commercial television licences following the end of the moratorium on new licences on 31 December 2006. This bill modifies the power to allocate new commercial television broadcasting licences within the broadcasting services bands of spectrum so that the Australian Communications and Media Authority cannot exercise this power unless a decision has been
taken by the Minister that such a licence should be allocated. This will implement the Government's election commitment to take a decision-making role in commercial television licensing.

This bill also provides a power to the Minister to veto the allocation by ACMA of a new commercial television broadcasting licence outside the BSB (under s.40 of the BSA) on the basis that the allocation of the licence would be contrary to the public interest.

The end of the simulcast period, intended to commence in the period 2010 to 2012, provides a natural point from both a policy and practical perspective, for further changes to the digital television regulatory settings.

The removal of the remaining restrictions on free-to-air multichannelling and international obligations mean that the way obligations such as Australian content quotas are applied to digital channels from switchover will need to be revisited. This bill requires that such a review shall be conducted prior to the end of the simulcast period. This will ensure that appropriate regulatory settings are in place at the time of switchover.

In the meantime, the bill ensures that the usual viewer protections will apply in relation to the regulation of content on multichannels, but other obligations such as the provision of Australian content and children's content will not apply in the early stages so as not to unduly stifle their development. There will be a review of the regulation of multichannels before switchover.

Taken as a package with the bills on media ownership reform and enforcement powers for ACMA, the opportunities for new digital services on currently unallocated spectrum and the development of a Digital Action Plan for digital TV, the reforms in this bill represent a significant and important step forward in Australian media policy and regulation.

The digital television component of the package will provide opportunities for Australian television viewers to access a greater range of digital programming and services and ensure that viewers and broadcasters are better prepared for digital switchover.

BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2006

The communications environment, in Australia and across the world, is experiencing a period of rapid and accelerating change. New platforms are emerging, along with new forms of content and greater levels of interactivity. Media content is now available in multiple forms, on-demand, and to fixed or mobile receivers, providing Australians with an unprecedented level of choice and control in their media usage.

Despite this proliferation of services and platforms, the need to ensure the diversity of media ownership remains fundamental. Ensuring a variety of content, particularly in regional communities with less access to a diverse range of media than in metropolitan areas, is a key priority for the Government. The Parliament has long regarded these objectives as critical, and they are at the heart of the Broadcasting Services Act 1992 (the BSA). The Government, in committing to reform Australia’s media ownership laws at the 2004 election, indicated that it would do so while protecting media diversity. This bill, along with measures in the other media reform Bills, gives effect to that commitment.

The regulatory framework in relation to the ownership and control of Australian media assets was developed in the mid-1980s. It focuses on regulating separately television, radio and newspapers—which at that time were essentially the only mass media. The framework imposes restrictions that impede commercial flexibility and access to capital for infrastructure and content investment. These restrictions hinder the ability of Australian media organisations to succeed in the new media environment. Most of all, by locking media companies into one platform, and by locking foreign investors out of our two most profitable media, they are fundamentally anti-competitive.

This bill seeks to remove these restrictions while still providing the protection the regulatory framework was intended to provide—the protection of media diversity.

The bill will remove the current foreign ownership and control restrictions in the BSA. However, foreign ownership of Australian media assets will continue to be regulated by the Foreign
Acquisitions and Takeovers Act 1975 and Australia’s Foreign Investment Policy (FIP).

The bill will also relax Australia’s outdated cross-media rules so that cross-media mergers can take place, but only where sufficient diversity of media groups remains following the merger. At least five separate media groups will be required to remain after any merger activity in mainland State capitals, and four groups in all other areas. The areas concerned will be based on commercial radio licence areas.

The Trade Practices Act 1974 will continue to apply to proposed media mergers and acquisitions. Any such proposals will be subject to a test for the effect on competition, which is administered by the Australian Competition and Consumer Commission (ACCC). For mergers outside metropolitan areas, the bill requires that proposed mergers involving commercial radio, commercial television and Associated Newspapers within a regional radio licence area will be required to obtain a clearance from the ACCC prior to the transaction proceeding.

The media ownership rules will be administered by the media regulator, the Australian Communications and Media Authority (ACMA). A person who undertakes a transaction that breaches the BSA will be guilty of an offence, and may be ordered by ACMA to divest licences or newspapers to return to compliance with the BSA. To ensure compliance with the minimum number of separate media groups rule, ACMA will maintain a Register of Controlled Media Groups identifying the ownership and control of media groups in each licence area that comply with the BSA.

In a media environment where mergers are permitted, it is likely that media companies will be required at some point to provide news coverage of matters relating to cross-held entities. The bill imposes a general obligation on media outlets to disclose cross-media relationships in such circumstances.

The Government recognises there is a level of public concern about declining levels of local and regional news and information programs on both television and radio and this bill contains significant measures to address those concerns. In 2003, ACMA imposed licence conditions on regional television broadcasters requiring the broadcast of minimum levels of programming of local significance. The bill amends the BSA to require ACMA to impose such conditions in aggregated television licence areas in eastern Australia, in effect formalising the existing conditions, which will remain in place. Additionally, the requirement will be extended to Tasmanian licensees. ACMA is currently considering whether similar arrangements should be extended to licensees in South Australia and Western Australia.

Local content licence conditions and Local Content Plans will be implemented to provide protection for local content on radio in regional areas. The bill provides that where a commercial radio licence is transferred, is subject to a change in control or otherwise becomes part of a merged media group, the licensee will be required to meet specified local content licence conditions. These conditions will establish minimum standards for local news, community service announcements and emergency warnings, as well as minimum service standards for other types of local content, if specified by the Minister by legislative instrument.

Licensees will be required to demonstrate in a Local Content Plan how they will meet the local content licence conditions and what resources they will have in place to achieve the requirements.

This will ensure that regardless of any mergers that may take place, regional audiences can be assured that they will continue to receive relevant, local news and information from the commercial broadcasters in their area. Of course, this is in addition to the myriad of other media services available around Australia from ABC television, radio and online, SBS television, radio and online, community television and radio, subscription television, plus the ever-expanding range of online services available over the Internet and the new digital services that will emerge as a result of the Government’s media reform package.

This bill provides for the timely reform of the outdated regulatory framework governing the ownership and control of Australian media organisations. It is part of a wide-ranging and significant legislative reform package that will ensure that Australian media organisations, as well as the Australian public, are well positioned to
meet the challenges and exploit the opportunities presented by the digital communications revolution we are currently witnessing.

CRIMES AMENDMENT (BAIL AND SENTENCING) BILL 2006

The Australian Government has the responsibility to protect all Australians from criminal behaviour, moreover, it has a long-term commitment to overcome the particular disadvantages suffered by Indigenous Australians.

At the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities, held in June this year, the Minister for Families, Community Services and Indigenous Affairs, expressed our concerns about the relatively high level of violence and abuse in Indigenous communities. The Australian Government called upon all Australian jurisdictions to take action against the perpetrators of violence and abuse, and to improve the safety and security of the general community.

All Australians should be treated equally under the law. Every Australian may expect to be protected by the law, and equally every Australian is subject to the law’s authority.

Criminal behaviour cannot in any way be excused, justified, authorised, required or rendered less serious because of customary law or cultural practice. The Australian Government rejects the idea that an offender’s cultural background should automatically be considered, when a court is sentencing that offender, so as to mitigate the sentence imposed.

Likewise, this bill will preclude any customary law or cultural practice from being taken into account, in the process of granting bail to an alleged offender, in such a way that the criminal behaviour concerned is seen as less culpable. All Australians, regardless of their background, will thus be equal before the law.

At the Intergovernmental Summit in June, the Attorney-General indicated that the Commonwealth would review its bail provisions to ensure that adequate protection is given to alleged victims and potential witnesses, especially those who live in remote communities.

Victims and witnesses in remote communities face particular difficulties when alleged offenders are released, and the proposed amendments to the Commonwealth’s bail provisions will require the impact on such victims and witnesses to be considered in the process of granting bail to alleged offenders.

The recommendations of the Royal Commission into Aboriginal Deaths in Custody were considered during the formulation of the amendments in this bill. The Australian Government remains concerned about Aboriginal deaths in custody and high incarceration rates, but we are also particularly concerned about the high levels of family violence and child abuse in Indigenous communities. The Government wants to ensure that proper sentences are given to offenders and that the law covering such crimes reflects their seriousness.

The high levels of family violence and child abuse in Indigenous communities is appalling. The law covering such crimes must reflect the fact that such criminal behaviour is unacceptable. The Australian Government is committed to protecting Australians from criminal behaviour, and those who are most vulnerable are obviously those most in need of protection.

This bill forms one element of our approach to addressing these difficult issues. The amendments in this bill are complemented by law enforcement initiatives which include the creation of a National Indigenous Violence and Child Abuse Intelligence Task Force to facilitate the sharing of information and intelligence on crimes of violence and child abuse in the Indigenous community. There are also initiatives underway for community legal education and judicial cultural awareness training. These initiatives are in addition to the actions that the Australian Government is already undertaking to address the complexities that Indigenous Australians face within the justice system, including initiatives through the National Community Crime Prevention Programmes, the Prevention, Diversion, Rehabilitation and Restorative Justice Program and the Family Violence Prevention Legal Services Program.

The Australian Government will continue to work with States and Territories to improve Australia’s justice system, and in this regard, the Australian Government encourages the States and Territories
It is with pleasure that today, I introduce a Bill which delivers on a key aspect of the Australian Government’s commitment to develop a single economic market between Australia and New Zealand, based on common regulatory frameworks. This bill represents a significant step towards this objective in the particular area of banking supervision.

The Australian and New Zealand banking markets are among the most highly integrated in the world. Australian banks have a combined market share of more than 85 per cent of the New Zealand banking market, and New Zealand assets comprise around 15 per cent of Australian banks’ total assets. Moreover, the same four banks are the major banks in both countries.

Given this high level of commercial integration, there is benefit in moving towards seamless regulation of banks on both sides of the Tasman, to minimise compliance costs and promote efficiency.

Reducing compliance and administration costs for consumers and business in Australia is a topic in which the Australian Government has a direct, substantial and ongoing interest.

In the current context, it is also important that the banking supervisors are able to cooperate more closely with respect to promoting financial system stability in each country given the interdependence of both financial systems.

In 2005, the Trans-Tasman Council on Banking Supervision was established by the Treasurer and the New Zealand Minister of Finance. The Council’s objective is to promote a joint approach to trans-Tasman banking supervision that delivers a seamless regulatory environment for banking services, as the first step towards a single economic market in banking.

Both the Australian and New Zealand Governments agreed to implement legislative changes recommended by the Council. They did this to ensure that the Australian Prudential Regulation Authority (APRA) and the Reserve Bank of New Zealand (RBNZ) can support each other in meeting their statutory responsibilities.

This bill implements the Council’s recommendations. It also contains some small complementary proposals relating to secondments and financial system stability, to ensure that the Council’s recommendations work effectively.

I am pleased to report that New Zealand is currently progressing its own reciprocal legislative amendments through its Parliament.

In Australia, the amendments will require APRA to do a number of things. First, APRA will be obliged to support the RBNZ in performing its statutory responsibilities relating to prudential regulation and financial system stability. Second, APRA must consider the implications of its actions for financial system stability in New Zealand. And lastly, APRA must consult the RBNZ on these matters.

Under the bill, an administrator or statutory manager—that may be appointed by APRA to a bank in severe financial distress—will also be required to consider the implications of a proposed action on financial system stability in New Zealand. In addition, the bill includes specific amendments aimed at ameliorating the risk that APRA could be required to interfere with the provision of outsourced services from an APRA-regulated entity to a New Zealand bank.

As a result of these amendments, banks should be allowed greater flexibility with respect to the trans-Tasman location of their systems and functions than can be afforded under the current regulatory regimes of both countries.

Importantly, this can be achieved without compromising the ability of regulators to meet their existing statutory objectives. The bill will therefore bring compliance cost and efficiency benefits to banks with trans-Tasman operations, which should have flow-on benefits for customers (including depositors) and shareholders alike.

In developing these proposals, the Government has been very conscious that that Australian banks operate across borders and need to be competitive in an increasingly globalised financial system. Many large international banks are able
to centralise systems and functions to secure cost savings that contribute to their competitiveness. These amendments should create a regulatory environment under which impediments to banks choosing the location of systems and functions within the trans-Tasman market are reduced.

To complement these proposals, this bill amends the legislation to clarify that APRA can second staff from the RBNZ. This will contribute to cooperation between APRA and the RBNZ by simplifying the arrangements for such secondments.

In addition, this bill clarifies that one of APRA’s objectives is to promote financial system stability in Australia. This has always been one of APRA’s roles, but has not been explicitly noted in legislation. Inserting this objective into legislation now will assist in the implementation of reciprocal legislative amendments in New Zealand legislation. These amendments will also mean that Australia’s legislation is more consistent in the way it refers to financial system stability in Australia and New Zealand.

This bill promotes a joint approach to trans-Tasman banking supervision and a seamless regulatory environment for banking services. This is consistent with the high level of commercial integration of the Australian and New Zealand banking markets and the interdependence of both countries’ financial systems.

The amendments contained in this bill enhance the framework for ensuring that trans-Tasman banks and financial systems remain sound while providing benefits to business.

The Government considers that these proposals are not only imperative in making progress towards the Australia-New Zealand single economic market objective, but that they are also ‘trail blazing’ internationally in the regulation of business having cross-border operations and activities.

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

Ordered that the Crimes Amendment (Bail and Sentencing) Bill 2006 and the Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Bill 2006 be listed on the Notice Paper as separate orders of the day.

CLIMATE CHANGE IN THE PACIFIC REGION

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.49 am)—I move:

That the Senate—

(a) notes:

(i) the formation of a group, the Pacific Calling Partnership, made up of organisations and individuals who recognise Australia’s ecological debt to its low-lying Pacific neighbours,

(ii) that droughts, storm surges and associated salination of soil and water are already causing people in low-lying Pacific countries to move their homes and to seek higher ground for growing food,

(iii) that the tiny coral atolls of Kiribati are more susceptible to damage because they are less than 3 metres high,

(iv) one of the messages brought to the Australian Parliament from the people of Kiribati by the Partnership is ‘We ask if you can provide a place for us if we are in big trouble. Thank you’, and

(v) that the Kiribati Government currently estimates that there will be a need to resettle 10 000 I-Kiribati in the next 20 years;

(b) recognises Australia’s ecological debt to low-lying Pacific nations, as a major per capita emitter of greenhouse gases, and the economic benefits enjoyed by Australia as a result of using the energy that generated these emissions; and

(c) urges the Government to support the people of the Pacific through:

(i) committing to the Kyoto Protocol as an act of international goodwill and cooperation,

(ii) committing to reducing Australia’s greenhouse emissions,
(iii) supporting adaptation and mitigation works in low-lying Pacific nations, and
(iv) leading an international coalition to accept climate change refugees when a Pacific country becomes uninhabitable because of rising sea levels.

Question put.
The Senate divided. [9.53 am]
(The President—Senator the Hon. Paul Calvert)

Ayes........... 30
Noes........... 34
Majority........ 4

AYES
Allison, L.F. Brown, B.J.
Brown, C.L. Campbell, G. *
Crossin, P.M. Evans, C.V.
Faulkner, J.P. Forshaw, M.G.
Hogg, J.J. Hurley, A.
Hutchins, S.P. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A.
McLucas, J.E. Milne, C.
Moore, C. Murray, A.J.M.
Nettle, K. O’Brien, K.W.K.
Polley, H. Ray, R.F.
Siewert, R. Stephens, U.
Sterle, G. Stott Despoja, N.
Webber, R. Wortley, D.

NOES
Abetz, E. Adams, J.
Barnett, G. Bernardi, C.
Boswell, R.L.D. Brandis, G.H.
Calvert, P.H. Chapman, H.G.P.
Colbeck, R. Coonan, H.L.
Eggleston, A. Ferguson, A.B.
Ferris, J.M. * Fieravanti-Wells, C.
Fifield, M.P. Heffernan, W.
Humphries, G. Joyce, B.
Lightfoot, P.R. Macdonald, I.
Macdonald, J.A.L. Mason, B.J.
McGauran, J.J. Minchin, N.H.
Nash, F. Parry, S.
Patterson, K.C. Payne, M.A.
Ronaldson, M. Santoro, S.
Scullion, N.G. Troeth, J.M.
Trood, R.B. Watson, J.O.W.

* denotes teller

Question negatived.

MIGRATION ACT

Senator ALLISON (Victoria—Leader of the Australian Democrats) (9.56 am)—At the request of Senator Bartlett, I move:

That the Senate—

(a) notes that:

(i) 26 September 2006 marks the 5th anniversary of the guillotining through the Senate of seven separate pieces of legislation amending the Migration Act 1958,

(ii) some aspects contained in these pieces of legislation have caused enormous suffering and hardship to asylum seekers who were fleeing persecution, and

(iii) 5 years on, numerous reports and inquiries have uncovered multiple cases of damaged lives due to flaws in the legislation and in the culture of the Department of Immigration and Multicultural Affairs, and repeated failures to ensure that the rights of asylum seekers and refugees are protected and that their cases are processed fairly;

(b) expresses the view that some of the changes made to the Migration Act in the wake of the *Tampa* incident undermined basic legal principles such as equality before the law, procedural fairness, transparent accountability of the actions of Commonwealth officers and protecting against refoulement; and

(c) calls for reform of the Migration Act to ensure greater fairness, transparency, accountability and compliance with Australia’s obligations under international law, and an end to the Pacific solution, manda-
tory detention and temporary protection visas.

Question negatived.

**NUCLEAR TESTS AT MARALINGA**

**Senator MILNE** (Tasmania) (9.57 am)—I move:

That the Senate—

(a) notes that:

(i) 27 September 2006 is the 50th anniversary of the first of the nuclear tests at Maralinga,

(ii) the nuclear tests resulted in fallout over most of Australia, and especially contaminated great tracts of traditional land, transforming an independent and physically-wide ranging people into a semi-static and dependent group, the damage being radiological, psychological and cultural,

(iii) the Royal Commission into British Nuclear Tests in Australia concluded that, at Maralinga, ‘attempts to ensure Aboriginal safety’ during the tests ‘demonstrate ignorance, incompetence and cynicism on the part of those responsible for that safety’,

(iv) the test site remains radioactive and that there are unresolved issues about compensation for the traditional owners,

(v) approximately 16 000 servicemen exposed to radiation during the tests never received recognition of hazardous service and survivors receive limited ongoing support, and the high mortality and illness rates of these men have not yet been adequately acknowledged or explained,

(vi) the Government breached its own standards for the disposal of long-lived radioactive waste disposal by burying plutonium-contaminated debris in shallow, unlined trenches,

(vii) the Australian Radiation Protection and Nuclear Safety Agency described the ‘clean-up’ as marred by a ‘host of in-

(b) calls on the Government to recommit to international nuclear non-proliferation, including ruling out the export of Australian uranium to countries that are not signatories to the Nuclear Non-Proliferation Treaty and ruling out the development of uranium enrichment plants in Australia.

Question put.

The Senate divided. [9.59 am]

(The President—Senator the Hon. Paul Calvert)

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

Noes............ 34

Majority........ 4

**AYES**

Allison, L.F.  Brown, B.J.
Brown, C.L.  Campbell, G. *
Crossin, P.M.  Evans, C.V.
Faulkner, J.P.  Forshaw, M.G.
Hogg, J.J.  Hurley, A.
Hutchins, S.P.  Kirk, L.
Ludwig, J.W.  Landy, K.A.
Marshall, G.  McEwen, A.
McLucas, J.E.  Milne, C.
Moore, C.  Murray, A.J.M.
Nettle, K.  O’Brien, K.W.K.
Polley, H.  Ray, R.F.
Siewert, R.  Stephens, U.
Sterle, G.  Stott Despoja, N.
Webber, R.  Worley, D.

**NOES**

Abetz, E.  Adams, J.
Barnett, G.  Bernardi, C.
Boswell, R.L.D.  Brandis, G.H.
Calvert, P.H.  Chapman, H.G.P.
Colbeck, R.  Coonan, H.L.
Eggleston, A.  Ferguson, A.B.
Ferris, J.M. *  Fierravanti-Wells, C.
Fifield, M.P.  Heffernan, W.
Humphries, G.  Joyce, B.
Lightfoot, P.R.  Macdonald, I.
I move:

That the Senate

(a) notes the imposition of new restrictions on the distribution of foreign news in China;

(b) condemns any move by the Chinese Government to impose unfair restrictions on foreign press freedom; and

(c) calls on the Minister for Foreign Affairs (Mr Downer) to investigate the matter.

Question put.

The Senate divided. [10.02 am]

(The President—Senator the Hon. Paul Calvert)

Ayes............. 30
Noes.............. 34
Majority......... 4

AYES

Allison, L.F. Brown, B.J.
Brown, C.L. Campbell, G. *
Crossin, P.M. Evans, C.V.
Faulkner, J.P. Forshaw, M.G.
Hogg, J.J. Hurley, A.
Hutchins, S.P. Kirk, L.
Ludwig, J.W. Lundy, K.A.
Marshall, G. McEwen, A.
McLucas, J.E. Milne, C.
Moore, C. Murray, A.J.M.
Nettle, K. O’Brien, K.W.K.
Polley, H. Ray, R.F.
Siewert, R. Stephens, U.
Sterle, G. Stott Despoja, N.
Webber, R. Wortley, D.

NOES

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

* denotes teller

Question negatived.
(c) recognises that this makes the grass a potentially serious threat to both Australia’s agriculture and its environment, if it were to be introduced into Australia; and

(d) urges governments to:

(i) implement mechanisms to prevent the importation of GE creeping bentgrass and other exotic herbicide-resistant GE grasses that could make our shocking weed problem worse, and

(ii) introduce stronger measures to ensure that GE plants released in Australian field trials do not contaminate the environment and become problem weeds.

Question put.

The Senate divided. [10.06 am]

(The President—Senator the Hon. Paul Calvert)

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

Noes........... 34

Majority........ 4

AYES

Allison, L.F.  Brown, B.J.
Brown, C.L.  Campbell, G. *
Crossin, P.M.  Evans, C.V.
Faulkner, J.P.  Forshaw, M.G.
Hogg, J.J.  Hurley, A.
Hutchins, S.P.  Kirk, L.
Ludwig, J.W.  Lundy, K.A.
Marshall, G.  McEwen, A.
McLucas, J.E.  Milne, C.
Moore, C.  Murray, A.J.M.
Nettle, K.  O’Brien, K.W.K.
Polley, H.  Ray, R.F.
Siewert, R.  Stephens, U.
Sterle, G.  Stott Despoja, N.
Webber, R.  Wortley, D.

NOES

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

PAIRS

Bishop, T.M.  Vanstone, A.E.
Carr, K.J.  Ellison, C.M.
Conroy, S.M.  Kemp, C.R.
Sherry, N.J.  Johnston, D.
Wong, P.  Campbell, I.G.

* denotes teller

Question negatived.

SOCIAL SECURITY (HELPING PENSIONERS HIT BY THE SKILLS SHORTAGE) BILL 2006

First Reading

Senator GEORGE CAMPBELL (New South Wales) (10.08 am)—At the request of Senator Evans I move:

That the following bill be introduced: A Bill for an Act to amend the Social Security Act 1991, to assist those who have had their pension cut because of lengthy delays in the construction of a new home due to the national shortage of building tradespeople.

Question agreed to.

Senator GEORGE CAMPBELL (New South Wales) (10.09 am)—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 GEORGE CAMPBELL (New South Wales) (10.09 am)—I move:

That this bill be now read a second time.

I seek leave to table the explanatory memorandum and have the second reading speech incorporated in Hansard.
Leave granted.

_The speech read as follows—_

SOCIAL SECURITY (HELPING PENSIONERS HIT BY THE SKILLS SHORTAGE) BILL 2006

The Social Security (Helping Pensioners Hit by the Skills Shortage) Bill 2006 aims to ensure that pensioners who sell their home in order to build a new dwelling do not lose their benefit entitlement due to construction delays resulting from the Howard Government’s skills shortage.

Under the social security legislation the proceeds of the sale of a primary residence are exempt from the assets test for 12 months where those funds will be used to buy or build a new primary residence. After 12 months the proceeds of the sale are assessed as assets on the non-homeowner assets test scale and benefit eligibility is adjusted accordingly.

Australia is experiencing a shortage in construction trade skills caused by the failure of the Howard Government to invest in skills and training over its ten long years in office. In Western Australia, the resources boom is placing an additional strain on the supply of skilled labour. This has driven up new home completion times to the extent that it is becoming increasingly difficult to complete a home building project within one year. In May this year The West Australian reported: “In WA, it takes 15 months from the time land is bought to the time a home is finished—four months longer than it did a year ago.”

As a result of these delays, a small number of pensioners are finding themselves with reduced pension benefits when their building project extends beyond the 12 month limit. I have been contacted by constituents regarding this problem and this bill is a response to their concerns.

The bill seeks to provide the Secretary of the Department with the discretion to extend the period where sale proceeds are not included in the assets test up to 24 months, where there has been an unavoidable delay in construction. Currently that discretion does not exist.

In a recent letter to a pensioner affected by the current rule the Minister, Mal Brough MP, clearly acknowledged that the problem exists but then goes on to say “I have no discretion under the Act to make or change decisions on individual cases. There is no immediate intention to change the 12 months exemption period.”

The Howard Government knows that pensioners are getting caught by this problem but have no intention of fixing it. Unlike the Minister, Labor recognises that this is a problem worth fixing.

This measure will ensure that pensioners are not disadvantaged by the Howard Government’s incompetent approach to skills and training.

What this bill cannot do is address the wider challenges to WA’s economy presented by the Howard Government’s failure to invest in skills and training. Western Australia is the engine room of the Australian economy, accounting for more than half of the nation’s trade by volume and almost 30 per cent by value. Each year since 1987, the state has made a net fiscal contribution to the nation. The WA Department of Treasury and Finance estimates that in 2005, the state made a net financial contribution to the nation of $4 billion—or $2000 for every Western Australian.

Forecasts suggest that the continuing boom in the resources sector, as well as new commitments in infrastructure, mean the demand for skills will continue to grow. The WA Government has initiated a range of programs to develop the state’s labour supply. At the last state election, WA Labor promised to lift the number of apprentices and trainees to 30,000, a promise which was honoured within a matter of months.

Unfortunately, despite the significant contribution WA makes to the nation’s finances, Prime Minister Howard is not meeting the commitment of the state’s Labor Government. In the period from 2001 to 2004 the WA Government’s increased allocation to vocational education and training was nearly three times that of the increase in funding provided to the state by the Commonwealth. Under the current funding agreement the Commonwealth’s growth funding to WA is less than $5 million a year. The Howard Government needs to make a stronger commitment to skills development in Western Australia.

Australia needs a nation-building Labor Government which will commit to the skills development that will grow our economy over time. In the meantime, this private senator’s bill, the Social
Security (Helping Pensioners Hit by the Skills Shortage) Bill 2006, will provide a simple and logical measure to ensure that pensioners are not unfairly disadvantaged by the current stresses in the skilled labour market. I commend the bill to the Senate.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

CONDOLENCES

Mr Hakim Taniwal

Senator STEPHENS (New South Wales) (10.10 am)—by leave—I move:

That the Senate

(a) records its deep regret at the death, on Sunday, 10 September 2006, of Mr Hakim Taniwal who was killed by a suicide bomber in Afghanistan;

(b) recognises that Mr Taniwal, having fled his country in 1980, arrived in Australia with his wife as a refugee, returned to Afghanistan in 2002 to contribute to the rebuilding of his homeland and by serving as the Governor of Paktia in eastern Afghanistan; and

(c) extends its profound sympathy to Mr Taniwal’s family in their bereavement.

Question agreed to.

EUTHANASIA

Suspension of Standing Orders

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.11 am)—I ask that motion No. 546, relating to the right to die with dignity, be taken as a formal motion.

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

Senator George Campbell—Yes.

The PRESIDENT—There is an objection to this motion being taken as formal, Senator.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10.11 am)—Pursuant to contingent notice, I move:

That so much of the standing orders be suspended as would prevent him moving a motion relating to the conduct of the business of the Senate, namely a motion to give precedence to general business notice of motion no. 546.

I was prepared to simply have a count of the voices on that motion but, seeing as formality has been denied, I hope whoever denied it—Senator George Campbell—will let us know why. It is a very simple motion about the right of Australians to die with dignity. I particularly wanted it dealt with today because we are approaching the 10th anniversary of the death of Bob Dent, the first person to have a legally assisted and compassionate death under the Northern Territory euthanasia laws. There were four such people before there was an override from this parliament. That happened in March 1997 finally, with the passage of a private member’s bill known as the Andrews legislation.

It is high time that we revisited this issue, because we as a mature nation ought to be moving to allow Australians to die with dignity. The obvious alternative viewpoint is that Australians do not have the right to die with dignity, and to block a vote on the matter is to lead me to now call for a debate on the matter. That, of course, will be determined by the vote that is going to follow after this very short debate. It is an important matter. It should not be swept under the carpet and it is a matter for debate. I know that there will be the argument that this is not the way to do it, that it should be done in some other forum or that we should be debating it in some other way. But, if you look at the record, nobody brought it forward in the long intervening period until I did now.

As a former doctor, I am aware through the Medical Journal of Australia that there are some 4,000 assisted compassionate deaths by doctors in Australia at the moment. We ought to legalise the matter. We ought to ensure that those Australian citizens who are
dying from a terminal illness without chance of a recovery, who are suffering and who find indignity in the long process of death in an age when the dying process as well as the living process in our society is becoming longer, have a right to a determination to end the indignity and the suffering and, with their families and with the backup of proper medical authority, are able to have a release from that suffering.

The matter is important. I will listen carefully to the debate. I suspect there will be statements that this is not the proper way to do it. Senator Allison has a bill on the Notice Paper. I have spoken with her about that, and I support that bill. In fact, I was moving for the same legislation to be brought forward on the Notice Paper. We will be moving to have that brought up for debate, and let the debate be enjoined. The worst thing is to have our heads in the sand—to be trying to deny that as we sit here comfortably today there are people in very undignified circumstances in a slow, prolonged dying process in this nation of ours who should be given an option but who are not being given that option. Since the debate in this place, other countries, including Catholic Belgium, have moved to give people that right. Australia should be doing the same.

I feel very strongly about this because, as a doctor, I have been involved in the process of people being in a long dying process who do not want to continue their suffering, their indignity. And only they can determine that. Of course there have to be proper rules and forms, and we know all about those in Australia. We have the wit and wisdom to do that and not to leave the situation where doctors have to make decisions without proper conversation with their patients—and to do it every day in Australia. This motion is just the start of a process. I suspect we may get a vote against having a debate on the matter. I think that is a sad reflection on the courage of us all to take on this important issue, debate it and come to a better result than we have so far.

Senator BOSWELL (Queensland—Leader of The Nationals in the Senate) (10.16 am)—We are debating why this motion should be declared urgent and why this debate should come forward. Senator Brown did not address that, but I was not going to call a point of order on him. Senator Brown—through you, Mr Acting Deputy President—this is shorthand for euthanasia. If you want to put up a euthanasia motion, at least be honest enough to call it euthanasia, not ‘the right to die with dignity’. Of course everyone wants the right to die with dignity, but if you are honest with the Senate and with the Australian people you will put up the right motion. But you do not want to frighten the horses, so you are making it a horse of a different colour, if I can use that expression. We had this debate a number of years ago. It was divisive; it divided the community. In fact, I have never had such hate mail from certain sections of the community.

Senator BOSWELL—I do not have 13 staff.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! Senator Boswell, ignore the interjections.

Senator BOSWELL—Let us not go down that road, but that is completely untrue. This has been on Senator Brown’s mind for a number of years, and he persists in bringing it up against the wishes of the Senate in general. Recently in South Australia a Democrat in their state parliament produced methods of suicide. The speech was eventually struck off the Hansard because it was feared that it contained advice that would have triggered deaths. You, Senator Brown, received a gong from Dr Nitschke’s organisation—if we can
call him a doctor; Dr Death—for services to the right-to-die movement. I hope you were proud when you received that medal on supporting euthanasia. In 1997, the Greens introduced into the Tasmanian parliament the Medical Treatment and Natural Death Bill. That bill was written by you, Senator Brown. One thing that we can say about you, Senator Brown, is that you are certainly consistent. You certainly want doctors to have the ability—

Senator Bob Brown—I wasn’t in the parliament and I didn’t write the bill.

The ACTING DEPUTY PRESIDENT—Order! Senator Brown, you were heard in silence; let Senator Boswell continue.

Senator BOSWELL—it was written by Senator Brown in 1985. Senator Brown, if you are determined to keep pursuing euthanasia then be honest about it.

Senator Bob Brown—we have a bill coming.

Senator BOSWELL—Be honest about it. Don’t try to put up some sort of subterfuge in this parliament where you call it ‘the right to die with dignity’. Be honest and say ‘euthanasia’. I do not see any reason why we should proceed with this debate. I do not think in the mind of the Senate that we want to bring on this very divisive debate. We had the debate four years ago. That was considered over a two- or three-month period when people could actually make their decisions, have Senate inquiries and call witnesses. But, no, today you want to jump up and hijack the parliament so you can pursue this stupid ideology that you have—you want to get this parliament to back you in euthanasia when it is opposed by the majority in this parliament.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (10.21 am)—Labor voted not formal on this motion because we think it is an inappropriate way to bring on a debate that is much more complex and is intended to reflect something that is not honestly put in the motion. Quite frankly, Senator Brown, in speaking to the motion, you very much let the cat out of the bag. On the face of it, the motion says:

That the Senate supports the right of Australians to die with dignity.

No-one could disagree with that. Everyone hopes that everyone gets the opportunity very late in life to die with dignity. But when you spoke you talked about the 10th anniversary of Bob Dent’s legally assisted death. You talked about the override and the Northern Territory legislation. Be honest enough to put it in the motion. Be honest enough to be upfront about it. I think this was quite sneaky and does your reputation no good at all, Senator Brown. I have respect for you, but this is not the way to behave. This is not the way to use the Senate. You make speeches, as I do, about the appropriateness of Senate process, about treating the Senate and senators appropriately.

Senator Bob Brown—Where’s your motion?

Senator CHRIS EVANS—I do not have to bring on a motion. I do not believe we should consider euthanasia with a one-line motion moved in the Senate without debate. I think that is a really inappropriate way to deal with a complex issue. How I vote on euthanasia will be on the record when we have a proper debate by virtue of a bill, where people get to express their views. Quite frankly, this does you no credit at all. Not only is it a blunt instrument but also complex issues are allegedly brought down to one simple line which, at first blush, appears inoffensive, but when you speak you make it clear that you want de facto to have a debate about euthanasia. You expect to put
through the Senate without debate a motion about euthanasia.

Senator Bob Brown—You are about to block the debate.

Senator CHRIS EVANS—Leave me alone! This is a cheap political stunt and you know better.

Senator Bob Brown—You know better.

Senator CHRIS EVANS—No. Senator Brown, you know better. As I said, quite frankly this does you a disservice. Those motions and that process are designed to deal with things that are expressions of the Senate view. If you expect the Senate to express a view on euthanasia without debate, with a one-line motion that is not even honest, I think you ought to think again because you have not treated us with respect and you have not acted in a way that brings you any credit at all. If you want to bring on a bill about euthanasia, I will vote for us having the capacity to debate it as individuals. You know this issue is a matter of conscience, that both major political parties have allowed their senators to vote on the basis of their own conscience, but you think that you can pull a stunt on a Thursday morning that somehow we are going to pass a resolution about euthanasia. As I said, it is breathtaking and it does you no credit.

No senators were consulted. Until you spoke today, I did not honestly know what was intended by this motion. Thankfully, you were honest about what you intended, but in reading the motion we would not have known that. Quite frankly, I am confirmed in my view that we should have voted no to the formality request. I am angrier now than I was before about this stunt. If you want to debate serious ethical issues, do it properly. As I said earlier today, this Senate has a good record of dealing with these things in a mature and proper way, allowing senators the respect they deserve—to articulate their views and examine issues properly. We did that with the euthanasia bill last time. I voted against the Andrews bill and I was unsuccessful, but I did that after examination of the issues, a proper debate in the Senate and a proper community debate. Stunts such as this are not appropriate and do you a disservice, Senator Brown. They treat the Senate with a total disrespect. We will not be supporting this sort of stunt. That is not the way to have a debate on euthanasia. If you want to debate euthanasia, do it properly: put up a bill, inform the public, inform the Senate and treat your fellow senators with a bit more respect.

Senator ALLISON (Victoria—Leader of the Australian Democrats) (10.27 am)—I want to indicate that my colleagues and I will not be voting on this matter. I think it is a great shame. I stand in this place as someone who is very supportive of reform of our laws to ensure that people can die with dignity, if that is what they choose. As has already been mentioned, my bill would have overturned the Andrews bill. Things have moved on since we last had that debate, and it is appropriate for us to discuss it. We cannot do this in a shorthand way; we cannot vote on a very simplistic statement. It is disappointing that it has come down to this. I would welcome a proper debate on the subject of voluntary euthanasia because many people feel it important to have that opportunity available.

We need to recognise that voluntary euthanasia does happen. Sometimes with their consent, sometimes at their insistence, people are euthanased in this country. We need to talk about it, but I would prefer that we did that with a bill or indeed with a general reference. I would be delighted if we were to refer this matter to a committee for consideration. There is no urgency at this point for us to vote on this. It is not going to take us anywhere. It does not say what will...
happen if we do vote on it. It will not progress the issue, and that is the problem that I have with it. In fact, it is more likely to get people’s backs up.

Senator Brown, I suggest that you withdraw this motion. As you are hearing, around the chamber there is an interest in us debating it, but debating it for half an hour on a Thursday is not my idea of an informed debate or a worthy way to treat such a profoundly important issue, one on which views are deeply held. This issue is rightly given a conscience vote because people hold very strong views on both positions. That is the reason we will not be present in this chamber for the vote.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.28 am)—Family First believes the phrase ‘dying with dignity’ is really code for euthanasia. The reality is: every Australian wants to die with dignity but not everyone wants to deliberately end someone else’s life. Family First opposes deliberately ending a person’s life or helping them to end their own life. We have already seen how far the euthanasia agenda goes. Dr Philip Nitschke has already moved quickly to assisted suicide, as well as giving depressed and suicidal people the means to end their own lives. This is not something that the Australian community believes is right.

Suicide is a major issue in Australia. In fact, more Australians commit suicide than are killed on the roads each year. Family First believes we should be focusing on supporting those desperate people who are thinking about suicide. We should be treating their depression and their pain. Family First does not believe euthanasia is a solution. It certainly does not address the needs of Australians in crisis. What message are we sending our kids? Suicide is not a solution. We should be looking at helping people who are obviously in desperate need of help. We should be doing all we possibly can. The motion we are debating is absolutely ridiculous.

Senator ROBERT RAY (Victoria) (10.30 am)—The difficulty we have with a motion such as this is that it is an all-encompassing motion of great seriousness. How we could possibly have declared it formal and put it through without debate is beyond me. The Senate has shown a lot of forbearance in having a lot of motions declared formal and voted on without debate. It is an increasing trend—we know that. We are averaging about four divisions a day on these matters. It is not as though the Labor Party, by objecting to Senator Brown’s motion, has been at all spiteful. It has been consistent. The issues raised, and as explained by Senator Brown here today, are serious issues. You cannot just vote on them without debate. As to their urgency, Senator Brown let the cat out of the bag in interjecting on Senator Boswell, when he said that he had a bill coming in here to deal with it. Am I misquoting you?

Senator Bob Brown—No—Senator Allison has a bill.

Senator ROBERT RAY—Senator Allison has—so that is the appropriate time to debate this issue. It will be debated as an issue, I assume with a conscience vote. The one difficulty will be gathering enough time to do so; I concede that. It is not easy in general business to bring any of these things to a resolution, as we will find out later today with the ACT self-government bill. It is very difficult to do so. There was a bit of grumpiness initially from Senator Brown, who wanted to know who objected, who declared this not formal. We are saying it was us, and we are not apologising for it. We are not going to apologise for it, because it is a major issue that cannot be just voted on, yes or no. There is subtlety of positions to be explained.
on all sides. We will have an opportunity when Senator Allison’s legislation comes in to discuss it—maybe not to resolve it, but to discuss it. That is the appropriate time. Therefore, this cannot even be treated as a matter of urgency and we should defeat Senator’s Brown’s motion on this occasion.

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (10.32 am)—I agree. We cannot have an abbreviated statement on something with such huge implications. It is a profoundly important topic, and discussion is not possible in such a truncated way. The Australian people would expect that the topic of euthanasia be approached in a much more appropriate way than this.

Question negatived.

COMMITTEES
Publications Committee
Report
Senator WATSON (Tasmania) (10.33 am)—On behalf of the Publications Committee, I present the 15th report of the committee. I move:

That the report be adopted.

Question agreed to.

BUDGET
Consideration by Legislation Committees
Additional Information
Senator SCULLION (Northern Territory) (10.33 am)—I present additional information received by various committees relating to estimates as follows:

- Community Affairs Committee—2006-07 budget estimates
- Employment, Workplace Relations and Education Committee—2006-07 budget estimates
- Environment, Communications, Information Technology and the Arts Committee—2006-07 budget estimates
- Foreign Affairs, Defence and Trade Committee—2006-07 budget estimates
- Rural and Regional Affairs and Transport Committee—2005-06 and 2006-07 additional and budget estimates

Senator STEPHENS (New South Wales) (10.33 am)—by leave—I wish to make a statement in relation to the additional information that we have been provided with. It is extraordinary that we are receiving information from the 1998-99, 1999-2000, 2000-01 and 2005-06 budget, supplementary budget and additional estimates in the Senate Standing Committee on Economics. It is extraordinary that information that has been sought through the economics committee has taken so long to come here. We would expect that information to have been much more readily available since 1998. This outstanding information would have served us all well in this place.

NATIONAL CATTLE DISEASE ERADICATION ACCOUNT AMENDMENT BILL 2006
EDUCATION SERVICES FOR OVERSEAS STUDENTS LEGISLATION AMENDMENT (2006 MEASURES No. 1) BILL 2006
EDUCATION SERVICES FOR OVERSEAS STUDENTS LEGISLATION AMENDMENT (2006 MEASURES No. 2) BILL 2006
First Reading

Bills received from the House of Representatives.

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (10.35 am)—I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I
will be moving a motion to have one of the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (10.36 am)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

NATIONAL CATTLE DISEASE ERADICATION ACCOUNT AMENDMENT BILL 2006

The National Cattle Disease Eradication Account Amendment Bill 2006 (the bill) will enable residual cattle and buffalo industry levies, collected under the bovine tuberculosis and bovine brucellosis eradication campaigns, to be transferred to a more broadly based industry disease fund.

For many years the cattle and buffalo industries have contributed, through levies, to the National Cattle Disease Eradication Account (NCDEA). These funds were used in initiatives to eradicate brucellosis and tuberculosis, most recently through the Tuberculosis Freedom Assurance Program (TFAP). Successive campaigns have resulted in both diseases being considered to be eradicated in Australia. This is a major achievement that other countries are unable to claim and a shining example of government and industry partnership.

As the Tuberculosis Freedom Assurance Program (TFAP), will conclude on 31 December 2006, the cattle and buffalo industries have requested that residual funds in the National Cattle Disease Eradication Trust Account are transferred into the more broadly focused Cattle Disease Contingency Fund (CDCF).

The Cattle Disease Contingency Fund is a trust fund that was established in 2002 by the cattle industry and Animal Health Australia (AHA), in order to fund various animal health activities which are to the benefit of the cattle industry in Australia. The funds may be used for a number of specified purposes, including prevention, eradication and control of endemic or exotic cattle diseases, research and other animal health activities likely to benefit the Australian cattle industry.

In comparison to the NCDEA, there is significantly greater scope for the application of funds held in the CDCF. The increased autonomy and flexibility in the use of the levy monies will strengthen the cattle industry's ability to address biosecurity issues, to conduct research and risk mitigation activities and to respond to incursions of exotic diseases.

The bill amends the current National Cattle Disease Eradication Account Act 1991 to add a clause that will enable payments to be made from the Trust Account to the CDCF. The bill also includes the addition of a clause that clearly defines the CDCF for the purposes of the Act.

The bill enables funds remaining after the successful completion of the brucellosis and TB programs to be used in the ongoing work of building a strong biosecurity framework for the Australian cattle industry. It will further help maintain the competitiveness of Australia’s agricultural industries through an outstanding animal health status.

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EDUCATION SERVICES FOR OVERSEAS STUDENTS LEGISLATION AMENDMENT (2006 MEASURES No. 1) BILL 2006

The Education Services for Overseas Students Act 2000 (the ESOS Act) and its complementary legislation regulate the international education and training services industry. This ESOS Act was introduced in 2000 to address problems facing the industry: the uncertain financial protections for students' pre-paid course fees, the emergence of a small minority of unscrupulous providers and inconsistent quality assurance.

The purpose of the legislation is to ensure that overseas students who come to Australia to study on student visas receive the education and training for which they have paid. It aims to protect
the reputation of Australia’s education and training export industry and strengthen public confidence in the student visa program.

The ESOS Act required that an independent evaluation be commenced within three years of its having received Royal Assent. The report of the evaluation was released by the former Minister for Education, Science and Training in June 2005.

The evaluation report found broad industry support for existing arrangements, but made recommendations for improvement. These amendments address some of the evaluation recommendations. As consultation with industry is ongoing, it is anticipated that further amendments will be submitted for consideration in the spring sittings.

All providers who deliver education and training to overseas students must be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). It is a requirement of registration that providers demonstrate that they are ‘fit and proper’ to be registered. The ‘fit and proper’ test currently applies to providers and their associates on registration only. These amendments will allow for the ‘fit and proper’ test to be applied, not only on registration, but at any time during a provider’s registration.

To prevent former providers with an adverse history in the industry from taking up positions of influence with other providers, the application of the fit and proper test will be extended from providers and their associates to employees, agents or officers of the provider where these persons have sufficient authority to be assumed to represent the provider in relation to the business of providing courses. Where it is clear that a provider no longer meets the ‘fit and proper’ test, the Act will allow for the suspension of their registration from CRICOS.

These amendments will provide a further guarantee of the credentials of CRICOS registered providers.

Protection and enhancement of Australia’s reputation for providing reliable and high quality education is crucial to achieving sustainable growth of this important export industry. These amendments will strengthen the regulatory framework and consumer protection provisions of the legislation. They will have the additional advantage of reducing the administration of certain aspects of the ESOS Act.

I commend the bill to the Senate.

EDUCATION SERVICES FOR OVERSEAS STUDENTS LEGISLATION AMENDMENT (2006 MEASURES No. 2) BILL 2006

This is the second Bill to implement measures recommended by the independent evaluation of the Education Services for Overseas Students Act 2000 (the ESOS Act). It also includes amend-
ments which my Department has identified as necessary to clarify provisions relating to providers’ consumer protection and reporting obligations.

Overseas students considering a study destination are aware that the Australian international education industry is regulated by law. This is a strong consideration when students decide to study in Australia. These measures will further strengthen this regulatory framework and ensure that Australia continues to be a destination of choice for overseas students.

The ESOS Act is currently unclear regarding the refund provisions to apply when a provider excludes a student from study for non-payment of fees, a breach of a visa condition, or misbehaviour. This became apparent in a recent case which involved the reinstatement of certain cancelled student visas. The ESOS Act currently suggests that student default can only occur where a student actively withdraws from a course. Extending the concept of student default to cover those circumstances where a provider excludes a student for certain types of student behaviour will clarify a student’s rights in these circumstances.

Unfortunately, there are a small number of providers in the industry who may take advantage of students who wish to come to Australia to study, but find that they are unable to obtain a student visa. I want to ensure that refund agreements do not punish a student who is unable to obtain a visa. This amendment will prevent withholding prepaid course fees, while still allowing providers appropriate recompense for the administrative work associated with the recruitment of these students.

While consumer protection is an essential feature of the ESOS Act, it is equally important to amend provisions originally designed to protect students, but which have subsequently been found to give students a greater refund than is justified in some cases. The Fund Manager will now be able to reduce the amount of a refund where it can be demonstrated that a student has received academic credit or recognition of prior learning for completed study. This is an important amendment as it will ensure that students are adequately compensated in the event of a provider failing, or ceasing to deliver a course, but will prevent what some in the industry regard as double-dipping, that is, students receiving a refund for education and training which has been received and accepted as credit or recognition of prior learning for a course with a new provider.

The inclusion of a sunset clause of 12 months for calls on the Fund will further enhance the Fund Manager’s ability to manage the Fund’s liabilities, with an associated minimal impact on overseas students.

A strong message from respondents to the ESOS Evaluation was the need to revise the student visa conditions relating to attendance and satisfactory academic performance to bring them into line with current educational practice. Currently breaches of these visa conditions must be reported, and students sent a notice of the breach. There has been extensive consultation with the Department of Immigration and Multicultural Affairs and industry over the past 12 months to reach an agreed approach to the visa conditions which should be monitored and reported on by providers.

The complementary changes to the National Code, the Migration Regulations and the ESOS Act will ensure that providers’ obligations to monitor and report against student visa conditions are in line with current educational practice while continuing to support the integrity of the migration system. Amending the ESOS Act to prescribe the visa conditions which must be reported in the Regulations will ensure that there is no ambiguity for providers as to the nature of their obligations and will allow for ongoing consistency with the Migration Regulations and the National Code.

The ESOS Act and its complementary legislation ensure the quality of education and training provision to overseas students, provide overseas students with consumer protection and maintain the integrity of the student visa system. The amendments contained in the bill will further enhance and clarify the consumer protection provisions and migration integrity aspects of the legislation, as well as introduce amendments of a technical nature to streamline the administration of the Act.

I commend the bill to the Senate.

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

Ordered that the National Cattle Disease Eradication Account Amendment Bill 2006 be listed on the Notice Paper as a separate order of the day.

**MARITIME TRANSPORT AND OFFSHORE FACILITIES SECURITY AMENDMENT (MARITIME SECURITY GUARDS AND OTHER MEASURES) BILL 2005 [2006]**

Returned from the House of Representatives

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

**COMMITTEES**

Legal and Constitutional Affairs Committee
Interim Report
Extension of Time

Senator SCULLION (Northern Territory) (10.37 am)—On behalf of the Chair of the Legal and Constitutional Affairs Committee, Senator Payne, I present an interim report of the committee on its inquiry into the provisions of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 and seek leave to move a motion in relation to the report.

Leave granted.

Senator SCULLION (Northern Territory) (10.37 am)—I move:

That the time for the presentation of the final report of the Legal and Constitutional Affairs Committee on the provisions of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 be extended to 9 October 2006.

Question agreed to.

SUPERANNUATION LEGISLATION AMENDMENT (SUPERANNUATION SAFETY AND OTHER MEASURES) BILL 2005

In Committee

Consideration resumed from 13 September.

Bill—by leave—taken as a whole.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (10.38 am)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 5 September 2006.

The TEMPORARY CHAIRMAN (Senator Moore)—Minister, are you seeking leave to move those amendments together?

Senator COLBECK—Yes, I am.

Leave granted.

Senator COLBECK—I move:

(1) Clause 2, page 2 (table item 3), omit the table item, substitute:

3. Schedule 2, items 1 to 25

   Either:
   
   (a) if this Act receives the Royal Assent on 1 July in a year—the day on which this Act receives the Royal Assent; or
   
   (b) otherwise—on the 1 July that next follows the day on which this Act receives the Royal Assent.

(2) Clause 2, page 2 (table item 5), omit the table item, substitute:

5. Schedule 2, items 28 and 29

   Either:
   
   (a) if this Act receives the Royal Assent on 1 July in a year—the day on which this Act receives the Royal Assent; or
   
   (b) otherwise—on the 1 July that next follows the day on which this Act receives the Royal Assent.
Senator MURRAY (Western Australia) (10.39 am) — Thank you, Madam Temporary Chairman, for taking my place there today so I can handle this bill. I wish to deal separately with the two items on sheet 4821 revised. I move:

(1) Schedule 1, page 3 (after line 5), before item 1, insert:

1A Subsection 3(1) (after the definition of SIS Act)
Insert:

spouse, in relation to a person:
(a) includes another person, who although not legally married to the person, lives with the person on a bona fide domestic basis as the husband or wife of the person; and
(b) includes a person in an interdependency relationship as defined in section 27AAB of the Income Tax Assessment Act 1936.

Despite the obvious abilities of the parliamentary secretary, I am disappointed that the minister responsible for this bill is not present in the chamber. No doubt he has a good reason for that, but I am disappointed because he has an intimate knowledge and understanding of the issues at hand which I doubt the duty minister would have. This will make it difficult for the duty minister to answer the sorts of questions I intend to put to him.

In moving this amendment I must make it clear that it is my view that the government has accepted the policy. It is my view — from an interchange that Senator Sherry, on behalf of the opposition, and I, on behalf of the Democrats, have had with the minister at estimates and in previous discussions on this matter in superannuation bills — that the minister has made it clear to us that he personally wishes to advance this particular policy but that he needs to ensure that the government is able to cover off all the various issues. I will read into the record an answer which is somewhat more formal than the more encouraging remarks the minister has made by way of direct questioning. Question No. 1692 to the Minister for Finance and Administration read as follows:

Senator Allison asked the Minister for Finance and Administration, upon notice, on 11 April 2006:

With reference to the recent statements by the Prime Minister about the removal of discrimination against same-sex couples, and to the then Minister for Revenue and Assistant Treasurer, Senator Coonan’s, second reading speech on 22 June 2004 in relation to proposed interdependency provisions in Commonwealth superannuation schemes:

(1) What was the result of the review conducted by ministers responsible for the Commonwealth superannuation schemes, to ‘ensure consistency with these interdependency amendments’?

(2) When is it anticipated that legislation ensuring this ‘consistency’ will be introduced in the Parliament.

Senator Minchin answered, with respect to (1) and (2):

The Government is committed to providing all Australian Government employees with equitable and flexible superannuation arrangements and has introduced the Public Sector Superannuation Accumulation Plan (PSSAP) to provide a fully funded accumulation scheme for new employees. Through the PSSAP, the Government provides for death benefits to be available to the dependant of a scheme member — which can include a person in an interdependency relationship. Members can also nominate a dependant or dependants or a legal personal representative to receive those benefits. The PSSAP applies to new Australian Government employees who commenced employment on or after 1 July 2005.

Most Australian superannuation schemes are accumulation schemes, like the PSSAP, which can be readily adapted to pay death benefits to people in an interdependency relationship with no
cost to the scheme. The Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) however, are closed, defined benefit schemes. They are more complex and have very prescriptive rules to determine eligibility for death benefits.

Unlike accumulation funds, benefits in the CSS and PSS are unfunded. This means that benefits in the CSS and PSS are funded by the Government from the Budget when they become payable rather than as they accrue, such as in accumulation funds. Unlike accumulation funds, benefits in the CSS and PSS are usually provided in pension form to eligible spouses and children and are payable for life in the case of a spouse.

Extending eligibility to death benefits from the CSS and the PSS to people in an interdependency relationship is likely to increase scheme costs and the Government's unfunded liabilities because these changes may mean some people would qualify for a lifetime pension which they would not otherwise be entitled to receive. This could have a significant impact on the Budget. Unfunded superannuation liabilities are the Australian Government's largest liability, currently amounting to more than $96 billion and are expected to grow to around $140 billion by 2020.

The Government has indicated that the issue of extending eligibility for death benefits in these schemes to persons in an interdependency relationship with a scheme member is being examined. However, because of the design of these schemes, a number of technical matters and also Budgetary considerations need to be fully examined before any decision could be made.

If I can recap: it is quite clear that the interdependency relationship has been accepted into law, as defined in section 27AAB of the Income Tax Assessment Act, and that the policy of addressing this issue has been accepted by the government with respect to the minister's, the Prime Minister's and Senator Coonan's previous remarks. Therefore, in shorthand, my belief is that the concern is about money: what is it going to cost? Now, if there were very few people of a gay or lesbian persuasion, money would not matter. That means that not only is this an issue of discrimination but it is actually an issue of discrimination against very large numbers of people—because why would there be a budgetary consideration if there were just one or two people disadvantaged in this way scattered through the public sector? So that is an interesting perspective in itself, because the government obviously has a view that the numbers are quite large.

My suggestion to the minister—through you, Madam Chair—is that, if the minister is finding it difficult to get the cabinet to advance this all in one go across the range of superannuation schemes which the government has control of, perhaps the best thing would be to lay out a timetable and introduce these changes on a planned and phased basis. For the purpose of that remark, I wish to indicate to the chamber that, as far as I am aware, there are eight schemes that the government can deal with on this matter. I will go through them in order of numbers—I would assume the easiest and the cheapest ones to deal with are the ones with the lowest numbers, but perhaps that is not the case. The following are the fund or scheme names and the numbers affected: governor-generals, five—whether one of our former governor-generals might fall into the category we are discussing is neither here nor there, but the fact is that the scheme discriminates against governor-generals; federal judges, 220; Parliamentary Contributory Superannuation Scheme members, 546; Military Superannuation and Benefits Scheme members—the numbers I am giving are the estimated numbers of members as at 30 June 2005, so they are not exact—50,000; Defence Force Retirement and Death Benefits Scheme members, 63,317; Australian Government Employees Superannuation Trust members, 150,000, which as we know is the fund under which new politicians since 2004 fall; Commonwealth Superannuation Scheme mem-

CHAMBER
The government is aware that certainly the Democrats—the opposition can speak for themselves—are not going to let this issue go. The government is aware it is an issue of equity which must be addressed sooner or later. I think the government needs to have a plan. I think you have had enough time, over several years, to work out a plan and to work out where you should go with this. What I am suggesting to you, with respect, through the chair, is that you consider a defined time line and a phased introduction. It would be easiest for you, obviously, to introduce it to those schemes that have the lowest numbers, in my view.

So this amendment to item 1 is to specifically remind us of our own language in this matter, to keep the government honest—and we will continue to do so, because you have accepted the policy. You have accepted the policy. So what we are on about is its implementation and when it should occur. May I make it clear and put it on the record: I certainly see no mala fides on the part of the Minister for Finance and Administration; I accept his bona fides in this matter. But this is a government matter, it is a cabinet matter, and it is about time it was resolved. It is about time that due consideration was given to public policy that discriminates against a very substantial portion of our society, and it is about time that this genuine issue was resolved. This is the 21st century; let’s get with it, folks.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (10.51 am)—Thanks, Senator Murray. Can I just make a couple of comments. I understand the historical perspective that Senator Murray has, and that his remarks apply more broadly than just to those in same-sex relationships. Interdependency covers a much broader range of relationships than just same-sex relationships. So I think his comments, which focused very closely on that particular sphere, perhaps need to be clarified. In fact, the government are not looking just at those in same-sex relationships; we are also looking at those in interdependency relationships—which, as I said, is a much broader issue.

I turn to Senator Murray’s comments in relation to the perspective of the minister and, of course, the government, and the information he has put into the Hansard that the government does remain committed to examining options to extend interdependency to members of Australian government schemes. The government has examined some options to further that process but, unfortunately, those options have not proved feasible. Senator Murray has already read into the Hansard an answer he received at estimates hearings which included a range of considerations that the government has been looking at in making that decision. Because the options we have canvassed at this point in time have not proved feasible, we are seeking further actuarial analysis on a much broader range of options to advance the issue of interdependency. We remain committed to doing that, as I think we are all essentially agreed.

I think it is worth clarifying that it is not just about same-sex relationships but about a much broader issue. We are looking at it in that context and we remain committed to doing so, as Senator Murray has already stated.

Senator STEPHENS (New South Wales) (10.53 am)—On behalf of the Labor Party, I indicate that it is our intention to support this amendment proposed by Senator Murray on behalf of the Australian Democrats. We be-
lieve this is an important issue that does need to be addressed somehow, and we congratulate Senator Murray on his persistence in raising this matter time and time again, trying to get the very complex issue of interdependency dealt with in a reasonable manner.

We heard in Senator Murray’s contribution to the debate that he is proposing a very reasonable timetable to be introduced as part of his proposal. We believe this is a bit like the elephant in the room which is not being discussed. We actually need to get on with it and find someway of resolving this issue.

Senator Murray (Western Australia)
(10.54 am)—I cannot resist: as an old African I would remind you that the saying is, ‘You eat an elephant a mouthful at a time.’

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

The committee divided. [10.59 am]
(The Temporary Chairman—Senator C Moore)

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AYES

Allison, L.F. Barnett, G. Bernardi, C.
Brown, B.J. Boswell, R.L.D. Brandis, G.H.
Brown, C.L. Calvert, P.H. Chapman, H.G.P.
Crossin, P.M. Colbeck, R. Coonan, H.L.
Falkner, J.P. Eggleston, A. Ferguson, A.B.
Hogg, J.J. Ferris, J.M. Fielding, S.
Hutchins, S.P. Fierravanti-Wells, C. Fifield, M.P.
Marshall, G. Heffernan, W. Humphries, G.
McLucas, J.E. Joyce, B. Lightfoot, P.R.
Moore, C. Macdonald, I. Macdonald, J.A.L.
Nettle, K. Mason, B.J. McGauran, J.J.J.
Polley, H. Nash, F. Parry, S.
Siewert, R. Patterson, K.C. Payne, M.A.
Sterle, G. Ronaldson, M. Santoro, S.
Webber, R.* Scullion, N.G.* Troeth, J.M.
Wortley, D. Trood, R.B. Watson, J.O.W.

NOES

Abetz, E. Adams, J.

27FA Procedures for merit selection of appointments

(1) The Minister must by writing determine a code of practice, for selecting a person to be appointed by the Commonwealth or a Minister to a position under this Act, that sets out general principles on which the selections are to be made, including but not limited to:

(a) merit; and

(b) independent scrutiny of appointments; and

(c) probity; and
(d) openness and transparency.

(2) After determining a code of practice under subsection (1), the Minister must publish the code in the Gazette.

(3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.

(4) In reviewing a code of practice, the Minister must invite the public to comment on the code.

(5) A code of practice determined under subsection (1) is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

As the chamber is aware, well over 30 of these amendments have been moved over the last six or seven years and the message is the same every time: the government has to get with the program—as our friend Senator Vanstone likes to say—‘Get with the program, lads and ladies,’ because this issue of selecting people on merit is one being taken up all over the world in advanced democracies and our own democracy does not have a sufficiently robust system for the merit selection of appointments. In fact, recently there was another academic paper on the very issue. I forget the name of the person who wrote it but it was circulated, I think, in the democrat audit. That is not the Democrat party; that is the democrat audit section of the Australian National University—for those who are interested in these accountability matters.

I am not going to motivate this at length; the chamber has heard my arguments before. The government do not believe in appointments on merit. They believe in appointments of mates. Now and again, of course, the mates do have merit. They do not accept the argument that their processes need to be improved, so we will lose the vote and we will add one more to the list of the number of times they have opposed appointments on merit.

Senator STEPHENS (New South Wales) (11.03 am)—I rise to indicate that Labor will be supporting this amendment. As Senator Murray has said, this is an argument that we continue to have. It is a bit like the other elephant—bite by bite and bit by bit. Across the world the consideration of good governance includes the issue of merit selection of appointments for the kinds of positions that are incorporated in this amendment. That point was made most recently, and the concern about the lack of robustness in our processes was raised by Professor Meredith Edwards of the National Institute for Governance. Labor certainly believes that this is an important principle. We should have selection on merit. As Senator Murray said, we know this will not be agreed to by the government because they continue to appoint their mates.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (11.04 am)—Obviously the government does not agree with the final comment made by Senator Stephens. The government’s arguments in relation to this matter are probably as well known as Senator Murray’s arguments. If we are to continue to talk about eating elephants, I hope there are a few people who are relatively hungry, because it is going to be a big job. The government’s views on this issue are very well known. The government does have in place arrangements that require a licence under the Prudential Regulation Authority and trustees have to meet a fit and proper operating standard as determined under the Superannuation Industry (Supervision) Act 1993. That standard is designed to ensure that the interests of superannuation scheme members are managed and overseen competently by honest and trustworthy individuals. So the government believes that it does have in place proper arrangements to
deal with board selection appointments. Rather than prolonging the debate, I will just say that, as Senator Murray has indicated, his views are well known and I think the government’s are as well. We oppose the amendment.

Question negatived.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (11.07 am)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

BUSINESS

Rearrangement

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (11.07 am)—I move:

That government business order of the day no. 2 (Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006), be postponed till the next day of sitting.

Question agreed to.

HEALTH INSURANCE AMENDMENT (MEDICAL SPECIALISTS) BILL 2005

Second Reading

Debate resumed from 18 August 2005, on motion by Senator Minchin:

That this bill be now read a second time.

Senator STERLE (Western Australia) (11.08 am)—I rise to speak to the Labor amendment to the Health Insurance Amendment (Medical Specialists) Bill 2005. The Labor amendment provides an opportunity to reflect on how well Australia’s system of medical specialist accreditation ensures that Australian citizens have access to quality medical treatment and care. The fact that 90 per cent of the costs of medical services in Australia are funded from the public purse means that the senior levels of the medical profession have a collective responsibility to the Australian public with regard to the quality of medical care in this country. Australia’s system of postgraduate medical specialist training and accreditation has for decades been heralded by the medical profession as being highly successful and amongst the best in the world. It has been the repeated stance of many senior members of the medical profession that the current system of medical specialist training and accreditation should be touched only very lightly by the hand of government. Sadly, it seems to be the view of some members of the medical profession that it is the job of government merely to provide the money and to cop the blame for their mistakes.

In 1995 the Quality in Australian Health Care Study established that adverse medical events were involved in 16.6 per cent of hospital admissions at a cost to the nation of around $1 billion annually. The initial response to this study by many members of the medical profession was lukewarm at best, particularly as the findings of the study went to the very foundations of Australia’s medical specialist training and accreditation system. Since the publishing of the Quality in Australian Health Care Study report there has been the Campbelltown and Camden hospitals inquiry, the Canberra Hospital inquiry, the King Edward Memorial Hospital inquiry and the Bundaberg Hospital inquiry. All these inquiries have been initiated by governments in response to the public’s justified concern about the gross failures in the medical care provided by doctors to hospital patients.
Has anything really changed in recent times? No, not if you believe a recent Victorian university study into the rate of adverse medical events in Victorian public hospitals. That study, which looked at patient admissions to Victorian public hospitals in 2003-04, found that almost seven per cent of admissions to hospital had at least—one adverse medical event. In other words, one in 14 people who are admitted to a Victorian public hospital are injured by their medical treatment and care. The Victorian study estimated that the annual cost of adverse medical events in Victorian public hospitals was in the vicinity of $500 million. If we extrapolate this figure to Australia as a whole, the total cost to the Australian public hospital system of adverse medical events is now in the order of $2 billion annually. Where there are breakdowns in the standards of medical practice in this country, medical specialists as a group cannot avoid bearing a significant part of the blame for these breakdowns.

Over the past 10 years the Australian public has seen and experienced enough to be deeply sceptical about the degree to which some sections of the medical profession have an uncompromising commitment to high medical standards and patient safety. There are now volumes of documented evidence that medical error is far from rare. On any reasonable measure medical errors are commonplace. Because these are so commonplace, they appear to be regarded by many in the medical profession as a fact of life. This may explain the clamour of outrage we hear from the medical profession when there is any concerted effort towards greater individual accountability in respect of adverse medical events and of individual medical practitioner competency to perform particular procedures. Sadly, it seems that it is much easier to blame processes and administrative procedures than it is for the profession to audit the ongoing performance and competency of individual doctors. There appears to be a deeply rooted culture of denial that pervades some elements of the medical profession when it comes to accepting blame for medical error.

Representatives of the medical profession have often responded to independent inquiries that seek to get to the truth about medical practitioner error or negligence with fierce resistance. It appears that each time an inquiry finds evidence of a serious breakdown in medical standards, the public is told by representatives of the medical profession that the problems have long since been remedied and the inquiry is only documenting ancient history. However, year by year, new breakdowns in the quality and safety of Australia’s medical services continue to find their way to the surface.

In recent years we have seen the heroic actions of whistleblowers who have taken the lid off major incidences of gross medical incompetence and negligence that have led to major harm to patients and, unfortunately in some incidences, to the deaths of patients. Writing about a number of recent inquiries into breakdowns in hospital medical practice standards in the July 2004 edition of the Medical Journal of Australia, Thomas Faunce and Stephen Bolsin noted:

... none of the substantiated problems had been uncovered or previously resolved by extensive accreditation or national safety and quality processes; in each instance, the problems were exacerbated by a poor institutional culture of self regulation, error reporting and investigation.

They went on to comment that:

... even after substantiation of their allegations, the whistle blowers, who included staff specialists, administrators and nurses received little respect and support from their institutions and professions.
The head of the special commission of inquiry into the Campbelltown and Camden hospitals inquiry also wrote:

This inquiry to date discredits the notion that individual accountability through professional disciplining is inconsistent with the systemic improvement of clinical care and institutional administration.

It is instructive that these inquiries were not demanded by the medical profession; they were demanded by the public. Almost invariably, they were resisted by senior elements of the medical profession.

This was demonstrated in Western Australia when the state government initiated an inquiry into clinical standards and procedures at the King Edward Memorial Hospital. The King Edward Memorial Hospital inquiry found that clinical errors were very common amongst very high-risk obstetric cases. One or more clinical errors occurred in 47 per cent of cases at the hospital. More than half these errors were regarded as serious. Let us be totally clear about this: this situation occurred under the supervision of, ostensibly, Western Australia’s most skilled obstetricians.

Since that inquiry, enormous efforts have had to be made to lift the overall standard of the hospital’s clinical services to a level that can be claimed to emulate best tertiary hospital practice. The response of the medical profession to the formation of the inquiry was regrettable. Before and throughout the inquiry the medical profession, through its peak body, the AMA, did everything it could to denigrate its findings in advance of publication. The Western Australian branch of the AMA was particularly vocal on the matter. It denounced the inquiry as a farce. It is hard to believe, but on 5 October 2005 the AMA put out a press release with the title ‘King Edward inquiry a farce’ in which it complained that the inquiry was a ‘costly, time consuming and stressful episode’. The then state president of the WA branch of the AMA had this to say about the King Edward Memorial Hospital inquiry:

... adverse cases should have been sent to the WA Medical Board rather than wasting taxpayers’ money in this way.

And again, the AMA state president claimed the King Edward Memorial Hospital inquiry findings should be made:

... to a university anthropology unit because they would be outdated and totally irrelevant.

Despite the views expressed by the president of AMA WA, the King Edward Memorial Hospital inquiry report has since become a landmark document and has been used as a template for change and improvement in the quality of hospital medical practice elsewhere.

In November 2005, the Western Australian government released a report titled WA sentinel event report October 2003—June 2005. For the benefit of senators who do not know what a sentinel event is, it is a term similar in its clarity of meaning to the phrase ‘collateral damage’. The term ‘sentinel event’ covers a range of tragedies, including occurrences when a medical procedure is performed on either the wrong patient or the wrong body part, procedures where instruments are left inside patients, requiring further surgery, or medication errors resulting in patient death.

According to the report, in Western Australian hospitals in the 2004-05 financial year, there were 10 procedures performed on either the wrong patient or the wrong body part, six occurrences of instruments left inside patients that required further surgery to retrieve them and, unfortunately, two deaths from medication errors. These events were tragedies for the patients, their families and the medical staff involved.

I searched the AMA WA’s website for any comment on the sentinel event report, but I found nothing. The AMA WA put out seven
media releases in November 2005, but not one of them mentioned the sentinel events report. There was a press release welcoming the appointment of a doctor to the Medical Indemnity Policy Review Panel. Another press release warned people to be careful of snakes in the hot weather. The advice warning people about the dangers of snakebites was helpful and timely; 66 people presented to Western Australian hospitals in 2004-05 to be treated for snakebite, and any effort to reduce this number is commendable. But, during that same time, 45 sentinel events were reported to the Western Australian Chief Medical Officer.

I am disappointed that there were no suggestions forthcoming from the AMA WA to reduce the number of times doctors leave surgical instruments inside their patients. As things stand today, it remains extremely difficult to obtain an independent and authoritative picture of whether the circumstances and events that led up to the inquiries into medical care standards at Campbelltown and Camden, Canberra, King Edward Memorial and Bundaberg hospitals are unique to those hospitals or represent a much broader problem in Australia’s hospital system.

Nonetheless, these inquiries have shown that the current system of specialist medical training, supervision and accreditation is, unfortunately, far from perfect. It requires urgent attention, as does the ongoing monitoring of specialist medical practice. The most serious and troubling concern is a reluctance of medical professional bodies to embrace the concept of accountability to the Australian public at its most fundamental level.

In summing up, the medical professional bodies must be willing to exercise discipline over their members, who receive considerable monetary benefits and privileges from the community by virtue of the professional recognition bestowed on them by the individual medical colleges. The Australian people deserve nothing less.

Senator McLucas (Queensland) (11.22 am)—The Health Insurance Amendment (Medical Specialists) Bill 2005 implements changes to the prerequisites for the recognition of certain medical specialists and consultant physicians. The changes will remove separate processes that these medical practitioners must undertake to access Medicare. Currently, there are three ways in which medical practitioners can apply to the HIC to provide Medicare services. These processes vary depending on the circumstances. Firstly, if a medical practitioner lives in Australia, if they are a fellow or if they have a relevant qualification from a specialist medical college they are able to seek automatic recognition. This recognition occurs after the HIC receives confirmation from the medical college that these qualifications have been satisfied. Secondly, consultant physicians and other medical practitioners who do not meet these criteria must seek recognition through the specialist recognition advisory committees. These committees exist in every state and territory and meet every two months to perform this task. They are appointed by the minister. Thirdly, all other medical practitioners not domiciled in Australia must seek recognition through a ministerial determination.

The government is of the view that these committees present an obstacle to practitioner recognition because they rely on the advice of specialist medical colleges and have the effect of delaying recognition for the purpose of Medicare because the committees only meet every two months. In their place, this recognition will come from a delegate of the minister in the Health Insurance Commission. This bill tidies up an administrative process associated with the recognition of medical practitioners for the purposes of
Medicare and Labor supports this. However, the bill demonstrates that the government is happy to play around the edges of our medical workforce policy but not to look at the big picture and focus on the larger and longer term issues facing the sector.

The first of these is the shortage of GPs and specialists in rural, remote and outer metropolitan areas. Australia is facing many challenges with regard to the supply of medical practitioners. The absolute number of medical practitioners or doctors is important, but their concentration, distribution and working behaviour is becoming even more important to the way we shape our medical workforce policy. Over the 30 years to 2001, the rate of growth for medical practitioners grew faster than the population. In the 1980s and 1990s this rate of growth slowed. This was largely due to the number of medical graduate places being held stable over the 1980s and 1990s relative to previous decades. It also reflected policies aimed at streaming students into specialist places rather than into general practice.

At the end of 2002, there were nearly 22,000 primary care practitioners employed in Australia, of whom 64 per cent were males and 36 per cent were females. The majority of the group, around 87 per cent, covers vocationally registered GPs who are essentially Medicare licensed GPs. A critical aspect of the changing nature of the medical workforce is the increased number of women practising general medicine and the number of hours worked by GPs, both male and female. This has resulted in a declining contribution of males to the GP workforce and an increasing contribution of women practising general medicine, while the total number of doctors in the population is beginning to decline.

An important measure of the medical workforce is FTE, full-time equivalents. Measured in FTE, there were 101 primary care practitioners per 100,000 people in Australia, based on a 45-hour standard, which is a decrease from 108 in 1997. So we have gone from 108 to 101 in quite a short period of time. While the number of women in the primary care workforce has increased, their average number of hours worked is significantly less than the total average, while men work slightly more hours than the 45-hour standard full-time week. The policy response has to be that the overall workforce level must increase if the growing trend of women in the workforce continues. The days of the single practitioner, particularly in a country town, working from 8 am till 6 pm in a surgery from Monday to Friday, 8 am till 1 pm on Saturday and on call 24/7 are over. We welcome of course the increase in the number of women doctors. I remember that, when I first went back to Cairns in 1985, finding a woman doctor was a very hard thing to do. It is much easier now and that is terrific, but the reality is that women are more family focused than the traditional male GP in a country town and therefore they see fewer patients. As a community, we should welcome that. We should be welcoming the fact that we have a GP workforce that are increasingly focused on their quality of life. This is in no way casting any aspersions on the role of women GPs—quite the contrary, women GPs are far more welcomed—but the government has a responsibility to recognise that the contribution they make in hours of operation is less than the traditional male GP in a country town of bygone years.

Another phenomenon at the heart of the medical workforce trend is the ageing of the health workforce. About 39 per cent of people employed in health were aged 45 years or over, up from 31 per cent in 1996. The proportion of workers aged 45 and over increased faster for females than for males, which reflects the fact that our nursing work-
force is rapidly ageing. Parity in access and distribution of GPs is also very important, considering that about a third of all Australians live in rural and regional areas. Generally, these Australians have higher mortality rates and higher health risk levels than their counterparts in the city, due to their greater tendency to develop chronic illness and their likelihood of working in physical employment which can be hazardous—for example, mining and forestry—and not to mention that Indigenous communities are far more concentrated in rural, regional and remote areas.

In 2002, the AMA commissioned Access Economics to investigate the extent of the shortage of GPs that we will face in the future. They found that the availability of Australian trained doctors is falling well below both the demand and the requirements of the health sector, with the shortfall being partially covered by a major increase in the recruitment of overseas trained and temporary resident doctors.

The Access Economics report found that there is a declining participation rate by GPs, that female GPs and younger GPs are only prepared to commit to a working life of well under the 50 to 60 hours per week traditionally worked by GPs, that Australian medical schools are not graduating enough doctors to fill all of the available training places and that there are not enough training places to meet demand. The availability of training places is increasingly becoming an issue, as there has been a slight increase in the number of undergraduate places in very recent years.

The Access Economics report also found that the GP workforce shortage is greatly exacerbated by the restriction on the number of training places to some 450 per year. In 2001, Access Economics estimated that the overall shortfall of GPs—both Australian trained and overseas trained doctors—was between 1,200 and 2,000 full-time equivalent GPs. The rural shortage is estimated at approximately 700 full-time equivalent GPs and the urban shortage at around 500.

As a result of the government’s negligence we have seen these trends emerging, and the government has failed to act. Unfortunately, this problem required a response many years ago, and failure to keep track of the changing nature of the medical workforce has seen policy turn to overseas trained doctors for a quick fix. Overseas trained doctors have an important role to play in our medical workforce; there is no doubt about that. However, even the AMA has acknowledged that we cannot rely on an overseas supply and that an investment in the local workforce is required to meet current and future challenges.

Why is this the case? It is the case because not only is our medical workforce ageing but the medical workforces of other countries, which are facing their own demographic challenges, are ageing as well. Surely we have a responsibility to train Australian doctors—not just for Australians but to export to those countries that require medical assistance in times of need and emergency. As a developed nation, surely we have a responsibility to be a net exporter of doctors, not an importer as we are now.

Another key issue which requires timely government attention is the regulation of specialists by the colleges, and in particular their ability to restrict the supply and distribution of specialists. In an environment where the rights of all other workers are being attacked, it strikes me that the Howard government—and in particular the health minister, previously known for his hard stance on workplace relations—sees no need to reform the way in which the colleges control the supply and distribution of specialists. While the government does all it can to stop legitimate unions from representing their
members on basic issues of pay and entitlements, the colleges continue to dominate the health workforce debate.

The Productivity Commission’s current work on the medical workforce will hopefully lift the lid on longstanding regulatory and structural elements of the medical workforce. This is not just because we are facing a medical workforce shortage but because, like other sectors of the economy, we should be applying ongoing reforms to improve productivity to enhance our overall economic performance.

While demarcations which existed in traditionally union dominated sectors of the economy have been gradually reformed and modernised, unfortunately this has not happened in health. In addressing the issue of demarcation and regulation, there is little doubt, given the submissions received by the commission, that issues related to role and task substitution will be on the Productivity Commission’s agenda for comment. Given the advances made in medical technology, it would not seem surprising that other types of health workers are very capably performing tasks which were seen solely as being in the general practitioners’ ambit in the last decade.

We should be examining ways in which other highly qualified healthcare workers can remove the burden on GPs so they can focus on providing the advice patients seek. For example, in Canada the medical association has lobbied for task substitution, in the past, as a means of transferring process orientated aspects of examinations to other healthcare professionals within a group or team structure. Rather than seeking to mark a line in the sand, the Canadian Medical Association has sought to use this reform as a means of better positioning GPs to focus on the value-add aspect of the consultation. The move to employ nurses in general practice has gone some way to increasing the use of health professionals other than GPs in processes that happen in a GP’s surgery but which do not necessarily have to be undertaken by that highly trained individual, the GP.

Another area of the medical workforce in which this government has failed to show leadership is in the area of managing quality and safety—Senator Sterle spoke very strongly about this issue this morning—and, in particular, the very fragmented approach to the accreditation of medical professionals. The Productivity Commission, in its health workforce report, has highlighted this as a key area warranting further attention. As an example, it uses the accreditation of nurses and the sorts of problems which can arise as a result. Nursing registration processes vary from state to state. Some run single registers while others run multiple branch registers which register a specialisation in nursing. When moving across jurisdictions, nurses have to prove that their existing qualification is the equivalent of that in the state or territory they are moving to. This situation discourages mobility, despite the high demand for nurses across Australia. As the Productivity Commission highlights, uniform accreditation will not just address mobility issues but may also improve quality and remove problems which lead to adverse issues.

Labor will support this bill but in doing so we move the second reading amendment which has been circulated. I move the following amendment:

At the end of the motion, add:

“but the Senate condemns the Government for:

(a) failing to address the medical workforce shortage affecting our rural, remote and outer metropolitan areas;

(b) failing to invest in the future of the medical workforce and its over reliance on importing skilled medical practitioners;”
(c) failing to show leadership in the area of the uniform standards for medical professionals; and

(d) failing to address the impact that regulation of medical professionals by the colleges has on supply and distribution of specialists”.

Australia is facing a health workforce crisis, especially in regional, rural and remote Australia, in some specialties and, as I know only too well, in aged care. I urge the government to do more to curtail our reliance on overseas trained doctors. As valuable as they are, our reliance on them raises serious questions about Australia’s commitment to education and training of the medical profession.

Senator ADAMS (Western Australia) (11.37 am)—I rise today to speak on the Health Insurance Amendment (Medical Specialists) Bill 2005. This bill represents a minor procedural change to the Health Insurance Act 1973. The reason for this amendment lies in the current cumbersome and time-consuming process by which some medical practitioners are recognised as specialists or consultant physicians for the purposes of Medicare. It will streamline the procedures for the recognition of some medical specialists and consultant physicians so that their patients can access Medicare rebates at the specialist or consultant physician rates.

With Australia experiencing shortages in the medical workforce, this amendment will ensure that specialists and consultant physicians can enter the workforce as quickly as possible without compromising safety and quality standards.

This legislative amendment does not bestow specialist or consultant physician status on medical practitioners. Medical practitioners are identified as specialists or consultant physicians by medical boards when they are registered and by specialist medical colleges. Currently, a medical practitioner is recognised as a specialist for Medicare purposes via one of three pathways. The first pathway is automatic recognition. Applicants can seek automatic recognition if they are living in Australia, have a fellowship with a specialist medical college and have the relevant qualifications from a specialist medical college. Recognition is then provided by the managing director of the Health Insurance Commission, following advice from a relevant specialist medical college that the criteria have been met.

The second pathway is alternative recognition. For those Australian trained medical practitioners who are unable to meet the criteria for automatic recognition an alternative pathway is available. In the alternative pathway the minister’s delegate must refer the medical practitioner to an appropriate state or territory specialist recognition advisory board. State and territory specialist boards are administered by the Health Insurance Commission and meet every two months. The Minister for Health and Ageing appoints committee members from panels of nominees put forward by the relevant professional bodies and colleges. For those medical practitioners who are seeking recognition as consultant physicians, which are a subgroup of specialists with qualifications as physicians, rehabilitation specialists and psychiatrists, this is the only pathway for recognition.

The third pathway is for non-domiciled medical practitioners. Medical practitioners not domiciled in Australia at the time of application may seek recognition through a determination of the Minister for Health and Ageing. Applications for temporary residence were previously considered by an overseas specialist advisory committee. These committees were abolished in July 2004. The government was able to do this administratively because there was no mention of the overseas specialist advisory committees in the act. The government is abolishing the specialist recognition advisory
committees for much the same reason that the overseas specialist advisory committees were abolished: these committees have become redundant. Since the committees were first established, specialist medical colleges and medical registration boards have been developed and they have implemented assessment processes which are used by the specialist recognition committees in making their determinations.

That the specialist recognition committees have relied on the assessment advice of specialist medical colleges and medical registration boards in making their decisions means that the specialist recognition committees have become a redundant administrative layer in the processing of applications. This unnecessarily extends the time between the registration of specialists and when they provide services under Medicare. According to an official at the Department of Health and Ageing, the Health Insurance Commission is reporting that since the abolition of the overseas specialist advisory committees it has been processing applications within a shorter time frame than was previously the case. Applications are now usually processed within 28 days, as opposed to the previous time frame of two to three months.

It is intended that the decision-making powers of the disbanded specialist recognition advisory committees will pass to the delegate for the Minister for Health and Ageing in the Health Insurance Commission. This will streamline the application processes for special recognition by avoiding the necessity to meet cut-off dates for applications to the specialist recognition advisory committees and then wait for up to two months for the committees to meet.

The amendments proposed in the bill include the recognition of the consultant physicians domiciled in Australia in the alternative method of recognition. Because the specialist recognition advisory committees have been the only means by which medical practitioners could be recognised as consultant physicians, disbanding these committees will remove the provision for them to become recognised. To correct this, consultant physicians will be included along with specialists in the alternative method of recognition. Transitional arrangements have been provided to ensure that specialists and consultant physicians previously recognised by the specialist recognition advisory committees will continue to be recognised under Medicare. Arrangements have also been made to allow the delegate to immediately consider existing applications with the specialist recognition advisory committees at the time of abolition.

This bill involves minor changes to existing procedures. The objective of these minor changes is to reduce the complexity and time currently involved in the recognition under Medicare of medical specialists and consultant physicians seeking to enter the Australian medical workforce. According to Dr Felicity Jefferies of the Western Australian Centre for Remote and Rural Medicine, commonly known as WACRRM, anything that streamlines the process of recognition of specialists is an excellent idea. As Director of WACRRM, Dr Jefferies has an intimate understanding of the medical needs of rural Western Australians and is at present greatly concerned about the lack of general physicians practising in rural and regional Western Australia.

According to Dr Jefferies, there is currently only one general physician practising in each of the three major population centres in rural Western Australia. There is one general physician in Albany, a city that services the specialist medical needs of towns as far afield as Katanning, Narrogin and my own hometown of Kojonup. There is one general physician in Geraldton, a city that services a
huge area of the northern wheat belt in Western Australia. There is one general physician in Kalgoorlie, which is one of the most remote cities in the whole of Australia. These general physicians need support and, more importantly, they need to be able to pass on their knowledge to the next generation of country medical specialists.

General physicians are an interesting class of medical practitioner. They have undergone an enormous amount of training, including some of the hardest exams faced by any medical student. They are not surgeons and they are not specialists such as the cardiothoracic or ENT specialists that we are used to finding in our capital cities; rather, they are a highly trained general medical consulting physician with a detailed understanding and knowledge of most human symptoms, complaints, ailments and diseases. They are exactly the sort of medical practitioner that country regions need, and we are running out of them very fast.

Rural and regional Australia cannot generally support highly trained and specialised surgeons, as small populations generally mean practices such as these are not profitable. However, the practice of a general physician who can advise patients on a wide variety of medical problems can be supported in regional areas. Any change in legislation, whether technical in nature or not, any removal of barriers to entry and any scheme that facilitates more doctors and general physicians moving into rural and remote Australia is a positive step.

The Rural Doctors Association of Australia, RDAA, has supported calls for better measures to encourage specialist physicians to practise in rural Australia, adding that there is a desperate need for all types of medical specialists in the bush. The Internal Medicine Society of Australia and New Zealand and the Royal Australasian College of Physicians launched a position statement in September last year which recommended that Australia’s governments implement various strategies to attract general physicians to rural and remote areas, including improved financial arrangements, better access to training and continuing professional development.

I cannot overstate just how important that is. Continuing professional development is absolutely essential for people who go to work in rural and remote areas, and they must have improved conditions of work. Dr Sue Page, President of the Rural Doctors Association of Australia, said:

Medical specialists, including general physicians, are a critical part of the multi-disciplinary rural healthcare team ... But as with the rural GP procedural workforce, many rural specialists are now nearing retirement, with few younger specialists moving to rural areas to replace them.

Coming from rural Western Australia and having been very involved with health and health service provision over a number of years, I cannot overstate how strongly people out in rural areas feel about being unable to access medical specialist services. Another thing I feel very strongly about is that, if the specialists cannot move to the rural areas, at least we should have a better system throughout Australia for the Patient Assisted Travel Scheme. Every state in Australia is having problems with this scheme. I think we have to do something about rural people being second-class citizens in not being able to access specialist medical services, and I intend to move in that direction when I can.

Dr Page went on to say:

Urgent recruitment and retention strategies are required to reverse this trend, before specialists become all but extinct in the bush and rural patients are subjected to the very serious consequences of this decline. In its recent submission to the Productivity Commission’s Health Workforce Study, RDAA’s Rural Specialists Group

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highlighted key actions for increasing the number of specialists in rural Australia, including:

- improving rosters and locum arrangements, so that rural specialists are not required to be on-call for after-hours duties more than 1 in 4 days and can take much-needed recreation or education leave. In cases where a 1 in 4 roster is impossible to achieve, doctors must be supported by triage back-up, special locum relief and additional recreation leave;

- increasing the infrastructure available to support specialists in rural areas, including information and communication technology, medical infrastructure, and additional healthcare and administrative staffing support;

- strengthening connections between regional specialists, metropolitan hospitals and metropolitan specialists. Rural specialists rely on these connections for clinical CPD, ready access for second opinions on clinical cases, access for the referral of patients requiring higher level services, and an avenue for locum support;

- encouraging and supporting the specialist colleges to provide enhanced rural training; and

- resolving rural specialist dissatisfaction with inadequate payments and unresolved financial anomalies between metropolitan and rural practice. For example, recent Medicare changes that allow obstetricians in private practice to charge a significant 'booking-in fee' do not benefit their rural colleagues who practise overwhelmingly in the public sector. Additionally, there is currently very poor remuneration available for rural doctors (whether GPs, GP proceduralists or specialists) who make a significant commitment to provide after-hours care in the bush, and a rural after-hours loading should be provided in this regard.

Importantly, the more complex caseload undertaken by all rural doctors—GPs, GP proceduralists and rural specialists (including non-procedural specialists)—must be recognised through higher remuneration structures such as rural complexity loadings. The increased complexity of rural patients' healthcare needs, coupled with less access to additional medical support locally, often means longer consultations for rural doctors and hence reduced incomes compared with their metropolitan colleagues.

Our governments must work together urgently with the medical profession and its colleges to widen measures to support general physicians and other medical specialists currently working in the bush, and to entice more of these specialists to the bush, before there are no specialists left in rural Australia at all.

I would like to continue with some of the National Rural Health Alliance policy statements. For seven years, I was a member of the National Rural Health Alliance representing the Australian Healthcare Association. I have followed and worked very closely with the National Rural Health Alliance. This general statement really fits in with this bill:

The Alliance ... has a particular interest in:

- the enhanced infrastructure, and broader system, for placement and postgraduate training of the extra medical and nursing students;
- increased rural exposure in the training of medical specialists;
- the references to special incentives for the training of dentists (the Alliance wants to see the Commonwealth involved in this as well as the States);
- the promise of "better consultation" between the States and Commonwealth on health-related university places;
- a single national registration scheme for health professionals …

I must say, having been involved with nursing and also at the moment working for Navy nurses on this issue, for the Defence Force this is one of the most difficult things as far as registration goes for nurses. Each
state has its own registration scheme. As you can imagine, when Defence people are so mobile and shifted at short notice, this is causing huge problems for them. The statement continues:

a single national registration scheme for—

health professionals and the fact that “other professional groups (including Aboriginal Health Workers) may be added over time”;

a single national accreditation scheme for health education and training;

a national process for the assessment of overseas-trained doctors …

Once again, this is very difficult with each state doing their own assessment through their medical boards. The statement continues:

the Commonwealth’s intention to provide rural medicine with formal recognition under Medicare as a generalist discipline; and, most importantly, the initiatives relating directly to improving the health and wellbeing of Indigenous people, such as governments’ “long-term, generational commitment” to overcome Indigenous disadvantage, the commitment to closing the health, education and learning gaps between Indigenous and non-Indigenous children, and further measures to address alcohol and substance misuse, including through additional resources for treatment and rehabilitation services in regional and remote areas.

Having been involved in the petrol-sniffing inquiry with the Senate Community Affairs References Committee, I cannot stress enough just how important it is to have rehabilitation services in regional and remote areas—they are very important services. Once again, we need a very different sort of specialist to be able to handle and cope with these areas.

In conclusion, I commend this bill to the Senate. It is very important that the legislation is put into practice as soon as possible so that specialists are not waiting for two to three months before being recognised to practise. We cannot afford this time.

Senator IAN MACDONALD (Queensland) (11.57 am)—It is indeed a pleasure and an honour to follow a speaker like Senator Judith Adams. I am always very proud of the people in this parliament, mainly from this side, regrettably—regrettably in that there are not more—who have a real interest in and understanding of these issues. As Senator Adams indicated, she has practised as a nurse and worked in the health area in many other ways over a long period. The parliament and the people of Australia are all the better for the input that people like Senator Adams bring to debates such as this. Whenever I am uncertain about things in country areas, I refer to Senator Adams to get the real story. I have a general understanding of the situation and some of the needs which exist in country Australia, but it is always useful to refer to people, and to Senator Adams in particular, to get technical and accurate input to debates on issues.

As well as Senator Adams, on this side of the parliament we are very fortunate to have the input of Senator Eggleston, a very well-regarded medical practitioner from Port Hedland in his former days before he came to the Senate; Dr Mal Washer, a doctor from Western Australia; and Senator Patterson, who was a health professional. I have named only a few; there may well be others. It is certainly good to see parliamentarians with those sorts of skills and expertise coming into this chamber and lending the parliament and through the parliament the people of Australia their expertise on these issues.

With Australia experiencing the sorts of shortages we have in the medical workforce, it is important that the administrative processes are made more efficient and timely to ensure that appropriately qualified specialist and consultant physicians enter the work-
force as quickly as possible. The purpose of the Health Insurance Amendment (Medical Specialists) Bill 2005 is to reduce unnecessary red tape for medical practitioners seeking to provide those specialist and consultant physician services under Medicare. It is proposed to do this by disbanded the state or territory specialist recognition advisory committees and allowing medical practitioners to make direct application to the minister or his delegate for approval for Medicare purposes. Under the new processes, registered medical practitioners will apply in writing directly to the minister through his delegate in the Health Insurance Commission for recognition as specialists or consultant physicians for the purposes of the act.

I recently attended an AMA gathering in Parliament House, and I was told that the specialist colleges had increased by 40.6 per cent training places in the colleges. But, whilst the training colleges for specialists are increasing their activities, all of the states are, regrettably, cutting training positions. There is no point in the colleges training specialists if the specialist positions in the hospitals are no longer there. It is with great sadness that I report that in my own state this situation is enormously difficult and underresourced by the state government.

I do not want to sound like a bad loser, but, regrettably, the people of Queensland have returned the Beattie government—a government which has done more to destroy the health system in Queensland than any in history. During the recent election campaign, I found some old posters that we were using at the election three years ago. We were able to use them again this year. The posters said: ‘Don’t reward Labor, with the mess they’ve made of the Townsville Hospital. Fix the Townsville Hospital now.’ They were posters we used three years ago. Unfortunately, the people of Queensland did not take the message then. We used them again this year and, regrettably, for any number of reasons—I guess it is because the people of Queensland did not have a great deal of confidence in the coalition leadership this time around—the administration that for eight years has just about destroyed the public health system in Queensland has been returned to government. It is particularly galling to me that Mr Beattie, in the pre-election advertising, would smile nicely at people and say: ‘Yes, it is a problem. I promise to fix it.’ The people of Queensland have been gullible in yet again falling for Mr Beattie’s promises.

Senator McLucas—Did the voters get it wrong?

Senator IAN MACDONALD—He promised to fix the problems three years ago and nothing happened. In fact, they got worse—Senator McLucas will be well aware of that. The problems in North Queensland that she and I are intimately aware of have got worse in the three years since Mr Beattie promised he would fix them. Again this year Mr Beattie has smiled at everyone and said: ‘Yes, dear. Isn’t this a terrible problem? I will fix it.’ But what has he been doing for eight years? Accordingly, I have no confidence in the proposition that the health problems we have in Queensland will be fixed so long as Mr Beattie and his cronies are there. More bureaucrats will be put into it and more advertising will be done. Mr Beattie has been running huge full-page advertisements for the last six months. I suspect they will stop now, the election being over. These advertisements were paid for by the taxpayers. Instead of putting the money into medical services, where it should have been put, it was put into advertising. We have had all the promises. We have had the nice pictures. We have had the announcements. But mark my words: in three years time things will not have improved. You only have to talk to anyone in the health areas to know this.
I have been approached by any number of nurses who say to me: ‘Because of the Commonwealth government we have been able to get places in universities, but we cannot get training places in Queensland hospitals.’ The training places are essential for those nurses to complete their work. I have doctors coming to me who are also grateful to the federal government for providing all these additional university places for would-be medical practitioners. But, once they finish, they have nowhere to go for their training in the Queensland hospitals. The Queensland hospitals, according to the AMA, and the hospitals in all other states, are cutting those training positions. That is of great concern to me.

The federal government has, over the 10 years that it has been in power, made a significant difference to medical services in country Australia. It has done this in so many ways that time today does not permit me to go through them all. I just want to mention one aspect of where the federal government has improved considerably the prospect of better medical treatment in country areas of Australia, and that is the introduction of a medical school at James Cook University, in Townsville, the city where I have my base. The James Cook University medical school is a real success story. I certainly give credit to Professor Bob Porter AC, who was the planning dean. When he first joined JCU in 1997 he was responsible for getting Australian Medical Council accreditation for the MBBS—that is, the Bachelor of Medicine Bachelor of Surgery. He originally came from Monash University, where he was the leading light in the development of the university’s medical school. Professor Ian Wronski, who is the executive dean of the Faculty of Medicine, Health and Molecular Science at JCU, also deserves significant credit for the great successes the James Cook University medical school has achieved.

The first-year numbers this year of Commonwealth funded places at JCU’s medical school were 83, which is a creditable contribution. Last year, in December, I was privileged to attend the graduation of some 58 students from the first MBBS program at James Cook University. I am delighted to hear that 64 per cent of graduates indicated that they were going to work in rural areas of Australia. That is absolutely fantastic, and it will certainly arrest the drain over recent years resulting in a paucity of medical practitioners in country Australia and certainly in country Queensland.

Fifty-six per cent of the graduates said they would remain in North Queensland, which means they will stay in Townsville, Cairns and Mackay. Even so, it shows the wisdom of the Howard government’s approach to problems in the bush. It is a long-term solution, but the long-term solution had to be undertaken. The thought was—and it is justified by the statistics—that there is a greater likelihood of country young people who enter medical schools in a non-capital-city university staying out of the capital cities. In the past, too many country kids would go to a capital city university to do their medical course and would get involved with a partner from that area, resulting in their staying in the capital cities. Very few of them went back out to the country.

This initiative of getting medical schools into regional areas—Townsville is just one of them but it is the one I am most familiar with—is already paying dividends. It means that the citizens of country Australia—which is where I live, in a country town in North Queensland—will have better prospects of getting a doctor in the years ahead. So congratulations to James Cook University medical school and all credit to Dr Wooldridge, who initiated this program, and the health ministers of the coalition government over the last 10 years.
This program has been very significant in getting a better deal for country people but, whilst the Commonwealth government continues to look after country people and to help the medical profession, regrettably all of the state governments—and my state of Queensland in particular—seem to be working against country people. I again mention the cut in the training positions. I urge the Queensland government to do something about that. There have been comments about the Commonwealth taking over the hospital and health systems in the state. It is an appealing thought, because the states have made such a botch of health, but the set-up—the infrastructure and the way it works—makes it impossible for the Commonwealth to take that over in the foreseeable future. One would hope that the states would learn from the disasters that have occurred.

I do feel sorry for those Queenslanders who, over many years, have approached me and my colleagues in tears about their health problems, which in many cases have been terminal and could not be treated because they could not get into the state hospital system. Whilst the leadership of the coalition might not have been what Queenslanders wanted, certainly the state coalition has an excellent policy that, if you cannot get into a public hospital and you have a life-threatening disease, the government will pay for you to go to a private hospital. I would hope that the new Queensland government will take that up. I think that is a vain hope, because the Queensland government has shown no interest over the last eight years in addressing the disaster that has overtaken public health in Queensland.

I will very briefly mention the need for increased technology in the provision of medical services. I was at Palm Island recently, and a new system was demonstrated to me. It could be technically explained, but I will not even attempt to do that. I will explain it in the way it appeared to me. Palm Island is a remote place. It is not all that far from Townsville but it is across the sea and it is difficult to get to. The medical people there do a fabulous job in difficult circumstances. They are working on a system whereby the local practitioner can, by means of television and telecasting, get the advice of specialists in Townsville to deal with problems that arise unexpectedly.

There has been something like this in place for some time in western Queensland, but I am told that this is a more interactive approach. A GP in a remote area who is faced with a life-threatening situation can look at the television screen and get advice from a specialist and even some help from the specialist to show how it is done. I know the Commonwealth government has been very much involved in the provision of these improved technological aids to allow the expansion of good medical treatment right throughout Australia.

I conclude my remarks by commending this bill to the parliament. The bill represents a minor procedural change, but the objective of the change is to reduce the current complexity in recognising medical specialists and consultant physicians under the Medicare system. It is anticipated that this amendment will significantly reduce the time taken between receipt of an application from a medical practitioner and the recognition. That will help the health system improve. It is an initiative which deserves commendation, and I commend the bill to the Senate.

Senator SANTORO (Queensland—Minister for Ageing) (12.15 pm)—I thank all contributors to this debate: Senators McLu- cas, Sterle, Ian Macdonald and Adams. I express appreciation for the constructive and cordial way in which this debate has taken place. I could be tempted to follow on from the contribution by Senator Ian Macdonald.
in relation to Queensland matters with great ease, but I suspect that I would be taking a point of order on relevance from Senator McLucas and perhaps you, Madam Acting Deputy President Troeth—maybe question time would be a more appropriate time—so I shall sum up. I will make some general statements in relation to the Health Insurance Amendment (Medical Specialists) Bill 2005 and then address some of the specific contributions made by senators opposite, particularly those by Senator McLucas, who is representing the shadow minister in this place.

The proposed amendment will reduce unnecessary red tape for medical practitioners seeking recognition as specialists and consultant physicians under the act in order to provide services which attract Medicare benefits at the appropriate rate to their patients. Currently, the administrative process for recognising medical practitioners can involve unnecessary duplication and lengthy periods. This has been the source of regular complaints from medical practitioners, specialists, medical colleges, employers and recruitment agencies. Applications for specialty recognition by certain medical practitioners must be referred to state or territory specialist recognition advisory committees, known as SRACs. All applications seeking recognition as consultant physicians must also be referred to an SRAC. Referrals to SRACs may have been effective in the past by providing a structure for the assessment of specialists who are not eligible for automatic recognition. However, since these committees were established, specialist medical colleges and medical registration boards have developed and implemented assessment processes which are now used by the SRACs in making their determinations. Because SRACs rely on the assessment advice of specialist medical colleges and medical registration boards in making their decisions, the committees now add a redundant administrative layer for processing applications. This unnecessarily extends the period of time between the registration of specialists and when they can provide services which attract Medicare rebates.

The amendment will disband the SRACs in order to streamline the recognition process. Applicants will apply to the Minister for Health and Ageing’s delegate in Medicare Australia for recognition as a specialist or consultant physician. Transitional arrangements have been provided to ensure the continued recognition of specialists and consultant physicians previously recognised by SRACs. Provision has also been made for the delegate to immediately consider applications that are with SRACs at the time they are disbanded.

This bill represents a minor procedural change. The objective of the change is to reduce the complexity currently involved in the recognition of medical specialists and consultant physicians under the Medicare system. It is anticipated that the amendment will significantly reduce the time between the receipt of an application from a medical practitioner and the granting of recognition for the purpose of Medicare. The legislative amendment does not bestow specialist or consultant physician status on medical practitioners. Medical practitioners are identified as specialists or consultant physicians by medical boards when they are registered on the advice of specialist medical colleges.

With Australia experiencing shortages in the medical workforce, the streamlined administrative process will mean that the specialists and consultant physicians enter the workforce as quickly as possible. I note that all of the speakers generally expressed support for the legislative amendments that we are making, and I thank them for that indication of support.
Senator McLucas in her substantial contribution made mention of several aspects of the medical system, including her contention that there is a lack of formal planning by the Australian government. She made comments in relation to her belief that the government fails to show leadership on quality and safety, especially with regard to the accreditation of GPs. She also made some comments in relation to overreliance on overseas trained doctors. I will briefly make some comments about those three contributions.

In response to Senator McLucas’s suggestion that there is a lack of formal planning by the Australian government: she would obviously be aware that, since 2000, there has been an increase in the number of medical schools. In fact, we now have 15 medical schools. The number of medical graduates will increase from 1,500 in 2003 to approximately 3,400 in 2015. As part of the 2006-07 budget, 400 medical school places were announced and, following the COAG meeting, another 205 places were announced. I will come back to that and outline in a little bit more detail the increase in the number of medical school places.

Senator McLucas also suggested that the government failed to show leadership on quality and safety, especially with regard to the accreditation of GPs. The recent COAG announcement included new processes for the accreditation and registration of medical professionals, and my advice is that those announcements were very well supported by all governments, including state governments, represented at the COAG meeting. That is something that can be recognised in this place as a step forward.

I am sure that Senator McLucas would acknowledge that the government takes its quality and compliance responsibilities for aged care very seriously, as demonstrated by measures that I have previously announced for which we are currently drafting legislation and which we have funded to the extent of approximately $110 million. We take our responsibilities seriously. I always say that there is always more that one could do, but that statement is made within the context of the very heavy competition for government funds.

In relation to a point that I think was made by Senator Sterle on the reliance on overseas trained doctors, honourable senators would appreciate that it can take up to 11 years before a student can become fully qualified to practise. Given that that is the case, we also need measures to boost doctor numbers in the short term. I am sure that all senators would welcome the range of measures which the Howard government has put in place in order to address the short-term situation.

The government has started addressing that short-term situation by increasing the number of appropriately qualified overseas trained doctors practising in Australia, through international recruitment strategies. It has reduced red tape in the approval processes and also changed some of the immigration arrangements. I think all senators would welcome into the medical system in our country the arrival of overseas trained doctors who are able to assist in taking care of the health of Australians.

We have had unfortunate cases, such as that of Dr Patel, but we will not dwell on that situation at this point in time. I, like Senator Ian Macdonald, have been visited by a number of overseas trained doctors since the Dr Patel situation came into public focus, stressing that they regard it as an honour and a privilege to be in Australia and to work with their Australian colleagues. They believe, I believe and the government believes that they make a very valuable contribution to the health and welfare of Australians.
In addition to that, the government is supporting more than 1,600 general practices to employ practice nurses and is allowing all GPs to claim Medicare items for certain services undertaken by practice nurses. Again, feedback I have received, particularly in my local area of North Brisbane—I live in the North Brisbane area and have come into contact with GPs, including with my own GP—is that this is a very welcome move. I think that can be put on the record with some justification and pride.

The government is also assisting by making funding available for 280 short-term placements each year for junior doctors to work under supervision in general practices in outer metropolitan and rural and regional areas. When the government made the decision, it again demonstrated its commitment to Australians who live outside the major cities, including and in particular the major capital cities. I am a proud member of a government that does not forget that Australia does not stop at the boundaries of our major cities, including our capital cities. I am sure all senators in this place believe that the food baskets and the great economic, cultural and social hinterlands that rural and regional Australia represent need and deserve attention such as that shown by the Howard government in its emphasis on improving medical services within regional and rural Australia. Increased support has also been provided for rural general practitioners who provide procedural services such as obstetrics and minor operations.

Only a few months ago I visited several centres in western Queensland, and it was very clear to me that some of the measures I have just mentioned in this summing-up speech were appreciated. They were commented upon certainly to me, and to some of my other senatorial colleagues, including Senators Ian Macdonald, Mason and Brandis, who accompanied me on that trip. The measures were appreciated, and vocally so, by many of the people we met.

I would like to conclude by again bringing to the attention of senators that, at its 14 July 2006 meeting, COAG announced its support for the key directions of the Productivity Commission report Australia’s health workforce. COAG agreed to a range of health workforce reforms to address key issues raised in the report. I will not go through all the components of that agreement, because to outline that would go beyond the scope of the bill we are considering here today. But I think it is important to again acknowledge in this place that the Australian government’s contribution to the package of reforms is $300 million, and it includes funding for 605 new medical places, with 220 going to Victoria, 150 to Queensland, 110 to New South Wales, 60 each to Western Australia and South Australia, and five to Tasmania. As an aside, a commitment was also made at that COAG meeting for 1,000 new nursing places.

I listened very carefully to the contributions to the debate, particularly those of opposition senators. I think it is fair that they do raise issues of concern to them in terms of what they perceive to be deficiencies within Australia’s medical system. But I also think it is important to acknowledge that the Howard government does provide as much as it can to the improvement of health services right across Australia and, through this bill, is eliminating what is now considered to be unnecessary red tape which has hitherto hindered the efficient processing of matters related to the registration of doctors. I commend this amendment bill to the Senate.

Question negatived.

Original question agreed to.

Bill read a second time.
In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (12.30 pm)—I move Democrats amendment (1) on sheet 4848 on behalf of Senator Allison, who could not be here to move it herself:

(1) Schedule 1, page 4 (after line 2), after item 8, insert:

8A Subsection 10AA(7) (definition of spouse)
Repeal the definition, substitute:

spouse includes a de facto spouse and means a person who is living with another person on a bona fide domestic basis although not legally married to that other person, including a same-sex partner.

The amendment repeals the definition of ‘spouse’ and introduces a new definition that ‘spouse’ includes a de facto spouse and means a person who is living with another person on a bona fide domestic basis although not legally married to that other person, including a same-sex partner. The Democrats, through Senator Allison and other senators, have moved this amendment a number of times with respect to the health legislation. They move it because the Medicare safety net continues to discriminate against same-sex couples and their families. The current legislation relating to the Medicare safety net defines ‘spouse’ in relation to a person means a person who is legally married to and is not living on a permanent basis separately and apart from that person and a de facto spouse of that person’. ‘De facto spouse’ is not defined elsewhere in the act to exclude same-sex couples. However, the Medicare Australia website specifically defines de facto couples for the purposes of the safety net as couples of the opposite sex, even though this is not defined in the legislation. Quite frankly, I do not know how valid that is at law and whether it has been tested or should be tested. This means that same-sex couples are discriminated against as the medical expenses of one family member in a same-sex couple are not counted towards reaching the family safety net threshold. This is unjust and unwarranted. The Howard government has moved, albeit very slowly, to end discrimination in this area in various fields of legislation, including tax law, where the interdependence definition clears up the issue. Same-sex couples and their families, in our view, are entitled to the same access to the safety net provisions as any other couples—de facto, married or in any bona fide domestic long-term relationship. This amendment specifically recognises same-sex relationships so that same-sex couples and families have the same access to the safety net provision as heterosexual couples and their children.

Obviously there is a financial consequence to this amendment. But the fact that something might cost the government money is not a reason not to end an unjust discrimination in an area which is being addressed by the government in a number of fields. I think you will know that the removal of discrimination over the years has cost money. The removal of discrimination against women, for instance, cost money, as the equal value for equal work movement took hold and as women were given their due place in society. This is another area of unjustified discrimination and that is why the Democrats have moved the amendment.

Senator McLUCAS (Queensland) (12.33 pm)—I indicate on behalf of the Labor Party that we will be supporting the Democrat amendment. We concur that a definition of ‘spouse’ is required and the issues of inequality that have been raised are valid. During the second select committee of inquiry into Medicare, the issue was raised, particularly with respect to the application of the safety net. What it means in effect is that a heterosexual couple will qualify for application of
the safety net far earlier than a homosexual couple in similar circumstances. A heterosexual couple with an ill child will achieve the threshold of the safety net far earlier than a homosexual couple with a child who is similarly ill. We have to ask: where is the equity in that? How fair is it that one child would receive support from the government because that child’s parent just happened to be heterosexual, whereas the other child—simply because the parent happened to be gay—missed out on support through the Medicare safety net? We still maintain our concern about the application of the safety net in a broader question, but the clarification of the definition of ‘spouse’ would at least provide some equity to families in the application of the safety net. For those reasons Labor will be supporting this amendment. I urge the government to give it consideration.

Senator SANTORO (Queensland—Minister for Ageing) (12.35 pm)—I appreciate senators opposite and Senator Murray acknowledging that discrimination in statutes and elsewhere within our community is being progressively eliminated—that is something that can be placed on the record—by all parties represented in the chamber, and that is good. However, at this point the advice that I have received—and the amendment has been considered by the government—is that the amendment would have a significant impact on the Health Insurance Act and the National Health Act, particularly the safety net arrangements under the Medical Benefits Scheme and the Pharmaceutical Benefits Scheme. I have been advised that the amendment would require much fuller consideration and that at this point it cannot be accepted by the government.

Senator Murray (Western Australia) (12.36 pm)—Through you, Mr Temporary Chairman, to the minister: Minister, you will not be able to answer immediately and I request that you take this question on notice. Can the government particularise an estimated cost and the estimated policy effects, if I can summarise it that way, of introducing this change? My view is that it is going to happen in due course, but the sooner the government says to us exactly what it involves the sooner a planned introduction can be considered.

Senator SANTORO (Queensland—Minister for Ageing) (12.37 pm)—I will take that question on notice and undertake to get back to Senator Murray with an answer.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator SANTORO (Queensland—Minister for Ageing) (12.38 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

MR JOHN VANDER WYK

Senator MINCHIN (South Australia—Leader of the Government in the Senate) (12.38 pm)—by leave—On behalf of the government, I want to note with great regret on our part that an esteemed and highly respected member of the Senate staff, Mr John Vander Wyk, has announced his retirement from the Senate to take effect on 22 September, after some 32 years of fantastic service to the Senate. On behalf of the government I congratulate John on his extraordinary dedication to the task of serving one of Australia’s great institutions, the Australian Senate. I want to thank him on behalf of all coalition senators, past and present, who have served with John in the roles he has performed in those 35 years and to say, on a personal note, how much I valued his guidance and assis-
tance when I first came here as a somewhat younger, junior and fresher opposition back-bencher and found his help and guidance invaluable.

Senator Ludwig—Look what’s happened!

Senator MINCHIN—Unfortunately, he has failed in later years to keep me on the straight and narrow. It has been a tremendous record of service—to think that someone would devote 32 years of their working life to serving this chamber, to making, as I say, what is an extraordinarily important institution in the governance of this country work so well and to assisting so many senators, past and present, in the performance of their important duties. On behalf of all coalition senators, we wish John very well in his retirement and thank him very much for what he has done for all us.

Senator MURRAY (Western Australia) (12.40 pm)—by leave—I rise to speak on the same matter and say to the minister and to John Vander Wyk that we could not have expressed it better; we share your sentiments exactly and we would repeat them. We will be writing to John to express our appreciation as a party. Those of us who are here and who have been here from the Democrats thank you and say well done for your service.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (12.41 pm)—by leave—As far as the opposition is concerned, we would like to associate ourselves with the remarks made by the Leader of the Government in the Senate. It is a significant record to put up with us for 32 years. However, it is not a case of putting up with us; we would like recognise your service as being long and meritorious service by you, John. In the time I have been here you have provided me with excellent advice, and I am not sure that I could have survived as well as I have done without your input. You have had a range of roles in this place, and you have served those roles very well. You have also served the Senate well and all the individual senators who have come in and out of this place. I am sure you have seen and heard many interesting things in that time—if the walls could only talk! From Labor’s perspective we want to recognise the service you have given to this place and to us; we thank you very much for that.

NATIONAL HEALTH AMENDMENT (IMMUNISATION) BILL 2006

Second Reading

Debate resumed from 6 September, on motion by Senator Abetz:

That this bill be now read a second time.

Senator McLUCAS (Queensland) (12.43 pm)—I wish to indicate that the Labor Party will support the passage of the National Health Amendment (Immunisation) Bill 2006. The reason we are dealing with this matter is that there was an error in the drafting of the National Health Amendment (Immunisation Program) Act 2005 which particularly affected the operation and delivery of a number of vaccines. It was particularly concerning to me in North Queensland and for people associated with the cattle industry and the delivery of the Q-Vax, so we are pleased to support it. Let us make sure that we have a good look next time so that we do not end up here again.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.43 pm)—The National Health Amendment (Immunisation) Bill 2006 amends the National Health Act 1953 to enable the Minister for Health and Ageing to arrange for the provision of goods and services such as Q fever skin tests and five per cent incentive payments to states and territories that are associated with or incidental to the provision or administration
of designated vaccines. In summary, this amendment will ensure that such goods and services can continue to be funded by the Australian government under the act. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

MR JOHN VANDER WYK

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (12.45 pm)—by leave—I want to take the opportunity to make some very short remarks on the retirement of the Assistant Clerk, John Vander Wyk, who is in the chamber at the moment. I know he will be terribly embarrassed that I have done this, but I was not here last night when the President made his remarks and I want to indicate on behalf of the Labor opposition how much we appreciate his 32 years of service to the Senate and his service to all the senators. We have great respect for the professional way he has always carried out his duties and the quiet way he goes about his business ensuring that the senators and the Senate function effectively. I personally very much appreciated his work when I was Opposition Whip. Many a time he provided me with advice that stopped me making a complete idiot of myself, and it was very much appreciated. I know all the whips over the years have relied on that advice and on the other jobs John has. I am under strict instructions from one of the other clerks not to make these remarks because clerks like to keep a low profile, but the Senate would not work without the hundreds of people who serve the Senate and Australian parliamentary democracy so well, and John has been one of those who have played a very senior role in servicing the parliament and our democracy. I understand from talking to him the other day that he is going up to live in Queensland. I hope he enjoys life up there and we thank him very much for his service.

BUSINESS

Rearrangement

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.47 pm)—I move:

That government business order of the day no. 6 (Intellectual Property Laws Amendment Bill 2006) be postponed till after consideration of government business order of the day no. 9 (Protection of the Sea (Harmful Anti-fouling Systems) Bill 2006).

Question agreed to.

SOCIAL SECURITY AND FAMILY ASSISTANCE LEGISLATION AMENDMENT (MISCELLANEOUS MEASURES) 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 COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.47 pm)—The Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Bill 2006 is a minor housekeeping bill that will make various technical and similar amendments to social security, family assistance and related legislation. These amendments are to improve the operational effectiveness of that legislation. The amendments will remove anomalies, clarify the legislation in line with established policy and make technical corrections and refinements. Notably, the bill introduces no significant new policy and has no or negligible financial impact.
The bill includes several measures to do with childcare benefit. One of these makes sure that childcare benefit customers who use registered care for their children cannot be paid childcare benefit that exceeds the actual fee that they have paid for that care. This common-sense rule mirrors the current limit on childcare benefit for care provided by an approved childcare service. Similarly, a new rule for care provided by approved childcare services replicates the existing rule for registered carers. This measure will clarify that neither registered care nor approved childcare service care will attract childcare benefit if the care is provided as part of a compulsory education program. Clearly, childcare benefit should not be payable while children are in the care of their teachers as part of their normal schooling.

The bill makes numerous refining amendments to social security legislation, including a measure to confirm that two members of a couple who are living apart on a temporary basis may generally be regarded as a temporarily separated couple whether they are legally married or a de facto couple. The temporarily separated classification gives couples access to a higher rate of certain payments such as rent assistance and remote area allowance. At present only legally married couples fall within the definition and it is anomalous that de facto couples are not treated in the same beneficial way.

The income test for the low-income healthcare card has also been refined by this bill. A rule inadvertently repealed from the legislation in 2001 is being reinstated so that a social security pension or benefit is clearly income under the low-income healthcare card income test as intended. It is also made clear that two veterans’ entitlement payments, the Defence Force income support allowance and the income support supplement, which are of a similar nature to the current components of income, are income for the purposes of the card.

A further measure aligns the definition of homelessness that currently applies for special benefit with the similar definition that applies for the larger customer groups of Youth Allowance and young disability support pension recipients. This corrects an inequity between the two groups of customers. To tidy up the statute books, seven acts relating to housing that are no longer operational are being repealed by this bill. Most of the remaining measures of this bill are technical corrections and refinements, many of these consequential to the commencement of the Legislative Instruments Act 2003 and reflect new concepts and arrangements established by that act. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

CRIMES ACT AMENDMENT (FORENSIC PROCEDURES) BILL (No. 1) 2006

Second Reading

Debate resumed from 21 June, on motion by Senator Abetz:

That this bill be now read a second time.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.51 pm)—The primary purpose of the Crimes Act Amendment (Forensic Procedures) Bill (No. 1) 2006 is to address specific impediments raised by states and territories that have prevented the exchange of DNA profiles on a national basis. The amendments will allay the concerns of states and territories and so encourage all jurisdictions within Australia to commit to interjurisdictional DNA profile matching. The amendments
also, among other things, address the recommendations contained in the Senate Legal and Constitutional Legislation Committee’s report. I wish to place on the record the government’s appreciation of the work of the committee. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.53 pm)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 5 September 2006, and I seek leave to move government amendments (1) to (8) together.

Leave granted.

Senator COLBECK—I move:

(1) Schedule 1, item 7, page 4 (lines 18 to 25), omit section 23XSA, substitute:

23XSA Presence of prison officers

If:

(a) a particular suspect is being detained in prison; and

(b) a forensic procedure is to be carried out on the suspect (whether or not the forensic procedure is to be carried out in prison);

one or more prison officers may be present while the forensic procedure is carried out.

(2) Schedule 1, item 20, page 7 (lines 12 to 18), omit subsection 23YDACA(2), substitute:

(2) A participating jurisdiction, or an authority of a participating jurisdiction, may access NCIDD to the extent that it consists of:

(a) the whole or a part of the State/Territory DNA database system of the participating jurisdiction; or

(b) information obtained from the State/Territory DNA database system of the participating jurisdiction;

but only if the participating jurisdiction, or the authority of the participating jurisdiction, is required or authorised by or under a law of the participating jurisdiction to access the State/Territory DNA database system of the participating jurisdiction.

(3) Schedule 1, page 8 (after line 14), after item 26, insert:

26A After subsection 23YDAE(2)

Insert:

(2A) A person may access information stored on NCIDD in the circumstances permitted by subsection 23YDACA(2).

(4) Schedule 1, page 8 (after line 17), after item 27, insert:

27A Subsection 23YDAF(1) (cell at table item 2, column 3)

Repeal the cell, substitute:

yes

27B Subsection 23YDAF(1) (cell at table item 2, column 5)

Repeal the cell, substitute:

yes

(5) Schedule 1, page 8 (after line 20), after item 28, insert:

28A Subsection 23YDAF(1) (cell at table item 4, column 3)

Repeal the cell, substitute:

yes

28B Subsection 23YDAF(1) (cell at table item 4, column 5)

Repeal the cell, substitute:

yes

(6) Schedule 1, page 9 (after line 15), after item 35, insert:

35A After subsection 23YO(1)

Insert:

(1A) Paragraph (1)(a) does not apply to access to information stored on NCIDD
in the circumstances permitted by subsection 23YDACA(2).

(7) Schedule 1, page 10 (after line 4), after item 41, insert:

41A At the end of subsection 23YUD(1)  
Add “Subject to subsection (1B), these arrangements may also deal with using such information.”.

(8) Schedule 1, page 10 (after line 13), after item 43, insert:

43A At the end of subsection 23YUD(1A)  
Add:  
; or (c) subject to subsection (1B), using such information.

43B After subsection 23YUD(1A)  
Insert:

(1AA) Subject to subsection (1B), an arrangement with a participating jurisdiction under subsection (1A) may deal with:  
(a) CrimTrac comparing information transmitted in accordance with that arrangement with other information on NCIDD; and  
(b) CrimTrac identifying matches that are found because of such comparisons and CrimTrac transmitting information arising from such matches to that participating jurisdiction.

(1AB) Subsection (1AA) does not limit subsection (1A).

Government amendment (2) implements the Senate Legal and Constitutional Committee’s recommendation—the word ‘audit’ has been removed. The intent of this bill is to grant access to a state and territory proportion of NCIDD to all relevant state and territory officials who are authorised under state and territory law to have such access. The amendment gives effect to the original policy intent. Government amendments (1), (3), (6), (7) and (8) are clarifying the intent of the legislation. These amendments address issues raised by the states and territories and do not make substantive changes to the way DNA is used, accessed or controlled. Government amendments (4) and (5) change the permissible matching situations to mirror other jurisdictions’ matching tables and remove any unnecessary restrictions on matching volunteer DNA. The changes will also allow suspects to be matched against other suspect data and implement recommendation 8 of the independent review of part 1D of the Crimes Act by Tom Sherman AO in 2003.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.55 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

PROTECTION OF THE SEA
(HARMFUL ANTI-FOULING SYSTEMS) BILL 2006

Second Reading

Debate resumed from 7 September, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (12.56 pm)—The Protection of the Sea (Harmful Anti-fouling Systems) Bill 2006 will protect Australia’s marine environment and population from the pollution caused by organotin compounds used in antifouling paints. It will fulfil the government’s commitment through Australia’s Oceans Policy to ban the application of tributyltin, TBT, to vessels in Australian docks. This bill builds on Australia’s
existing maritime pollution prevention regime, and Australian ratification of the International Maritime Organisation’s International Convention on the Control of Harmful Anti-fouling Systems on Ships depends on the passage of this bill. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

INTELLECTUAL PROPERTY LAWS AMENDMENT BILL 2006

Second Reading

Debate resumed from 8 August, on motion by Senator Vanstone:

That this bill be now read a second time.

Senator CARR (Victoria) (12.57 pm)—I wish to speak briefly on the Intellectual Property Laws Amendment Bill 2006. While Labor support the bill, we feel the need to point out just how long a time it has been between the period in which the Howard government announced it was seeking to take some action in this matter and the presentation of this legislation. We say that the Howard government is characterised by its complacency and neglect when it comes to making Australia a more attractive environment for innovative companies.

Labor understands that appropriate intellectual property arrangements are critical to creating an environment which supports Australian innovation and the commercialisation of Australian ideas. These arrangements must strike the appropriate balance between protecting the rights and returns of innovators and facilitating an open and competitive market. The amendments contained in this bill will improve the intellectual property regime, enhance efficiency and maintain an appropriate balance between innovation and competitive outcomes. But they are long overdue.

The amendments made by this bill give effect to some of the outstanding recommendations of the Intellectual Property and Competition Review Committee, which produced its final report in September 2000. It took six years to get to this point. I cannot for the life of me understand why it took so long. I have had a keen interest in this matter for some time. When I had responsibility for these issues as shadow minister these were questions which were at the forefront of the manufacturing industry in this country. There were demands being made right across the country for action to be taken with regard to these questions, yet this government failed to respond to a report of this importance for some six years. The bill gives effect to some outstanding aspects of the March 1999 report of the Advisory Council on Intellectual Property on its review of the enforcement of industrial property rights. So it has taken 7½ years for the government to act on that particular report.

The bill proposes to: broaden the spring-boarding regime for pharmaceutical patents; clarify the rights of a prior user in the granting of patents; add a competition test to the compulsory licensing of patents; allow for exemplary—in fact, punitive—damages to be awarded in patent infringement actions; amend provisions relating to the revocation of trademarks and public access to trademark files; and make minor and technical amendments to the Patents Act 1990, Trade Marks Act 1995, Designs Act 2003 and Plant Breeder’s Rights Act 1994.

Intellectual property rights and arrangements are an important issue as, for many Australian companies, IP is not just their only asset but their only product. As a nation, we have significant weaknesses in the commercialisation of Australian ideas and inno-
vation, and the intellectual property regime in this country ought to have been strengthened some time ago. The reality is that the Howard government is anti research and anti innovation. The latest OECD figures make the point, with regard to research and development, that in 2003 Australia ranked 18th of all OECD countries in terms of investment in research and development as a percentage of GDP.

Where Australia spends 1.65 per cent of its GDP on research and development, other OECD countries are up around three per cent. Our major industrial competitors in the north of Asia and the north of Europe leave us for dead on these issues. In today’s Age there is a report on page 8 quoting Monash University Vice-Chancellor, Professor Richard Larkins, as saying:

Everything that is happening is pointing to Australia being more and more of a research and development and high tech backwater.

According to the Age, government figures responded to this criticism by arguing that the strong local economy meant it was not as important to keep up with international research standards. I find it an extraordinary proposition that the spin doctors in the government would say that this is not important. It is an amazing proposition. The same article says:

Eminent medical biologist and former Australian of the Year Gustav Nossal said that industry investment was well behind overseas levels.

The article went on:

But Sir Gustav said the Government also needed to increase its funding and continue to encourage business investment through tax incentive, start-up grants or “plain old jawboning”—talking up the importance of science.

So, at every level, criticism is coming forward of the government’s appalling performance on these issues. In fact, I would argue that there is no better evidence of the Howard government’s failure to secure Australia’s economic future than its failure to invest in research and innovation, which drives productivity.

Intellectual property rights and arrangements, both legal and financial, are a key lever in the pursuit of better commercialisation outcomes and thus, by extension, are an integral feature of the broader innovation debate. They are critical to high-skilled, high-wage jobs in manufacturing in this country. This bill does make the situation a little better but it fails to deal with the fundamental problem—that it has taken the government the better part of seven years just to get this far. Such a lag in the implementation of important legislation is simply unacceptable and it is symbolic of this government’s complacency and neglect.

Senator MURRAY (Western Australia) (1.04 pm)—The Intellectual Property Laws Amendment Bill 2006 is largely a consequence of the review of intellectual property legislation under the Competition Principles Agreement, which resulted in a report produced by the Intellectual Property and Competition Review Committee chaired by Henry Ergas, which led to the establishment of an interdepartmental committee by the Minister for Industry, Tourism and Resources.

Perhaps it is a mark of the complexity and the extent of the commercial interest involved in this field that it has taken so long for this to reach Senate approval. It is a pity it has taken so long because the matter needs to be addressed. We have to be careful of believing that just because this is in a non-controversial section of the Senate agenda— which means that all parties support it—we can take the view that this is a relatively minor or insignificant bill. It is not. This is quite a substantive bill. It has 16 schedules and it has 41 pages but, unusually, the ex-
planatory memorandum is longer, at 54 pages, indicating that this is a field which requires careful explanation.

Those of us who are familiar with the ways in which laws are developed know that an explanatory memorandum is relied on as part of the view a court should take with respect to particular issues. Perhaps that is one of the reasons that the Senate Scrutiny of Bills Committee has started, in recent years, to pay such attention to the quality of explanatory memorandums and to encourage the government to lift their game in that respect.


Schedule 1 revokes the registration of trademarks. Schedule 2 relates to the non-payment of fees relating to trademarks. Schedule 3 concerns the registration process for the certification of trademarks. Schedule 4 relates to the availability of documents about trademarks. Schedule 5 covers exemplary damages. Schedule 6 concerns the prior use defence. Schedule 7 covers springboarding and patents. Schedule 8 concerns the compulsory licensing of patents. Schedule 9 and 10 have the minor technical amendments on innovation patents. So it is a comprehensive bill. It is very apparent to me that for those involved it is an area which, because it impacts on their businesses in an integral way, is in fact quite controversial. This field is of massive commercial significance.

Those people who took the time to write submissions and appear before the Senate Economics Legislation Committee had a keen interest in the outcome and there were a number of well-argued views presented to the committee. I think it is unfortunate the committee inquiry was a short one. I think it is unfortunate the committee was only tasked with examining a couple of schedules, because this is the sort of field where you have to be on your toes on a more holistic basis.

I was pleased to receive a fax from the Hon. Bob Baldwin on 12 September to advise me that the government was, to an extent at least, taking up the recommendations of the Senate economics committee, in particular in relation to schedules 7 and 8, which cover the springboarding and patents area and the compulsory licensing of patents. It was heartening to see that the government agency, IP Australia, has initiated a consultation paper to gather a wider range of views concerning the issue of springboarding so that it can have input from a diverse range of industries. This is a rapid response, largely to the submission by Nufarm to the Senate economics committee.

As I said, amendments in schedule 7 initiated a range of responses. Medicines Australia submitted to the committee that the proposals in the bill were likely to undermine Australia’s reputation for encouraging, supporting and rewarding innovation and had the potential to further weaken Australia’s intellectual property framework relative to its competitors. It is important to note, because of that remark, that there are sectors of business and industry that do not view this bill in a wholeheartedly supportive manner. However, the Generic Medicines Industry Association supported the amendments and argued that the proposed section 119A should
apply retrospectively and were supported by Nufarm.

These are obviously matters which are hotly contested by different groups in Australia with different financial and commercial interests in the application of intellectual property law. It should be increasingly clear to everyone why one of the most hotly contested and integral parts of the US-Australia Free Trade Agreement and the subsequent debate in this place was the protection of American versus Australian intellectual property rights internationally. They recognise it as the way of the future. It is time that Australia caught up in this field. It is no longer where something is manufactured or what the physical product is which generates a high level of income; it is where the ideas come from and how well they are protected in domestic and international law which is of growing importance in many fields, including that of genetic and DNA research.

With respect to schedule 8, I was also heartened to hear from the Hon. Bob Baldwin in response to the recommendations of the Senate economics committee that IP Australia had had discussions with Professor Corones from the University of Queensland. The professor had made some erudite and effective points about the interaction between the proposed amendments to the Trade Practices Act and the proposed amendments to the Patents Act.

The outcome of those discussions are that IP Australia has prepared—and it has been tabled—an amended or supplementary explanatory memorandum and has more clearly set out the relationships between the provisions of the Trade Practices Act and the Patents Act to assist in any dispute about their interaction. I would make the point, however, that if there is ambiguity you are far better off clarifying it in the statute than in a supplementary explanatory memorandum. I do hope you have not taken the easy way out and that this one is not going to come back and bite us on the posterior.

This process is a reminder that the parliamentary scrutiny system and the interaction with the bureaucracy can work at a very effective level. The Senate economics committee made recommendations, they were promptly acted upon by the responsible parliamentary secretary and his department and an outcome has been achieved, prior to the Senate voting on this bill today. If only this could happen in relation to the Trade Practices Act and the recommendations of the Senate Economics Reference Committee report of March 2004, *The effectiveness of the Trade Practices Act 1974 in protecting small business*—but of course that concerns another minister, not this one.

Although the committee did not make any recommendations in relation to schedule 4, I will make some brief comments on this. As many senators are aware, I am an advocate for a stronger Freedom of Information Act and I have a private senator’s bill on the Notice Paper to strengthen that act. I mention this because schedule 4 of this bill amends the Trade Marks Act to make documents relating to trademark applications publicly available. Currently, people have to make applications under the Freedom of Information Act to achieve this.

However, the way in which the amendment is structured has meant that IPTA, the advocacy group in this area, have argued that it is unclear what standard the registrar will be using to determine whether a document should be held confidentially. They point out that, if the applicable standard is unknown or below the standard that is currently applied under the Freedom of Information Act, applicants could be reluctant to lodge commercially sensitive material with IP Australia, and this in turn would make registration dif-
ficult. Further, the IPTA argue that, if a trademark applicant claims confidentiality for certain documents and the registrar does not agree that they should be held confidentially, it is unclear from the amendments to the legislation what recourse the applicant has against such a decision. IP Australia has acknowledged that it will be consulting further on this matter, which is prudent and advisable, but it is concerning that legislation is passing prior to the finalisation of the consultation process and without resolving this concern.

Intellectual property is often the lifeblood of corporations, and in this information age it is something which business must be willing to fight to preserve even more than before. Unfortunately that leads to a ‘deep pockets’ mentality. It is a substantial limitation to the effectiveness of the provision I have just outlined that there is a lack of clarity about what is confidential material, and those without deep pockets may be unable to pursue the matter effectively. A lack of clarity about the recourse a company may have if they disagree with the registrar’s decision may result in effective denial of justice. IP Australia have informed the committee that they are in the process of undertaking further consultation on how this will operate, and I assume that IP Australia will then report back to the Senate economics committee on this matter. I am quite sure from my knowledge of the chair and my understanding of the members of the committee that the committee will remain interested in this matter and will be pleased to hear the advice once it is available.

Senator CHAPMAN (South Australia) (1.15 pm)—The Intellectual Property Laws Amendment Bill 2006 implements a suite of amendments to Australia’s intellectual property system as recommended by two independent reports—one from the Intellectual Property and Competition Review Committee, known simply as the Ergas report, and the other from the Advisory Council on Intellectual Property. In addition, a set of amendments to the Patents Act 1990, the Trade Marks Act 1995, the Plant Breeder’s Rights Act 1994 and the Olympic Insignia Protection Act 1987 will further fulfil the expectation of the two reports that Australia formulate a succinct intellectual property law that is able to balance the rights of competitors with enforcing the right of innovators over their patents.

An important change will be to the Patents Act 1990. This will see a broadening of the capacity of Australian generic pharmaceutical companies to undertake more comprehensive springboarding activities. This important amendment will provide many benefits to Australia through a more internationally competitive pharmaceutical industry and an increased self-sufficiency of Australia’s medicines industry. Springboarding is a term that refers to using the subject matter of a patent to collect the data required to obtain regulatory approval of a generic version of a patented drug when the patent is still in force. Since the introduction of the Intellectual Property Laws Amendment Act in 1988, in Australia springboarding has only been permissible once a patent reaches its final stages. This bill addresses the current Australian competitive disadvantage by providing our generic pharmaceutical companies with the
capacity to undertake springboarding from
the time a patent is initially introduced. This
amendment will bring Australian legislation
into line with that of America and the Euro-
pean Union on springboarding thereby pro-
viding a more competitive and sustainable
Australian generic pharmaceuticals industry.
Clearly the introduction of this piece of leg-
islation will bring a range of benefits to the
Australian economy by providing more in-
centive for generic pharmaceutical compa-
nies to remain in Australia.

The importance of Australia’s pharmaceu-
tical industry cannot be underestimated. Its
economic role and the role it plays in na-
tional security are both essential. The generic
companies make up a third of the pharma-
cutical industry export trade and contribute
to our economy through strong investment
and providing highly skilled employment.
This legislation is necessary to ensure these
companies do not withdraw their operations
from Australia. It provides them with an
equal platform to match it with their interna-
tional competitors. In addition, the broaden-
ing of our springboarding laws will encour-
age generic pharmaceutical development in
Australia. This will ensure that in times of
national crisis we have an effective regime of
pharmaceutical research that will be able to
satisfy the needs of all Australians. This ex-
pectation that the industry remain sustainable
is a responsibility outlined in the national
medicines policy, which exemplifies the
government stance on developing intelligent
policy on patented products within the phar-
maceutical industry.

The Senate economics committee—of
which I am a member and to which Senator
Murray referred—examined the bill and re-
ported on 17 August. The committee recom-
manded that the government pass the legisla-
tion but with a couple of qualifications: firstly, that the government consider initiat-
ing an interdepartmental committee to con-
sider whether springboarding provisions
should be extended to other industries, and in
particular to agricultural chemicals. It is
pleasing that the government has responded
favourably to this recommendation. This
week the Parliamentary Secretary to the
Minister for Industry, Tourism and Re-
sources, the Hon. Bob Baldwin MP, re-
sponded that IP Australia has initiated an
interdepartmental committee to formulate the
government’s response to the report of the
Advisory Council on Intellectual Property
entitled Patents and experimental use. The
issue of springboarding was raised by Nu-
farm Ltd in a submission to this Advisory
Council on Intellectual Property inquiry, as it
was in their submission to the Senate eco-
nomics committee. Through the interdepart-
mental committee, IP Australia has recently
released a consultation paper which will
gather a wider range of views concerning
issues from affected industries.

Another recommendation of the Senate
committee was that the government recon-
sider schedule 8 to the bill in order to clarify
the relationship between the patent-licensing
provisions of the bill and the Trade Practices
Act 1974 in light of the concerns raised with
the committee by Professor Corones and Mr
Clapperton. Again, Mr Baldwin has advised
this week that officers of IP Australia have
held discussions with Professor Corones to
consider this issue in more depth. In those
discussions it has been agreed that amend-
ments to the bill are not necessary but a fur-
ther explanatory memorandum should be
tabled to provide greater clarity around this
issue. This further explanatory memorandum
clarifies that the provision to be inserted in
the Patents Act is intended to complement
the remedies available under the Trade Prac-
tices Act and is not intended to limit the
court’s powers under the Trade Practices Act.
It also clarifies that a compulsory licence for
a patent is available as a remedy under the
Patents Act 1990 for any breach of part IV of the Trade Practices Act in addition to any other remedies that are currently available under the Trade Practices Act. As a result, a party affected by a patent holder’s anticompetitive conduct will have a great number of options—either seeking any of the remedies that are currently available under the Trade Practices Act or seeking the remedy of a compulsory licence under the Patents Act.

The government’s positive response to the work of the economics committee again highlights the willingness of the Howard government to consult widely with interested parties on issues before the parliament and also reinforces the value of the work of legislation committees in the Senate.

Legislation that honours our international obligations, especially on such an internationally sensitive issue as intellectual property law, is also important. Australia is a signatory to the World Trade Organisation Agreement on Trade Related Aspects of Intellectual Property Rights, generally known as TRIPS. This agreement does not allow generic pharmaceutical companies to manufacture, stockpile for later sale or export quantities of pharmaceuticals while patents are still in place. This legislation is an appropriate step towards honouring this agreement while remaining sensible about our right to research and develop a sustainable pharmaceutical industry which is able to satisfy our needs. This piece of legislation will keep important knowledge companies in Australia, employing young Australians to undertake research work of the highest strategic importance, whilst not violating our international commitments.

This bill is also an example of the effective ways in which we can balance the rights of the innovator with the expectations of the community to receive the benefits of innovation through competition. It was found by the Ergas report that, although intellectual property law and competition policy were more often than not complementary, as they recognised in recommendation 15:

While conferring intellectual property rights encourages investment in creative effort, it can allow the owners of the results of this effort to unduly restrict the diffusion and use of these results. The potential for anticompetitive behaviour following patenting requires that we have legislation in place that provides adequate rights and entitlements for all parties involved. This has been satisfied in the bill through a competition test to be undertaken between parties at the Federal Court if it is believed that one who owns their patent is not fully utilising it for the benefit of the broader community or is using it for anticompetitive purposes such as stifling further innovation.

Schedule 6 includes the provision that if one is deemed by the trademarks office to have satisfied the requirements of being a prior user of the patent then they will not be licensed to continue their work but instead assigned that right, provided that they undertake it themselves within Australia. This legislation is effective in its provision for parties who have a genuine claim to prior use recognition. It gives them the potential to continue their work throughout the life of the patent whilst also providing to strategic industries, such as the generic pharmaceutical industry, the concession to research and therefore remain competitive in their industry. This upholds the recommendations of the Ergas report by ensuring a balance between the innovator and their competitors.

In addition, as was recommended by the Advisory Council on Intellectual Property report, intellectual property will now have more effective mechanisms of enforcement to ensure the rights of innovators are respected. The bill provides in schedule 8 that
the trademarks office will be able to revoke trademarks due to administrative error or oversight. In addition, schedule 5 outlines that the judicial system, through the Federal Court, will have the capacity to order punitive damages in addition to financial recuperation against those who are in violation of patent law. These considerations made for the rights of the innovator will, however, be regulated by the introduction of further competition tests to ensure patents are being fully utilised as decided by the Federal Court.

Therefore the intellectual property bill that is currently before the Senate is an important piece of legislation that will improve our national health by securing a sustained pharmaceutical industry that can fulfil our requirements in times of emergency and that is also capable of raising investment, employment and training opportunities as well as providing other important reforms with regard to intellectual property. However, it also achieves this while still sensibly balancing the rights of innovators and competitors in a succinct way which will improve the benefits of intellectual property law for all Australians. Therefore I commend it to the Senate, as was recommended by the Senate economics committee.

Senator WEBBER (Western Australia) (1.26 pm)—I rise to make some brief remarks on Intellectual Property Laws Amendment Bill 2006, also as a member of the Senate Standing Committee on Economics. First I would like to place on record my thanks to the committee secretariat and members of the committee for what, as Senator Murray has outlined, was a very useful and informative process. As is often the case with the Senate economics committee, we were able to come to a fairly unanimous view in recommending some changes to this legislation.

As a member of that committee, I was particularly moved by the representatives of Nufarm Ltd about the need to progress the issue of the use and manufacture of generics in their industry as well as in the pharmaceutical industry. I was made aware of the large number of Australians who are employed by Nufarm and other companies, and I must say I was therefore a little concerned at the slow progress that has been made through the bureaucracy when it comes to addressing similar issues for that industry. The committee was informed that there is a paper around that addresses similar issues for the agricultural and fertiliser industry. However, that has been with the agency since August last year but as yet we have not had meetings with relevant agencies and actually progressed any draft legislation.

The committee was informed that there was a hope that we might get to see something that addresses the concerns of that industry by the end of this year. It would seem that we make very slow progress when it comes to dealing with these issues. I just want to place on record my concern that we do seem to hasten very slowly in this area—it is an area that is worthy of some reform—and put in a plea that we try to deal with this a bit more quickly than we dealt with the issues that are before us today.

I would also like to thank Professor Corones, who appeared by teleconference before the committee. He pointed out that he had become aware of our inquiry at a very late stage. In fact, it was his evidence that pointed out some of the inconsistencies that we had to deal with; hence the change in the explanatory memorandum. It is useful to note that the government did take the committee’s recommendations on board and gave us a new explanatory memorandum to address our concerns.
However, as Senator Murray has outlined, I do hope that that is all that is needed to address those particular concerns. Not being a lawyer I cannot guarantee that, but I do hope that we are getting this right. It was of some concern to me that it was Professor Corones who knew about the two pieces of government legislation—the proposed bill that we are now dealing with and the amendments that the government were making to their national access regime bill. However, agencies of government did not know about the inconsistencies between the two pieces of legislation. It took members of the economics committee and an outside academic to point out the inconsistencies in approach. When you are looking at aspects of trade practices reform, I think it is really important that all agencies pay attention to what is being done in that area because it affects all of us. Who knows what would have happened if Professor Corones had not got hold of the issue at such a late hour? Who knows what mess we may have ended up in?

I thank him for his evidence and I thank the members of the committee. I put in a plea hoping that we will progress the next stage of this reform for companies like Nufarm perhaps quicker than we have addressed this reform. I hope the new explanatory memorandum does in fact achieve everything that the government claims it does in addressing the committee’s concerns.

Senator COLBECK (Tasmania—Parliamentary Secretary to the Minister for Finance and Administration) (1.31 pm)—Firstly, I table further explanatory memoranda relating to the Intellectual Property Laws Amendment Bill 2006. In addressing some of the issues that have been raised in the debate, I thank senators for their contribution to the debate on this piece of legislation. I would just like to correct a couple of things that have been put on the record, particularly by Senator Carr, in relation to the Ergas report and the report of the review of enforcement of industrial property rights of the Advisory Council on Intellectual Property.

It is important to note that, contrary to what Senator Carr said, the key recommendations of the Ergas and the ACIP reports were enacted in 2001 by the Patents Amendment Act 2001. These changes to the patents legislation have operated effectively for some years now, and this bill implements the majority of the residual recommendations of those two reports. It is important to put on record that there has in fact been progress since those two reports were brought down in 2000. In 2001, the initial work was done. The implementation of these recommendations that we are looking at today was delayed by the negotiation of the Australia-United States Free Trade Agreement and by other competing government priorities, so there is a legitimate reason for the process that has occurred to this point.

As has been indicated during the debate, there are some recommendations that are outstanding at this point, but that is because recommendations of some other recent reports into the intellectual property system affect the implementation of some of the recommendations. The government continues to do further work on progressing these outstanding recommendations. They are on the government’s legislation program and will be implemented in the near future. Having said that, I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

Sitting suspended from 1.34 pm to 2.00 pm
MINISTERIAL ARRANGEMENTS

The PRESIDENT (2.00 pm)—I wish to inform the Senate that Senator Ian Campbell, the Minister for the Environment and Heritage, will be absent from question time today. Senator Ian Campbell is attending ministerial consultations in preparation for the 12th conference of the parties to the UN Framework Convention on Climate Change. During Senator Ian Campbell’s absence, Senator Eric Abetz will answer questions in relation to environment and heritage, defence, veterans affairs, transport and regional services, local government, territories and roads—and very capably, I am sure.

QUESTIONS WITHOUT NOTICE

Media Ownership

Senator CONROY (2.00 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer to the government’s plans to weaken the cross-media ownership rules. Can the minister confirm that, under the government’s diversity or voices test, the number of owners of major commercial media could fall from 12 to six in Sydney and from 11 to six in Melbourne? How can the minister continue to claim that the government wants to protect media diversity when its plans allow the number of owners to halve in our major cities? How can such a massive concentration of media ownership possibly be in the public interest? What guarantees can the minister give that the government’s plans will not inevitably see newsrooms merged, reporters sacked and local content reduced?

Senator COONAN—I thank Senator Conroy for the question. The government has absolutely no plans to weaken media laws—let me make that perfectly clear. So the premise of Senator Conroy’s question is entirely false. The government is proposing to reform the media industry in the interests of consumers. What we have decided will be appropriate is to ensure that there will be strenuous safeguards to prevent concentration of ownership. That will be secured by the number of voices not being able to fall below five in a metropolitan region and four in regional and rural Australia, bearing in mind that there are very few markets that will qualify for that particular voices test.

On top of that, the ACCC have a mandate to ensure that no mergers infringe the competition principles of substantially reducing competition in a market. The ACCC have put out a paper issuing guidelines as to how they will approach media mergers, and it very clearly says that they will be looking at whether it also includes matters such as advertising revenue and what will be a market, and they propose to take into account news and opinion. It is important to understand that the only media rules that will be affected will relate to the regulated platforms of commercial television, commercial radio and print. They certainly will not relate to pay television, to out-of-area newspapers such as the Financial Review and the Australian, to the internet or to the ABC. No matter how many mergers there are, there will still be other additional outlets.

People can run around and make all sorts of scurrilous comments about this. Mr Keating was doing that last night. The media laws are 20 years old. They were fashioned last century, when the internet had just been invented and when it was all about academics, when IPTV had never been thought of, when the streams of content you now get over mobile phones and the internet had never even been dreamed of. Mr Keating came out from somewhere because there is a total absence of any policy on the part of the Labor Party. The best they can do is to trot out a former failed Prime Minister with a 20-year-old policy and suggest that is the way for the future. We have to ensure that con-
sumers are able to take advantage of all the new services that this media package will enable.

This media package is all about consumers. It is all about providing benefits to consumers. Why should Australian consumers be worse off than consumers right around the world who are able to access these services? It is important that Australian media can grow and invest. Subject to the appropriate safeguards, which will look after diversity, these reforms will move Australia into the 21st century.

Senator CONROY—Mr President, I ask a supplementary question. Is the minister aware that leading Australian law firms, including Phillips Fox, Blake Dawson Waldron, Holding Redlich and Freehills, have all cast doubts on the ACCC’s ability to stop cross-media mergers? Given the weight of legal opinion against her, why is the minister pretending that the ACCC will be able to do anything to ensure continued media diversity? Isn’t it really the case that the minister’s plans contain no effective safeguards against a dangerous concentration in media ownership?

Senator COONAN—It would be diverting, to say the least, if those opinions that are touted by Senator Conroy addressed the issue that was part of his primary question, which related to cross-media mergers. The ACCC looks after all mergers in this country. Unless you are going to say that the ACCC is incapable of managing mergers and acquisitions throughout the whole country, you cannot sustain that proposition. It is extremely important that the ACCC, like every other industry, is also able to regulate competition in the media sector. It ill behoves Senator Conroy to try to trump up some argument to the contrary.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of a parliamentary delegation from the National Assembly of the Socialist Republic of Vietnam, led by Mrs Nguyen Thi Hoai Thu, Chair of the Committee on Social Affairs and head of the Vietnam Australia Parliamentary Group. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Workplace Relations

Senator FERRIS (2.07 pm)—My question is to the Minister representing the Minister for Employment and Workplace Relations, Senator Abetz. Is the minister aware of any threats to the accelerated job creation and continued wage growth which has been experienced in this country under the Howard government’s workplace relations policy Work Choices?

Senator ABETZ—I thank Senator Ferris for her question and note that she is a great champion of the Australian worker. There is a threat to the accelerated job creation and continued wages growth that this country has experienced under Work Choices. There is a threat to the 175,000 new jobs, and counting, that have been created since Work Choices and, as Senator Ferris would know, that threat is Mr Beazley and the Labor Party. Mr Beazley wants to rip up these job-creating laws. He wants to take us back to the outdated industrial relations system of the 1980s and 1990s, when over one million of our fellow Australians were unemployed and wage growth was stagnant. He wants to take us back to the days when the unions ran this country. Just ask Greg Combet, who said as much recently.
Mr President, I do have a confession to make. On Monday I misled the Senate. I told the Senate that, under Labor’s ‘back to the 1980s industrial relations policy’, if just 51 per cent of workers at a workplace wanted a collective agreement, the other 49 per cent had to cop it. Well, I was wrong. In fact, Greg Combet—the real shadow industrial relations minister—revealed yesterday at the National Press Club:

This is not a system where the role to collective bargaining is predicated upon a majority decision by its employees.

So you do not even need a majority decision by workers in a workplace for a collective agreement; all you need is one worker, and the other 99 per cent would have to follow suit under the brave new world of the Labor Party and Mr Beazley. This is compulsory unionism under any other name. At a time when over 75 per cent of Australian workers have said that they do not want to be members of a trade union, to try to foist that upon the hardworking Australian workforce is nothing but disgraceful and it indicates what the Australian Labor Party would do.

Returning to Work Choices and its job creation impact, let me give this quote to those opposite:

Dire warnings of mass sackings and a resurgence of Dickensian employment practices can finally be rejected for the deceitful hot air they always were.

... this beautiful set of numbers—

that is, the 175,000 new jobs and record low industrial disputes—
suggests the opposite to the Dickensian nightmare of an enslaved proletariat.

Who do you think might have said that? The Prime Minister or Mr Andrews? No. It was the Australian editorial of 13 September. Let us go further, to Senator O’Brien’s home newspaper the Launceston Examiner, which represents that wonderful seat of Bass—so ably represented by Mr Michael Ferguson. On 12 September, that paper said:

The stream of horror stories that the unions promised has not eventuated.

There is only one real horror story facing the workers of Australia—that is, the prospect of a Beazley Labor government, which will destroy jobs and jobs growth and ensure that there is a greater rate of industrial disputation.

Media Ownership

Senator STEPHENS (2.12 pm)—My question is to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer to the government’s proposal to require regional radio stations to produce a local content plan that sets out how they will provide local news and information if they become part of a cross-media group. Can the minister confirm that this idea is similar to the local presence plan that the government imposed on Telstra? Isn’t it the case that Telstra’s local presence plan has allowed the company to announce the sacking of up to 12,000 workers and the removal of 5,000 payphones? Given this experience, why should anyone in regional centres like Orange, Dubbo or Albury believe that their local news service will not be gutted if their radio station gets swallowed up in a merger? What guarantees can the minister give that this will not happen?

Senator COONAN—I thank Senator Stephens for the question. I commence my answer by saying that she is quite wrong—there is actually a difference between a local presence plan for a major telecommunications company and a local presence plan for regional radio stations. But, moving right along, the important thing to understand about regional protection is that it will protect regional content and diversity for consumers because it is a key component of the
media package that was introduced into parliament earlier today. There are a number of measures, for Senator Stephens’s information, contained in the framework that will ensure that regional consumers do not miss out on the benefits of media reform. To best achieve protection of local content levels, the government will legislate to maintain minimum content levels for regional commercial television in regional Queensland, regional New South Wales and regional Victoria. It will also be extended to Tasmania, and the government is examining similar requirements in respect of South Australia and Western Australia.

In addition—particularly in relation to radio, which Senator Stephens asked about—where regional commercial radio licensees change ownership or become part of a cross-media group, they will be required to meet minimum local content levels, including local news and weather bulletins, local community service announcements and emergency warnings. They will be required to maintain at least the existing level of local presence, including staff levels, studios and other production facilities, and to submit local content plans to the Australian Communications Media Authority, which will specify how licensees will meet their local licence conditions, for consideration and for approval.

Local content obligations may also be imposed where the format of the service is narrowed or when the Minister for Communications, Information Technology and the Arts directs ACMA to consider imposing local content requirements. Local content requirements and the need to protect consumers and to ensure diversity in rural and regional Australia have been a key part of the government’s development of the media package. They ensure that those in rural and regional areas will be able to maintain a level of live and local content and that there is an important journalistic presence in respect of news and broader local content. The balance in enabling radio stations to take part in the media package while maintaining local diversity has been an important part of how this package has been developed. I consider that it is critical that a live and local presence be maintained. On the same point, it is very critical to ensure that there is not a special and overburdening layer of regulation just on rural and regional radio and television. It is important that there is not a two-tier system of regulation for media. In addition, it is extremely important that those who consider mergers in these areas do so knowing well in advance what will be required to maintain a live and local presence so we can approach these reforms with media companies with certainty and with consumers being certain of how they will be able to access live and local services.

Senator STEPHENS—Mr President, I ask a supplementary question. I thank the minister for her answer. It probably would have been helpful had she been able to describe what the levels of minimum service represent in real terms. It gives me a real concern about local presence plans and the local content plan. Surely, as many of her National Party colleagues suggested, media moguls will be able to drive a truck through the local content plan, just as Telstra has been able to do with the local presence plan. Does this not mean that the minister cannot give any guarantees really that local news and radio services in the bush will not be cut? After failing to live up to its commitment on Telstra in relation to regional services, is there any reason why anyone should trust the minister to protect regional media services?

Senator COONAN—That is a bit rich coming from Senator Stephens, who is a member of a party that does not even have a policy on rural and regional Australia either
in telecommunications or in media. The shadow minister goes missing and they have to trot out a 20-year policy to try to give themselves a bit of oxygen on this issue.

Senator Chris Evans—Mr President, I rise on a point of order as to relevance. A supplementary question is not an opportunity for the minister to launch an attack. She was asked about a serious concern about radio services in the bush under her plans. I think the Senate deserves an answer to that question.

The President—The senator has been answering that question, particularly in the main balance of the answer, and she has 32 seconds to complete her answer.

Senator COONAN—I am afraid 32 seconds does not give me enough time to wind up some sensible assessment of the absolute policy paucity of the Labor Party in relation to telecommunications and media policy. They are an absolute disgrace, reliant on poor old Mr Keating. Let him retire. Let him go somewhere where he does not have to trot out on media. Try to develop your own position on these things.

Telecommunications

Senator FIFIELD (2.19 pm)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Coonan. Will the minister inform the Senate how government investment is helping drive broadband take-up in Australia? Is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Fifield for a most timely question and for his ongoing interest in the provision of telecommunications services to Australians. As senators on this side of the chamber are aware, broadband is of great interest to a growing number of Australians and is transforming the way people do business, communicate with their families and access entertainment services. I am very pleased to inform the Senate that some very positive news about broadband take-up has been released today by the Australian Competition and Consumer Commission. The snapshot of broadband deployment released today shows that by 30 June this year there were more than 3.5 million premises connected to broadband, representing some eight million broadband users in Australia.

The ACCC figures also show that in the year to June 2006 there have been 1.5 million new broadband connections, a growth rate of 67 per cent. The figures speak for themselves. We have gone from two million connections just a year ago to more than 3.5 million at the end of June 2006. At this rate, we are very close to breaking through the four-million barrier, given that we are now in September. The latest results for the June 2006 quarter, released today, show the third biggest quarterly rise ever with nearly 350,000 new broadband connections. This demonstrates that broadband take-up in Australia is booming; it explains why Australia is now ranked fifth out of all OECD countries in growth of broadband take-up; and it shows that the Australian government’s broadband policies are certainly taking us in the right direction. The government’s $878 million Broadband Connect program is one of the many factors driving this incredible increase in the market. Broadband rollout and take-up in Australia has after all just rolled right over Labor’s doomsday pronouncements about broadband. Not only is the take-up of broadband rocketing ahead; the technology continues to improve with ADSL2+ broadband now expected to be switched on by both Telstra and Optus to add to consumer choice of provider and faster speeds.

Senator Conroy—you mean real broadband.

The President—Senator Conroy!
Senator COONAN—Today’s broadband figures from the ACCC are very bad news for the Labor Party, and that is why Senator Conroy is so hysterical today in question time. The 1.5 million Australian premises that connected to broadband in the past year are simply rocketing Australia up the OECD league tables on broadband. It is clear that Labor hates the fact that Australia is now ranked fifth by the OECD on growth of broadband connections. Australians are embracing this technology and are taking up the ever-increasing range of services on offer under the government’s competition regime. While the Labor Party flounders on communications, without a policy on telecommunications or media, this government is getting on with the job of connecting all Australians.

Senator HUTCHINS (2.22 pm)—My question is also to Senator Coonan, the Minister for Communications, Information Technology and the Arts. I refer the minister to the front-page article in today’s Daily Telegraph newspaper, entitled ‘Telstra: the school bully’. Is it true that Telstra plans to double the line rental charges to NSW schools who choose to take advantage of lower call rates with other telecommunications providers? Is the minister also aware that the line rental increases will hit some of the most vulnerable schools in New South Wales, in areas like Raby and Minto? Hasn’t the minister’s failure to rein in the soon-to-be-privatised Telstra resulted in money that schools could have been spending on new books and facilities, going into Telstra’s back pocket? What action will the minister take to prevent Telstra from exploiting its position at the expense of New South Wales schools and their students?

Senator COONAN—Thank you to Senator Hutchins for the question. I understand that Telstra is revising the way it prices services to the not-for-profit sector and in particular to schools. To date, Telstra has offered a special low not-for-profit line rental rate of $19 per month to many schools, regardless of which provider they use for the actual calls. I now understand that Telstra’s new position on provision of this special low rate is that it will only be available to schools that also use Telstra for their telephone calls on that service. Schools, particularly poorer schools, are a particularly sensitive and important sector of the community, and Telstra—as well as the wider industry—should tread carefully when adjusting telephone prices that have been available to schools for many years.

Obviously Telstra has a responsibility to its shareholders, but it should not forget its broader corporate social responsibilities as well, and I urge Telstra not to rush any amendments to the telephone pricing arrangements for schools. It is important that schools are given an appropriate lead time to consider their options before any change, particularly those schools that are on contracts with other providers. As we can all appreciate, it can often take considerable time to move from one provider to another, due to contractual arrangements, and I do encourage Telstra not to rush the implementation of this decision but to give schools time to consider the best package that will meet their needs.

Having said that, I would like to make some additional comments to put some context around Telstra’s decision. Firstly, I am advised that Telstra will still be offering the same large discounts on line rental to all schools, as long as they use Telstra for the school’s telephone service. Secondly, I believe there is some merit in the argument put forward by Telstra that they should not necessarily be required to provide 50 per cent discounts on line rental to their competitors’ customers while their competitors get all the
revenue from those phone calls. So, whilst Telstra plans to continue discounts for its customers, I do strongly encourage Telstra’s competitors, particularly the larger companies, to also offer cheaper line rentals to schools.

Australia does have a competitive communications market and all consumers have a choice of provider, service and price. The competition regime established by the government has resulted in substantial price reductions across the board, as well as a much greater choice of services, and each school has the option to compare the services and prices being offered by the large number of service providers that can offer high-quality telecommunications services. Mr President, isn’t it a very good thing that competition means there can be a choice for schools in relation to the prices they are offered and that they are not entirely beholden to Telstra? In those circumstances, I think that the competition regime speaks for itself. Apart from urging Telstra to treat this matter with some caution and to not pull the rug out from under people quickly, I say that it is very important that people have choice.

Senator HUTCHINS—Mr President, I ask a supplementary question. Doesn’t the minister’s failure to protect schools from the detrimental effects of the government’s extreme privatisation agenda show that all not-for-profit groups are at risk? Isn’t it true that other groups like charities and religious groups could also feel the sting of massive line rental increases if they choose to use other telecommunications providers? Will the minister now intervene—rather than ‘urge’ Telstra—to protect schools and other not-for-profit organisations from Telstra’s abuse of its market position?

Senator COONAN—The level of lack of comprehension that underlines Senator Hutchins’s understanding of this matter is just extraordinary. The Australian government has ensured that, if Telstra supplies a school with a standard telephone service, the government’s price control arrangements require Telstra to offer that school the standard line rental charge. That does not seem to be a point that has got through to the Labor Party, but I am very glad to have had the opportunity to disabuse them of the assumption that they have made in asking this question. It is very clear that the universal service obligation does work and certainly does provide Australians with the services they need.

Aged Care

Senator HUMPHRIES (2.28 pm)—My question is to Senator Santoro, the Minister for Ageing. Will the minister inform the Senate what steps the government has taken to address the shortfall in aged care places that existed in this country when the government assumed office in 1996; and is the minister aware of any alternative policy approaches?

Senator SANTORO—In thanking Senator Humphries for his question, could I also acknowledge his very strong advocacy on behalf of the aged and the frail in the ACT—an advocacy that has been so effective it has even been recognised by the current Chief Minister of the ACT, Mr Stanhope. Mr President, I have been waiting; I waited yesterday for a follow-up question to those asked of me on Tuesday, and I provided the opposition with some quite specific information relating to Queensland—but alas. I am thankful to Senator Humphries for at least having the interest to provide me with some further opportunity to elaborate on the performance of the Howard government in its provision of aged care places.

When the Howard government was elected in 1996 it inherited a national deficit of 10,000 aged care places. It was not the incoming Howard government that said that; in fact it was said in the latest report of the
Auditor-General. After years of Labor Party neglect, Australia had an operational ratio of—listen to this, Mr President—just 93 aged care places per 1,000 people aged over 70. Thanks to 10 years of strong investment in aged care, the Howard government has increased that ratio from 93 to 106 places per 1,000 people over 70 years of age. We are on track to achieve the target we committed to in 1996—that is, 108 aged care operational places per 1,000 people over the age of 70 by the end of next year.

Mr President, to assist the opposition, I have presented the information in the form of a table. In case they do not understand the figures, the red arrow represents the Labor Party’s performance—

The PRESIDENT—Senator Santoro, are you seeking to table this document?

Senator SANTORO—Through you, Mr President, I am seeking permission to table this very simple document.

The PRESIDENT—You do not need permission to table it; just table it.

Senator SANTORO—Thank you very much. Mr President, the opposition will be able to understand it if they just follow the colours: red is the Labor Party performance; blue is the Howard government’s performance. Labor’s spokesperson for aged care continues to fixate on bed numbers. Labor remains fixated on bed numbers rather on the total number of packages for aged care.

This year the Howard government has delivered on its promise of 200,000 operational aged care places. Almost 9,000 new aged care places are available for 2006-07, with a further 20,000 places to come on line in the following two years.

Senator Chris Evans interjecting—

The PRESIDENT—Senator Evans, come to order!

Senator SANTORO—What Senator McLucas and her colleagues over there do not understand is that aged care is much more than simply residential places. You should stop being fixated simply on bed places. Labor is stuck in the centuries-old fixation on bed places.

Opposition senators interjecting—

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

Senator SANTORO—By contrast the Howard government is committed to providing a full range of choices for the elderly. This means residential care; it means community care and an expanded range of HACC programs. As a result of this commitment, there are now 56,000 more aged care places in Australia than there were when the Howard government took office in 1996.

Senator Humphries also asked me about alternative policies. I have to report to the Senate today that, unfortunately for democracy, the opposition does not have any alternative policies. Despite being Labor’s aged care spokesperson since December 2004, almost two years—(Time expired)

Senator Carr interjecting—

The PRESIDENT—Senator Carr, when you stop shouting across the chamber we will continue with question time.

Senator HUMPHRIES—Mr President, I ask a supplementary question. Did I hear the minister say that there were another 56,000 places available to aged Australians today than there were in 1996? Can the minister also explain why the government will not be adopting the alternative policies of which he spoke?

Senator SANTORO—The reason we will not be adopting any alternative policies is very simple: there are none, even if we did want to consider them. What Senator McLucas and her colleagues over there are con-
cerned about is running down the reputation of aged care homes and their staff and frightening residents and their families.

Under the Hawke-Keating governments, and this is very instructional, there was no system of accreditation for nursing homes, there was no policy on building certification, there was no policy on fire safety in nursing homes and there was no increase— I repeat: no increase—in aged care places for the elderly and the frail. On 3 July, Barry Jones, the President of the Australian Labor Party, committed to having an aged care policy by the Labor Party within a few weeks. A few weeks after 3 July, we are still waiting, and I suspect we will continue to wait.

Australian Made Products

Senator FIELDING (2.35 pm)—My question is to the Minister for Finance and Administration, Senator Minchin. Minister, Family First believes that the Australian parliament should be a showcase for Australian-made products to proudly display Aussie talent. Recently, however, senators received a new set of mugs with the Senate logo, and they are made in China. Minister, why don’t government procurement guidelines recognise that Australia’s parliament should showcase Australian-made products?

The PRESIDENT—Senator Minchin, I think the question was asked of you.

Senator MINCHIN—I am not sure, Mr President, who actually acquires mugs for the parliament, whether that is—

Opposition senators interjecting—

Senator MINCHIN—I know the Labor Party produces a lot of mugs. I am not sure whether the purchase of mugs is in your domain, Mr President, or that of the Department of Finance and Administration, off the top of my head. I will have to confirm the actual authority in relation to that.

Opposition senators interjecting—

But the overriding concern of the government is to ensure that taxpayers, who pay for all these things, do receive value for money. If at the end of the day there is an overseas supplier who can supply a product at a much better value-for-money proposition then, with due respect to taxpayers, who pay for these things, that will be the contract that will be entered into.

Obviously we all hope that there are Australian suppliers of these things. I do not particularly know off the top of my head whether there are Australian suppliers of the type of mug that was apparently acquired. Senator Fielding may know if an Australian
supplier missed out on this tender. I do not have that information. For the sake of Senator Fielding, I am happy to have a look at that tender just to make sure it was properly conducted in accordance with the rules. But we do not run a pro-Australian tender operation. I think that would be quite wrong.

Of course, with respect to MPs’ cars—something I feel strongly about as a senator for South Australia—we do seek to ensure that Australian vehicles are on the list. The only vehicles on the list that are not Australian made are those supplied by companies that do make vehicles in Australia. I think that is an appropriate policy. The Australian automobile industry is a very significant one, and I think it is appropriate that MPs who are supplied with vehicles do seek to drive Australian cars. I know most MPs would voluntarily do so anyway. But in terms of general acquisition policy the principles are as I have stated.

Senator FIELDING—Mr President, I ask a supplementary question. I am not sure whether that answer would be in line with the community’s expectations about promoting Australian made. This is the Australian parliament. I do not know whether you are familiar with the famous Bendigo Pottery, which is just one Australian company that would be delighted to supply quality Aussie-made mugs to this parliament. Instead of using mugs made in China, wouldn’t it be more in line with the Australian community’s expectations to be using Australian-made products in the Australian parliament?

Senator MINCHIN—There are certain iconic and significant features of this parliament that are made in Australia. Most of the woodwork in this place is Australian made. But, with great respect, when it comes to things like mugs I think it is appropriate that we apply the general principles of value for money. I would love to see an Australian supplier be able to compete and win the contracts, but at the end of the day taxpayers expect us to ensure value for money in our procurement.

Family Relationships Services

Senator ADAMS (2.40 pm)—My question is to the Minister representing the Minister for Families, Community Services and Indigenous Affairs, Senator Kemp. What recent initiatives have been taken by the federal government to promote the development of better family relationships and to encourage early intervention when relationships are at risk?

Senator KEMP—I thank Senator Adams for her very important question. This, of course, is part of the continuing interest that Senator Adams has in supporting families, and I acknowledge the work that she does in the Senate in this regard. Over the last 10 years the government has developed policies and initiatives that have developed a very strong economy, which we all know. This has been of great benefit to Australian families. As the economy has grown, the coalition has placed even greater emphasis on providing support for families, developing policies to strengthen family relationships and assisting families in time of need.

There are a number of recent initiatives that I would like to bring to the Senate’s attention, particularly in the area of family relationships that Senator Adams raised. The Minister for Families, Community Services and Indigenous Affairs, Mal Brough, recently opened applications for a second round of funding under the Family Relationships Services Program. Fourteen million dollars in funding will be provided to establish 27 new family relationship intervention services around Australia. These will provide greater access to family support services. On behalf of Minister Brough, I encourage all
eligible organisations to apply for this funding.

The program aims to reduce the economic and emotional costs associated with the disruption of family relationships by increasing access to early intervention services, thus helping families to resolve issues before they result in breakdown. Successful organisations will deliver a range of services, including relationship counselling, education and skills training, and men and family relationship services. These services will help families develop and sustain safe and supportive family environments. This will add to the 33 additional early intervention services established in the first funding round, which commenced operations in July 2006. These 27 new service locations confirm the coalition government’s very strong commitment to supporting families by extending support services to provide the community with a greater range of services and, in particular, access to services.

In addition, some senators may be aware that earlier this month Minister Brough and the Attorney-General called for interested organisations to apply to run one of the next 25 family relationship centres. The centres will be the front door for information, advice and other help to people seeking to strengthen family relationships, prevent separation wherever possible and resolve relationship difficulties after separation. These services will open in July 2007 and build on the achievements of the first 15 centres already in operation. The government’s policies will see an expansion in services, including early intervention services such as pre-marriage education, family skills training, additional counselling, mediation and similar services, and children’s contact services.

Further, on Monday Minister Brough extended the fifth birthday celebrations of Mensline Australia. Mensline Australia provides 24 relationship counselling and referral services and this service has responded to more than 110,000 calls. Having restored Australia’s economy to a position of really great strength, the coalition will continue to deliver what is needed to support Australian families. I thank Senator Adams for her very important question.

**Afghanistan Opium Trade**

**Senator CHRIS EVANS** (2.45 pm)—My question is directed to Senator Coonan in her capacity as Minister representing the Minister for Foreign Affairs. I refer the minister to Senator Ellison’s answer to a question last week about the record levels of opium production in Afghanistan. Is the minister aware that the head of the United Nations Office on Drugs and Crime, Mr Antonio Maria Costa, has now called on NATO forces to use military action to eradicate opium production in Afghanistan, particularly in the south of the country? Has either the UN or the Afghan government made approaches to Australia to request our assistance in those efforts to eradicate the crop? What is the government’s policy on the use of military action to eradicate opium production in Afghanistan?

**Senator COONAN**—I thank Senator Evans for the question. It is certainly a very important matter that he raised. Opium cultivation and trafficking in Afghanistan is of course a major threat to the future stability and security of the country. That is why we take a very serious view of it. Australia does support the Afghan government’s national drug control strategy and efforts to curtail the narcotics industry.

At the London conference for the signing of the Afghanistan compact on 30 January this year, Mr Downer committed Australia to spending up to $150 million over five years, subject to the Afghan government’s performance against benchmarks contained in the...
compact. Counter-narcotics is a priority issue of the Afghanistan compact and an important component of Australia’s continuing development assistance to Afghanistan.

I should say on behalf of the minister that Australia is currently providing $4.5 million in direct support of counter-narcotic efforts in Afghanistan and this includes $2 billion to the UNDP Counter-Narcotics Trust Fund to support alternative livelihoods, which of course is a critical issue if you are trying to look at stemming narcotics in Afghanistan, and another $2 million in joint funding with the Australian Centre for International Agricultural Research to improve wheat and maize productivity to provide alternative economic livelihoods. So it is a matter that this government takes very seriously. I am aware that Mr Downer has taken a particular interest in this, as evidenced by his participation at the London conference and Australia’s support for looking for alternatives to this pernicious trade.

Senator CHRISt EVANS—Mr President, I ask a supplementary question. I thank the minister for the answer and I understand that the government supports the Afghan national drug control strategy. But, given that there has been a 60 per cent surge in cultivation this year alone and that the opium production in Afghanistan now accounts for 92 per cent of the total world supply, clearly it is not working. Minister, I return to my original question: what is the government’s policy on the suggestion that we use military action to eradicate opium production in Afghanistan?

Senator COONAN—I thank Senator Stott Despoja for the question. There is no doubt that we all watch with great dismay the very serious matters in Darfur. Can I just say on behalf of the government as a starting point—I will go through what the government is doing in relation to this matter—that we welcome the UN Security Council’s resolution 1706 of 31 August, last month, calling for the transition of the African Union Mission in Sudan, or AMIS, to a UN force by no later than 31 December 2006. So at least we do have a focus on how we might assist more effectively in getting a handle on this terrible problem. We reject the government of Sudan’s demand that AMIS troops withdraw from Darfur and that they not be supported by the UN and we call, as a government, on the government of Sudan to accept the UN

Sudan

Senator STOTT DESPOJA (2.49 pm)—My question is also addressed to the Minister representing the Minister for Foreign Affairs and it relates to the deteriorating situation in Darfur. I ask the minister: what efforts are being made by the Australian government in the form of contributions to the peacekeeping effort, both currently and in future? What support will the government provide, say, in terms of funding, technical assistance or troop deployments? I acknowledge the government’s provision of more than $40 million already in humanitarian assistance, but I ask whether the minister is aware of recent reports that suggest that this funding may provide little assistance if peacekeeping efforts cannot be reorganised and strengthened so that that money can be used.

Senator COONAN—I thank Senator Stott Despoja for the question. There is no doubt that we all watch with great dismay the very serious matters in Darfur. Can I just say on behalf of the government as a starting point—I will go through what the government is doing in relation to this matter—that we welcome the UN Security Council’s resolution 1706 of 31 August, last month, calling for the transition of the African Union Mission in Sudan, or AMIS, to a UN force by no later than 31 December 2006. So at least we do have a focus on how we might assist more effectively in getting a handle on this terrible problem. We reject the government of Sudan’s demand that AMIS troops withdraw from Darfur and that they not be supported by the UN and we call, as a government, on the government of Sudan to accept the UN
peacekeepers in Darfur. We call on the international community to continue to urge the government of Sudan to accept the transition of AMIS to a UN force. The government is very concerned by reports that Sudanese government forces are involved in bombing villages in north Darfur and that the entire Darfur humanitarian operation, to which Senator Stott Despoja alludes—and hundreds of thousands of more lives—are at risk.

Since the signing of the peace agreement on 5 May 2006, attacks against humanitarian workers have persisted while access for humanitarian operations is at its lowest since the conflict began in 2003. So I will say in response to Senator Stott Despoja that we have translated our concerns over Darfur into action. Since May 2004, the Australian government has provided $52.6 million in humanitarian assistance to Sudan, mostly to Darfur, including the announcement just on 1 September of another $5 million for the World Food Program in Darfur and a further $510,000 for AUSTCARE in both Darfur and southern Sudan. It seems to the government that, with the current state of affairs and with the aid we have given, it is premature for us to be commenting on a possible Australian contribution in Darfur. We would have to assess any formal request against our existing contribution in Sudan and our extensive commitments elsewhere. Having said all that, I can assure Senator Stott Despoja that this government takes a very close interest in the unfolding events, and we will do whatever we can to work with all the agencies to ensure that the humanitarian effort—we are making a very extensive humanitarian effort—meets the targets and meets the needs.

Senator STOTT DESPOJA—Mr President, I ask a supplementary question. I thank the minister for her answer. I understand from her latter remark that the government is not necessarily ruling out a contribution in the form of peacekeeping. I will ask the minister to refer that to the Minister for Foreign Affairs for a specific response. I also ask the minister: what diplomatic efforts has the Australian government engaged in in recent times, in this year alone, in relation to the deteriorating situation in Darfur?

Senator COONAN—I thank Senator Stott Despoja for her supplementary question. Obviously, we are working very closely with all agencies in relation to the deployment of our aid and in relation to the situation as it unfolds in Darfur. I can also confirm that we have 10 AFP officers on the ground there working with the United Nations. So we have made that additional contribution in personnel to the efforts there on the ground. As I have said—and I repeat—any further deployment would need to be considered in the context of our extensive commitments elsewhere and the existing contribution we have made in Sudan.

Information Technology

Senator FORSHAW (2.55 pm)—My question is directed to Senator Minchin, Minister for Finance and Administration. Can the minister confirm that the government has been responsible for the bungled management of IT projects worth hundreds of millions of dollars? Didn’t the Centrelink project titled the ‘Edge’ get quietly cancelled after $20 million had been spent on the failed project? Can the minister confirm that the cost of a Defence personnel IT project blew out from $25 million to over $75 million while failing to deliver the contracted capability? Didn’t the bungled Customs cargo management project end up costing an extra $175 million, with taxpayers potentially having to fork out millions more in compensation payments? Given these failures, and as the minister for finance, what is the minister doing to protect taxpayers’ interests in the $1 billion smartcard and other major IT projects currently on foot?
Senator MINCHIN—IT acquisition and procurement is a major and difficult exercise for anyone in the corporate sector or the public sector. There are instances every day of the corporate sector facing the sorts of difficulties which both state and federal governments face in major and complex IT acquisition projects. I neither confirm nor deny the sorts of figures that Senator Forshaw is putting on the table; I do not have those figures in front of me. I am not denying that those are accurate reports of difficulties that have occurred in various IT projects.

As finance minister, I must confess that one of the headaches one has is in relation to various departmental acquisition projects with IT is that you know that, under our structure, acquisition of this kind is the responsibility of each department. The heads of these departments do have that authority. Obviously, they must seek cabinet approval for the acquisition, but the responsibility for the acquisition is then a matter for the agency head, and they should do that in accordance with their responsibility in terms of value for money for the management of their department’s resources.

The process is extensively and exhaustively overseen through ANAO audits, and many of the issues that arise are brought to light by the ANAO, so there is certainly the requisite degree of transparency. It must be said that we are always seeking ways to ensure that we improve the management of these projects. It comes down to the skill of the personnel involved in each department that is responsible for the management of the acquisition itself. I am as disturbed as anyone else when these projects blow out, do not meet their deadlines or prove to be more expensive than was originally thought.

But we are not unique in having that difficulty. We have, which I think we formally announced recently, the introduction of a major new review mechanism called the ‘gateway process’, which we took from Victoria—and I accept and appreciate that the Victorian government has been a leader in this process; we all have the same problems at the state and federal level. Victoria, I think, brought to bear this gateway process from its experience of studying what the UK Labour government was doing. We have introduced that new review mechanism. It is quite a sophisticated mechanism by which each stage of a major acquisition project is reviewed. The smartcard, to which Senator Forshaw referred, is subject to that gateway review process and indeed the first such step in that has occurred.

The smartcard is an outstandingly important project for the government to embark on, but it is a complex one. It is one that Minister Hockey is turning his attention to with great rigour, and he knows that he has an enormous responsibility to ensure its delivery. My department, in taking responsibility for ensuring that each department in an acquisition process uses the gateway process, is actively involved in implementing the gateway process to oversee smartcard. Smartcard is important but it must subject itself to that rigour and, of course, it will be subject to full ANAO audit.

I accept, Senator Forshaw, that there have been the sorts of difficulties to which you refer. I suspect they are impossible to eliminate; they are not unique to the federal government, but we are doing our utmost to ensure they are minimised. If you have any additional suggestions for additional procedures, we would be happy to hear them. (Time expired)

Senator FORSHAW—Mr President, I ask a supplementary question. Thank you, Minister, for a very frank answer, which I accept as a confirmation of the point made in the question. I could suggest that the issue be
referred to the Senate Finance and Public Administration Committee. That might be a good idea. Is the minister aware that IT industry representatives are already warning that the final cost of the smartcard project is likely to be more than the $1 billion claimed? Wasn’t the decision to award IBM the $495 million project to update immigration’s IT systems described as a blank cheque for IBM? Why has the government allowed project after project after project to go off the rails with taxpayers having to foot the multi-million dollar bill that is involved?

Senator MINCHIN—I am not sure that I can add much to my answer. Of course, I am aware that there is commentary that the smartcard will cost more than is forecast, but we are putting as much rigour as we can possibly bring to bear on smartcard. It will be the most rigorous process that any government IT acquisition has ever been subjected to. Mr Hockey knows the responsibilities he has. Can I say that, for those that do blow out, there are many more that are delivered on time and on budget but that are unheralded. One should not be left with the impression that in this area it is all bad news. There are a lot of very good Australian public servants working very hard, as you would know, to make sure that Australian taxpayers do get value for money and do get delivery on time and on budget. But it is a difficult area. I accept what Senator Forshaw is saying. It is an appropriate role for the opposition to be applying its oversight to this. We will continue to do our utmost to deliver on time and on budget.

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

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Media Ownership

Senator CONROY (Victoria) (3.02 pm)—I move:

That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Coonan) to questions without notice asked today.

What a demonstration in the last 24 hours of the arrogance and out-of-touch behaviour of a 10-year-long government. I am hoping Senator Eggleston will stay and join in this debate because he has a crucial role to play in the next few weeks. Yesterday we saw Senator Coonan on behalf of Senator Eggleston announce the date and the timing of a Senate committee. There was no consultation whatsoever with members of the committee, including Senator Eggleston. I am willing to bet that the first Senator Eggleston knew about the deadline was when he read it in the press release. What an extraordinary abuse of process. Senator Ronaldson is on this committee and I bet he did not know anything about this deadline either. As we have seen in documents circulated today, the Senate is going to be allowed a grand total of three days of hearings in Canberra. Originally, it was said that there would be some meetings around the country, but no: three days in Canberra—nothing more. What has Senator Barnaby Joyce got to say about this? What has Senator Ron Boswell got to say about this? What has Senator Fiona Nash got to say about this? What has Senator Eggleston got to say about this?

Senator Heffernan interjecting—

Senator CONROY—They can all read and write, Senator Heffernan. They are on our committee. What we have here is another smash and grab, another situation where the government is simply going to say: ‘We don’t care what the parliament thinks. We
don’t care what the people of Australia think. We are just going to ram this through as fast as we can because we’ve got the numbers.’ Ten long years and the arrogance is shining brightly. The Prime Minister promised there would not be abuses of the Senate. The Prime Minister really has changed since he got control of both chambers. He has tossed all the promises out—no surprise to those of us on this side: just tossed them away. We are going to have a whitewash of a committee and a whitewash of a report, rushed through with no genuine consideration and no genuine interest whatsoever. It is not surprising because the scam that the government is trying to pull on the Australian public is to deliver Australia one of the most concentrated media industries in the world. Only probably North Korea is going to have a more concentrated media than we are going to have after this. North Korea or maybe Lebanon, I do not know.

Senator Ferguson—Albania.

Senator CONROY—I think I am being unfair to Lebanon, Senator Ferguson. But in Sydney and Melbourne the number of owners could halve. In places like Albury, Dubbo and Bundaberg the number of owners could fall from six to four. These changes will undermine media diversity. Newsrooms will be merged, reporters will be sacked and local content will be reduced. Radio and TV news will just become a rip and read of the local newspaper. In regional Australia, local stories will be squeezed out by cheaper content from the big cities. These changes are demonstrably not in the public interest. To give credit, there is at least one member of the government on whom what is going on here is slowly dawning. It is, in fact, Mr Paul Neville, the chairman of the backbench communications committee of the government. This morning he went on radio and he said that, philosophically, his position is very similar to Paul Keating’s. He said, ‘We have to start considering why we are doing this.’ That is the trick. Why are we doing this?

He went on to say that you could not argue that there was not the potential for an interventionist proprietor or for a zealot editor to run a totally single stream point of view in a particular community. That is what he told ABC Radio. I think that I have almost unanimous support from National Party members and rural Liberals on this issue. I do not think there would be one who would disagree with me that we need to have a more vibrant local media and more vibrant local programming. As Stephen Bartholomeusz said in the Age today: ‘Unless there are new entrants, new competitors and new and compelling content, where is the trade-off for less diversity of ownership and content?’

(Time expired)

Senator RONALDSON (Victoria) (3.07 pm)—Firstly, I welcome back, Senator Conroy. It is nice to have him back as a spokesperson again for today at least. I find it quite extraordinary that five months after Senator Coonan first announced these reforms, the day the legislation is to be introduced, the day the committee is meeting, we did not hear one word of policy from the Labor Party apart from some nefarious commentary on regional Australia, which Senator Conroy would have absolutely no idea about because he is, at best, an infrequent visitor. There has not been one discussion about where the Labor Party stands on media reform. They are the dinosaurs of communication reform in this country. The last time the Australian Labor Party talked about media reform was 20 years ago—the internet was the domain of academics, pay TV was in its infancy, there was no framework for digital radio, IP TV had not been thought of, let alone 3G, video ipods or television mobile devices.
This reform package is predominantly directed at one group of people in this great country, and that is the consumers. The Australian Labor Party have a very big decision to make over the next four weeks on this issue. Are they prepared to support—

The DEPUTY PRESIDENT—Order, Senator Ronaldson. A couple of us have formed the view that your microphone does not seem to be working properly, but we can still hear you in spite of that. Just be careful about the way you are facing, because I do not think you are feeding into the microphone.

Senator RONALDSON—I am very grateful to you, Mr Deputy President, because I get unfairly accused of speaking too loudly in this chamber and I am very grateful for your support in this regard. I will face the right direction. Senator Sterle, you should take note of the Deputy President’s comments too.

This reform package is about delivering to consumers in this country a modern telecommunications system and a modern media ownership system that will allow the Australian people to get the benefits that will flow from media reform, such as investment in communications in this country, which has been sadly lacking for a long time. It is incumbent upon the Australian Labor Party to state where they stand on this. Five months after Senator Coonan floated these reforms in some detail, we have not heard one policy position from the Australian Labor Party. Is it fair that, because of the intransigence of the Australian Labor Party, Australian consumers are going to miss out on new services that are restricted now because of the lack of investment?

The big winners under this reform package will be consumers. It would take me some time to go through the full benefits to consumers of these reforms, but I will just go through some of them very quickly. In doing so, I will talk about the new services. Obviously, the new services will be digital services. The two channels, A and B, will be auctioned as separate national licences. Both licences will be issued for 10 years, with the possibility of a further five-year renewal. Consistent with the government’s intention that these channels be used for new and innovative digital services for consumers rather than replicating traditional television services, neither channel A nor B will be permitted to be used for traditional commercial free-to-air services or subscription TV services to fixed in-home receivers. The Australian Labor Party has got to tell the Australian public now, today, whether they are going to support them or continue to deny them modern telecommunications and a modern media ownership system. Today is the day for them to tell us where they stand. Are they anti-consumer or pro-consumer?

Senator STEPHENS (New South Wales) (3.13 pm)—I also rise to take note of the answers given by Senator Coonan. We all know that this media package introduced today is complex; it is multilayered. We have heard some comments this afternoon by senators about the television aspect of these bills, but I would like to address my remarks to the question that I asked of Senator Coonan, which was really about the concentration of media ownership in rural and regional Australia.

It would be very sensible to remind ourselves of something that was said in this chamber in 2003 by former Senator Brian Harradine who, when we were talking about this very issue, said: Those who own or run media organisations are in a position of privilege and influence. They are members of an unelected elite which is not effectively accountable to the Australian people. It is our job as elected legislators to ensure not only that there are reasonable parameters set for the
running of successful media businesses but, much more importantly, that these parameters serve the Australian people.

He also said:

The people do not want further concentration of power in the major players in the media.

It is very clear from the explanatory memorandum that rural and regional Australians will be the big losers, particularly in relation to local content issues. I asked the minister quite specifically about that and she regurgitated the second reading speech that comes with the bill, talking about local content licence conditions and local content plans.

I would like to draw senators’ attention to what is in the explanatory memorandum about this. For example, in relation to the issue of local news it says that there must be a minimum service standard for local news, that bulletins must be broadcast on different days of the week, and that bulletins must be broadcast during prime time and must adequately reflect matters of local significance. I wonder if you can guess the minimum number of news bulletins that is going to be required. Can you guess, I wonder? It is five bulletins—that is, a requirement for less than one news bulletin a day would be incorporated in this legislation.

And we have a guarantee from the minister about local community service announcements. Can you imagine what the minimum standard is for local community service announcements? That requirement is for one per day. This is what we are going to be reduced to when we have regional services amalgamated under this regime.

Already in Australia we have a concentration of ownership that is a problem. Fifteen of the 28 regional dailies are owned by large media companies such as Rural Press and APN. And most regional radio stations are owned by a few networks such as Macquarie Radio and ARN Clear Channel. The locally owned regional newspaper and radio station is very much a thing of the past.

So Senator Coonan’s so-called media reform proposal does nothing more than extend the existing oligopoly that the networks are enjoying. There has been no explanation from Senator Coonan about assurances that local news services will not have local content if these radio stations become part of a cross-media group. There is a simple explanation for that: Senator Coonan cannot give any guarantees that local news and radio services will not be cut in the bush. She could not outline what the so-called minimum standards would be—although I found them eventually in the memorandum—and she certainly could not give any comfort to her National Party colleagues who are very concerned about what is happening here.

Steven Bartholomeusz, writing in today’s Age, said:

Unless there are new entrants, new competitors and new and compelling content, where is the trade-off for less diversity of ownership and content?

The obvious answer is that there is no trade-off and the communications minister is treading on very dangerous ground. Terry McCann, considering this matter today said:

The reforms are all about ownership and nothing to do with the dynamic development of media.

It really is a huge issue that we are confronting and, as Senator Conroy so rightly said, the consultation process by the committee is a disgrace.

Senator BRANDIS (Queensland) (3.18 pm)—I was pleased that Senator Conroy referred in his speech to Mr Paul Keating’s interview on Lateline last night. I, too, watched Mr Paul Keating’s interview on Lateline and all the memories came flooding back as I saw Mr Keating—a bit greyer than he was, his face a bit hollower than it was,
and his voice a bit thicker than we remember it from the days of the Keating government. No doubt that air of ennui reflects 10 years of schadenfreude at the prospects of the Australian Labor Party and federal politics since the fall of the Keating government in 1996. And I couldn’t help thinking, ‘Is this what the Australian Labor Party has come to in their media policy?’

You see, I was second to none in being a critic of Mr Keating and the 17 per cent interest rates that he gave us. But there were certain aspects of public policy—it cannot be doubted—in which Mr Keating was ahead of the game, and he kept a reluctant, mulish, recalcitrant, pervicacious Australian Labor Party ahead of the game in reforming certain sectors of our economy. In particular, we remember financial deregulation. And my side of politics has always given full credit to Mr Keating for his achievements in that field. They were achievements which, as the journalist George Megalogenis recently wrote in his very good book *The Longest Decade*, were the precursors of the fuller reforms that the Howard government has undertaken.

But sadly that reforming zeal, which in some respects marked Mr Keating’s approach to certain sectors of the Australian economy, has been completely lost both on him and on the party he once led when it comes to cross-media laws. We have the sorry spectacle of the opposition in this country, engaged in a debate of national importance about media policy, saddled with a policy that was written before the digital revolution, and represented in this place—though you would not know it, so seldom is he given the opportunity even to ask questions about policy at question time; today was an exception—with a spokesman on communications, Senator Stephen Conroy, of whom we know from Mr Latham’s diaries, when offered the portfolio of communications after the last federal election by Mr Latham, his then leader, said, ‘I don’t want to be the shadow minister for communications because I’m not interested in the area. I know nothing about it. I’m not interested in it; let me do something else. It has no appeal for me.’

Nevertheless, Senator Stephen Conroy did end up being the shadow minister for communications and, my goodness, hasn’t his lack of interest or knowledge in the area been on embarrassing display for the whole of the Australian people in the two years or so since? That is a fact not lost, I might say, on Mr Lindsay Tanner, the member for Melbourne, who one might think really was the shadow spokesman for communications. So, Senator Conroy, I say to you, through the chair: it does not matter how abusive your language, it does not matter how inflammatory your rhetoric, it does not matter how confected your outrage, it does not matter how sesquipedalian your language and it does not matter how ideological your intent—none of the political theatre in which you engage matters one iota. It does not camouflage from the Australian people your lack of interest in this area of policy. Nor does it camouflage from the Australian people that the Australian Labor Party’s attitude to cross-media ownership laws predates pay TV, predates the digital revolution and predates the further internationalisation of the telecommunications sector of the Australian economy.

To this day—not more than a year before the next federal election, after 10½ years of policy laziness and being asleep at the wheel on this, as on so many other areas of public policy—the Australian Labor Party still cannot find a consistent, coherent, understandable, modern position on cross-media ownership laws. What a lamentable failure. What a disgrace, Senator Forshaw. What a disgrace. *(Time expired)*
Senator FORSHAW (New South Wales) (3.23 pm)—I listened to the speech of Senator Brandis, and I have to say that the emasculation of the English language that we have just heard from Senator Brandis suggests to me that a number of members of the government benches today have swallowed a thesaurus. But let’s get away from the literary game that is being played over there—the number of big words you can get into a five-minute speech. Let’s go to a member of the government who understands this issue, a person whom I have the very highest regard for, and that is Mr Paul Neville, a National Party member from Queensland—a member of the National Party who, unlike most of the rest of that fast-fading rump, makes a contribution to debates in this parliament.

Mr Neville is the chair of the backbench communications committee of the government. How did he describe the proposals put forward by Senator Coonan, the Minister for Communications, Information Technology and the Arts? He stated that they are:

…the exact opposite of competition. It’s centralising and consolidating regional markets, it’s not creating a more vibrant and competitive market.

He went on to say:

If you can’t stand your ground on issues like this, you may as well not be here.

What a condemnation of all of the other members of the government parties, toadying along on these proposals to destroy the cross-media ownership laws. Mr Neville is on the money on this one. Mr Neville and those other few people on the government benches hopefully will continue to stand up against these outrageous proposals put forward by the minister, Senator Coonan.

Senator Ronaldson started his contribution by claiming that the Labor Party did not have any policies. Let me remind Senator Ronaldson that on the issue of media ownership the Labor Party has had a consistent policy for years and years, going back to the days when we were in government. It is a pro-consumer policy. It is an anti-media-monopoly policy. It is a policy which is pro media diversity. It is a policy that is anti the concentration of media ownership.

It was very instructive and indeed enjoyable last night to watch Paul Keating interviewed on the Lateline program, because if ever any member of the parliament in those years of the Labor governments took on the issue of protecting the cross-media ownership laws it was the former Prime Minister, Paul Keating. And he was right. The policy of the Labor Party is to maintain the cross-media ownership laws so that we maintain diversity in this country, so that we prevent the two large media organisations, the Packer empire and the Murdoch empire, from effectively taking control of the print media, the television media and the multimedia in this country—both free-to-air and pay TV.

The minister today, in answer to the first question from the opposition, said that the government had no plans to weaken the media laws. I think Senator Coonan may actually believe that, because the minister does not know. This policy of destroying the cross-media ownership laws is not being run by Senator Coonan. This is being run straight out of the Prime Minister’s office, because he has always wanted to do this. Now that they have control of the Senate, they believe they can achieve it. It was always the Senate that prevented them from destroying the cross-media ownership laws.

If you think that the scandals that surrounded the cash for comment saga, which the Prime Minister’s pet journalist and commentator, Alan Jones, was involved in, then you have not seen anything yet. When it comes to what will happen once the two media organisations gain virtually total control of the media in this country, it will be a
scandal and it will lead to far less diversity and far less accountability. *(Time expired)*

Question agreed to.

*(Quorum formed)*

AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) AMENDMENT (DISALLOWANCE POWER OF THE COMMONWEALTH) BILL 2006

Second Reading

Debate resumed from 19 June, on motion by Senator Bob Brown:

That this bill be now read a second time.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.32 pm)—I am pleased to open this debate on my private senator’s bill, the Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006, which amends the Australian Capital Territory (Self-Government) Act of 1988. As senators will know, not too long ago we were dealing with the override of the Australian Capital Territory’s Legislative Assembly. The Stanhope government was elected on a commitment to introduce legislation. It then introduced that legislation, which passed through the assembly and duly into law. The executive of the national government, the Howard government, decided—without reference to the national parliament—that it would in turn regulate to override that legislation enacted by the Legislative Assembly of the Australian Capital Territory.

The problem here is that effectively that overrides section 122 of the Constitution, which gives this parliament the right to override laws of territories. The matter ought to have been referred to this parliament by the Howard government. But the Howard government did not do so. It took a disallowance motion from the Greens to cause a debate here in the Senate. The federal government, the Howard government, which has a majority—which Mr Howard assured us would not be used with hubris—then proceeded to use that majority to override the ACT’s law.

This bill is to prevent that from happening in the future. I want to make clear to senators who may not have looked at this as closely as I have that we cannot go outside the Australian Constitution, and the Constitution gives the parliament the right to override the laws of a territory. But in the modern era, in this year of 2006, where a territory legislature—be it the Northern Territory or the Australian Capital Territory—makes laws for its citizens, in consultation, as ever, with those citizens and subject to their rebuke at a future election, we can ensure that those laws
cannot be overridden by the executive, by the Prime Minister, effectively deciding in his office that he will send a regulation to the assured signature of the Governor-General of the day to override the laws of the territories.

Senators will note that my bill refers only to the Australian Capital Territory, but it is my opinion that the same protection from the arrogant and high-handed intervention on their law-making process by a future executive here in Canberra should be given to the voters of the Northern Territory. The process ought to be that, if the national government of the day does not like a territory law, then it should refer it to the parliament. It should prepare a bill, and it should refer it to the national parliament for passage through both houses of parliament. If it gets assent there, then the territory law will be overridden. This is not a complicated matter. This is about two things: one, honouring the Constitution of this country; second, honouring democracy as practised by people wherever they are in this country, be they in the Australian Capital Territory or anywhere else.

It is far from democratic for a government—in this case the Howard government, which had no authority from the people of Australia, who had never been to an election on the matter of civil unions—to regulate to override the express wishes, the voting outcomes, of the people of the Australian Capital Territory without reference to the parliament. Let me anticipate an argument or two. Firstly, it will be argued: ‘What about the states? What about the Franklin campaign? Didn’t the federal government override the state there?’ Two things: firstly, that matter went to the High Court, and the High Court ruled that the external treaties power, which binds Australia to international law, empowered the Commonwealth over the state and its domestic laws that enabled it to build a dam. There was a competition between authorities, and the Constitution was read by the High Court to enable the federal government to protect World Heritage properties in this country from the destruction that would have come from the Franklin Dam.

The High Court was not ruling whether or not that was a good thing; it was ruling that the Constitution gave that power to the federal government. What I am saying here is consistent with that honouring of the Constitution. Section 122 of the Constitution says that, if a federal government wants to override a state, it should do so through the parliament—not, as I said, through the arrogance of an executive decision by a government in an interparliamentary period, hoping that there will be no reaction to that.

The second thing is in the matter of some future emergency. It is very careless—indeed, I think it is irresponsible—to put an argument that you must defend an abuse of the spirit of the Constitution because there may be some emergency situation which would warrant that. Let those who argue that case state exactly what they mean. It is a specious and fatuous argument to bring before this place. Let me say to those such as Senator Humphries, who may argue that they should have been consulted more about this: no, sir. He should have consulted more about this himself. Primarily, he should have consulted with his own electors and should have taken note of the voters of the Australian Capital Territory, who empowered the Stanhope government in the matter of civil unions, and a whole range of other matters, for the good governance of the Australian Capital Territory.

Senator Humphries has been in the position of Chief Minister and will know that an ACT assembly will be closer to the people of the ACT than a federal government can be. That is the nature of the democratic process. So it is very much a matter about which Senator Humphries knows full well the ins
and outs. He has had my second reading contribution with him since this bill was brought in in June this year, and I am now putting the argument that is so strongly in favour of this legislation passing through the parliament.

I am very aware that this legislation ought to pass the Senate this afternoon with the support of Senator Humphries and at least his National Party colleagues, who are quite devoted to empowering regional Australia and to not allowing the concentration of power to go more and more into the hands of fewer and fewer people. So there is a real test here of consistency of argument, of honouring ideals put forward by those voted in on the other side to look after regional representation.

Let me reiterate that the overriding of the civil unions legislation—which had been passed by the ACT—by the Howard government executive was arrogant and undemocratic. It was a ruthless use of power, without consultation with either the people of the ACT or either house of this parliament. It would be extraordinarily inconsistent for any member—Senator Humphries or anybody else—to have voted against that override under those circumstances yet vote against this bill, which would prevent that happening in a future circumstance.

**Senator McGauran**—It’s unconstitutional.

**Senator BOB BROWN**—We have a poorly informed transferee from the National Party to the Liberal ranks saying that it is unconstitutional. He should read section 122 of the Constitution. I would expect not much better from him; I do expect better from representatives of the ACT.

This is important democratic legislation; this is safeguard legislation; it is quintessential Senate legislation. The Senate was set up to defend the interests of the states and ipso facto the interests of the two territories which have emerged since the formulation of the Commonwealth by the founding fathers now more than 100 years ago. This is the Senate’s business. The Senate should be upholding the interests of people at state and territory level. This legislation does just that. I recommend it to the Senate and look forward to support from both sides of the Senate in seeing the passage of this legislation this afternoon.

**Senator CARR** (Victoria) (3.45 pm)—The opposition will be supporting the Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006 on the basis that we believe that, if self-government is to mean anything, local parliaments have to be held accountable for the actions they take and that it is inappropriate for governments to seek, in a burst of political populism, to slither down to Yarralumla in the dead of night to have executive fiats imposed upon the people of the Australian Capital Territory. I say that in a context where it is abundantly clear that the actions taken by this government were aimed at the broader domestic political agenda in regard to debates on the question of homosexuality rather than on any serious discussion of the legal or the constitutional issues that were posed by the legislation that had been passed by the Australian Capital Territory government.

The nature and context of the controversy have to be understood if we are to examine the base political motives of the government in seeking to use this particular dispute as a means of exercising its executive power. I say that because it is my firm belief that the government lacked the courage to pursue its claims it was making in regard to the civil unions legislation of the government of the Australian Capital Territory, it would have moved a bill in the Commonwealth Parlia-
ment of Australia and it would have allowed its own members to vote on that bill. I am of the opinion that such legislation was not proceeded with because the government was not confident that it could rely upon its own members. It was a device that was being pursued by Mr Ruddock, in my judgement at the behest of the Prime Minister, with a view to extracting momentary political advantage on the question of whether or not civil unions could be pursued, when the real bottom line on this was the government’s hostility to homosexuality. The government would not be so crude as to come out and put that case formally and publicly because that is not the way this government operates. It operates on the basis of seeking to exploit fears and insecurities in the community, rather than debating issues of fundamental human rights.

The government of the Australian Capital Territory took a position to the electorate; it had a mandate to act and it sought to pass legislation acting upon that mandate. Furthermore, the government of the Australian Capital Territory sought to make very clear that it was not seeking to breach the Constitution. It said to the Commonwealth of Australia: ‘If you can demonstrate that that case is incorrect, we will amend the legislation still further.’ Those offers were never taken up because it did not suit the political agenda of John Howard for there to be legislation in the Australian Capital Territory concerning civil unions. It suited his political purpose for there to be this dead-of-night ambush by way of a governor-general disallowing ACT legislation, which, of course, the government sought to exploit for its base political motives.

In this particular legislation the objects of the bill are straightforward. This bill seeks to remove the Governor-General’s power to disallow an act passed by the Australian Capital Territory Legislative Assembly and seeks to reiterate the principle of the primacy of the Australian Capital Territory’s Legislative Assembly in making laws for the Australian Capital Territory. I take the view that, where the territory’s powers are exercised in accordance with the Constitution and in accordance with the appropriate legal framework, it is entitled to make those laws. We have a very basic principle here, however, that the government in the Australian Capital Territory has to take responsibility for the laws it passes. It has to defend its own actions. It does that on the same basis on which all other parliaments in this country operate—that is, they have to face elections. That is how questions of accountability are resolved. There is an appropriate mechanism, so long as the parliament acts within the parameters of its normal powers. I take the view that, if a democratically elected parliament runs the gauntlet of an electoral process and acts within power, then it is entitled to hold itself accountable at the next election in that jurisdiction. That is a proposition which, frankly, I find unarguable.

If the argument genuinely was that the government of the Australian Capital Territory had exceeded its powers, then legislation should have been brought into this chamber and into the House of Representatives and then we could pass judgement on that basis. I think that is an appropriate course of action. If that is what the government genuinely believes, if it believes there are fundamental human rights, for instance, that are being put at risk or there is a matter of urgency, legislation can still be moved through the two chambers quite quickly. But it does not give any justification for slipping off down to Yarralumla to stick the shiv into the local government, put out a press release and make out what big fellows you are in an attempt to search out particular views, homophobic views, within this country.

The self-government act here has been in operation now for 20 years, and it is entirely
appropriate that elements of the legislation should come under review and their continuing utility be examined. There are a number of standard measures that seem to me to be of use in evaluating the continuing benefits of the clauses empowering the Governor-General to disallow Australian Capital Territory legislation. I will mention just three. Firstly, you could argue whether or not particular legislation or a section of legislation is equitable and based on the recognition of the rights of citizens of the Commonwealth of Australia. It could be argued, secondly, whether or not it meets the spirit as well as the letter of particular pieces of legislation and, thirdly, whether it serves to promote good public policy and governance. But it is my contention that the disallowance powers of the Australian Capital Territory (Self-government) Act fail on all those tests. That is what needs to be assessed.

It has to be the case that under the present legal arrangements some Australian citizens, the citizens of the Australian Capital Territory and the citizens of the Northern Territory, are operating on a different standard of governance from the rest of the country. There are sanctions that can be applied to their local parliaments that are not applied to the rest of the Commonwealth. It strikes me that the present legal framework effectively discriminates against citizens in the Australian Capital Territory. If Senator Brown’s bill were carried by this chamber and of course the House of Representatives, it essentially would provide for genuine self-government of the Australian Capital Territory. If self-government of the Australian Capital Territory is to have any meaning at all, then the Australian Capital Territory legislature must have the right to determine its own policies within the parameters of its own authority. It strikes me that the present arrangements do not allow that to occur.

If we look at the sorts of interventions that have jeopardised the right of Australian Capital Territory electors to consider issues of social, cultural or economic importance and subsequently to collectively express their judgement on such matters through the ballot box, then we see we have a situation where the current law does not allow Australian citizens in the Australian Capital Territory to do that. Equally important is the point that needs to be made time and again: such power that currently exists compromises the rights of citizens in the Australian Capital Territory to hold their own governments accountable for actions that are taken.

It seems that the golden vote that is being reserved for the Governor-General—and I think Senator Bob Brown is quite right when he says that effectively means that the Prime Minister and government invoke their own discretionary, discriminatory capacities—is a matter of deep concern. It is a very lazy way to govern. It is a lazy way to hold governments accountable.

We are in the situation where the Howard government is increasingly seeking to interfere in the rights of the parliaments around this Commonwealth, but this is above and beyond that. We see it in the actions taken with regard to hospitals and schools, through to all aspects of the constitutionally legitimate functions of state governments. This is probably one of the most centralised or centralist governments in Australian history. It is an irony, because it is well known on this side of the parliament that there is quite considerable sympathy for national programs, for national consistency, for nation-building.

I must say that what I have seen in recent times, in terms of the interventions this government has made on what are traditionally regarded as the legitimate functions of state governments, is beyond all comparison with previous governments. There is hardly an
area of state government activity in which the Commonwealth of Australia is now not seeking to intervene—hardly an area that I can think of. But we have a situation here in the Australian Capital Territory where, as I say, you can slither off down to Adelaide Avenue, out to Yarralumla, and put in a quick fix in the middle of the night without trying to actually address any serious public policy debate.

If the Commonwealth is genuinely concerned, if it thinks that the actions of a territory are inappropriate or outside its due legal powers, there are avenues that ought be available to it. I say: if the government felt that the marriage provisions of the Constitution—which everyone acknowledges are a Commonwealth responsibility—had genuinely been challenged by the ACT, it should have had the guts, the courage of its convictions, to bring a piece of legislation into this chamber.

When the situation arose with the euthanasia debate, the government made arrangements for a private member’s bill to be brought in. I did not support that private member’s bill, because I thought the Northern Territory was entitled to make laws on euthanasia. But I will say this about that piece of legislation introduced some years ago: at least there was a debate and a vote in the two chambers of this parliament. A case had to be made for why the override existed. It was a situation in which the Australian government and the Australian parliament could be held accountable for their actions. The government had to make a case—and it said, of course, that it was a private member’s bill; we all know what the view of the government was—and win a vote in this parliament.

Frankly, that is not the style of this government of recent times. We have seen a deterioration in standards over the 10 long years of the Howard government. They are much better now at doing the backroom deal to put in the quick fix than they are at public debates and trying to bring the public with them. What they are seeking to do is to exploit an emotive response and abuse the process available to them.

It is true that the need to invoke the power of disallowance is premised on the presumption of a failure of discussions and negotiation. I also take the view that the government went out to deliberately ensure failure of the discussion, debate and negotiation with the Stanhope government. You would expect that there would be a presumption of rational debate, but there is no way that that case can be made in terms of the correspondence that is now publicly available between Minister Ruddock and various ministers of the government of the Australian Capital Territory.

It is abundantly clear from the history of the past decade that this government has increasingly sought to impose its will upon the states and territories for the most mercurial of reasons. Time and time again we have seen an unwillingness to debate the benefits of legislation, or even of national programs. Whether it be flagpoles in schools or other forms of divisiveness—incitement, in fact—across a range of programs, the government does not actually want to see debate unless it registers in the focus groups first. Increasingly that is where the debate happens. It is through polling and focus-group responses so that the government seeks to pursue agendas it believes will enhance its overall political position.

The bill Senator Bob Brown has put before us today, in my opinion, does not compromise the capacity of the Commonwealth parliament to exercise its authority and its judgement in its legitimate spheres of influence and responsibility; nor does it compromise the ability of this parliament to operate,
as it should, as the national guarantor of the human rights and wellbeing of Australian citizens. These are our fundamental responsibilities: to ensure the protection of citizens no matter where they live.

I fully acknowledge the possibility that, from time to time, governments do the wrong thing and do abuse human rights and may well in the future abuse human rights. There has to be protection to ensure that the legitimacy and equality of Australian citizens are protected. I say the way to do that is through deliberative legislative instruments.

The political compact that we call the Australian system of government must extend to allowing Australians the right to elect their governments—state, federal and territory—and to allow those governments to implement the platforms on which they are elected within their province of power. There cannot be a double jeopardy arrangement whereby the Governor-General has the right of disallowance over territory legislation without reference to parliamentary debate or parliamentary instruments. The fact that such a provision exists means there can be a partial and discriminatory exercise of executive power. Such a circumstance is incompatible with our legitimate right to protect the citizens of this country. Labor supports this proposed bill to remove the disallowance power over the Australian Capital Territory.

Senator HUMPHRIES (Australian Capital Territory) (4.05 pm)—I want to contribute to this debate by making the observation that the appropriate approach to issues like these is to consider whether one believes in an essentialist approach to the exercise of power in a democratic society or whether one takes a federalist approach, which accepts and supports the idea that there should be a range of centres of power in a federal system.

I unashamedly say to this chamber that I am a federalist. I am a great believer in a system that engineers a range of sources of authority and power within a democratic society, so that it is rarely or never the case that any one person or group or even government is necessarily able to exercise complete control and say over the lives and fortunes of the citizens of a particular community or nation.

In saying that I recognise what many others in this place have recognised: there is great genius in the Australian system of government, which despite many shortcomings and not being without the potential to be reformed in some way does nonetheless provide for there being two levels of government, with powers that are protected in the federal Constitution. Those levels of government have the capacity to stand their ground against any forbearance or paramount control by the other level that might override the wishes of a community that has elected that particular first form of government.

I think I am able to say in this debate that I am a federalist and I do generally support the exercise of power by state and territory governments, properly elected and properly mandated to reflect the wishes of their citizens against the wishes of even a federal government if that breaches the understood concept of federalism in Australia. I think I am able to make those comments with somewhat more of a history of support for federalism than some of those people today who will be supporting the Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006, introduced by Senator Brown.

I dare say that there are some members opposite—on the Labor benches, for example—who will be supporting this bill even though, presumably, they did not hesitate to support the legislation back in 1997 or 1998 that overrode the Northern Territory’s and, indeed, the ACT’s power to legislate with respect to euthanasia. I do not support eutha-
nasia, but I strongly oppose the exercise of that power because I believe in the right of territories to legislate in those areas. I wonder whether some of those on the other side of the chamber who will be voting for this legislation today might ask themselves whether those positions are particularly consistent.

I also supported the right of the Tasmanian government back in 1983 to make decisions about its hydro-electric needs. I know that Senator Brown, although not a member of parliament at that stage—at least not a member of this parliament—certainly did not support that particular exercise of state power. So there are circumstances in which all of us are prepared to discard this idea of balance between the two levels of government and let one level of government step into an area which we might regard as being the preserve or the prerogative of another level of government in Australia—if the circumstances are right. None of us are holier than thou in that respect in a debate like this.

If we are honest about it, we will admit that we all understand there are circumstances where limits need to be placed on the bald concept that here is an area where a state government has the right to make decisions and here is an area where the federal parliament has the right to make decisions and there is never any grey area, never any overlap, never any question where the simple rules need to be reconsidered, modified or bent a little to accommodate the needs of the community or what is right in particular circumstances.

The fact is that there are limits on those federal concepts. Those limits are particularly relevant in the case of both the ACT and, to some extent, the Northern Territory. A very good example of the limits of that concept was provided only recently when it became obvious that the ACT government was at least contemplating legislating with respect to antiterrorist measures in a way which was inconsistent with the position of every other Australian state and the Northern Territory. That was a very good example of where, in the national interest, it was appropriate for the federal government to consider the exercise of a power to override the Australian Capital Territory’s law-making capacity with respect to—and, of course, this is the classic definition—peace, order and good government.

You might well argue that terrorist legislation is about peace and order, so you might argue that the ACT had the right to legislate in those areas. But, no, it was widely accepted in the community—and I would not be surprised if it was widely accepted in this chamber—that there is a prima facie right, an a priori right, by the federal parliament to make sure that Australia has consistent antiterrorism legislation. These principles might be baldly stated as being absolutes, but in fact they need to be carefully considered in each particular context in which they arise.

Another limitation that arises from that model of federalism, particularly as it applies to the Australian Capital Territory, is that the ACT and the federal government share the one home. The federal government’s head-quarter, its parliament and its federal agencies are largely based in the national capital, and the ACT government, of course, administers the municipal and state-level services provided to the ACT community. So that need to ensure that federal interests are not compromised by the working of ACT self-government is a particular consideration that applies in the case of the ACT—perhaps not so strongly in the case of the Northern Territory, but it does clearly apply here.

I acknowledge that the ACT and the Northern Territory are in a slightly different constitutional position to the states. The
rights of the states to exercise certain powers are enshrined in the federal Constitution, whereas the rights of territories are defined under legislation which itself is passed by the federal parliament. But I would say that, generally speaking, we should move to a situation where we equate as much as possible the right of territory governments to legislate within the areas assigned to them under that federal legislation as freely as is possible within the values, the traditions and the constitutional conventions that apply in Australian political life to state governments.

Having stated that principle and having stated that sometimes we need to compromise on it, I state very clearly my view that I think in this particular case Senator Brown’s legislation takes too far the principle that the territory government ought to exercise this power untrammeled by intervention from the federal government in this way—that is, that, as a reaction to the case of the federal government overriding the ACT with respect to civil unions legislation, it is not appropriate to throw the baby out with the bathwater and exclude any circumstances where the executive can exercise such a power against the ACT government.

I do not think that is sustainable. I do not think that position is consistent with a balanced view of what the federal government and/or the federal parliament may need to do with respect to administration of this territory and the protection, in its role in the federal territory, of the national interest. I make it clear that a key issue here is that the federal executive’s power to make a regulation with respect to acts of the ACT parliament under section 35 of the Australian Capital Territory (Self-Government) Act 1988 does not exclude or prevent parliamentary involvement in that decision. It does not preclude the government from debating, and if necessary overturning, the exercise of that power by the federal executive.

Indeed, after the legislation of the ACT was overridden by an executive instrument of the Governor-General after taking advice from the executive, there was a motion of disallowance moved on the floor of the Senate. The motion attracted considerable interest. I am on the record as having supported that motion of disallowance. But the fact remains that parliament had its say. It was able to debate the issue. Had the numbers been different, it could have overturned the decision made by the executive.

The issue that Senator Brown is raising here is not so much about whether there is a role for parliament in these decisions but at what point in the process the role falls. I would not for one instance suggest that parliament should not have the right to consider this issue and decide it did not agree with an exercise of power, but I am not sure I can agree with Senator Brown in saying that in all circumstances the executive should not be able to act, particularly if there was a matter of national interest at stake, because we do not exclude the role of parliament in that process.

Senator Brown made reference to the dams case in 1983 and pointed out that the High Court upheld the power of the federal government to intervene in Tasmania’s affairs and overturn its scheme to dam the Franklin River. That is the case, but it is also the case that constitutionally—and there is no doubt here—the federal government can exercise power over the workings of the ACT Legislative Assembly on such matters.

Senator Bob Brown—The federal parliament.

Senator HUMPHRIES—The federal executive clearly has that power.

Senator Bob Brown—No; it says ‘parliament’ in the Constitution.
Senator HUMPHRIES—Senator Brown wants us to affirm that it is only the federal parliament. He would be arguing that it is both chambers of parliament. Senator Brown is arguing that only the parliament should exercise that power. I acknowledge that is what he wants, but there is nothing to stop the federal parliament from passing laws which delegate that power to the federal executive. Indeed, that is precisely what the federal parliament has done. In 1988, when it passed the Australian Capital Territory (Self-Government) Act, it delegated to the federal executive, under section 35, the power to disallow ACT enactments in whole or in part or to even recommend amendments to the Legislative Assembly to legislation that it might pass. So it does have that power. That is outlined in the act which the federal parliament has passed. It is a well-understood constitutional principle that if the Constitution grants a power to the federal parliament it has the capacity to delegate that power, and it has done so in this case. If Senator Brown believes that there is a constitutional argument against section 35 of the self-government act being invalid, I would be interested in hearing it, but he did not make that case in his presentation speech.

Senator Bob Brown—I am arguing that you should take back that executive power.

Senator HUMPHRIES—You want to take it back, but it has not been given illegally in the first place. It has been legally granted. It is within the power and the competence of the parliament to say, ‘We will delegate this power to the executive of the Commonwealth to overrule legislation.’ That is my argument anyway. If Senator Brown has a different argument I would love to hear it. When Senator Brown talks about the arrogance of government in exercising such powers, I have to say to him that it really is a matter of what you believe about the way in which that power is exercised. If he believes it is arrogant to override a territory parliament in these circumstances, I have to say to him that I think it was arrogant of the Hawke government to override the Tasmanian parliament in those circumstances.

Senator Bob Brown—It was abiding by international law.

Senator HUMPHRIES—It is a question of what attitude you bring to the decision, isn’t it, Senator? If you are overriding another government in an area where they have legislative competence—and there is no doubt that in that case they did; they had the power to build those dams—and you agree with their decision, you are acting in the national interest in accordance with international treaties; but, if you do not agree, you are being arrogant. It is a matter of your perspective, I think.

Senator Bob Brown—No. You would have breached international law not to have done that.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! It is time that remarks were addressed through the chair.

Senator HUMPHRIES—I will do that, Mr Acting Deputy President. Senator Brown said that he had not approached me to discuss this legislation, despite my obvious tendency towards considering it favourably, based on my voting record, because he believed that it was me who should have consulted with him, not the other way round, and that I should be listening to the people of the ACT. I want to place it on the record that, since this legislation was introduced back in June, nobody in the ACT community has approached me, other than journalists, to express any view about the matter.

Senator Lundy—It’s your job!

Senator HUMPHRIES—I make a point of asking people what they think about these issues. I have approached plenty of people to
The point I make is that nobody has come to me and said, ‘You ought to support Senator Brown’s legislation.’ I note that the ACT government, which was very happy to lobby me on the disallowance motion, has not bothered to express a view about this one way or the other. No doubt if I ask them they will tell me they support it, but I meet with members of the government regularly and there has been no indication of any view whatsoever on this legislation.

The fact is that I do not think this is a matter that greatly agitates the people of the ACT. Senator Lundy might report that she has had deputations, emails and letters on the subject, but I would be very surprised if she truthfully told us that that was the case. Frankly, I am very wary about adopting anything that the Greens put to me in the first place. I recall during the disallowance debate on the civil unions that I was urged earnestly by Senator Brown in the debate to support him. He particularly pointed me out and said, ‘You should do this, Senator Humphries; you should support this disallowance motion.’ I did and was promptly attacked by the ACT Greens for taking that position. They immediately doubted my sincerity and bona fides in taking the decision. So Senator Brown can understand why I am a bit hesitant to take his advice on this occasion. I wonder what sort of trap I am being led into by the Greens in such circumstances. I look forward to being assured that I am not, but he will understand that I am a little wary of the promises he makes.

Both Senator Brown and Senator Carr have repeatedly referred in this debate to the civil unions episode as justification for this course of action, but I believe that what they are doing is overreacting to that situation and that they are phlegmatically responding to that incident without thinking through the consequences of what they propose. What they propose is to exclude the possibility that in the national interest it might be appropriate for the federal government to exercise a power over a government and a parliament that it itself created through its own enactment. It is the child of the federal parliament, do not forget. I cannot foresee many circumstances where this would happen; I also cannot exclude the possibility that it could. If it were in the national interest, on a national security issue, for example, it could be appropriate in those circumstances. We ought not to exclude the capacity of the executive to act in accordance with section 35, particularly given that we have the safeguard or protection that the decision of the executive can be, and almost certainly would be, reviewed by the federal parliament in a debate of the kind we had not long ago.

**Senator Lundy** (Australian Capital Territory) (4.25 pm)—I welcome the Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006, the amendment to the Australian Capital Territory (Self-Government) Act 1988 that is being proposed here today. As you have heard from my colleague Senator Carr, Labor will be supporting it. This amendment would abolish the power of the Commonwealth to disallow any act of the ACT government, thus ending this unsatisfactory and undemocratic state of affairs.
Section 35 of the Australian Capital Territory (Self-Government Act) enables the Commonwealth to disallow otherwise legitimate ACT laws. Section 35 of this act has only ever been used once. It was used in June this year to overturn ACT laws relating to civil unions. The government’s use of section 35 of the self-government act was unprecedented and an unwarranted interference in the governance of the ACT, and it should never be allowed to happen again. This bill, if successful, will make sure it will not.

The ACT government was duly elected by the people of the ACT. The elected government had promised the ACT community that it would introduce laws recognising same-sex relationships if elected and sought to deliver on that promise. Chief Minister Jon Stanhope led the Labor team into majority government in 2004 for the first time since self-government, which was quite an achievement, and one of the Labor commitments, as I said, was to introduce the law that recognised same-sex relationships.

Under public pressure as to his stance on this issue, ACT Liberal Senator Humphries admitted to the Canberra Times on Friday, 16 June 2006 that:

I acknowledge that Jon Stanhope won a clear majority in the 2004 election ... I also acknowledge that Jon Stanhope went to the election with an explicit promise to legislate to recognise in law relationships between people of the same sex and to remove legal discrimination against gay and lesbian Territorians.

Senator Humphries then continued on to say that the obvious ‘democratic process’ would be to allow the ACT government to deliver on its election promise—a democratic process his Liberal colleagues in the Howard government clearly failed to respect and follow. Consistent with its election commitment, the ACT government held extensive consultations on how to proceed with introducing laws to recognise same-sex relationships. The outcome of these consultations was the Civil Unions Bill, a bill that enjoyed extensive community support.

The Howard government’s use of section 35 of the ACT (Self-Government) Act to overturn the Civil Unions Act was a triumph of the Howard government’s arrogant disregard for established democratic processes. They did it because they could. They used their majority plus the Family First senator, which meant that the vote of Senator Humphries was unable to change the outcome—and I do acknowledge that Senator Humphries crossed the floor on that occasion.

The Commonwealth executive—in this case, the Howard cabinet or, for that matter, the Governor-General—cannot pretend to represent the views of the people of the Australian Capital Territory. They have no right to use this power to substitute their views for the elected representatives of the people of the Territory. It was particularly offensive that the Howard government used the representative of the British monarchy in Australia to do the overriding of ACT law. It harked back to colonial times when an autocratic approach was used to govern allegedly wayward new colonies. It was highly condescending and completely inappropriate. It was also a triumph for the Prime Minister’s offensive and extreme ideology. I make the critically important point that the ACT Civil Unions Act did not infringe on the Commonwealth’s exclusive legislative rights over marriage, nor did the ACT bill conflict with existing Commonwealth legislation relating to marriage.

Many people will remember that the Prime Minister was desperate to say this was not so. He repeatedly asserted that there was some crossover or conflict but, when pushed on this point, he could produce no evidence because, in fact, none existed. It was, in my
opinion, homophobia, front and centre. I will continue to support the ACT government’s attempt to formally recognise same-sex relationships in the ACT. It should have happened then. It should still be in place. It is important in principle and in practical application. It is very important to the community as a whole.

The ACT Civil Unions Act intended to ensure that everyone received equal treatment under ACT law. The act would have allowed a couple to establish a domestic partnership by making a formal declaration of their intention to do so. The act was non-discriminatory in that anybody could have accessed a civil union in the ACT regardless of gender. In contrast, the federal government’s refusal to formally recognise same-sex couples is blatantly discriminatory.

The ACT Civil Unions Act clearly intended to stamp out the discriminatory treatment of same-sex couples under ACT law, and was entirely consistent with the obligations under the ACT Human Rights Act. The ACT Civil Unions Bill 2006 showed the ACT Labor government’s commitment to ensuring that everyone has the respect and dignity that they are entitled to and deserve—that is, a commitment to protecting everyone’s right to participate in society and to receive the full protection of the law regardless of their gender or chosen partner. All these aspirations have been undermined by the Howard government.

I would now like to make some comments with respect to the treatment of the ACT as a territory under the Constitution compared with the states. If the ACT were a state rather than a territory, the Commonwealth government could not have overturned this important new law, as is evident by the Tasmanian Relationship Act. The fact that this could not have happened to a state is further evidence that the government was ideologically driven to overturn this important and practical legislation rather than letting it stay in place.

Perhaps one of the most disappointing aspects of this matter is the Howard government’s complete unwillingness to talk with the ACT government. I am disappointed that the Howard government refused to engage with ACT representatives and find a constructive solution. They could have discussed what they found so offensive about the act. They could have discussed how the ACT law fitted in with Commonwealth laws and perhaps amendments could have been made so that the majority of the bill could have come into effect.

Finally, I formally call on my ACT Senate colleague, Senator Humphries, to support this amendment bill. I heard his contribution in the chamber today and I was very interested to hear his opinion on this important amendment. I would like to remind the Senate that Senator Humphries did cross the floor in June to vote for the disallowance motion that would have allowed the territory law to prevail. I would also like to remind the Senate of Senator Humphries’s comments to the Canberra Times on Friday, 16 June, 2006:

Here the democratic process—which of course was conferred on the ACT 17 years ago by this Parliament—provides a clear formula for what happens next: the ACT Government is entitled to pass laws, in an area of its legislative competence, to effect an explicit promise made to the ACT community.

Senator Humphries says he is a federalist. He waxes lyrical about its virtues and the limitations he thinks appropriate on a centralist approach to government, but the bottom line is that his support for federalism stops short of curtailing the long arm of centralism being used by his government colleagues to deny democracy in the ACT. He now extols the virtues of what he calls ‘necessary limits.’
Senator Humphries even resorted to the example about the antiterrorism legislation as an example where the ACT government ought not to be trusted and ought to be overridden—a double standard if ever I have seen one. A double standard that shows Senator Humphries is far less concerned with principle and far more concerned with the politics, in this case the politics of fear and the politics of the threat of terror attack as was espoused during that particular debate.

Finally, as I think several senators have acknowledged, Senator Humphries could easily resolve to support this bill and the federal parliament would always retain its capacity to legislate with respect to the territories as per the constitutional power. We all know that, so why does he squib on this bill? There is only one answer: he lacks principle on this matter.

Senator LIGHTFOOT (Western Australia) (4.34 pm)—Time and time again since I have been here I have said to remind myself, lest I forget, what a great honour it is to be in this place, the Australian Senate, where I try to represent the conservative views of decent, hardworking, mainstream Australians. Today, I have looked at the Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006, brought to the Senate by Tasmanian Senator Bob Brown and wondered, ‘Who is right—Senator Brown with his distinctly different lifestyle or me?’

This bill of Senator Brown’s for an act to abolish the power of the Commonwealth executive government to have the constitutional power to disallow any act of the Legislative Assembly of the Australian Capital Territory, and for related purposes—I look forward to returning to that phrase ‘and for related purposes’ in a moment—this bill by the different Greens, calls for the disallowance of the self government act’s provision for the parliament or the executive, in this case the Governor-General of Australia, to disallow any act of the ACT’s Legislative Assembly. Everyone knows that. This bill of Senator Brown’s seeks to remove that fundamental power of the executive of the federal government, a power integral to a Westminster system involving federal, state and territory systems. Section 122 of the Australian Constitution provides the Commonwealth with law-making powers over the territories. Specifically, section 122 reads:

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

What does this section of the Australian Constitution mean in terms of this bill? It means, without any ambiguity, that the Australian government or its executive, the Governor-General in this case, as I have said, has the power to override any legislation made by that territory that is not in the national interest.

The power to override, or disallow, legislation enacted by territory governments is subject to approval by the Governor-General and may also be disallowed by the Australian parliament which was alluded to by my colleague Senator Humphries. Also, I would point out that Section 35 of the Australian Capital Territory (Self-Government) Act 1988, which was also alluded to by Senator Lundy—an act with its genesis in this place—provides that the Governor-General may, within six months of an ACT enactment being made, disallow ACT enactments in whole or in part or recommend amendments to the relevant act to the ACT Legislative Assembly.
The Australian government does not generally intervene in the process of our democratic, self-governing, albeit limited, territories. In fact, this disallowance power has been exercised only once. I think Senator Lundy may have mentioned that also. It was disallowed by the executive concerning the Australian Capital Territory’s short history, and it is the single instance of the enactment of this disallowance power that has apparently so incensed Senator Brown that he wishes to have these powers completely removed from the executive.

What is this bee in the senator’s bonnet and to what exactly does ‘and related purposes’ refer? It was the disallowance of the Australian Capital Territory’s controversial civil unions legislation that was to give statutory recognition to same sex couples. The disallowance power that was used in respect of this legislation occurred on 13 June this year. Senator Brown did not agree with the exercise of these constitutionally supported disallowance powers, so this bill seeks to remove those powers as bestowed on the Governor-General by both the Australian Constitution and the ACT (Self-Government) Act 1998. Senator Brown’s bill would therefore require that the Australian government draft legislation to override inappropriate ACT law, the bill would then be debated through the parliament and it would be subjected to the normal parliamentary processes. The subsequent development of such a bill could take well in excess of the current six-month period that is currently available under the time limitation to disallow ACT enacted legislation.

The use of the section 35 powers of the ACT (Self-Government) Act is quick and relatively simple, particularly when compared to the process of passing a bill through this parliament, and disallowance must take place within six months as mandated in section 35. It is clear that the existing process of disallowance is more rapid, but Senator Brown wants to chuck out the existing workable laws that permit disallowance by the executive of unacceptable territory laws. He wants the Australian government to make new laws to override unacceptable territory laws. The appropriate laws already exist; Senator Brown just does not seem to like them. This afternoon we are in this chamber debating yet another Greens bill about introducing new laws to repeal other new laws, all because Senator Brown supports same-sex marriages. What a waste of the parliament’s time. Would it proceed to the lower house? I doubt it — there are too many decent people in this chamber for it to do so. I have no doubt about that. I have to wonder what this has to do with representing and upholding the values of hard-working, mainstream, decent Australians.

Senator Brown’s second reading speech refers to the quarter of a million ACT voters, which was actually only 227,000-odd in the 2004 election. Then again, Senator Brown was recently outed as being a little lax on accurate reporting of actual figures; $20,000-odd is neither here nor there, is it, Senator Brown, in your reporting to senators’ interests. Senator Brown’s second reading speech refers to these electors as though they all voted in favour of the civil union legislation, or as if the number of voters in the ACT should somehow exempt its legislators from the constitutions under which they preside. What is the relevance of voter numbers in the ACT 2004 elections? Why not look at the total population of the ACT, which incidentally is 326,700 compared to Western Australia’s more than two million; or the total kilometres of roads in the ACT, which is 2,645 compared to Western Australia’s nearly 150,000; or the number of people using public transport on a daily basis in the ACT, which is 7,500 compared to 25,000 in Western Australia; or the ACT’s 24,800 uni-
versity students across its four major campuses—and they are good campuses; or something really worthy of the interest of this chamber: the number of hospital beds available in the ACT’s two public hospitals, which are only 1,068, making availability of hospital beds in the ACT the lowest of any state or territory in Australia?

Let us not be side-tracked with figures and issues that are of no interest to Senator Brown. Let us refocus on what is important to Senator Brown—the fact that the ACT’s same-sex marriage legislation was subjected to constitutional disallowance powers. How awful that constitutional powers should have been used in this fashion. What a lot of rubbish. Senator Brown conveniently forgets or totally disregards that, subsequent to the disallowance of the ACT legislation, a bid was made in the Senate on 15 June this year. It was moved, incidentally, by Senator Brown’s colleague Senator Nettle and Senators Stott Despoja and Ludwig. It was a bid to overturn the disallowance and it failed. It failed then and it will fail if and when it is put to the test this afternoon. This failed bid in the Senate is proof that Senator Brown’s proposal to remove certain powers of the Governor-General and site that power within parliament is nothing more than another attempt to grandstand and to waste the time of this chamber and the money of Australian taxpayers. The best thing that could happen is this place is for someone to undertake a survey of the time wasted by the fatuous motions of the Greens.

That aside, Senator Brown already knows what the outcome would have been had the parliament been the sole arbiter of that particular disallowance. There is nothing at all to indicate that any future decision made under the same processes would have a different outcome were it instead subjected to the scrutiny of the parliament. No—the outcome would be the same. Senator Brown would have ample opportunity to procrastinate, posture and pontificate. However, the problems that could be created during the interim—bearing in mind that this process would have to be accomplished within the prescribed six months of enactment of legislation—are immense. Currently, inappropriate legislation can be overridden in a relatively short time simply using constitutionally mandated processes. Why on earth would we want to wait six months?

Really, one would have thought that Senator Brown had better things to do and that the ACT was capable of looking after its own interests, particularly given that the ACT Legislative Assembly, on average, has one elected representative for every 19,000 residents. Presumably Senator Brown feels some sort of empathy with this statistic given that Tasmania is very similar, with one legislative assembly representative for every 19,488 electors. Each of our lower house folk back in Western Australia struggle along representing nearly 36,000 residents. I know you find these statistics riveting, Acting Deputy President Marshall. Presumably those elected representatives are kept busy with matters of greater importance than the failed legislation that brought about this fatuous bill of Senator Brown’s.

The ACT is not Chief Minister Jon Stanhope’s sole bailiwick, nor is it the sole bailiwick of his fellow Labor members. The ACT is not Monaco to France; it is not Lichtenstein to Switzerland. The ACT is an integral part of the Commonwealth of Australia and as such it is subject—and should be—to the Commonwealth laws and the Commonwealth veto.

**Senator McGAURAN (Victoria) (4.46 pm)**—I, too, join this Thursday afternoon general business debate. I have always thought that this period of the parliament, at the end of the week, is a real dead rubber
period. It is not broadcast. No vote is ever taken on this. No divisions are ever allowed, according to standards orders. We know that out there—outside this chamber—there is a dash for the airport going on at this very moment.

Having been a whip in the past I know how hard it is to get people to speak in the afternoon of a Thursday. This period is a real indulgence of the opposition and the minor parties. I notice that even they do not take much advantage of it because most of the motions are Senator Carr’s. They always give Senator Carr a big say on Thursday afternoons because, I guess, he never wants to go home to his own state of Victoria; he is so notoriously known in his state.

Senator Lundy is always here on a Thursday afternoon. She will speak on anything, let alone move her own motions. I should say that while this is an opportunity for the opposition to move motions, debate and speak, I notice that the real heavy hitters—like Senator Conroy, Senator Ludwig and the like—are never here to debate anything on a Thursday afternoon.

So it is very much a dead rubber. But could it be any deader than today? Could a Thursday’s general business be any deader than today’s? This is one of the weakest speaking lists—

Senator Lundy—So why are you here? What does that tell us about you?

Senator McGauran—I am always here. Quite frankly, Senator Lundy, I am always here on Thursday afternoon. Senator Trood is going to speak after me—

The Acting Deputy President (Senator Marshall)—Senator McGauran, please address your remarks through the chair. I will take this opportunity to remind you of the question before the chair.

Senator McGauran—Yes, indeed, Acting Deputy President. I have a lot to say about the motion of Senator Brown. But the point has to be made that even Senator Brown, whom we all know never misses an opportunity to speak in this chamber, let alone to his full limit, could not even do his 20 minutes. It is a rare occasion when Senator Brown does not take his—

Senator Sterle—I rise on a point of order. Will Senator McGauran get back to the relevance of the order of the day that we are debating instead of just waffling on?

The Acting Deputy President—Senator McGauran, I remind you of the question before the chair.

Senator McGauran—I will be reading the question before the chair. For the benefit of those on the other side of the chamber, what I am trying to establish here is that the weight and importance being placed on this motion is minimal. It really is not as important as the strutting of Senator Brown would have us believe. That is the point I am trying to make. The government have supplied five of the eight speakers. This is the weakest speaking list I have ever seen for general business.

Opposition senators interjecting—

Senator McGauran—It is not just the three that they have supplied. Senator Bartlett, who speaks on documents, has not even come in.

The Acting Deputy President—Senator McGauran, please, I would rather you did not stand up and point across the chamber. I ask you to direct your comments through the chair. I ask other senators to cease interjecting.

Senator McGauran—with respect to you, Acting Deputy President Marshall, as the chair, with respect to the standing orders of the parliament on relevancy and with re-
spect to the parliament and the Senate, I will attempt to take this matter seriously.

Senator Sterle interjecting—

Senator McGauran—Yes, I will try to take this matter seriously. It is difficult but I will attempt. Senator Ludwig, it really surprises me that you are not on an aeroplane out of here. One of the more important members of the parliament—

The ACTING DEPUTY PRESIDENT—Senator McGauran, I have now asked you three times to address your remarks through the chair. I ask you to do that.

Senator Ludwig—Mr Acting Deputy President, I have been following this debate for some time but I wish to take a point of order in respect of Senator McGauran. Senator McGauran knows better than to use the language and to make the inferences that he has been making this afternoon. I ask Senator McGauran that if he was making accusations about people’s presence or otherwise he withdraws them.

Senator Lightfoot—I rise on a further point of order, Mr Acting Deputy President. My first point is that Senator Ludwig knows that he should not address Senator McGauran across the chamber like that. My second point is that I have listened to the debate and I have heard nothing that is of an unparliamentary nature that Senator McGauran has used in his contribution here this afternoon.

Senator Ludwig—Further to my point of order, and on that point of order, I ask, Mr Acting Deputy President, that if you think there is an issue to be taken, the transcript of the proceedings be reflected upon by the President. Senator McGauran can always, in due course, if the President so rules, deal with it accordingly. If there is no point of order in respect of that, and if there is no matter apparent in the transcript, then I accept Senator Lightfoot’s contribution.

The ACTING DEPUTY PRESIDENT—In order to steer a way forward, I will remind Senator McGauran of the standing orders, in particular standing order 193, with respect to the rules of debate, and particularly paragraph (3), about reflecting on other senators. I will simply at this point remind you of that, but I do ask you again to address your remarks through the chair and consider the standing order that I have referred to.

Senator McGauran—I will read out the object of Senator Brown’s bill before the Senate. It reads:

The objects of this Act are to—

Senator Lundy—We know what it says!

The ACTING DEPUTY PRESIDENT—Order!

Senator McGauran—Well, here I am, Mr Acting Deputy President, trying to read what is—

The ACTING DEPUTY PRESIDENT—Yes, Senator McGauran, and I was calling the interjecting senators to order. If you would please let me manage the chamber, I will attempt to do so, if you would cooperate with that. I would ask other senators to cease interjecting.

Senator McGauran—The bill reads:

The objects of this Act are to:

(a) remove the Governor-General’s power under the Australian Capital Territory (Self-Government) Act 1988 to disallow any Act of the Legislative Assembly for the Australian Capital Territory; and

(b) to provide exclusive legislative authority and responsibility for making laws for the Australian Capital Territory to the Legislative Assembly for the Australian Capital Territory.

In a nutshell, it is—

Senator Lundy—One minute!

Senator Sterle—Just get on with it! You really are struggling.
Senator McGauran, you are able to ignore the interjections.

Senator McGauran—I have read religiously from Senator Brown's bill. I read word for word its object and all I get is interjections on that alone. I am struggling with all the interjections that are being thrown across the chamber. I have plenty to say on constitutional matters and precedents about this particular bill. I just cannot seem to get past page 1, because Senator Sterle, who happens to be off duty now—you are off duty as whip—is hanging around just to annoy me on this particular bill. Mr Acting Deputy President, I will plough on, through you.

The ACTING DEPUTY PRESIDENT—I would be most grateful.

Senator McGauran—The essence of the object of this bill is to strip the federal government, and indeed the parliament, of the right to override territory laws. I would be right in saying that, wouldn't I?

Senator Bob Brown—No, you're wrong.

Senator McGauran—I am all-inclusive in this particular debate this afternoon, as you know, Mr Acting Deputy President. I seek to take it seriously. So the first point I wish to make, having read the objects of the bill, is that the federal government, indeed the Australian parliament, has the constitutional power to make laws to govern the territories—that is, the Northern Territory and the ACT. That is under section 122 of the Constitution, which is in everyone's drawer in the parliament here. I will read it in full. I know the previous speaker did also, but it is worthy of repeating because it is black and white constitutional law. Sometimes in this Constitution there are parts open to interpretation. We know that only too well. People make their careers on constitutional laws. The High Court often makes good or bad decisions with regard to their interpretations of constitutional law, but nothing could be more black and white than section 122 on this particular matter. I will read it:

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Back up this section of the Constitution, of course, are sections 51(xxi) and 51(xxii), which state:

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- marriage;
- divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants…

Again, this law, section 51, has been tested in the High Court and the Commonwealth has been supported in its acts. By the way—through you, Mr Acting Deputy President—while we are on section 51, Senator Brown in his address and the other speakers failed to mention the precedents set relating to section 51. They have been twice tested and twice passed by the High Court. The first example was the Franklin dam issue, where the government used its external powers under section 51(xxiv) to override the state of Tasmania.

The second time that section was used was when we were in opposition, under the Hawke government again. So the Hawke government used this section of the Constitution twice—first on the Franklin River dam issue and, second, on the Tasmanian gay rights issue. On both occasions they overrode
laws of Tasmania, which is the state that Senator Brown comes from. He did not mention either precedent in his address, most of all the gay rights issue. In about 1993 or 1994, I think, it was an issue in this parliament. So he does not mind when the issue suits him—

Senator Sterle interjecting—

Senator Santoro interjecting—

Senator McGAURAN—I apologise, Senator Santoro, if I am becoming a little passionate about this issue that, when I opened it up, I thought was as dull as dishwater and most unnecessary. I suddenly realised there is a lot of inconsistency, if not hypocrisy, in this particular issue. Why didn’t Senator Brown mention the gay rights debate and the vote we had in this parliament, where the Labor Party government and Prime Minister Hawke overrode the laws of the state of Tasmania with regard to gay rights? I will tell you why: because it suited him not to, and that is what this debate is all about. The other side know that this parliament or the executive government has the right to override the states on certain issues, as it does the territories—more so the territories, of course.

Senator Bob Brown—And you support that.

Senator McGAURAN—Yes, I do—to the hilt.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Senator McGauran, please ignore the interjections.

Senator McGAURAN—They know they have the constitutional rights but they only want to use them when it suits them. I have just read out what is black and white constitutional law. It is no doubt one for the constitutional lawyers, it always is, but I would venture to say that if Senator Brown’s bill was ever tested—if it ever so much as made it to the High Court—I think it would be deemed unconstitutional. You cannot pass legislation through here that overrides the Constitution. It is tested in the High Court—just as we have at the moment with the industrial relations laws being tested by the states in the High Court. This is another matter which the other side failed to mention. You can test legislation which goes through this parliament in the High Court.

If I may be helpful to Senator Brown on this issue, if he wants to achieve his end then he would need to initiate a referendum. The whole thing is hypothetical and ridiculous, but let us just assume that he seeks to achieve his end and the only way to do it is by referendum. He would require a majority of the people to support him in this referendum. I know that that is something that Senator Brown and the Greens are not versed in—seeking a majority of the people for anything at all. He knows this only too well and that is why he would never test it. He always avoids the hard question in regard to referendums because referendums simply do not have a good record in this country at all. We know that since Federation there have been some 44 referendums and only eight have been successful. We know that the last referendum held in this country in regard to a republic failed miserably. The last time a referendum was held during a Labor government was in the bicentennial year when some four referendums were put up at the general election in 1990. They all went down in a screaming heap. So referendums do not have a good record. It is simply not in the national interest that this ever go to a referendum anyway.

Another avenue for the Greens would be to create a state—the state of Canberra or the state of the Northern Territory. We know that many people in the Northern Territory for many years have sought to turn the Northern
Territory into a state. If it were a state, they would have greater freedom to make their own state based laws. But of course we know that in the Northern Territory when they held a referendum—it was actually more like a plebiscite—in 1998 where they expected there to be a landslide of support for the Northern Territory to become a state they got a real shock. The majority of the people rejected the referendum to have the Northern Territory become a state. I would venture to say that if you tried the same thing in the ACT you would get an even more overwhelming rejection of any such proposition.

In the ACT they live a very comfortable life, some would say even a ‘Tattslotto style lifestyle’, and they would be very loath to separate themselves from mother’s milk. When they look up from their homes in Forrest or wherever and see the parliament on the hill, they feel very comfortable. They feel very comfortable that the federal government, sitting on the hill looking down on their most junior of parliaments, as a last resort, have the authority to override—let alone the prestige that they see in us all; I do not single myself out, I stress, in that. So, Senator Brown, I have attempted to bring some common sense and some reality to your bill—to try and bring it some grounding. You can see that it has no grounding at all. Whatever avenue you take, the best shot you have is a Thursday afternoon broadcast. The truth of the matter is—

Senator Sterle—Mr Acting Deputy President, I rise on a point of order. I remind the honourable senator to address his remarks through the chair.

Senator Lightfoot—Mr Acting Deputy President, I rise to speak on the point of order. That is no point of order. It is not up to Senator Sterle to direct you to direct Senator McGauran to address his remarks through the chair. If you wish to do that, Sir, that is your prerogative.

Senator Wong—Mr Acting Deputy President, I rise to speak on the point of order. Clearly Senator Sterle was raising the point of order that Senator McGauran was not addressing his remarks through the chair. Senator Lightfoot may wish to be pedantic about the terminology used but I think the intent of the point of order was manifestly clear and I would ask you to draw Senator McGauran’s attention to it.

The ACTING DEPUTY PRESIDENT (Senator Barnett)—I draw the attention of all members of the Senate to the standing orders.

Senator McGauran—One feature of my address to the Senate, before I get back to the substance of it, is that I notice that Senator Sterle was off duty some 15 minutes ago or thereabouts but has decided to stay on, to listen to my contribution to this debate, to interject, and to become very stimulated by it. I am very pleased to say that we have finally got Senator Sterle to do an extra shift—a bit of overtime and a bit of work. I think the other side ought to give me a medal for that because they know that they have to drag him into this chamber at any time to do any sort of work because he is an old unionist who has never known the real substance of work—

Senator Sterle—Oh, pull your head in, you pompous—

The ACTING DEPUTY PRESIDENT—Order! Senator McGauran, I would ask you to address your remarks through the chair.

Senator Lightfoot—On a point of order, Mr Acting Deputy President: Senator Sterle made an unparliamentary remark. I would ask that you direct him to withdraw that unparliamentary remark.
The ACTING DEPUTY PRESIDENT—
I did not hear an unparliamentary remark. I would ask Senator McGauran to continue his remarks.

Senator Lightfoot—Further to that point of order, Mr Acting Deputy President, would you consider reviewing Hansard and, if that remark made it this time and was unparliamentary, directing Senator Sterle at another time to withdraw the remark?

The ACTING PRESIDENT—
Absolutely. I am happy to review the Hansard and, if there is anything unparliamentary, we will deal with it in the appropriate manner.

Senator McGauran—This has been a fiery debate, and for no reason at all. We have to put everything in perspective about the debate we have before the chamber at the moment. First of all, this is the Australian parliament. More people vote for this parliament than for any other in this country. Let us put in perspective what we are talking about with the ACT—and we should bring the Northern Territory in on this too. The Northern Territory has a parliament of some 25 members, each representing between 4,000 and 5,000 electors. It has a population of around 205,000 people. The ACT has a little more in population—about 325,000 people. It has an assembly of 17 members.

Let us put this perspective. Which parliament has the greater national interest at heart? I think on every occasion it would be seen to be this parliament. Yet, sparingly, and with judgement and with the national interest in mind, we have acted on only two occasions that I recall since we have been in government for some 10 years. The first one was, of course, in relation to the Australian Capital Territory’s Civil Unions Act.

On the issue of the Northern Territory euthanasia bill, I would like to read what I said in my address—given the time, I will be ever so brief—about why I considered we should have overruled that act and why it was in the national interest. I said:

The insidious Northern Territory Rights of the Terminally Ill Act, which is the first in the world, operates on new tenets for our society—tenets of hopelessness and neglect as distinct from hope and care. There is something very chilling about a health system that normalises the act of suicide for those aged 18 years and over. That is what our society will be doing if it accepts the Northern Territory euthanasia act because, once we normalise the state of hopelessness, we will accept the broader concept of suicide. After all, suicide is only ever chosen when the state of utter hopelessness is reached.

I would have thought that everyone in this chamber would have thought the debate on euthanasia was of national interest and that the Northern Territory had not legislated just for their boundaries; it would be an act which was influential morally and socially throughout Australia. We ought to have intervened, and we did.

Equally, on the Australian Capital Territory’s civil unions legislation, I would like to quickly quote Senator Minchin, who sits here in front of me, but I am not going to have time. But I would recommend to anyone that they read his speech in regard to the reasons we sought, on these rare occasions, to overturn the ACT legislation—after much consultation, I should add. I urge the Senate to utterly reject this bill. (Time expired)

Senator Trood (Queensland) (5.11 pm)—It is a delightful opportunity to be able to speak on this matter. Senator McGauran, my colleague from Victoria, has drawn attention to the lateness in this sitting period. It is late on Thursday afternoon. Any bill which
saying, in the explanatory notes, that it is ‘a bill for an act to abolish the power of the Commonwealth’s executive government to disallow any act of the Legislative Assembly of the Australian Capital Territory and for related purposes’ seems at least on the face of it to be a matter of some significance, some importance and in fact some might even say profound importance, since it would seem to touch the power of the Commonwealth in relation to one of its territories.

But I think we all know that this is a rather tawdry exercise by Senator Brown on behalf of the Greens. It is an exercise in trying to harvest populist votes from the good citizens of the Australian Capital Territory and to try to expand the Greens’ domain, if you will, in the territory. It is an effort to try to appeal to the people of the Australian Capital Territory on a matter which is hardly of core importance to the Greens. I have not had the opportunity to look at this in the time I have had available to prepare my remarks in this debate, but I would be very surprised if one of the core platforms of the Greens is that it wishes to extend democratic rights, as they might be described, for the good citizens of the Australian Capital Territory. Rather, this seems to me to be something of a spasm response to the Greens’ disappointment with the fact that the government earlier in the year made a regulation disallowing the legislation with respect to civil unions in the Australian Capital Territory.

In relation to that particular piece of legislation, the parliament took the view—and rightly, in my view—that marriage should not be redefined in the way in which the piece of legislation from the ACT legislature proposed. I still think that that was a correct decision. But that is the past, and I do not want to revisit that matter again this evening. There are other, and rather important, things to examine.

Indeed, there has been a great deal of fall-out from that piece of legislation and it is manifest in the Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006, which is before the chamber this evening. It is a short bill. In fact, it is a disarmingly short bill with respect to the impact it may have on the constitutional arrangements of the Commonwealth. Essentially, it seeks to remove the Commonwealth’s power to override legislation in the ACT legislature. It is deceptive because we are engaged in a rather simple proposition here but, in my view, it seeks to unravel a very important—perhaps even profound—constitutional compact that exists between the Commonwealth and one of its component parts, which of course is the Australian Capital Territory.

In the time available to me, I want to take a little time of the Senate to explain, as I see it, the unravelling of this particular compact and what the consequences would be if this bill were to ever see the light of day—if it were ever to be passed by parliament—and I trust that will not come to pass. But, before I do that, I will just make a couple of quick observations about the bill. The first is, I think, a natural one and one made by other speakers in the debate, which is that the power we are talking about here is not one that the Commonwealth engages in every day of the week or every sitting session or on a particular, regular basis. It is a power which is used, and rightly so, infrequently when circumstances demand that it should be used. In that context, it is proposed that we should change a profound principle of constitutional prac-
tice for a power which is hardly ever used, and that does not seem to me to make a great deal of sense.

The second proposition I make is that the Australian Capital Territory legislature is of course a unicameral legislature. I come from Queensland, as you know, Mr Acting Deputy President, and Queensland has a single legislature. It is a unicameral legislature. The Legislative Council in Queensland was abolished in the early part of the 20th century, and I think citizens of Queensland have had cause to regret that abolition on numerous occasions since then. I am not an advocate of unicameral legislatures. They seem to me to be unsound, as a matter of constitutional principle and practice. I would hardly be someone who would be coming into this chamber to encourage the idea that yet another unicameral legislature should have the power to make decisions which would have ramifications way beyond what has been decided by the constitutional arrangements that currently exist.

The third proposition I make is a very simple one—and I think it has been made by some of my colleagues—which is: even if this bill were to be passed by some minor miracle of constitutional activity, it would have no effect because we would still be left with section 122 of the Constitution and the power that that gives the Commonwealth to make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth … It then goes on to make some other remarks about various aspects of the government of territories. The second clause which is of particular relevance is section 52 of the Constitution. It reads:

The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to

(i.) The seat of government of the Commonwealth …

Here we have a very specific kind of constitutional design. We have an arrangement whereby the Constitution provides for the states to give up territories, should they voluntarily decide to do so, and in doing so the Constitution then gives power to the Commonwealth to make laws for ‘peace, order and good government’—a phrase that resonates in my own mind, from the days when I was at law school, and in the minds of most lawyers as one which relates to the exercise of Commonwealth power. Here we have a very specific and very clear arrangement on this particular matter and what is important is that the Australian Capital Territory is the Commonwealth’s seat of government.
Perhaps I can make, as an aside here, an observation which I think Senator Brown will no doubt find interesting about this matter, which is that the Constitution—and I give him the benefit of the doubt of being familiar with this particular provision—also gives power of representation in the federal parliament in relation to territories, and that particular right is contained within section 122 of the Constitution. And, of course, the Commonwealth has provided in relation to that particular power; it has provided the opportunity for two territories to have two senators sitting here and for members to take their places in the other place.

What is interesting about this particular power, what is, I think, noticeable about this power, in terms of comparative constitutional law, is that the United States, one of the great democracies on the planet and one often held up as being the exemplar of democracy, is a place where the territories do not have that right of representation in the federal parliament. So here we have, in relation to our own constitution, our own parliament, a right of representation for the territories. So they already have a particular democratic advantage, which is not given to people who reside in territories in the United States and in other places.

Let me return to my main theme, which is this compact that I alluded to. For a long period of time, the Commonwealth parliament was the parliament of the Australian Capital Territory. It made laws which were relevant to the people in the territory. It was the place where decisions were made about the direction and the future of the citizens of the capital territory and, for the most part, that was a reasonably happy arrangement.

Of course, it was decided in 1988 that this arrangement should be changed. The Hawke government obviously resolved that there should be a change in these matters and so we then had the Australian Capital Territory (Self-Government) Act, which provided for the folks of the Australian Capital Territory to have certain kinds of powers in relation to their own governance.

But this was a qualified self-government. These were not powers given to the Australian Capital Territory as being the same as the states’; these were not powers which were given to create sovereign states, of the nature of Queensland or Victoria or Tasmania or Western Australia or other states of the Commonwealth; these were essentially qualified powers. Very specifically, clearly, from the constitutional design, from the design of that particular act, they were qualified powers given to the territory legislature; essentially—and I do not mean to be ungenerous in making this remark—they were the kinds of powers that might be available to a local government, and I say this without wishing to offend the good citizens of the Australian Capital Territory.

And, of course, there was good reason for this. It was not just a coincidence that this occurred; it was not just a serendipitous use of powers; it was not just a casual part of a constitutional design. This particular decision, with regard to the powers of the ACT legislature—and this reflects the wider point that I was making earlier about the Commonwealth having the power to make legislation for the territories—was made in a purposeful way. It took a particular point of view. It was part of a specific intention.

The ACT is not just any territory of the Commonwealth. The Australian Capital Territory is not just any piece of geography on the Australian continent. It is the seat of the Australian government. It is the place from which the Commonwealth is governed and that gives it a unique quality. It gives it a unique character. And we know from the debates in relation to the formation of the
Commonwealth, the constitutional debates of the 1890s, how fundamentally important this idea was to the founding fathers. We know, from reading the constitutional debates—with which, I am sure, Senator Brown is very familiar—how anxious they were to find a place somewhere between Sydney and Melbourne which could be appropriately identified as the seat of government.

Indeed, a specific provision was included in the Constitution on this particular issue. It is section 125 which alludes to this particular point, and section 125 says:

The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be vested in and belong to the Commonwealth...

The point is that the seat of government ‘shall be vested in and belong to the Commonwealth’. So it is very clear from the constitutional design: this was not just, as I said, happenstance; it was not just serendipitous; this was a specific part of the constitutional design of the founding fathers—that they wanted a place of government and they wanted it to be a unique place in the context of the Commonwealth. And, in reflection of that particular proposition, they made Canberra the seat of government and they made specific provision for it.

The logical constitutional consequence of that view was that the Commonwealth should have power in relation to the seat of government, as provided for in section 52 of the Constitution, because it recognised the unique nature of the territory and the unique significance within the Commonwealth of this particular part of the country.

The 1988 act in a way compromises that idea. It compromises that unique constitutional situation. It allows the Australian Capital Territory legislature to make laws for its citizens on a wide range of issues, as we all know—on housing matters, transport matters, social security, parks and various other things. It has the right to do that, and I do not have any reason to quarrel with that. I think there is no reason on God’s earth why that opportunity should not be given to the local legislature.

Indeed, the citizens of Canberra have many privileges from living in this part of the Commonwealth. I think we would all agree that Canberra is a most charming city, a place of rural disposition and, perhaps, urban pretension on occasions. It is a wonderful place to live, a great place to bring up a family. I enjoyed living here for five years myself during my earlier years. Citizens of the Australian Capital Territory have the benefit of many privileges. They have access to all the great national institutions of the country, to all the great public buildings, of which Parliament House is but one. But one thing they do not have is legislative sovereignty over their affairs.

Senator Brown is clearly troubled by this—not substantively, but, as I said at the very beginning of my remarks, for what I regard as rather tawdry political purposes. He sees this—presumably the Greens see this—as a stain on the fabric of Australian democracy. I do not. I see this as one of the very few costs that the citizens of the Australian Capital Territory must bear for living in this very privileged part of the Commonwealth, the seat of government, the place identified within the Constitution as being specifically designed to create a unique environment for the national parliament and for the administration and governance of the Commonwealth. (Time expired)

Senator IAN MACDONALD (Queensland) (5.31 pm)—I am delighted to enter this debate on the Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill
2006. I support most of the arguments that my colleague from Queensland Senator Trood has very carefully and eloquently delivered to the chamber. I had a glance at Senator Brown’s second reading speech; I have to say that it goes down in history as quite the shortest speech that Senator Brown has ever made. It is strange that, when we are trying to get important government legislation through this parliament, we continually have not only long speeches from Senator Brown at the second reading stage—

Senator Bob Brown—Mr Acting Deputy President, I raise a point of order. My second reading speech was delivered here in this senator’s absence. It was by no means the shortest speech; it was one to be listened to, and he ought to have been here to have heard it.

The ACTING DEPUTY PRESIDENT (Senator Barnett)—There is no point of order.

Senator IAN MACDONALD—I have here what is said to be Senator Brown’s second reading speech, which is in Hansard and which comprises five paragraphs.

Senator Bob Brown—You don’t understand the forms of this place.

Senator IAN MACDONALD—Is this not your speech, Senator Brown? Perhaps we should conduct an inquiry into who has fraudulently put in this speech as your second reading speech.

Senator Bob Brown—it is your inability to understand the processes of the Senate on Thursday afternoons.

Senator IAN MACDONALD—I am being attacked by Senator Brown in the course of my speech, and it has distracted me. Certainly, his speech was very short. When we are trying to get important legislation through the parliament, Senator Brown speaks not only for 20 minutes in the second reading debate but for the maximum allowable time in the committee stage. Back in the days when we were introducing the regional forest agreement legislation, Senator Brown detained the chamber for 48 hours—was it, Senator Brown?

Senator Bob Brown—I think it was two weeks.

Senator IAN MACDONALD—Two weeks, was it? Your arguments in that case were even more puerile, if I might say, with respect, than your arguments here. At least I can understand what you are getting at here. But I think your arguments on the regional forest agreement demonstrated that you had no interest whatsoever in sustainable forestry, no interest in forestry at all and, in fact, very little interest in the environment. The only significant thing in that debate was that Senator Brown was actually talking about something that was related to the environment. Most of the issues he talks about in this chamber have nothing to do with the environment. I always think it is a bit of a fraud on the Australian public that Senator Brown masquerades under the name of the Australian Greens, when most of his contributions to this place have little to do with the environment, certainly little to do with sustainability.

I quite clearly oppose Senator Brown’s bill. Shock, horror, one might say; there is one thing I think Senator Brown and I might have agreed upon, which is vaguely related to the bill before us today—that is, the issue of euthanasia. We had a similar disallowance debate some years ago on the question of euthanasia. At that time I agreed with the substance of the debate. I think Senator Brown and I in that instance might have curiously been on the one side. I think at the
time I was the federal minister for the territories, and there were two reasons which led me to Senator Brown’s side of the substantive debate. One was that, as territories minister, I thought we should at least have some regard for the Northern Territory parliament. Perhaps more importantly, in a substantive way, for all the reasons I mentioned in that speech, I agreed with the proposal to effectively allow euthanasia. In speaking on this debate, I certainly do not want to rehash the arguments surrounding the controversies in the euthanasia debate. Suffice to say that, in that instance, Senator Brown and I were on the same side insofar as the substantive issue was concerned.

The bill before us at the moment is not one that I think should be supported by the chamber. The Constitution is a document that was brought together over a substantial period of time by some of the best minds that were then available in what I can only refer to as the continent of Australia; it was not the Commonwealth of Australia, because that was created by the Constitution. Mr Acting Deputy President, as you would well know, there were some colonies that came together, and representatives of those colonies met for many days, over a period of many years, to get a constitution that would suit what was to become the Commonwealth of Australia. Rather than having six colonies, we were joining together in one nation.

Our founding fathers had to carefully consider the best form of arrangements for running what would become the Commonwealth of Australia—and this constitution was put together. No-one just woke up one morning and said: ‘A constitution is a good idea. Let’s write this down and make it the rules for our country into the future.’ This written document, the Constitution, was the subject of many hours, many days, many weeks, many years of intense scrutiny, debate and very careful legal drafting. Of course, it has stood the test of time. On many occasions, there have been attempts to change the Constitution. There have been some occasions on which the Constitution has been changed, but almost invariably the Constitution has not been changed.

One change did happen—and one might say that the constitutional fathers were not quite right in this—to allow Indigenous people to have, put simply, the rights that other Australians had. One might say that demonstrated that the founding fathers did not have the best document for the Constitution of our nation but, of course, things were quite different in those days. I suspect that, in the days when that clause was originally introduced, people would have thought it was the right thing for everyone involved, including Indigenous people. I am delighted that a Liberal government led the charge to have that changed. That is one instance in which the people of Australia, under the leadership of a Liberal government, brought about a change in the Constitution of Australia.

That change occurred because attitudes had changed dramatically. It is a bit like the debate we are having about the 457 visas, which, it seems, the Labor Party are totally opposed to. Some of their rhetoric—certainly, Mr Beazley’s rhetoric—has shades of the old White Australia policy, which, as you know, was introduced and supported—

Senator Bob Brown—Mr Acting Deputy President, I rise on a point of order. I know the government wants to filibuster so that no vote is taken on this before six o’clock—and they may do that—but the senator has drifted right away from the topic of executive power over the ACT, and I ask you to call him back to it.

The ACTING DEPUTY PRESIDENT—There is no point of order.

Senator Ian Macdonald—I am talking about the Constitution, which, as I
understand it, is the subject of Senator Brown’s motion. I am talking about the powers given to this parliament and the territories under the Constitution. I am simply describing how a Liberal government led the charge to change the Constitution to treat Indigenous Australians like every other Australian—and I am very proud of that. I am just making an observation on how attitudes changed between the late 1800s and the mid-1960s, when that was changed. Back in the earlier part of our nationhood, the Labor Party and the unions were totally opposed to bringing coloured labour into Australia. I think the unions in those days did that for what they thought were the right reasons, but it was a fairly disgraceful episode in our history. Again, I am delighted that a Liberal government did away with the White Australia policy, which had been supported by the unions for so long—and by the party the unions supported.

Senator Brown is correct in that I have digressed just a little, and I will return to my comments on the Constitution. The Constitution was put together by people who had the best interests of Australia at heart. It was an exercise that went very carefully into every single element of every single section or clause of the Constitution. One of the sections dealt with at that time was section 122, which gave power to the Commonwealth to make laws over the territories. Again, Senator Brown, with his bill, wants to change that arrangement. He has explained why he wants to do so, as I say, in the shortest speech I have ever heard him make. However, that particular provision resulted from the work of some of the best legal minds in the country at that time—and I think those legal minds would have stood the test of time. Were our founding forefathers here today, they would still be recognised as some of the finest legal minds in the world. Those great lawyers and great statesmen of their time, including Sir Henry Parkes and Sir Samuel Griffith—a great Queenslander; I think I can say proudly that he comes from my state—would have gone through this very carefully. They would have looked at section 122 and would have decided that the Commonwealth should have law-making power over the territories.

Senator Bob Brown—it says ‘the parliament’, not ‘the Commonwealth’.

Senator IAN MACDONALD—Does it? Thank you, Senator Brown. I stand corrected. It provided for the parliament. I do not have the Constitution in front of me, so I am doing something that is always dangerous to do and taking you at your word. However, let me say either the Commonwealth or the parliament—or whoever. The parliament should have law-making power over the territories. Why would that have been? Of course, I was not around at the time those debates were had, but one can imagine—and from my reading of history—that the founding fathers put section 122 into the Constitution because there was a belief that only fully fledged states of the new Commonwealth should have law-making power that was sacrosanct and that could not be challenged.

However, the territories—as I say, as a former territories minister, I have been a great supporter of the territories over the years—are relatively small. Their budgets are supported very substantially by the national government. The numbers of people in those territories, certainly at the time the Constitution was adopted, were—even as they relatively are today—smallish. Arrangements were put in place for those territories—again, all in the best interests of territorians, one might say—which provided, amongst other things, that the Commonwealth should have law-making power over the territories. There was this arrangement that the Governor-General could exercise the
disallowance power. However, the Governor-General’s exercise of that power was always challengeable in parliament, so it was an instrument that could be disallowed by the parliament. We have been through this in an instance I mentioned previously, but this disallowance power has been used rarely by the Australian government and, even then, only where the national interest needed to be protected.

Senator Brown and I might wonder whether in the last instance, when the issue was euthanasia, which I have spoken of, the national interest needed protection. However, we had our vote on it at the time. As I recall, in that particular instance, the issue was not being determined by a government; it was being determined by a free vote. So, if Senator Brown and I wanted to blame someone there, we could not blame the government—and that would be the first time ever that Senator Brown would not have blamed the Howard government. When it rains, I think Senator Brown blames the Howard government. However, in that instance, it was a free vote.

Senator Bob Brown—I’d be happy to blame the Howard government for rain.

Senator IAN MACDONALD—If it rained now, we would be heroes. Joh Bjelke-Petersen always used to claim that whenever it rained, particularly in a drought time, it was his doing. I was not a great fan of Bjelke-Petersen’s, I might say, and I knew that that was not true. However, certainly that disallowance power has been used by the Australian government only where the national interest needed to be protected by this parliament. I was just making the point that it was not even the Australian government in that instance; it was the free vote of all parliamentarians here. Senator Brown and I happened to be on the wrong side then, but the result of that vote resulted from the will of those who had been elected by all Australians to represent them in this house and in the other place. The exercise of that disallowance power, as I say, is subject to approval by the Governor-General. It is a disallowable instrument and it can be disallowed by parliament.

Senator Brown’s reason, as I understand it from his very brief speech, is that he wants parliamentary scrutiny of these disallowance powers. However, what Senator Brown is proposing will not in any way increase parliamentary scrutiny. The debate I referred to previously and other debates that we have had where there has been an overriding of a territory power that has been subject to a disallowance motion have been long, heated, passionate and emotional. However, you could not for a moment suggest that they have lacked the parliamentary scrutiny that the disallowance power has. I think it is probably a good thing too that we do have this ability to have parliamentary scrutiny. But this proposal of Senator Brown’s will in no way increase the parliamentary scrutiny of that disallowance power.

Under Senator Brown’s bill, the Australian government would have to make laws to override unacceptable territory laws. Having new laws passed to repeal other new laws will be confusing for citizens, it will extend the time for doing these things and it will make the whole process much more drawn out. However, under the current system, you can get a decision. It may not be a decision that we all like. As I say, there has been an instance where Senator Brown and I probably did not like the outcome. However, it is there. (Time expired)

Senator MINCHIN (South Australia—Minister for Finance and Administration) (5.52 pm)—I am delighted to follow Senator Ian Macdonald in this debate. He has so eloquently put the case against this bill, and I
commend his contribution to the Senate. Given the experience that Senator Macdonald has had as a former Minister for Regional Services, Territories and Local Government, he does speak with great experience and knowledge of this area.

We are debating the Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006, as proposed by Senator Brown. This is an intriguing bill because it involves a substantial diminution in the authority of the Commonwealth over the Australian Capital Territory. I notice it does not refer to the Northern Territory—it is a bill restricted to the power of the Commonwealth with respect to the Australian Capital Territory—but it does involve a very significant wind-back of the existing arrangements. For Liberals who, like me, are genuinely federalist in philosophical inclination, these sorts of debates are always not easy; indeed, my involvement in these matters has always tested my underlying commitment to a federal structure.

I do have a genuine philosophical inclination to subsidiarity—that is, the proposition that decisions should be made, in as many cases as possible, by those closest to the people most affected by those decisions. That is the essence of federalism, it is the essence of the Australian Constitution and the constitutional structure of which we have all been the beneficiaries. But that constitutional structure is a function of the six state colonies coming together to form the Commonwealth and by agreement. Their Constitution is an agreement under which the six state colonies agreed to hand over certain of their powers to a central government, the Commonwealth.

The Northern Territory was then part of South Australia. We South Australians sometimes regret that our forebears handed over the Northern Territory to the Commonwealth and wonder what might have been if the Northern Territory had remained part of the great state of ‘Central Australia’. But that was not to be, and now we have not only the Australian Capital Territory but the Northern Territory.

I made a contribution on the euthanasia bill, in which I distinguished a territory from a state on the basis that the Commonwealth had a very clear and distinct responsibility—ultimate responsibility—for the Northern Territory as a territory not a state. The Australian Capital Territory is very much in that vein. A clear constitutional responsibility rests with the Commonwealth for the Australian Capital Territory, and I think that would be true of every country in the world where there is a distinct governance arrangement for the capital city, whether it is the District of Columbia or the Australian Capital Territory.

Australia has gone a long way towards granting the elements of self-government to the seat of its capital city—further than many others. Certainly my party has been proudly involved in that. Many would dispute the arrangements that we have put in place for the Australian Capital Territory. Wherever I go, both in the ACT itself and around Australia, many suggest that the more appropriate arrangement for the Australian Capital Territory would be what you might call a city council type arrangement—for example, a Brisbane City Council type arrangement or some such other. However, we do have this form of self-government but always on the understanding and on the basis that the ultimate authority over the territory does, must and should continue to reside with the Commonwealth.

This is the capital city for all Australians; it is not just a city for its residents. It has had a huge investment in it by all Australians through the taxes that we collect. Many of
the nation’s great institutions are in this city, so the proposition that the Commonwealth should absolve itself of its fundamental responsibilities through this act or any other act or bill that would seek to diminish those powers is contrary to the essential responsibility which the Commonwealth must have for the seat of national government—for the capital city that we in this country enjoy.

Having said that, it is worth going to the motivation for Senator Brown’s proposition. Clearly, as others have acknowledged, Senator Brown was motivated to bring this bill forward by the Governor-General’s disallowance of the ACT civil unions legislation. On my advice, this is the only time in which the authority of the Commonwealth over the ACT has ever been exercised. So what we are talking about here is a very rare, indeed singular, example of the exercise of this ultimate authority. It shows that self-government does work well and that, in the history of self-government, there has not been the need for the Commonwealth to exercise this ultimate authority. For Senator Brown to purport that we must immediately remove this authority simply because of the singular exercise of that authority in this one particular case is rather far-fetched. If we were dealing with a situation where the Governor-General was disallowing ACT bills at the drop of a hat—if this were the 100th time that it had occurred—then you might more closely examine the proposition that Senator Brown has put before us. But it is this one singular proposition.

The background to that proposition should be considered because we went to enormous lengths to work with the ACT to see whether a civil unions bill could be developed that was genuinely a civil unions bill. The point was made to the ACT repeatedly that anything that could properly and reasonably be seen to be a bill that impacted upon the Commonwealth’s prerogatives with respect to the institution of marriage would not be acceptable to the Commonwealth. That was said repeatedly. We gave the ACT every opportunity to restructure its Civil Unions Act to ensure that it did not contradict the Commonwealth’s responsibility for and its definition of the institution of marriage. Indeed, the ACT refused to accede to that. The bill says that a civil union is different from a marriage.

**The ACTING DEPUTY PRESIDENT (Senator Moore)—**Order! The time allocated for the debate has expired.

**SOMATIC CELL NUCLEAR TRANSFER (SCNT) AND RELATED RESEARCH AMENDMENT BILL 2006: EXPOSURE DRAFT**

Senator STOTT DESPOJA (South Australia) (6.00 pm)—by leave—I table an exposure draft of a bill, together with a tabling statement and a draft explanatory memorandum. It gives me great pleasure to table the documents. I also seek leave to make a very brief statement of around one minute.

Leave granted.

**Senator STOTT DESPOJA**—I thank the Senate. Today I table an exposure draft of a bill to permit the ongoing development of medical and scientific research using stem cells, including the strictly regulated use of techniques such as somatic cell nuclear transfer. This legislation also seeks to allow the development of techniques for efficient training, research and improvements in clinical practice in assisted reproductive technology.

This bill is for information and committee use. It can be updated and improved. The aim is to put the recommendations of the Lockhart legislation review, which reported to the parliament last year, in a detailed and legislative form so that the Senate Standing Committee on Community Affairs can build on and benefit from my work on this issue.
The bill enshrines the scientific recommendations of the Lockhart review that require legislative change to the current acts. The inclusion of all the Lockhart recommendations gives the parliament the opportunity to accept, reject or amend them, but to at least debate them. It is not my role to cherry-pick those recommendations. It is for the parliament to decide which ones become law.

This is an exposure draft. It will raise technical issues for debate. It offers ideas for the committee to examine. I thank those people who have been involved in this process, including the original drafter, my staff and my co-sponsor, Senator Ruth Webber. Like many in this place, I appreciate her preference for a cross-party collaborative effort on this issue. I must thank in particular the Clerk Assistant (Procedure), Mr Cleaver Elliott, and his staff—Dijana in particular. I thank them, and now I give this to the Senate to amend, reject, debate or clone.

DOCUMENTS

Tabling

Senator PATTERSON (Victoria) (6.02 pm)—I seek leave to table a number of articles from published refereed journals.

Leave granted.

COMMITTEES

Membership

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

Senator SANDY MACDONALD (New South Wales—Parliamentary Secretary to the Minister for Defence) (6.02 pm)—by leave—I move:

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

Community Affairs—Standing Committee—

Appointed—

- Participating member: Senator Hutchins
- Substitute members:
  - Senator Barnett to replace Senator Fierravanti-Wells for the period 18 September to 6 October 2006
  - Senator Ferris to replace Senator Adams for the committee’s inquiry into the provisions of the Commonwealth-State/Territory Disability Agreement on 6 October 2006
  - Senator Siewert to replace Senator Allison for the committee’s inquiry into legislative responses to the Lockhart review

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

Appointed—Substitute members:

- Senator Brandis to replace Senator Parry for the committee’s inquiry into the Broadcasting Services Amendment (Media Ownership) Bill 2006 and three related bills for 28 September and 29 September 2006
- Senator Murray to replace Senator Bartlett for the committee’s inquiry into the Broadcasting Services Amendment (Media Ownership) Bill 2006 and three related bills

Legal and Constitutional Affairs—Standing Committee—

Appointed—Participating member:

Senator Fifield

CHAMBER
Publications—Standing Committee—
Discharged—Senator Watson
Appointed—Senator Barnett.

Question agreed to.

Selection of Bills Committee
Report
Senator PARRY (Tasmania) (6.03 pm)—
by leave—I move:

That the order of the Senate agreed to earlier today adopting the 10th report of 2006 of the Selection of Bills Committee be varied to provide that the Environment, Communications, Information Technology and the Arts Committee report on the Broadcasting Services Amendment (Media Ownership) Bill 2006 and three related bills by 6 October 2006.

Question agreed to.

The ACTING DEPUTY PRESIDENT—
Order! The time for consideration of general business having expired, the Senate will now proceed to consideration of committee reports, government responses and Auditor-General’s reports, as printed on page 5 of the Notice Paper.

Consideration

The following orders of the day relating to committee reports and government responses were considered:

Migration—Joint Standing Committee—
Report—Negotiating the maze: Review of arrangements for overseas skills recognition, upgrading and licensing. Motion of Senator Kirk to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.


Rural and Regional Affairs and Transport References Committee—Interim report—Water policy initiatives. Motion of the chair of the committee (Senator Siewert) to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

Rural and Regional Affairs and Transport Legislation Committee—Report—National Animal Welfare Bill 2005. Motion of Senator Bartlett to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

Community Affairs Legislation Committee—Report—Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005. Motion of the chair of the committee (Senator Humphries) to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

Community Affairs References Committee—Report—Beyond petrol sniffing: Renewing hope for Indigenous communities. Motion of the chair of the committee (Senator Moore) to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Expanding Australia’s trade and investment relations with North Africa. Motion of the chair of the committee (Senator Ferguson) to take note of report agreed to.
Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Australia’s defence relations with the United States. Motion of the chair of the committee (Senator Ferguson) to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

Electoral Matters—Joint Standing Committee—Report—Funding and disclosure: Inquiry into disclosure of donations to political parties and candidates. Motion of Senator Carr to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

Foreign Affairs, Defence and Trade References Committee—Report—China’s emergence: Implications for Australia. Motion of the chair of the committee (Senator Hutchins) to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

Mental Health—Select Committee—First report—A national approach to mental health—from crisis to community. Motion of Senator Allinson to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

Legal and Constitutional References Committee—Report—Administration and operation of the Migration Act 1958. Motion of the chair of the committee (Senator Crossin) to take note of report called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

Community Affairs References Committee—Reports—Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children—Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care—Government responses. Motion of Senator Murray to take note of document called on. On the motion of Senator McEwen debate was adjourned till the next day of sitting.

The ACTING DEPUTY PRESIDENT (Senator Moore)—We now move to Auditor-General’s reports.

Senator Siewert—I wish to speak to a document.

The ACTING DEPUTY PRESIDENT—Which one?

Senator Siewert—No. 11. I seek leave to address document 11, which is the Aboriginal and Torres Strait Islander Social Justice Commissioner’s report 2005—the social justice report. As was well articulated in this report by Tom Calma, the Social Justice Commissioner, there persists a gap—

The ACTING DEPUTY PRESIDENT—Excuse me, Senator Siewert, I have just been advised that we cannot go back. I do apologise. Leave has been sought to continue remarks on that document.

Senator Siewert—I did actually stand up at the time, and you did not see me.

The ACTING DEPUTY PRESIDENT—The time for government documents has expired.

Senator Faulkner—That is the problem. We are through documents.

Senator Siewert—Documents are between 6 pm and 7 pm. I am seeking leave to talk about a document.

Senator Faulkner—You are not getting leave, because unfortunately the time for that has elapsed.

The ACTING DEPUTY PRESIDENT—Senator Siewert, we expired the time with the previous discussion, so that particular segment of the order has gone.

Senator Faulkner—We would all like to speak on documents.

Senator Bob Brown—Let us make this clear. Senator Siewert is now seeking leave of the Senate to speak on that document—
that is her right—and the Senate can make that decision.

**The ACTING DEPUTY PRESIDENT**—I have been advised that what we will do is proceed with the process of reading through the Auditor-General’s reports and then seek leave at the end of that.

**Senator Siewert**—According to the red, documents start no later than six o’clock. This is normal practice. Documents are between 6 pm and 7 pm and Auditor-General’s reports are done from 7 pm till 8 pm.

**The ACTING DEPUTY PRESIDENT**—Senator Siewert, the full time for consideration of items under points 16 and 17 of the red is 2½ hours. That expired at 6.02 pm because of the length of the previous discussion. We have now moved on to the next part of today’s program.

**Senator Faulkner**—Madam Acting Deputy President, I rise on a point of order. While I understand the point that Senator Siewert makes—because, obviously, if there is an interest in a particular government document, a senator appreciates five minutes to be able to speak, and often that is available at this time of day—like Senator Siewert, I would have liked to have spoken on a government document higher in priority than No. 7. So, if we are going to go through the process of seeking leave, I will be seeking leave before document No. 7 to speak to document No. 2—and I can assure you that I will be making a very interesting contribution on that document. But the problem we have is that the way this joint works is that this ordinarily does not occur, because the time for general business has elapsed.

**The ACTING DEPUTY PRESIDENT**—Thank you for the clarification, Senator Faulkner!

**Senator Faulkner**—I am just taking a point of order. If we are going to have a situation where leave is granted—and I accept, by the way, that anything can be done by leave—it is going to be a madhouse, or even madder than it is already.

**The ACTING DEPUTY PRESIDENT**—Thank you, Senator Faulkner. We will proceed with the Senate program. I think we have had the explanation for the way the session has operated this afternoon. The documents to which Senator Faulkner and Senator Siewert have each referred will remain on the Notice Paper for future consideration.

**AUDITOR-GENERAL’S REPORTS**

Report No. 49 of 2005-06

**Senator McEwen** (South Australia)

(6.09 pm)–I move:

That the Senate take note of the document.

I seek leave to continue my remarks later.

**Senator Bob Brown**—Madam Acting Deputy President, I rise on a point of order. I do give leave to the good senator, but I note that her colleagues blocked leave to my colleague on a previous point.

**The ACTING DEPUTY PRESIDENT** (Senator Moore)—We note that, Senator Brown.

Leave granted; debate adjourned.

**Consideration**

The following orders of the day relating to reports of the Auditor-General were considered:


Work Choices will pick up the underclass forgotten by the Labor Party—the unemployed. Under Labor, a million Australians were out of work. Under John Howard, 1.9 million jobs have been created, most of which are full time. Economic growth depends on keeping the reform process going. This approach has helped to build one of the strongest economies in the world. Changes to our workplace relations system since 1996 have been an essential contributing factor to the strong economy and low interest rates that Australia currently enjoys.

Work Choices replaces a system that has six different industrial jurisdictions, more than 4,000 awards and over 105,000 different job classifications. As the Hon. Joe Hockey recently said, in a workforce of roughly 10.2 million people, that means a different classification for every 100 workers. How ridiculous. Pay for employees doing the same job but under different awards can vary by up to $77 per week. The reforms include a set of minimum standards covering wages, annual leave, sick leave and the like. These standards cannot be undercut. They apply to up to 85 per cent of Australian employees.

In the union and Labor Party scare campaigns and criticism of Work Choices, they said two things: it will lead to fewer jobs and it will lead to lower wages. Indeed, AWU Secretary Bill Shorten said Work Choices was ‘a green light for slashing jobs’. Let us look at the facts, because the facts are on our side. The unions said that the sky would fall in, that there would be mass job losses under Work Choices. What has happened since Work Choices came into being? We have over 175,000 new jobs throughout Australia. That is since March this year. Indeed, since 1996, when the Howard government came into office, 1.9 million new jobs have been created. In Tasmania, my home state, since Work Choices started, unemployment has fallen four points, from 6.4 per cent to six
per cent. Of course, unemployment reached 12.6 per cent in Tasmania under Labor.

Labor said Work Choices would lead to lower wages. What do the facts say? Real wages have actually increased nationally by 16.4 per cent in the past decade under the Howard government. In the June quarter this year, real wages growth shows projected annual-basis wage growth heading for 4.4 per cent. In Tasmania, between February and May 2006, average weekly ordinary time earnings rose by 1.5 per cent; that is an indicative six per cent growth over a full year.

In response to last week’s fall in unemployment in Tasmania, the state Labor Treasurer, Michael Aird, admitted that the sky had not fallen in. What did he actually say? He said:

... more people are looking for work because they are confident of getting a job in the current economic climate.

Indeed, there have been no mass sackings since April, no Armageddon and no mass purge of the workforce as the union-Labor scare campaign warned.

I want to turn now to the economy. Let’s have a quick look at the results. The number of Australians in work under Labor was 8.3 million in 1996; under John Howard, 10.2 million. Of those jobs, 7.3 million are full time. The number of long-term unemployed was 197,800 in 1996; it was 91,200 as of June this year. Labor’s $96 billion debt has been wiped out; now we are looking at a surplus. Average mortgage rates under Labor were 12.75 per cent; under John Howard they are 7.15 per cent. Average inflation under Labor was 5.2 per cent; under John Howard, 2.5 per cent. The number of working days lost per 1,000 under Labor was 193; under Prime Minister Howard, 64. This is a very important point: strike action in the 1990s peaked at 104.6 working days lost per 100,000 in the 1992 December quarter. Who was the Minister for Employment, Education and Training then? The Hon. Kim Beazley was the employment minister. Our standard of living was ranked 13th in the OECD in 1995; it is now ranked eighth. Individual workplace agreements in Tasmania are, on average, 48 per cent more than those on awards, and nationally it is 100 per cent more than those on awards, and 13 per cent more than those on a collective agreement.

Interestingly, four out of five workers have opted not to have union membership. Union members are some 17 per cent of the private sector workforce now. Unions have handed the ALP $47 million in party affiliation fees and other contributions since 1996, whether the membership voted Labor or not. In my view, that is the key to the scare campaign behind Labor and union efforts to date. Most of those opposite are former union officials, and they know the importance of the union affiliation fees and contributions used to prop up the Labor Party. And now we know how they hope to protect this political laundering of union membership dues.

In the Hon. Kim Beazley’s rollback he wants to abolish AWAs. He is threatening the income of 20,000 workers on approved AWAs in Tasmania, and almost 900,000 nationally. The plan of the Leader of the Opposition is a plan for collective bargaining which will enable workplace collective bargaining if more than 50 per cent of the workers in that workplace agree. Mr Beazley’s office has confirmed that, under a Labor government:

... unions would be allowed to call on the Australian Industrial Relations Commission to subject all existing individual agreements to change to fit a new set of yet-to-be-announced minimum standards, even if neither party in the agreement wanted to change.

But on Wednesday, just yesterday, at the National Press Club, ACTU Secretary Greg Combet claimed that Mr Beazley’s collective...
bargaining announcement had been misinterpreted. He said:

We are not putting and I don’t understand Mr Beazley to be putting a position such as it obtains in North America where before a collective bargaining process can take place, there’s a necessity to establish that a majority of workers in that workplace want the collective agreement. What we are putting is that, a much, I suppose more flexible approach to it, that the law provide that employers and employees and Unions can voluntarily enter into collective bargaining at any time ... That is not a system where the right to collectively bargain is predicated upon a majority decision of the employees. It’s a system where any party can enter into collective bargaining negotiation at any time.

What does the business community think about that, and what do other commentators think about it? The state chamber of the peak New South Wales industry group, Australian Business Limited, said:

The Beazley plan is about stripping away the right of any worker to negotiate directly with an employer ...

I refer to the Illawarra Mercury headline today, Thursday, 14 September, entitled ‘Labor keeps union IR plan at a distance’. The lead sentence says:

Labor has distanced itself from a union plan to compel workplaces to adopt collective agreements even where the majority of workers don’t vote for them.

The Financial Review today says ‘Choices for work are clear’, and goes on to make some very interesting observations, including:

While the labour movement’s high priests have been mulling their response to Work Choices, evidence continued to mount that the new workplace regime is not the horror they seek to portray.

And indeed it goes on. We have the Tasmanian Chamber of Commerce and Industry expressing their concern, including on the front page of the Tasmanian Business Reporter, where they say that the union right of entry is ‘an outrage’, and Damon Thomas is quoted extensively in that regard. (Time expired)

The DEPUTY PRESIDENT—Before calling Senator Forshaw, I understand that Senator Forshaw has agreed to split between himself and Senator Carr the normal 10 minutes allocated for speeches on the adjournment debate. I ask the Clerk to set the clock accordingly: three minutes for Senator Forshaw and seven minutes for Senator Carr.

Mr Alex Buzo

Senator FORSHAW (New South Wales) (6.20 pm)—Thank you, Mr Deputy President. I am not sure whether I will need the full three minutes. Tonight I want to record in this parliament the sad passing of one of Australia’s renowned modern playwrights, Alex Buzo. Alex Buzo died on 16 August after a long illness. He was only 62 years of age. He died far too young and the nation has lost one of its modern literary giants.

Along with David Williamson and Jack Hibberd, Buzo was a pioneer of Australian drama in the 1960s and 1970s. I was fortunate to be studying Australian literature at Sydney university in the early 1970s and became well acquainted with his work, and I went to see his plays when they were shown. Buzo’s plays, particularly his first play, Norm and Ahmed, followed by Rooted and then the legendary Coralie Lansdowne Says No, have become modern Australian literary classics. Their themes are universal and timeless whilst being quintessentially Australian.

Alex Buzo was also well known for his great love of Australian sport and his interest in the emasculation of the language by prominent personalities, particularly sporting commentators. He started the Australian Tautilogy Competition, which he ran for many years, and published the results in the Na-
tional Times newspaper. Invariably the winner was the Rugby League TV commentator Rex Mossop, who gave us such immortal quotes as:

They're retreating backwards towards their own tryline!

He seems to be favouring a groin injury at the top of his leg.

Stanley Gorton is racing towards the opponent’s tryline with great speed and alacrity.

He’s just given him a verbal tongue-lashing.

There are many more, some of them unprintable. I think that Buzo secretly wished that he could have written many of the lines which seemed to tumble naturally out of Rex Mossop’s mouth. Buzo created the Australian Tautology Competition, and in a way I think he brought to the attention of readers the need for correct pronunciation and adherence to correct language standards. A number of obituaries have appeared in the newspapers following his untimely passing.

However, I believe it is appropriate that we note in this parliament Alex Buzo’s great contribution to our literary heritage. He enriched our cultural and sporting life.

**Meat Industry: Mr Aaron Leslie Willis**

**Senator CARR (Victoria) (6.23 pm) —**

Yesterday I raised matters concerning the Australian government’s supervision of Commonwealth subsidies of young workers under the New Apprenticeships scheme. I raised matters concerning the death of a meatworker, Aaron Willis, on 25 May 2006 and his preceding treatment at the hands of Midfield Meat of Warrnambool. I asked questions of DEST with regard to the training contract was cancelled and that Mr Willis’s employment was terminated, effective the day after his accident. There is no dispute that Midfield Meat failed to report this incident. There is no dispute that they failed to pay for the ambulance that took Mr Willis to hospital. The only thing in dispute is whether or not Mr Willis hit his head.

There is no dispute that something took place at the meatworks on 31 May 2005 and that Mr Willis was unconscious and was taken by ambulance to hospital as a result of this event. There is no dispute that Mrs Willis fell into some equipment — WorkSafe Victoria said ‘a bin’; Mr Willis said ‘a mincer’. Since the equipment was not operating at the time, it is neither here nor there. There is no dispute that the training contract was cancelled and that Mr Willis’s employment was terminated, effective the day after his accident. There is no dispute that Midfield Meat failed to report this incident. There is no dispute that they failed to pay for the ambulance that took Mr Willis to hospital. The only thing in dispute is whether or not Mr Willis hit his head.
The statement presented to the press today by the company suggested that I was seeking to ‘sensationalise’ this young man’s death. What I am doing is drawing attention to the treatment of Aaron Willis, a young trainee meatworker whose employer failed to exercise its duty of care for his welfare and safety. Midfield Meat claims that Aaron had a pre-existing medical condition—epilepsy, controlled by medication. If the company believed this, why did it sign off on Mr Willis’s training contract, forms of which I have, which states specifically that he had no pre-existing medical condition? This is a standard provision of all training contracts. Why did the company sign off that there was no pre-existing medical condition?

I am in possession of a letter from the hospital, dated some two months after the incident, where the doctor says they were still examining Aaron to see if he did or did not have epilepsy. If he already had it and was on medication for it, why would they be examining him to find out? How do we know that Aaron did not suffer any head or body injuries, as claimed by the company? Was it the supervisor who examined him, and what medical qualifications does this supervisor have? What expertise was relied upon? If it was the ambulance staff, what medical expertise do they have in neurology? Why doesn’t the company tell us who made the assessment and the qualifications of the people it relied upon so that it was able to make the statement to the press today?

The company refers to a ‘treating doctor’. It does not tell us when this doctor examined and treated Aaron. Was it immediately after the accident? Was it some time in the ensuing year? What kind of doctor was it? Was it a specialist or a hospital resident? The company relies on the word of a single supervisor who claims to have seen the incident. What about other workers? The supervisor cannot have been the only person to see what actually happened on the work floor that particular day. Other workers were working on the line.

In any case, we have the statement by Mr Willis’s mother to her lawyers in which she reports that Aaron phoned her from the hospital when he came around from being unconscious for 18 hours and told her that he had fallen into a mincer. Why would he have fabricated such a story? Midfield Meat claims that they ‘kept a position open’ for Aaron after the incident. Aaron’s mother states that he went back twice to seek re-employment and was refused on both occasions.

Furthermore, Aaron never had a permanent full-time position. Contrary to the rules covering a traineeship, Midfield was employing him and paying him as a casual. There was no position to be kept open for him. As it is claimed, Aaron’s traineeship ‘would have continued had he been fit enough to work’. Why did the company so promptly cancel his contractor training? And why are they trying to present this as an action of the Victorian government when everyone understands it is the company that makes those decisions? Finally I make these two points. Why is it that there are 100 trainees every year in this plant? What has DIMA been doing to provide approval for 100 section 457 visas for the same company? (Time expired)

**Conclusive Certificates**

**Senator KIRK** (South Australia) (6.31 pm)—I rise this evening to talk about freedom of information. As most of us are aware, the strength of our democracy rests on the ability of citizens to cast an informed vote at the ballot box and in order to do this information is the key. But there appears to be a predisposition within the higher levels of the Australian government to favour secrecy and nondisclosure—that is, a culture of suppres-
sion of information has become endemic. It is for this reason that we have freedom of information laws. The Commonwealth Freedom of Information Act, the FOI Act, had as its original aim to extend as far as possible the right of the Australian community to access information in the possession of the government of the Commonwealth. Without accountability there cannot be confidence that the executive government and the public servants who serve the executive are doing the right thing.

However, the High Court decision last week in McKinnon v Secretary, Department of Treasury has resulted in the 24-year-old FOI Act being rendered virtually useless in gaining access to sensitive government material. At the centre of this decision was Treasury information detailing revenue projections from tax bracket creep as well as fraud alleged to be occurring as to first home owners grants. The freedom of information editor of the Australian, Michael McKinnon, hoped to discover just how much tax the government really was handing back from bracket creep, where rising wages push workers into higher tax brackets, and the extent to which the first home owners grant scheme was being rorted, or possibly helped fuel the property boom. This is information that Mr McKinnon was seeking. It is hard to imagine information that it would be more in the public interest to disclose.

The Treasurer, Mr Costello, defended his decision to deny access to these documents on the grounds that they were in draft form and were working documents. The High Court of Australia agreed with the Administrative Appeals Tribunal, which had previously found that the Treasurer, Mr Costello, did have reasonable grounds to impose what are known as conclusive certificates on two sets of Treasury documents. The High Court found that ministers, such as the Treasurer, can issue conclusive certificates if they have ‘reasonable grounds’ to argue that the disclosure would run counter to the public interest. All justices of the High Court found that there was no provision under the existing FOI Act for a review of the merits of a minister’s decision to issue a conclusive certificate. Under the FOI Act a minister may issue a certificate that establishes conclusively that a document is exempt from disclosure. The damaging potential of conclusive certificates at the federal level in Australia means that there is, in effect, no way to monitor their use. Ministers, with all of the political interests that we are aware of, can issue conclusive certificates and as a consequence be the final arbiters of what is disclosed and what is concealed.

Under section 58(5) of the FOI Act, once a conclusive certificate is issued any appeal faces an almost impossible test. Just one public servant needs to say that the public interest is served by not granting the request to disclose. Indicating the unbalanced nature of the test, two justices of the High Court stated:

... so long as there is anything relevant to be said in support of the view that disclosure would be contrary to the public interest, an applicant ... must fail.

In other words, any old excuse will do when it comes to denying access to these documents. It does not matter if it contains little weight just so long as it contains some weight. And it does not matter if there are countervailing arguments, even if they are of far greater weight, in favour of giving access.

So instead of promoting access to government material, FOI has been left to the sole discretion of the relevant minister. This creates unlimited potential for the abuse of the conclusive certificate process. The High Court decision has triggered renewed calls for changes to the FOI Act, which has been the subject of many reviews and recommen-
lations for reform. Three reports from the Commonwealth Ombudsmen have pointed to inconsistent approaches by federal agencies to FOI requests. After this decision of the High Court, those agencies that had previously adopted a cooperative approach to FOI requests will be likely to change their approach. As the High Court said, the act’s ‘express and unmistakably clear language’ allows for this narrow and technical decision—and it paves the way for other ministers of the Crown to follow Mr Costello’s example and keep sensitive information secret from the public.

The decision dilutes the laudable objective of Commonwealth FOI laws and gives a green light to government secrecy. Particularly alarming is the fact that the information at the heart of the High Court’s decision was widely regarded by Treasurer Peter Costello as trivial, yet the government spent about $1.5 million of taxpayers’ money keeping secret the documents on tax bracket creep and potential rorting in the first home buyers scheme.

In contrast to our highest court, the superior courts in Canada and New Zealand have taken quite a different approach to the interpretation of their FOI laws. These courts have taken every opportunity to elevate the objectives of FOI laws above any black-letter interpretation of the various provisions. So, for example, information that the Australian government fought for four years to keep secret would be available in New Zealand within just 24 hours.

When we are dealing with FOI, the balance should always be weighted in favour of disclosure and the public interest. Our High Court failed to give adequate weight to the aims of the FOI Act—namely, to extend as far as possible the right of the Australian community to access information in the possession of the government of the Commonwealth.

The decision is quite a concerning one for journalism. Reporters will now increasingly be forced to rely on unofficial leaks—which, when they come from federal public servants, have the potential to breach the Commonwealth Crimes Act. It is an even more disturbing decision for the Australian community as a whole because, with this decision, it is difficult not to conclude that the freedom of information laws are now effectively lost as an avenue for making governments open, transparent and accountable.

The Australian Labor Party believes that freedom of information is a cornerstone of our modern democracy. We have promised to revamp the FOI laws and have also said that, when elected to government, we will abolish the use of conclusive certificates.

Federal Judicial Commission

Senator HEFFERNAN (New South Wales) (6.39 pm)—I will only be a couple of minutes. This is a rare occasion. I wanted to rise tonight to reiterate my strong view that Australia should have a federal judicial commission. I think there is no practical process at the present time to have full public scrutiny of the weaknesses—which we all have—of the federal judicial jurisdiction, which includes Federal Court judges, High Court judges, federal magistrates and Family Court judges.

Recently in Sydney there was an event which I would like to highlight tonight, which I think merits the case for a process—without having a process that becomes a witch-hunt—that the public can adopt to have full scrutiny of judges, whether those judges have an alcohol problem or dementia. As was recently demonstrated in Western Australia, where there was a problem, there was no process to deal with it other than convening both houses of this parliament. I
am not sure how you mount the argument to convene both houses of this parliament if you are not allowed to get out there and say it.

Recently in Sydney there was a matter at the Coroners Court. The proceedings of the Coroners Court have been suppressed, and the name of the person, a Federal Court judge, who was the subject of the Coroners Court inquiry—it was an inquiry into the death in bizarre circumstances of a judge—has been suppressed. I think it is a reasonable thing for people to expect that, if you are a person who has sat before the likes of this judge, and he sat in judgement of you in the days and weeks leading up to the circumstances that led to a process in the Coroners Court that is entirely suppressed to the point where not even the people he sat in judgement of know the bizarre life and death issues surrounding the matter, you are entitled to know the state of mind of the judge who was judging you.

The present process does not allow for that. I think it is a reasonable thing to expect that, if I am in court sitting before a judge and being judged, I am entitled to know what the state of mind of the judge is when he is judging me. This was, sadly, the case of a judge who died in a very bizarre circumstance—I am not too sure why it is suppressed—following some bizarre lifestyle choices, as I suppose you could say. I think it is unfair to the people who that person sat in judgement of not to be able to have the opportunity to pursue the state of mind of the judge at the time he sat in judgement on them.

I want to put that to the parliament as a reasonable example of why we should have a process of judicial commission at the federal level so people can have full confidence in the fairness and the performance of Federal Court judges. Obviously, I could go into a lot more detail, which I will not tonight, of other instances. Certainly this judge came to my attention over a number of years for some varying degrees of behaviour, shall I say, in court appearances. That is all I want to say.

**Stem Cell Research**

**Senator STOTT DESPOJA** (South Australia) (6.43 pm)—In the time remaining, I want to talk a bit about the Lockhart review that examined the current acts that govern stem cell research in this country. Of course, these are the Prohibition of Human Cloning Act and the Research Involving Human Embryos Act, both from 2002. They were the result of quite passionate and complex debates through the Senate committee process and indeed the parliament in December 2002.

Tonight I have tabled an exposure draft bill which seeks to implement some of the review’s recommendations. Fifty-four recommendations were contained in the Lockhart review. I have identified the scientific recommendations of the Lockhart review and put them into a legislative and policy framework to facilitate debate on the Lockhart recommendations in the parliament.

I made it clear that I was going to do that, in March this year, when I felt that the Prime Minister and the government were stymieing the debate on the Lockhart provisions. I am glad to see that since then the debate has moved and it has certainly gathered a great deal of momentum.

I welcome the Prime Minister’s decision to grant a conscience vote on this issue if there should appear a bill before the parliament. We of course anticipate that a private member’s bill will also be tabled and be subject to committee analysis and debate. But the gist of the exposure draft bill that I tabled tonight was to encapsulate all the Lockhart recommendations so that the parliament could decide and determine which were im-
important and appropriate scientific recommendations—those which encapsulate and reflect community values and concerns but, at the same time, allow the potentially dazzling benefits of this technology to proceed. I did not want to cherry pick those recommendations because I want the parliament to decide what to adopt, reject, amend, debate—and even what to clone, as the case may be.

I know that there are some people tonight roaming the galleries suggesting: 'The senator has included in the private member’s bill a couple of the more contentious Lockhart recommendations'—or, specifically, I think they are referring to Lockhart recommendation No. 24. The illusion or notion is being created, with regard to comments yesterday by the Chief Scientist, Dr Jim Peacock, that somehow he was skating away from these recommendations, or specifically recommendation No. 24. My understanding of his comments yesterday was not that he was shying away from the potential benefit or idea of recommendation No. 24 in an ethical, scientific or legal sense. I will read recommendation No. 24:

In order to reduce the need for human oocytes, transfer of human somatic cell nuclei into animal oocytes should be allowed, under licence, for the creation and use of human embryo clones for research, training and clinical application, including the production of human embryonic stem cells, as long as the activity satisfies all the criteria outlined in the amended Act and these embryos are not implanted into the body of a woman or allowed to develop for more than 14 days.

Certainly, that recommendation is encapsulated—or at least it is intended to be encapsulated—in the draft bill that I have tabled tonight. I do not shy away from that recommendation. I have no doubt that, when it comes to potential benefits involving this technology and potential cures, that particular recommendation has value, it has worth, and I think the Chief Scientist also acknowledges that. My impression of his comments yesterday is that this may not necessarily be the priority issue, and some of us would identify that there are a number of priority issues. I would hazard a guess that, for a majority in this place, the priority contained in these recommendations would boil down to somatic cell nuclear transfer so that there is an opportunity to legislate for so-called therapeutic cloning because of its potential benefits. Just because people may identify particular priorities among the recommendations, it does not mean that other recommendations are less valid or offer less potential. It was precisely for that reason that I did not cherry pick these recommendations. I wanted to give parliament an opportunity to examine and decide on these recommendations.

There will be differences of opinion and strongly held views on all sides of the chamber, and I respect that. I respect the fact that people have different views. I am glad to see, though, that some of those people who were opposed to or voted against some of the aspects of the bill in 2002 are actually recognising or arguing, for whatever reason, that the research should take place on excess embryos but not necessarily allow for somatic cell nuclear transfer. I consider that as some movement in the debate before us.

There is one thing I have not done—that is, legislate for a stem cell bank. People may wonder why that is, given that it was the successful amendment moved by Senator Jan McLucas and me in 2002 that charged the Lockhart review with examining the applicability of the establishment of a national stem cell bank. The reason I have not done that is, firstly, you do not need legislation to have a stem cell bank. The UK national stem cell bank does not have a legislative framework. But I expect there will be interest in that issue, and I have not ruled out the possibility that that may be something worth pursuing. So I have charged the Attorney-General’s
Department and the Department of Health and Ageing with examining the legislative framework of such a stem cell bank. There are various models that could be adopted. There are complicating issues, of course, such as intellectual property and a range of other issues that need to be dealt with.

In closing, I make it very clear: this is a technical, legal, scientific and ethical debate. It is a huge debate; it is a complex debate. I am not suggesting that the private member’s bill that I have tabled today, cosponsored by Senator Webber, is perfect. It will need technical examination and it will need improvement. But I am really proud to see that we have played some role in this debate today to move the government along to a point where not only has the Prime Minister granted a conscience vote but bills have been referred to committee and we will have a vote in November.

Mr Abdul Hakim Taniwal

Senator STEPHENS (New South Wales) (6.50 pm)—I seek leave to incorporate my speech.

Leave granted.

The speech read as follows—

Today, the Senate acknowledged the death of Abdul Hakim Taniwal—an Australian-Afghani, who was killed so tragically last Sunday in Afghanistan.

Mr Taniwal was the scholarly and soft-voiced governor of Paktia province in Afghanistan, and a close friend and confidant of President Hamid Karzai.

He was a charismatic political figure known for his skill in bringing together hostile groups in the country’s volatile tribal regions near the Pakistani border.

Mr Taniwal, his nephew, driver and bodyguard were killed when a suicide bomber threw himself under their vehicle, detonating the explosives as they were approaching the governor’s office in the provincial capital, Gardez, some 80 miles south of Kabul.

His death shocked foreign diplomats and political leaders around the world, who have praised Mr Taniwal for his service to his country. Having escaped the Taliban regime, he and his wife came to Australia as refugees, and lived outside Melbourne.

He returned home to Afghanistan in 2002, at the invitation of President Karzai, who sought his assistance in the fledgling new government.

He joined President Karzai’s administration, serving first as governor of Khost province, then as a member of the Cabinet as Minister for Social Welfare and Employment and Minister for Mines and Industry.

Just less than a year ago he agreed to take on the job of governor of the Paktia province.

President Karzai described Mr Taniwal as a great patriot. He fought against violence and corruption in Paktia;

He did much to bring the warring tribes together there; and he made a significant contribution to the national reconciliation program being undertaken in Afghanistan.

Mr Taniwal was the first Afghan governor to be killed in office since the Karzai government took office in late 2001. Several other governors have survived assassination attempts, and two cabinet ministers have been killed in Kabul.

In an interview with The Washington post in 2002 in his former office in Khost province, Mr Taniwal said he had been reluctant to leave his family in Australia but wanted to help his friend, President Karzai establish a strong democratic government after years of bloodshed and repression in Afghanistan.

He said he believed in bringing all Afghans into a national dialogue, including former Taliban members who were willing to return to civilian life—and he was attempting to do the same thing in his new post in Paktia province.

“I am not a commander. I am a peaceful man, and I want to resolve this peacefully ... I want to finish the Kalashnikov culture,” Mr Taniwal had said in the interview in Khost, as he was attempting to negotiate with a renegade militia commander.
Mr Taniwal acknowledged that his children were worried about him returning to Afghanistan to serve in the Karzai government, but that he had agreed to help calm the trouble in the turbulent eastern region.

“This is my home, and I wanted to do something for my people,” “I am not alone here.” he said at the time.

Mr Taniwal’s influence came in part from the respect he received as an elder of his Tani tribe. He was exactly the kind of man that President Karzai was trying to position in senior posts around the country—replacing the warlords and mujahideen commanders with educated men who could promote education and the law.

His son, Zmarak, said his father had fervently believed he could help rebuild his homeland.

Let us hope that his life and his work are not in vain and that there is continued international support for the government of Afghanistan in coming months.

His death reminds us of the dangerous work that our service men and women are doing in Afghanistan and the sacrifices they are making for the cause of democracy.

At the funeral, Mr Karzai praised Mr Taniwal for his efforts and his contribution.

“The enemies of Afghanistan are trying to kill those people who are working for the peace and prosperity of Afghanistan,” he said.

Telling words, since at the funeral, another suicide bomber killed six people and wounded at least 30 others.

Mr Taniwal is survived by his wife and children, who have many reasons to be very proud of the quiet sociology professor who has given his life for the country he loved.

Our thoughts and prayers are with them all.

Mr John Vander Wyk

The DEPUTY PRESIDENT (6.50 pm)—Before the Senate adjourns this evening, on behalf of other senators in this place, I want to make a final statement on the fine service that John Vander Wyk has provided. I know other people have made statements. I think it is appropriate at the conclusion of the sitting fortnight, and just prior to the retirement of John Vander Wyk, that we acknowledge, once again, the fine work that he has performed over 32 years for this Senate. He will, undoubtedly, be missed and I welcome him as a future citizen of the state of Queensland.

Senate adjourned at 6.51 pm

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:


Class Rulings CR 2006/88 and CR 2006/89.

Goods and Services Tax Bulletins—GSTB 2006/1.

Notice of Withdrawal—GSTB 2000/2.


GSTR 2001/3.


Product Rulings PR 2006/129 and PR 2006/130.

Taxation Determinations TD 2006/53 and TD 2006/54.

Taxation Rulings—Notices of Withdrawal—Old Series—IT 2034, IT 2213, IT 2292.

TR 97/8.

TR 2006/8.

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—
Australian Research Council.
Australian Trade Commission.

**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:

Canberra International Airport
(Question No. 2380)

Senator O’Brien asked the Minister representing the Minister for Defence, upon notice, on 15 August 2006:

With reference to the open day at Canberra International Airport in 2006:

(1) Given that more than 7,500 people attending the open day had access to the runway extension, what arrangements were made to ensure the security of Defence facilities co-located at Canberra International Airport and Royal Australian Air Force (RAAF) aircraft either on the tarmac or in a hangar.

(2) Was the RAAF or the department consulted.

Senator Ian Campbell—The Minister for Defence has provided the following answer to the honourable senator’s question:

(1) The 34 Squadron Special Purpose Aircraft facility is a secure facility with appropriate measures in place at all times.

(2) Yes.

Wilderness Society
(Question No. 2404)

Senator Bob Brown asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 17 August 2006:

Has the Minister met with representatives of the Wilderness Society in the past 5 years; if so, on what dates.

Senator Ian Campbell—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

No meetings specifically with the Wilderness Society have been held. The Wilderness Society may have been represented at broader meetings and functions attended by the Minister.